ABA MODEL RULES SPECIFIC NOTES

INTRODUCTION

This document identifies and addresses what are or seem to be, mistakes, inconsistencies, and arguably poor wording in the ABA Model Rules.

Each Note appears on a separate page, in rule order. To make in-person or virtual collaboration and references easier, the pertinent ABA Model (or Comment) number appears at the top of each page. If this document contains more than one Note about the same Rule or Comment, the Notes are consecutively numbered. This allows anyone referring to a Note to identify the pertinent ABA Model Rule or Comment, and which Specific Note he or she is addressing. The goal is to allow lawyers communicating about any Note to easily assure that they are "on the same page."

Each Note also has a Code number. These indicate the Note's possible importance. These Code numbers are in decreasing order of possible significance:

(1) Urged improvement

(2) Recommended improvement

(3) Substantive suggestion

(4) Stylistic note

ABA MODEL RULE PREAMBLE [6]	
Note # 1	**Code # 4**
ABA Model Rule Preamble [6]'s fourth sentence contains the word "poor" in describing people who "cannot afford adequate legal assistance." This arguably pejorative word contrasts with several phrases contained in ABA Model Rule 6.1: "those unable to pay" (ABA Model Rule 6.1's introductory sentence); "persons of limited means" (ABA Model Rule 6.1(a), ABA Model Rule 6.1(b), ABA Model Rule 6.1 cmt. [2]), "the disadvantaged" (ABA Model Rule 6.1 cmt. [1]).	

ABA MODEL RULE PREAMBLE [8]	
Note # 1	**Code # 3**
ABA Model Rule Preamble [8]'s second sentence explains that "a lawyer can be a zealous advocate on behalf of a client" – "when an opposing party is well represented." This would seem to limit lawyers' ability to be "a zealous advocate on behalf of a client" to those circumstances, but without any guidance for lawyers when "an opposing party" is not well represented.	

ABA MODEL RULE PREAMBLE [11]	
Note # 1	**Code # 2**
ABA Model Rule Preamble [11]'s third sentence explains that "abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice" (emphasis added). It is unclear what this means, because lawyers are dependent on the government "for the right to practice."	

ABA MODEL RULE SCOPE [14]	
Note # 1	**Code # 4**
ABA Model Rule Scope [14]'s seventh sentence contains the word "constitutive." That pretentious word is rarely used, and seems unnecessary here.	

ABA MODEL RULE SCOPE [14]	
Note # 2	**Code # -**
ABA Model Rule Scope [14]'s eighth sentence notes that "[m]any" of the [ABA Model Rule] Comments use the term "'should'", and assures that "[c]omments do not add obligations to the [ABA Model] Rules but provide guidance for practicing in compliance with the [ABA Model] Rules." This implicitly confirms that the term "should" describes suggested or aspirational actions, rather than ethical requirements. But as the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. This document contains some but not all examples of this.	

ABA MODEL RULE SCOPE [18]	
Note # 1	**Code # 3**
ABA Model Rule Preamble [18]'s third sentence contains the term "government law officers." That term is not defined, and contrasts with various terms contained in other ABA Model Rule provisions: "Government Officers" (ABA Model Rule 1.11's Title); "public officer" (ABA Model Rule 1.11(a)).	

ABA MODEL RULE SCOPE [21]	
Note # 1	**Code # 4**
ABA Model Rule Scope [21]'s second sentence contains the phrase "[t]he Preamble and this note on Scope" (emphasis added). It is unclear what the phrase "this note on Scope" means. Perhaps it refers to ABA Model Rule Scope [14]-[21], but in that case the singular seems incorrect.	

ABA MODEL RULE 1.0 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 1.0 cmt. [2] third sentence's explanation of when two or more lawyers "constitute a firm" contains the unhelpful circular explanation when such lawyers "conduct themselves as a firm, they should be regarded as a firm for purposes of the [ABA Model] Rules."	

ABA MODEL RULE 1.0 cmt. [2]	
Note # 2	**Code # 2**
ABA Model Rule 1.0 cmt. [2]'s fourth sentence points to "[t]he terms of any formal agreement between associated lawyers" as relevant in determining whether the lawyers constitute a "firm" (emphasis added). It would seem that even an "informal" agreement would have some effect.	

ABA MODEL RULE 1.0 cmt. [2]	
Note # 3	**Code # 1**
ABA Model Rule 1.0 cmt. [2]'s sixth sentence contains an example of when two or more lawyers "could be regarded as a firm:" "[a] group of lawyers could be regarded as a firm for purposes of the [ABA Model] Rule that the same lawyer should not represent opposing parties in litigation" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" when the word "must" would be more appropriate, if not required. This is one of the stark examples where the word "must" would be more appropriate than the word "should." Under ABA Model Rule 1.7(b)(3), "a lawyer may represent a client if … the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal." In other words, ABA Model Rule 1.7(b)(3) explains that the same lawyer must "not represent opposing parties in litigation."	

ABA MODEL RULE 1.0 cmt. [9]	
Note # 1	**Code # 2**
ABA Model Rule 1.0 cmt. [9]'s sixth sentence understandably defines ethically compliant "screening" as including "denial of access by the screened lawyer to firm files per other information. Inexplicably, ABA Model Rule 1.10(b)(2) allows a law firm to represent the adversary of a former client previously represented by one of the firm's lawyers who has since left the firm – as long as no "lawyer remaining in the firm" has material protected client confidential information. This exclusive focus on lawyers thus allows such a law firm to represent an adversary of one of its former clients even in the same matter that the firm handled for the now-former client if: (1) non-lawyer such as paralegals with such information remain at the firm, and (2) lawyers and non-lawyers have not been screened from the now-former client's files remaining at the firm. In other words, ABA Model Rule 1.0(b)(2) does not require such denial of such access to firm files	

ABA MODEL RULE 1.1 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 1.1 cmt. [1]'s first sentence explains that determining a lawyer's "competence" includes analyzing "whether a lawyer employs the requisite knowledge and skill in a particular matter" (emphasis added). That is an odd use of the "employs." Where other ABA Model Rules contains that word, it denote an employment relationship. Also, the present tense "employs" seems to refer to lawyers' representational activity, not whether the lawyer possesses pre-representational ability. A word like "possesses" might be more appropriate.	

ABA MODEL RULE 1.1 cmt. [1]	
Note # 2	**Code # 2**
ABA Model Rule 1.1 cmt. [1]'s first sentence notes that "determining whether a lawyer employs the requisite knowledge and skill" includes "whether it is feasible" to: (1) "refer the matter to… a lawyer of established competence in the field in question;" (2) "associate… with… a lawyer of established competence in the field in question;" or (3) "consult with… a lawyer of established competence in the field in question. Presumably the word "refer" denotes the lawyer handing off the matter to a competent lawyer – which seems like a inapt attribute of "competence." The word "associate" is not defined, but presumably refers to a lawyer not in the same firm. That possible arrangement adds to the confusing use of the word "associate" throughout the ABA Model Rules. The word "consult" presumably denotes the lawyer receiving guidance from a lawyer in another firm, but not handing off the matter or establishing a co-counsel relationship. This trifecta of possibilities is inconsistent with ABA Model Rule 1.1 cmt. [6] first sentence's description of such a lawyer "retain [ing] or contract [ing] with other lawyers."	

ABA MODEL RULE 1.1 cmt. [1]	
Note # 3	**Code # 4**
ABA Model Rule 1.1 cmt. [1]'s first sentence explains that a lawyer lacking competence may make one of several arrangements with "a lawyer of established competence in the field in question." The word "established" seems unnecessary.	

ABA MODEL RULE 1.1 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 1.1 cmt. [2]'s fifth sentence describes a scenario in which "[a] lawyer can provide adequate representation" (emphasis added). Presumably the word "adequate" is intended to be synonymous with the word "competent." But the word "adequate" arguably describes a lower standard. And in any event, it would be more clear if ABA Model Rule 1.1 cmt. [2] contained the same word ("competent") to denote the same level of competence.	

ABA MODEL RULE 1.1 cmt. [2]	
Note # 2	**Code # 2**
ABA Model Rule 1.1 cmt. [2]'s sixth sentence contains the same phrase "a lawyer of established competence" (emphasis added) as ABA Model Rule 1.1 cmt. [1]. The word "established" seems unnecessary.	

ABA MODEL RULE 1.1 cmt. [6]	
Note # 1	**Code # 1**
ABA Model Rule 1.1 cmt. [6]'s first sentence describes a lawyer's relationship with another lawyer that will enable the former to satisfy ABA Model Rule 1.1's "competence" standard. ABA Model Rule 1.1 cmt. [6]'s first sentence describes a lawyer who "retains or contracts with" a lawyer from another firm. ABA Model Rule 1.1 cmt. [6]'s second sentence contains the same words "retain or contract with." Those two words contrast with ABA Model Rule 1.1 cmt. [1]'s first sentence's phrase "associate or consult with" another lawyer. The word "retains" seems inappropriate. Lawyers don't "retain" another lawyer as a replacement or as co-counsel – clients retain such lawyers. The word "contracts" seems somewhat less inappropriate – if it refers to a client-approved co-counsel arrangement.	

ABA MODEL RULE 1.1 cmt. [6]	
Note # 2	**Code # 2**
ABA Model Rule 1.1 cmt. [6]'s first sentence states that "the lawyer <u>should</u> ordinarily obtain informed consent from the client . . . before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be, more appropriate, if not required. In this sentence, the word "must" or perhaps the phrase "ordinarily must" would seem more appropriate than "should ordinarily."	

ABA MODEL RULE 1.1 cmt. [6]	
Note # 3	**Code # 3**
ABA Model Rule 1.1 cmt. [6] describes a lawyer's possible arrangement with a lawyer from another firm that enables the former to satisfy ABA Model Rule 1.1's "competence" standard. ABA Model Rule 1.1 cmt. [6]'s first sentence describes such a lawyer's arrangement with another lawyer "outside the lawyer's own firm to provide or assist in the provision of legal services to a client." The word "provide" would seem to describe a new lawyer replacing the first lawyer – perhaps shedding light on ABA Model Rule 1.1 cmt. [1]'s first sentence's phrase "refer the matter to… a lawyer of established competence in the field in question." And the word "provide" is inconsistent with the phrase "retains or contracts with," which appears earlier in that sentence.	

ABA MODEL RULE 1.1 cmt. [6]	
Note # 4	**Code # 3**
ABA Model Rule 1.1 cmt. [6]'s concluding sentence lists as a factor in determining the ethical propriety of a lawyer's arrangement with another lawyer the "the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information." Those factors do not seem to focus on the other lawyer's "competence," but rather on extrinsic ethics rules and perhaps other rules that will govern both lawyers.	

ABA MODEL RULE 1.1 cmt. [7]	
Note # 1	**Code # 1**
ABA Model Rule 1.1 cmt. [7]'s first sentence explains that lawyers from different firms working on the same matter for the same client "ordinarily should consult with each other and the client" about several issues (emphasis added). As the ABA Model Rules General Notes discuss, the term "ordinarily should" presumably denotes something between "should" and "must." But the word "must" would be more appropriate here.	

ABA MODEL RULE 1.2 cmt. [3]	
Note # 1	**Code # 2**
ABA Model Rule 1.2 cmt. [3]'s first sentence explains that clients may authorize lawyers to take "specific action" – "[at] the outset of a representation" (emphasis added). That is certainly true, but clients may authorize their lawyers to take specific action at any time during the representation. It may be more likely that would do so near the end of the representation, especially if the representation may end with a settlement of some sort.	

ABA MODEL RULE 1.2 cmt. [5]	
Note # 1	**Code # 2**
ABA Model Rule 1.2 cmt. [5] explains that a lawyer's representation of a client "does not constitute approval of the client's views or activities." This is a more generic (but appropriate) list than that contained in black letter ABA Model Rule 1.2(b): "the client's political, economic, social or moral views or activities." One might expect that an ABA Model Rule 1.2 Comment's list would be more expansive than ABA Model Rule 1.2(b)'s black letter list. One might also have expected ABA Model Rule 1.2 cmt. [5] to mention ABA Model Rule 6.2 – especially because black letter ABA Model Rule 1.2(b) specifically refers to "representation by appointment."	

ABA MODEL RULE 1.2 cmt. [6]	
Note # 1	**Code # 1**
ABA Model Rule 1.2 cmt. [6]'s first sentence explains that lawyers may limit the scope of their representation "by agreement with the client or by the terms under which the lawyer's services are made available to the client" (emphasis added). The word "or" seems inapt – because such a limitation must always rest on an "agreement with the client."	

ABA MODEL RULE 1.2 cmt. [9]	
Note # 1	**Code # 3**
ABA Model Rule 1.2 cmt. [9]'s concluding sentence implicitly warns that lawyers may not "recommend [ ] the means by which a crime or fraud might be committed with impunity" (emphasis added). The phrase "with impunity" seems like an unnecessary embellishment. Lawyers may not recommend such means regardless of possible client impunity.	

ABA MODEL RULE 1.2 cmt. [10]	
Note # 1	**Code # 3**
ABA Model Rule 1.2 cmt. [10]'s second sentence warns that lawyers may not assist their clients in fraudulent conduct "for example, by drafting or delivering documents that the lawyer knows are fraudulent." The word "delivering" seems odd. Presumably it refers to lawyers passing along documents that they did not draft. It might be more clear if the phrase "by drafting or delivering documents" was replaced with a broader phrase such as "by participating in the creation or use of documents."	

ABA MODEL RULE 1.2 cmt. [10]	
Note # 2	**Code # 3**
ABA Model Rule 1.2 cmt. [10]'s third sentence explains that a lawyer who "discovers" that she is assisting her client in criminal or fraudulent conduct "must, therefore, withdraw from the representation of the client in the matter" (emphasis added). ABA Model Rule 1.2 cmt. [10] refers to ABA Model Rule 1.16(a) – presumably as requiring such withdrawal. But ABA Model Rule 1.16(a)(1) only requires withdrawal if "the representation will result in violation of the [ABA Model] Rules of Professional Conduct or other law." Lawyers thus presumably might continue representing such clients if the lawyers' continued representation would not result "in violation" of the ABA Model Rules or other law. For example, the client might discontinue the fraudulent conduct, make amends, etc.	

ABA MODEL RULE 1.2 cmt. [10]	
Note # 3	**Code # 4**
ABA Model Rule 1.2 cmt. [10]'s concluding sentence states that lawyers must sometimes "give notice of the fact of withdrawal" (emphasis added). The words the "the fact of" seem unnecessary – presumably the lawyer would give notice of his "withdrawal." The same language appears in ABA Model Rule 4.1 cmt. [3]'s fourth sentence.	

ABA MODEL RULE 1.2 cmt. [10]	
Note # 4	**Code # 4**
ABA Model Rule 1.2 cmt. [10]'s concluding sentence explains that lawyers may be obligated under some circumstances "to disaffirm <u>any</u> opinion, document, affirmation or the like" (emphasis added). This so-called "noisy withdraw" obligation refers to ABA Model Rule 4.1 ABA Model 4.1 cmt. [3]'s third sentence contains a slightly but presumably synonymous phrase: "disaffirm <u>an</u> opinion, document, affirmation or the like" (emphasis added).	

ABA MODEL RULE 1.2 cmt. [12]	
Note # 1	**Code # 2**
ABA Model Rule 1.2 cmt. [12]'s third sentence explains that lawyers may "undertake[ ] a criminal defense incident to a general retainer for legal services to a lawful enterprise" (emphasis added). Presumably this is just an example of permissible conduct. Lawyers may certainly "undertak[e]" a criminal defense "incident to" a specific retainer.	

ABA MODEL RULE 1.2 cmt. [13]	
Note # 1	**Code # 4**
ABA Model Rule 1.2 cmt. [13] describes two situations in which lawyers "must consult with the client regarding the limitations on the lawyer's conduct. The first situation is "[i]f a lawyer comes to know" that the client expects inappropriate assistance (emphasis added). The phrase "comes to know" is unusual, if not unique. The ABA Model Rules normally contain the simpler word "knows."	

ABA MODEL RULE 1.2 cmt. [13]	
Note # 2	**Code # 1**
ABA Model Rule 1.2 cmt. [13] describes two situations in which lawyers "must consult with the client regarding the limitations on the lawyer's conduct. The second scenario is "[i]f a lawyer . . . reasonably should know" that the client expects inappropriate assistance – referring to ABA Model Rule 1.4(a)(5). However, there is a significant mismatch between ABA Model Rule 1.2 cmt. [13] and ABA Model Rule 1.4(a)(5). ABA Model Rule 1.4(a)(5) only applies "when the lawyer knows that the client expects assistance not permitted by the [ABA Model] Rules of Professional Conduct or other law" (emphasis added). Thus, in contrast to ABA Model Rule 1.2 cmt. [13], ABA Model Rule 1.4(a)(5) does not contain a "reasonably should know" standard.	

ABA MODEL RULE 1.3 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 1.3 cmt. [1]'s third sentence assures that "[a] lawyer is not bound, however, to press for every advantage that might be realized for a client" (emphasis added). That seems arguably inconsistent with the preceding sentence, which requires that lawyers "must also act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf" (emphasis added).	

ABA MODEL RULE 1.3 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.3 cmt. [3]'s third sentence warns that lawyers' "unreasonable delay" in lawyers' action on the client's behalf can (among other things) "undermine confidence in the lawyer's trustworthiness" (emphasis added). The word "trustworthiness" is appropriate conceptually here, but seems inappropriate in a Comment on the ABA Model Rule addressing diligence. One would think that the word "diligence" would be more appropriate here.	

ABA MODEL RULE 1.3 cmt. [4]	
Note # 1	**Code # 2**
ABA Model Rule 1.3 cmt. [4]'s first sentence explains that "a lawyer should carry through to conclusion all matters undertaken for a client" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. This is an example of an ABA Model Rule Comment where the word "must" would be more appropriate than the word "should."	

ABA MODEL RULE 1.3 cmt. [5]	
Note # 1	**Code # 4**
ABA Model Rule 1.3 cmt. [5]'s concluding sentence refers to lawyers' steps to "take other protective action in absence of a providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer" (emphasis added). Including the word "the" between the word "in" and the word "absence" would seem more linguistically correct.	

ABA MODEL RULE 1.4(a)(3)	
Note # 1	**Code # 3**
ABA Model Rule 1.4(a)(3) contains the term “the matter” – presumably denoting the matter being handled by a lawyer representing the client. ABA Model Rule 1.4(b) contains a different term: “the representation.” Perhaps these terms are meant to be synonymous, although the word “matter” has a more substantive aspect to it – in contrast to the word “representation” (which seems to focus on the relation between a lawyer and the client, and the logistics of that relationship).	

ABA MODEL RULE 1.4(a)(5)	
Note # 1	**Code # 1**
ABA Model Rule 1.4(a)(5) requires that lawyers consult with their clients "when the lawyer knows that the client expects assistance not permitted by the [ABA Model] Rules of Professional Conduct or other law." As explained in the ABA Model Rule Specific Note's discussion of ABA Model Rule 1.2 cmt. [13], that ABA Model Rule Comment's first sentence cites black letter ABA Model Rule 1.4(a)(5) as applying both "[i]f a lawyer comes to know or reasonably should know" that a client expects inappropriate assistance (emphasis added). Given this significant mismatch, presumably black letter ABA Model Rule 1.4(a)(5) trumps ABA Model Rule 1.2 cmt. [13].	

ABA MODEL RULE 1.4(b)	
Note # 1	**Code # 3**
ABA Model Rule 1.4(b) contains the term "the representation." As explained in connection with ABA Model Rule 1.4(a)(3), it is unclear whether the term "the representation" is intended to be synonymous with ABA Model Rule 1.4(a)(3)'s term "the matter."	

ABA MODEL RULE 1.4 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 1.4 cmt. [2]'s first sentence explains that in certain circumstances, lawyers must "secure the client's consent" (emphasis added). The word "secure" is unusual. The word "obtain" might be more appropriate.	

ABA MODEL RULE 1.4 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.4 cmt. [3]'s second sentence explains that lawyers' ABA Model Rule 1.4 communication duty will require consultation [with the client] prior to taking action" – "[i]n <u>some</u> situations" (emphasis added). That is an accurate statement, but it would arguably be preferable to use the phrase "[i]n most situations" or the word "[o]rdinarily."	

ABA MODEL RULE 1.4 cmt. [4]	
Note # 1	**Code # 3**
ABA Model Rule 1.4 cmt. [4]'s second sentence requires lawyers' "prompt compliance" "[w]hen a client makes a reasonable request for information" (emphasis added). That seems to imply that lawyers do not have a similar duty if a client makes an "unreasonable" request for information. It would seem that lawyers could be obligated to promptly respond to any client request for information, although ABA Model Rule 1.16(b)(6) allows lawyers to withdraw (among other reasons) if "the representation . . . has been rendered unreasonably difficult by the client."	

ABA MODEL RULE 1.4 cmt. [5]	
Note # 1	**Code # 1**
ABA Model Rule 1.4 cmt. [5]'s first sentence explains "[t]he client should have sufficient information to participate intelligently in decisions" relating to the representation – "to the extent the client is willing and able to do so." This is a strange condition. If the client is "is not willing… to do so," it is unclear what the lawyer must or can do. Lawyers cannot make materials decisions on their own, so presumably such a lawyer would be required to exercise her discretion to withdraw under ABA Model Rule 1.16. If the client is not "able to do so," presumably such a lawyer would look to ABA Model Rule 1.14 for guidance.	

ABA MODEL RULE 1.4 cmt. [5]	
Note # 2	**Code # 2**
ABA Model Rule 1.4 cmt. [5]'s second sentence explains that lawyers should review negotiation proposals with their clients "when there is time to explain a proposal made in a negotiation" (emphasis added). It is unclear what a lawyer must or can do when there is not time to explain such a proposal.	

ABA MODEL RULE 1.4 cmt. [5]	
Note # 3	**Code # 2**
ABA Model Rule 1.4 cmt. [5]'s third sentence explains that in a negotiation context, "the lawyer <u>should</u> review all important provisions with the client" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. The word "must" would seem more appropriate than the word "should" in this ABA Model Rule Comment.	

ABA MODEL RULE 1.4 cmt. [5]	
Note # 4	**Code # 3**
ABA Model Rule 1.4 cmt. [5]'s third sentence explains that in a negotiation context, under some circumstances "the lawyer should review all important provisions with the client before proceeding to an agreement" (emphasis added). The phrase "proceeding to an agreement" seems odd, and that sentence seems to imply that the lawyer is the one "proceeding to an agreement." It would be preferable if not required to explain that "the client" is the one "proceeding to an agreement."	

ABA MODEL RULE 1.4 cmt. [5]	
Note # 5	**Code # 3**
ABA Model Rule 1.4 cmt. [5]'s concluding sentence describes a scenario in which "a lawyer asks a client to consent to a representation affected by a conflict of interest" (emphasis added). As the ABA Model Rules General Notes discuss, the phrase "conflict of interest" is one variation of that concept. As the ABA Model Rules General Notes discuss, the ABA Model Rules use several different terms in describing the presence of conflicts of interests: "involves a concurrent conflict of interest" (ABA Model Rule 1.7(a), ABA Model Rule 6.5(a)(i)); "presents a conflict of interest" (ABA Model Rule 6.5 cmt. [3]). The phrase "affected by a conflict of interest" seems to describe a situation that might or might not "involve[ ]" a conflict or "present" a conflict.	

ABA MODEL RULE 1.4 cmt. [7]	
Note # 1	**Code # 2**
ABA Model Rule 1.4 cmt. [7]'s second sentence contains the example of a lawyer who "might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client." That appropriate example seems to imply a permanent withholding – in contrast to ABA Model Rule 1.4 cmt. [7]'s preceding sentence's explanation that "a lawyer may be justified in delaying transmission of information" in certain circumstances (emphasis added). It might be appropriate to use the phrase "might temporarily withhold" (emphasis added).	

ABA MODEL RULE 1.4 cmt. [7]	
Note # 2	**Code # 2**
ABA Model Rule 1.4 cmt. [7]'s third sentence warns that "[a] lawyer may not withhold information to serve . . . the interests . . . of another person." That does not seem like an accurate description of the ABA Model Rules. For instance, ABA Model Rule 1.6 may require lawyers to "withhold information to serve . . . the interests of another person." It would be appropriate here to add a phrase such as the following at the end of that sentence: "unless if permitted or required by the ABA Model Rules of Professional Conduct."	

ABA MODEL RULE 1.5(a)	
Note # 1	**Code # 3**
ABA Model Rule 1.5(a) addresses "[t]he factors to be considered in determining the reasonableness of a fee" (emphasis added). Although black letter ABA Model Rule 1.5 and its Comments also address "expenses," ABA Model Rule 1.5 apparently does not describe factors that should be "considered in determining the reasonableness" of an expense.	

ABA MODEL RULE 1.5(a)	
Note # 2	**Code # 3**
ABA Model Rule 1.5(a)(1) describes as a factor "in determining the reasonableness of a fee" "the skill requisite to perform the legal service properly" (emphasis added). The word "properly" seems inapt. The ABA Model Rule – defined words "competently" or "diligently" (or both) would seem more appropriate here.	

ABA MODEL RULE 1.5(a)	
Note # 3	**Code # 2**
ABA Model Rule 1.5(a)(2) describes as one of the factors "to be considered in determining the reasonableness of a fee" "the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer" (emphasis added). It is unclear why that factor can be considered in determining a fee's reasonableness only "if apparent to the client." That would seem irrelevant.	

ABA MODEL RULE 1.5(a)	
Note # 4	**Code # 2**
ABA Model Rule 1.5(a)(4) identifies as one of the "factors to be considered in determining the reasonableness of a fee" "the results obtained." That is necessarily backward-looking, and therefore seems somewhat inappropriate here. Black letter ABA Model Rule 1.5(b) requires that lawyers normally communicate "the basis or rate of the fee and expenses for which the client will be responsible" – "before or within a reasonable time after commencing the representation." At that time, it would seem impossible to factor in "the results obtained." The "results obtained" factor might support renegotiation of the fee.	

ABA MODEL RULE 1.5(a)	
Note # 5	**Code # 3**
ABA Model Rule 1.5(a)(6) identifies as one of the "factors to be considered in determining the reasonableness of a fee" "the nature and length of the professional relationship with the client." It is unclear whether deep and lengthy professional relationship would justify a higher fee, or result in a lower fee in the "reasonableness" analysis. A deep and lengthy professional relationship might provide the lawyer a "head start" in understanding the client, which would seem to justify a higher fee. But many if not most lawyers offer a lower fee to long-standing clients who are paying the lawyer for a high volume of work.	

ABA MODEL RULE 1.5(b)	
Note # 1	**Code # 3**
ABA Model Rule 1.5(b)'s first sentence requires lawyers to communicate "[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible." ABA Model Rule 1.2 and ABA Model Rule 1.4 address "[t]he scope of the representation." That required communication seems out of place in ABA Model Rule 1.5 – which addresses fees.	

ABA MODEL RULE 1.5(c)	
Note # 1	**Code # 4**
ABA Model Rule 1.5(c)'s second sentence contains the phrase "contingent fee agreement," without a hyphen. ABA Model Rule 1.5(c)'s fourth sentence contains the phrase "contingent fee matter," without a hyphen. This contrasts with ABA Model Rule 1.8 cmt. [13] second sentence's phrase "contingent-fee personal injury cases," with a hyphen.	

ABA MODEL RULE 1.5(e)	
Note # 2	**Code # 4**
ABA Model Rule 1.5(e) contains the phrase "[a] division of a fee." That contrasts with ABA Model Rule 1.5 cmt. [7]'s first sentence's phrase "[a] division of fee," and ABA Model Rule 1.5 cmt. [8]'s phrase "division of fees."	

ABA MODEL RULE 1.5 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 1.5 cmt. [1]'s first sentence addresses the requirement that lawyers "charge fees that are reasonable under the circumstances" (emphasis added). That is only a subset of black letter ABA Model Rule 1.5(a) list of prohibited actions: "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee." Presumably ABA Model Rule 1.5 cmt. [1]'s factor would apply equally to lawyers' "agreement for" or "collection" of an unreasonable fee.	

ABA MODEL RULE 1.5 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 1.5 cmt. [2]'s first sentence notes that lawyers who have regularly represented a client "ordinarily will have evolved an understanding" with the client about fees and expenses (emphasis added). The word "evolved" is not linguistically incorrect, but seems odd here. The word "reached" would seem more appropriate.	

ABA MODEL RULE 1.5 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.5 cmt. [3]'s concluding sentence refers to "[a]pplicable law" that "may apply to situations other than a contingent fee" (emphasis added). That concluding sentence seems out of place in an ABA Model Rule Comment addressing contingent fees.	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 1	**Code # 1**
ABA Model Rule 1.5 cmt. [5]'s concluding sentence explains that "[a] lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures." As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. The word "must" would seem more appropriate here.	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 2	**Code # 4**
ABA Model Rule 1.5 cmt. [7]'s first sentence contains the phrase "[a] division of fee." That contrasts with black letter ABA Model Rule 1.5(e)'s phrase "[a] division of a fee," and ABA Model Rule 1.5 cmt. [8]'s phrase "division of fees."	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 3	**Code # 2**
ABA Model Rule 1.5 cmt. [7]'s second sentence describes a fee "division" . . . between a referring lawyer and a trial specialist" (emphasis added). The term "referring lawyer" normally seems to denote a lawyer who has totally handed off a representation to another lawyer (here, "a trial specialist"). For instance, black letter ABA Model Rule 1.1 cmt. [1]'s first sentence describes the following three steps that a lawyer lacking the necessary competence might take "when" it is feasible: "refer the matter to, or associate or consult with, a lawyer of established competence in the field in question" (emphasis added). ABA Model Rule 1.5 cmt. [7]'s second sentence's term "referring lawyer" seems to have a very different meaning – less than a total hand-off.	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 4	**Code # 2**
ABA Model Rule 1.5 cmt. [7]'s sixth sentence explains that the required "joint responsibility" supporting an ethically permissible fee split requires "financial and ethical responsibility for the representation as if the lawyers were associated in a partnership (emphasis added). The term "associated" is not defined here or elsewhere in the ABA Model Rules. As the ABA Model Rule General Notes discuss, it seems clear that some lawyers in a law firm are "associated" with their other law firm colleagues, and some are not. The type of responsibility justifying a fee split might not be limited to a law partnership's "associated" lawyer – a possible subset of the partnership's lawyers.	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 5	**Code # 3**
ABA Model Rule 1.5 cmt. [7]'s penultimate sentence explains that the required "joint responsibility" supporting an ethically permissible fee split requires "financial and ethical responsibility for the representation as if the lawyers were associated in a partnership (emphasis added). The phrase "associated in a partnership" presumably denotes a subset of ABA Model Rule 1.5 cmt. [8]'s phrase "associated in a law firm" (emphasis added). It is unclear why the analogy would not include lawyers "associated" in entities other than partnerships. The terminology difference between ABA Model Rule 1.5 cmt. [7]'s last sentence's term "partnership" and ABA Model Rule 1.5 cmt. [8]'s term "law firm" obviously is deliberate, but it is unclear whether it is intended to have substantive significance.	

ABA MODEL RULE 1.5 cmt. [7]	
Note # 6	**Code # 2**
ABA Model Rule 1.5 cmt. [7]'s concluding sentence explains that "[a] lawyer should only refer a matter" to another lawyer in certain circumstances. As with ABA Model Rule 1.5 cmt. [7]'s earlier reference to "a referring lawyer," ABA Model Rule 1.5 cmt. [7]'s concluding sentence presumably refers to a lawyer totally handing off a matter to another lawyer – not associating with or establishing a joint representation with another lawyer who will jointly represent the client on the same matter. Such a total handing off does not seem to support a division of fees under ABA Model Rule 1.5(e).	

ABA MODEL RULE 1.5 cmt. [8]	
Note # 1	**Code # 4**
ABA Model Rule 1.5 cmt. [8] contains the phrase “division of fees,” which is inconsistent with black letter ABA Model Rule 1.5(e)’s phrase “[a] division of a fee” and ABA Model Rule 1.5 cmt. [7]’s phrase “[a] division of fee.” Presumably those phrases are intended to be synonymous, but it would have been more appropriate to use a consistent phrase.	

ABA MODEL RULE 1.5 cmt. [8]	
Note # 2	**Code # 2**
ABA Model Rule 1.5 cmt. [8] explains that black letter ABA Model Rule 1.5(e) "does not prohibit or regulate" a fee split in circumstances involving lawyers who "were previously associated in a law firm." As explained above, the phrase "associated" is not defined here or elsewhere in the ABA Model Rules. In ABA Model Rule 1.5 cmt. [8]'s context, the lack of a prohibition or regulation of a fee split would seem to apply whether or not lawyers were "previously associated in a law firm." A lawyer practicing in a law firm but not "associated" with her law firm colleagues presumably should be treated the same way for ABA Model Rule 1.5 cmt. [8]'s purposes as lawyer who was "associated" with her law firm colleagues.	

ABA MODEL RULE 1.5 cmt. [8]	
Note # 3	**Code # 2**
ABA Model Rule 1.5 cmt. [8] explains that black letter ABA Model Rule 1.5(e) "does not prohibit or regulate" a fee split in circumstances involving lawyers who "were previously associated in a law firm" (emphasis added). As explained above, ABA Model Rule 1.5 cmt. [8]'s reference to lawyers "associated in a law firm" is a more expansive description of such an association than ABA Model Rule 1.5 cmt. [7] penultimate sentence's narrower phrase "associated in a partnership."	

ABA MODEL RULE 1.5 cmt. [9]	
Note # 1	**Code # 1**
ABA Model Rule 1.5 cmt. [9] represents one of the most inexplicable misuses of the word "should" when the word "must" would be more appropriate, if not required. ABA Model Rule 1.5 cmt. [9] first describes "a procedure [which] has been established for resolution of fee disputes such as arbitration or mediation procedure established by the bar." ABA Model Rule 1.5 cmt. [9] then understandably explains that a lawyer: (1) "must comply with the procedure when it is mandatory"; and (2) "even when it is voluntary, . . . should conscientiously consider submitting to it (emphases added). ABA Model Rule 1.5 cmt. [9] next describes a situation in which "[law] may prescribe a procedure for determining a lawyer's fee." ABA Model Rule 1.5 cmt. [9] then inexplicably explains "[t]he lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure" (emphasis added). Thus, having just two sentences earlier indicated that a "lawyer must comply with the [bar-established] procedure when it is mandatory," ABA Model Rule 1.5 cmt. [9] inappropriately indicates only that lawyers only "should comply with the [legally]-prescribed] procedure" (emphasis added).	

ABA MODEL RULE 1.6(a)	
Note # 1	**Code # 4**
ABA Model Rule 1.6(a) indicates that "[a] lawyer shall not reveal" certain protected client confidential information (emphasis added). The word "reveal" (which ABA Model Rule 1.6(b) also contains) presumably is intended to be synonymous with the word "disclose." ABA Model Rule 1.6(c) contains the word "disclosure," and ABA Model Rule 1.6 cmt. [1] contains both the term "disclosure" and "reveal." It is unfortunate that ABA Model Rule 1.6's core confidentiality duty does not use a consistent word. Elsewhere, ABA Model Rule 5.1 cmt. [6] contains the word "reveal" to explain that a lawyer's misconduct "could reveal" ethics violations by her supervisory lawyer. In that context, the word "reveal" has a slightly different meaning – denoting the effect of bringing to light, or uncovering something, that would otherwise stay hidden. ABA Model Rules frequently use the word "disclose" or a variant thereof to describe lawyers' permissible, discretionary or required disclosure or revelation of protected client confidential information.	

ABA MODEL RULE 1.6(a)	
Note # 2	**Code # 3**
ABA Model Rule 1.6(a)'s definition of protected client confidential information as "information relating to the representation of a client" seems strangely under-inclusive. For instance, it is difficult to see how that definition would include a client's admission over lunch with a lawyer about an adulterous relationship, or the client's use of the "n" word when referring to a driver who cut off the client and lawyer while they were riding back from lunch together. Thus, those statements and informational content presumably would not be protected by: (1) ABA Model Rule 1.6(a); (2) ABA Model Rule 1.9(c)(1) or (2)'s prohibitions on the lawyer's "use" or disclosure of "information relating to the representation" of a former client. Other ABA Model Rules (or common law) might require lawyers to maintain the confidentiality of such potentially damaging communications or information, but ABA Model Rules' core confidentiality duties apparently do not. A more expansive (and logical) definition of protected client confidential information might do so, such as: "information gained during or relating to the representation of a client."	

ABA MODEL RULE 1.6(a)	
Note # 3	**Code # 3**
ABA Model Rule 1.6(a)'s prohibition (absent specified exceptions) on lawyers' disclosure of "information relating to the representation of a client" seems inappropriately broad and unrealistic. On its face, this total prohibition would prohibit a lawyer from advising her spouse that she would be late coming home because a hearing in the Smith v. Jones case might extend into the evening. It would prohibit a defendant's lawyer from cordially telling a plaintiff's lawyer as they walk down the courtroom steps "I thought you did a really good job arguing today." Lawyers disclose such "information relating to a representation" every day without harming their clients. And of course no disciplinary process would ever consider that sanctionable conduct, although it would violate ABA Model Rule 1.6(a). Some jurisdictions understandably have prohibited disclosure of protected client confidential information only if it somehow prejudices the client. In fact, ABA Model Rule 1.8(b) contains this logical "disadvantage of the client" standard in prohibiting lawyers' "use [of] information relating to representation of a client." (emphasis added) A similar standard might make sense in ABA Model Rule 1.6(a)'s provision applicable to disclosure rather than use of protected client confidential information.	

ABA MODEL RULE 1.6(b)(1)	
Note # 1	**Code # 3**
ABA Model Rule 1.6(b)(1) describe a certain circumstance in which lawyers may (but are not required to) "reveal" protected client confidential information – "to prevent reasonably certain death or substantial bodily harm" (emphasis added). The word "bodily" presumably does not include purely "mental" harm. Perhaps such "mental" harm manifests itself in some "bodily harm." But it would be preferable to make that clear.	

ABA MODEL RULE 1.6(b)(7)	
Note # 1	**Code # 3**
ABA Model Rule 1.6(b)(7) describes circumstances in which lawyers may disclose protected client confidential information "to detect and resolve conflicts of interest" – "but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client (emphasis added). ABA Model Rule 1.6 cmt. [13]'s fifth sentence contains the same phrase as black letter ABA Model Rule 1.6(b)(7): "the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice a client" (emphasis added). The word "compromise" seems inapt. Courts normally use the word "waive" when addressing lawyers' conduct that destroys client's attorney-client privilege. Perhaps the word "compromise" is intended to denote some erosion of the client's attorney-client privilege but not its full waiver. If so, there is no ABA Model Rule Comment explaining that concept.	

ABA MODEL RULE 1.6(b)(7)	
Note # 2	**Code # 2**
ABA Model Rule 1.6(b)(7) explains that lawyers may reveal protected client confidential information "to detect and resolve conflicts of interest" as long as the disclosure "would not compromise the attorney-client privilege or otherwise prejudice the client" (emphases added). ABA Model Rule 1.6(b)(7) does not explicitly address the admittedly different "work product doctrine" which ABA Model Rule 1.6 cmt. [3]'s first sentence acknowledges as a separate evidentiary protection. Presumably a disclosure that would "compromise" the work product doctrine would also "prejudice the client" and therefore fall outside of ABA Model Rule 1.6(b)(7)'s permissible disclosure.	

ABA MODEL RULE 1.6 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 1.6 cmt. [1]'s first sentence explains that ABA Model Rule 1.6 "governs the disclosure by a lawyer" of specified information. The word "disclosure" highlights the presumed intent to use the synonymous terms "reveal" (which ABA Model Rule 1.6(a) and (b) contain) and "disclosure" (which also appears in other ABA Model Rule 1.6 Comments). ABA Model Rule 1.6 cmt. [1] itself uses the word "reveal" in the next sentence. This highlights the unfortunate use of presumably synonymous but possibly different (at least slightly) words to mean the same thing.	

ABA MODEL RULE 1.6 cmt. [3]	
Note # 1	**Code # 2**
ABA Model Rule 1.6 cmt. [3] addresses several evidentiary protections. ABA Model Rule 1.6 cmt. [3]'s second sentence correctly notes that both the attorney-client privilege and the work product doctrine "apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client." That is certainly true – but it represents only a tiny and rare subset of circumstances involving either the attorney-client privilege or the work product doctrine. Lawyers are only rarely the target of litigation discovery. In the overwhelming majority of situations, lawyers must assert evidentiary protections when their clients are targeted with discovery.	

ABA MODEL RULE 1.6 cmt. [4]	
Note # 1	**Code # 2**
ABA Model Rule 1.6 cmt. [4]'s concluding sentence explains that lawyers may permissibly use hypotheticals "so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved" (emphasis added). The word "listener" seems archaic. A term such as "the third person" might make more sense here.	

ABA MODEL RULE 1.6 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 1.6 cmt. [5] addresses situations in which "a lawyer is impliedly authorized to make disclosures about a client." ABA Model Rule 1.6 cmt. [5] provides several examples. The first example ("a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed") seems somewhat inapt. It probably would be preferable to explain that lawyers' disclosure in that setting is required if the situation presents itself in the litigation setting). A second example ("to make a disclosure that facilitates a satisfactory conclusion to a matter") sounds somewhat mysterious. Presumably the phrase "a satisfactory conclusion to a matter" denotes a negotiated settlement of litigation or a transactional negotiation. But it seems very unlikely that lawyers would not seek their clients' explicit permission to make such disclosures, rather than relying on black letter ABA Model Rule 1.6(a)'s "impliedly authorized" provision. More helpful examples might include lawyers' disclosures to banks or credit card companies processing client-identifying information, lawyers' reliance on shipping companies to deliver packages to their clients, etc.	

ABA MODEL RULE 1.6 cmt. [5]	
Note # 2	**Code # 3**
ABA Model Rule 1.6 cmt. [6] addresses black letter ABA Model Rule 1.6(b)(1)'s term "reasonably certain." ABA Model Rule 1.6 cmt. [6]'s second sentence explains that "harm is reasonably certain to occur if it will occur imminently or if there is a present or substantial threat that a person will suffer such harm at a later date" (emphasis added). This explanation is helpful, but technically harm that "will be suffered imminently" is suffered "at a later date."	

ABA MODEL RULE 1.6 cmt. [13]	
Note # 1	**Code # 2**
ABA Model Rule 1.6 cmt. [13]'s first sentence contains the word "association" to describe lawyers' relationship "with another firm." As the ABA Model Rule General Notes discuss, the ABA Model Rules do not define the word "associated," – but it seems clear that some lawyers in a law firm are "associated" with their law firm colleagues, and some lawyers are not. Black letter ABA Model Rule 1.6(b)(7) allows disclosure of protected client confidential information to resolve conflicts "arising from the lawyer's change of employment." Lawyers may "change" their employment without becoming "associated" with the law firm that employs them. So ABA Model Rule 1.6 cmt. [13] presumably (and probably erroneously) describes only a subset of the employment-changing actions of lawyers relying on black letter ABA Model Rule 1.6(b)(7).	

ABA MODEL RULE 1.6 cmt. [13]	
Note # 2	**Code # 2**
ABA Model Rule 1.6 cmt. [13]'s third sentence explains that any conflict-clearing disclosure of information under ABA Model Rule 1.6(b)(7) "should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated" that seems naively and unrealistically narrow. Lawyers considering a lateral hire or a law firm merger almost inevitably would disclose, and seek the disclosure of, much more information – about billings, collections, the possibility of clients' transfer of matters or future work, etc. All are nearly all of that information presumably would deserve ABA Model Rule 1.6(a) protection.	

ABA MODEL RULE 1.6 cmt. [13]	
Note # 3	**Code # 2**
ABA Model Rule 1.6 cmt. [13]'s fifth sentence contains the phrase "compromise the attorney-client privilege," which is also contained in black letter ABA Model Rule 1.6(b)(7) (emphasis added). As explained above, the word "compromise" is rarely if ever used in the context of the attorney-client privilege. And ABA Model Rule 1.6 cmt. [13]'s limitation to the attorney-client privilege reflects the same limited reach as black letter ABA Model Rule 1.6(b)(7) – by failing to address the admittedly separate (per ABA Model Rule 1.6 cmt. [3]) work product doctrine or other evidentiary protections.	

ABA MODEL RULE 1.6 cmt. [13]	
Note # 4	**Code # 3**
ABA Model Rule 1.6 cmt. [13]'s penultimate sentence addresses black letter ABA Model Rule 1.6(a)'s requirement that "the client or former client gives informed consent" under conflicts-clearing circumstances not covered by black letter ABA Model Rule 1.6(b)(7) (emphasis added). Technically, ABA Model Rule 1.9 covers lawyers' disclosure or use of their former clients' protected client confidential information. But black letter ABA Model Rule 1.9(c)(2) implicitly refers back to black letter ABA Model Rule 1.6 for the rules governing lawyers' disclosure (rather than "use" of their former clients' protected client confidential information).	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 1	**Code # 2**
ABA Model Rule 1.6 cmt. [14] addresses limitations on lawyers' ABA Model Rule 1.6(b)(7) disclosure of protected client confidential information in the conflict-clearing context. ABA Model Rule 1.6 cmt. [14]'s first sentence points to black letter ABA Model Rule 1.6(b)(7) as indicating that "[a]ny information disclosed [under black letter ABA Model Rule 1.6(b)(7)] may be used . . . only to the extent necessary to detect and resolve conflicts of interest." Black letter ABA Model Rule 1.6(b)(7) only addresses a situation where "[a] lawyer may reveal information relating to the representation of the client" (emphasis added). The "use" of protected client confidential information is instead governed by ABA Model Rule 1.8(b), which indicates that "[a] lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these [ABA Model] Rules" (emphasis added). So ABA Model Rule 1.6 cmt. [14]'s first sentence's reference to "use[ ]" points to the wrong black letter ABA Model Rule. There seem to be many ways in which lawyers may "use" protected client confidential information without disclosing it.	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 2	**Code # 3**
ABA Model Rule 1.6 cmt. [14] addresses limitations on lawyers' ABA Model Rule 1.6(b)(7) disclosure of protected client confidential information in the conflict-clearing context. ABA Model Rule 1.6 cmt. [14]'s first sentence points to black letter ABA Model Rule 1.6(b)(7) as indicating that "[a]ny information disclosed [under that black letter ABA Model Rule] may be . . . <u>further disclosed</u> only to the extent necessary to detect and resolve conflicts of interest" (emphasis added). It is unclear what the phrase "further disclosed" refers to. Perhaps the phrase "further disclosed" denotes one law firm's disclosure to other law firms. If so, the reference is ambiguous, and not further explained.	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 3	**Code # 2**
ABA Model Rule 1.6 cmt. [14]'s second sentence explains that black letter ABA Model Rule 1.6(b)(7) "does not restrict the use of information acquired by means independent of any disclosure pursuant to" that black letter ABA Model Rule (emphasis added). That sentence involves several issues. First, black letter ABA Model Rule 1.6(b)(7) does not address "use of information" – it addresses disclosure of information. Second, if the sentence intends to address restrictions on lawyers' use of clients' protected client confidential information, ABA Model Rule 1.6 cmt. [3]'s fourth sentence explains that ABA Model Rule 1.6(a)'s confidentiality duty would apply not only to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source" (emphasis added). Perhaps ABA Model Rule 1.6 cmt. [14]'s second sentence is intended to address information about the other law firm or the would-be lateral hire, in which case the information presumably might fall outside black letter ABA Model Rule 1.6(a)'s definition of "information relating to the representation of the client."	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 4	**Code # 3**
ABA Model Rule 1.6 cmt. [14]'s third sentence explains that black letter ABA Model Rule 1.6(b)(7) "does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized." The word "affect" is not defined in this context, and its meaning is unclear. If the word "affect" was intended to by synonymous with the word "prohibit," ABA Model Rule 1.6 cmt. [14] presumably should have used the phrase "it does not prohibit the disclosure of information."	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 5	**Code # 1**
ABA Model Rule 1.6 cmt. [14]'s third sentence cites ABA Model Rule 1.6 cmt. [5] as shedding light on intra-firm disclosure. ABA Model Rule 1.6 cmt. [5]'s concluding sentence explains that "[l]awyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers" (emphasis added). It is unclear how ABA Model Rule 1.6 cmt. [5]'s permissible intra-firm disclosure "in the course of the firm's practice" applies in black letter ABA Model Rule 1.6(b)(7)'s context of lateral hiring or firm mergers. The information disclosed "within a law firm" presumably would be information about the lateral hire's clients or the other possible law firm merger partner's clients – not about the hiring firm's own clients or practice.	

ABA MODEL RULE 1.6 cmt. [14]	
Note # 6	**Code # 2**
ABA Model Rule 1.6 cmt. [14] concludes by analogizing black letter ABA Model Rule 1.6(b)(7) permissible conflicts-clearing disclosure to a situation "such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation." That seems like an inapt analogy. In that situation, lawyers disclose information to their current law firm colleagues in addressing conflicts when beginning to represent another client. This sharply contrasts with black letter ABA Model Rule 1.6(b)(7) – which involves disclosing protected client confidential information to strangers, in the context of a "lawyer's change of employment or . . . changes in the composition or ownership of a firm."	

ABA MODEL RULE 1.6 cmt. [16]	
Note # 1	**Code # 3**
ABA Model Rule 1.6 cmt. [16] generally addresses ABA Model Rule 1.6(b)'s scenarios in which lawyers "may reveal information relating to the representation of the client to the extent the lawyer reasonably believes necessary." ABA Model Rule 1.6 cmt. [16]'s second sentence explains that "[w]here practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure." That type of persuasion would be appropriate in some circumstances. But in other black letter ABA Model Rule 1.6(b)'s circumstances, a lawyer would "first seek to persuade the client" to avoid action, not "take suitable action." For example, ABA Model Rule 1.6(b)(1) allows (but does not require) lawyers to disclose protected client confidential information "to the extent the lawyer reasonably believes necessary . . . to prevent reasonably certain death or substantial bodily harm." In that context, lawyers presumably would "first seek to persuade the client" to refrain from actions that would cause "reasonably certain death or substantial bodily harm."	

ABA MODEL RULE 1.6 cmt. [17]	
Note # 1	**Code # 3**
ABA Model Rule 1.6 cmt. [17] addresses lawyers' discretionary disclosure of protected client confidential information under black letter ABA Model Rule 1.6(b). Among other things, ABA Model Rule 1.6 cmt. [17] describes several factors lawyers "may consider" in "exercising the discretion conferred by this [ABA Model] Rule." One of the factors is "the lawyer's own involvement in the transaction" (emphasis added). It is unclear to what "transaction" this ABA Model Rule 1.6 cmt. [17]'s sentence refers.	

ABA MODEL RULE 1.6 cmt. [19]	
Note # 1	**Code # 4**
ABA Model Rule 1.6 cmt. [19]'s first sentence requires lawyers to "take reasonable precautions to prevent the information from coming into the hands of unintended recipients" (emphasis added). That is an awkward turn of phrase. A phrase such as "from being disclosed to" would seem colloquial and therefore more appropriate.	

ABA MODEL RULE 1.7 TITLE	
Note # 1	**Code # 4**
ABA Model Rule 1.7's Title contains the phrase "Conflict of Interest" (in the singular). As the ABA Model Rules General Notes discuss, other ABA Model Rule Titles, Rules and Comments contain a confusing mix of the words "conflict(s)" and "interest(s)" in the singular and plural.	

ABA MODEL RULE 1.7(a)	
Note # 1	**Code # 4**
ABA Model Rule 1.7(a) explains that "a lawyer shall not represent a client" under certain conditions (emphasis added). The word "client" is inconsistent with ABA Model Rule 1.9(a)'s prohibition on a lawyer representing another "person" under certain circumstances (emphasis added). Under either Rule, the "person" cannot be a "client" because of the specified prohibitions.	

ABA MODEL RULE 1.7(a)	
Note #2	**Code # 3**
ABA Model Rule 1.7(a) explains that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest" (emphasis added). ABA Model Rule 1.7(a)'s word "involves" contrasts with ABA Model Rule 1.4 cmt. [5]'s concluding sentence's phrase "representation affected by a conflict of interest" (emphasis added), and ABA Model Rule 6.5 cmt. [3]'s phrase "presents a conflict of interest" (emphasis added). It is unclear whether these different terms intend to be synonymous, or instead to articulate different standards.	

ABA MODEL RULE 1.7(a)(1)	
Note # 1	**Code # 3**
ABA Model Rule 1.7(a)(1) applies a "directly adverse" standard in describing a prohibited representation. The ABA Model Rules General Notes discuss the various adversity standards contained in different ABA Model Rules.	

ABA MODEL RULE 1.7 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [1]'s first sentence contains a reference to "the lawyer's relationship <u>to</u> a client" (emphasis added). The word "with" might be preferable.	

ABA MODEL RULE 1.7 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [3]'s concluding sentence contains a reference to an unidentified ABA Model Rule 1.3 Comment. Presumably the Comment is ABA Model Rule 1.3 cmt. [4]. It would be helpful for ABA Model Rule 1.7 cmt. [3] to identify the Comment.	

ABA MODEL RULE 1.7 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [3]'s concluding sentence refers to an unidentified ABA Model Rule Scope paragraph. Presumably the ABA Model Rule Scope paragraph is ABA Model Rule Scope [17]. It would be helpful for ABA Model Rules 1.7 cmt. [8] to identify the paragraph.	

ABA MODEL RULE 1.7 cmt. [6]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [6]'s fifth sentence describes a "directly adverse conflict . . . when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit" (emphasis added). This is an odd scenario. A lawyer would face a conflict by eliciting (either during direct or cross-examination) information that damages the lawyer's client. The conflict would not depend on whether the witness was one of the lawyer's other clients. It would seem far more likely that a lawyer seeking to adequately represent her client in the litigation would elicit testimony from another client that helps the lawyer's litigation client – but damages the client who is testifying. The lawyer's motive in that scenario would be understandable – serving her litigation client. Of course, the lawyer's actions harming such a witness-client presumably would violate her duty to that client.	

ABA MODEL RULE 1.7 cmt. [8]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [8]'s second sentence provides an example of an ABA Model Rule 1.7(a)(2) "material limitation" conflict: "a lawyer asked to represent several individuals seeking to form a joint venture." Although that situation may involve a "material limitation" conflict, the reference and analysis would seem more appropriate in ABA Model Rule 1.7 cmt. [29] – [33]'s discussion of a "common representation."	

ABA MODEL RULE 1.7 cmt. [10]	
Note # 1	**Code # 1**
ABA Model Rule 1.7 cmt. [10]'s first sentence explains that "[t]he lawyer's own interests should not be permitted to have an adverse effect on representation of a client" (emphasis added). The word "must" would seem more appropriate here.	

ABA MODEL RULE 1.7 cmt. [10]	
Note # 2	**Code # 3**
ABA Model Rule 1.7 cmt. [10]'s second sentence contains an example of a lawyer's personal interest possibly having "an adverse effect on representation of a client": "if the probity of a lawyer's own conduct in a transaction is in serious question" (emphasis added). That example is appropriate, although it represents just a subset of such possible personal conflict scenarios. Given the inherently more adverse nature of litigation, it would seem more likely that such a personal interest conflict would arise in the litigation context.	

ABA MODEL RULE 1.7 cmt. [10]	
Note # 3	**Code # 4**
ABA Model Rule 1.7 cmt. [10]'s fourth sentence warns that "a lawyer may not allow related business interests to affect representation" (emphasis added). The words "must not" would be more appropriate.	

ABA MODEL RULE 1.7 cmt. [10]	
Note # 4	**Code # 4**
ABA Model Rule 1.7 cmt. [10]'s fourth sentence warns that "a lawyer may not allow related business interests to affect representation" (emphasis added). The sentence would sound more linguistically correct by using the term "a representation" or "the representation" (emphases added).	

ABA MODEL RULE 1.7 cmt. [11]	
Note # 1	**Code # 2**
ABA Model Rule 1.7 cmt. [11] addresses lawyers' conflicts based on family relationships. ABA Model Rule 1.7 cmt. [11]'s third sentence explains that "a lawyer related to another lawyer . . . ordinarily may not represent a client" if the adverse party is represented by the lawyer's relative: mentioning "parent, child, sibling or spouse." This list is a subset of ABA Model Rule 1.8(c)'s list of persons exempt from ABA Model Rule 1.8(c)'s prohibition on lawyers receiving substantial gifts or preparing related instruments: "a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship." Although perhaps ABA Model Rule 1.7 cmt. [11]'s list should not include all of those relatives, it would seem appropriate to at least include a person "with whom the lawyer . . . maintains a close, familial relationship" (such as a sexual partner).	

ABA MODEL RULE 1.7 cmt. [11]	
Note # 2	**Code # 4**
ABA Model Rule 1.7 cmt. [11]'s concluding sentence addresses the imputation of ABA Model Rule 1.7 cmt. [11]'s "disqualification." The ABA Model Rules generally address a "prohibition" rather than a "disqualification." So the word "prohibition" might be more appropriate.	

ABA MODEL RULE 1.7 cmt. [12]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [12] addresses lawyers' "sexual relationships with a client" (emphasis added). It would seem appropriate for both of those words to either be in a singular or the plural, rather than having a mismatch.	

ABA MODEL RULE 1.7 cmt. [14]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [14]'s concluding sentence explains that "the question of consentability must be resolved as to each client" – "[w]hen the lawyer is representing more than one client" (emphasis added). It normally would seem more appropriate for a consentability question to be resolved before the lawyer represents the client, not when the lawyer "is representing more than one client" (emphasis added).	

ABA MODEL RULE 1.7 cmt. [20]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [20]'s fourth sentence explains that the requirement for a written consent "does not supplant the need in most cases for the lawyer to talk with the client" (emphasis added). The word "talk" seems archaic in today's electronic communication world. ABA Model Rule 1.18(a)'s word "consult" might be more appropriate here.	

ABA MODEL RULE 1.7 cmt. [21]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [21] contains a mismatch of singular and plural “client” and “clients.” Specifically, ABA Model Rule 1.7 cmt. [21]’s first sentence contains the singular, but its second sentence contains both the singular and the plural.	

ABA MODEL RULE 1.7 cmt. [22]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [22]'s first sentence contains the word "waive," and its second sentence contains the word "waivers" and the word "waiver." ABA Model Rule 1.7's fourth, fifth, sixth, and seventh sentences contain the word "consent." Because ABA Model Rule 1.0(e) defines consents rather than waivers, the latter word would be preferable, and linguistically consistent.	

ABA MODEL RULE 1.7 cmt. [22]	
Note # 2	**Code # 2**
ABA Model Rule 1.7 cmt. [22]'s fourth sentence contains the phrase "consent to a particular type of conflict." As explained in ABA Model Rule 1.0(e), consent "denotes the agreement by a person to a proposed course of conduct." Similarly, ABA Model Rule 1.0 cmt. [6]'s first sentence describes scenarios in which lawyers must obtain a consent "before accepting or continuing representation or pursuing a course of conduct." Thus, clients or others do not "consent" to a "conflict." Instead, they consent to a representation. Black letter ABA Model Rule 1.7 contains that formulation. It might be preferable for ABA Model Rule 1.7 cmt. [22] to use the same approach.	

ABA MODEL RULE 1.7 cmt. [25]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [25]'s second sentence uses the phrase "need to get the consent of such a person" (emphasis added). The phrase "need to get" the consent seems colloquial and awkward. For instance, ABA Model Rule 1.0 cmt. [6]'s first sentence contains the more appropriate phrase "require…to obtain."	

ABA MODEL RULE 1.7 cmt. [26]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [26]'s concluding sentence addresses "material limitation" conflicts – noting that "[t]he question is often one of proximity and degree" (emphasis added). It is unclear what the words "proximity" and "degree" mean in this material limitation analysis.	

ABA MODEL RULE 1.7 cmt. [27]	
Note # 1	**Code # 2**
ABA Model Rule 1.7 cmt. [27]'s concluding sentence explains that "the lawyer should make clear the lawyer's relationship to the parties involved" in estate administration work (emphasis added) – because "[i]n estate administration, the identity of the client may be unclear under the law of a particular jurisdiction." The word "must" or at least "ordinarily must" would seem more appropriate here.	

ABA MODEL RULE 1.7 cmt. [29]	
Note # 1	**Code # 4**
ABA Model Rule 1.7 cmt. [29]'s first sentence contains the term "multiple clients," rather than "common clients" or "joint clients." Presumably those terms are all intended to be synonymous, but it might be clearer if ABA Model Rule 1.7 cmt. [29] and other ABA Model Rule 1.7 Comments contained the same term.	

ABA MODEL RULE 1.7 cmt. [29]	
Note # 2	**Code # 3**
ABA Model Rule 1.7 cmt. [29]'s first and second sentences describe a scenario in which "the common representation fails" (emphasis added). Its third sentence similarly refers to a "failure." The words "fails" and "failure" seem inapt – as if describing some substantive failure of the representation, rather than an impermissible conflict.	

ABA MODEL RULE 1.7 cmt. [29]	
Note # 3	**Code # 4**
ABA Model Rule 1.7 cmt. [29]'s sixth sentence describes a scenario "if the relationship between the parties has already assumed antagonism" (emphases added). The word "parties" might be confusing. The word "clients" might be more appropriate. The term "assumed antagonism" seems odd. It might be more appropriate to describe the clients' interests as already antagonistic, or to use some other phrase.	

ABA MODEL RULE 1.7 cmt. [29]	
Note # 4	**Code # 3**
ABA Model Rule 1.7 cmt. [29]'s sixth sentence warns that "the possibility" that a lawyer may continue a joint representation "is not very good" – "if the relationship between the parties has already assumed antagonism" (emphasis added). The phrase "is not very good" seems overly optimistic. If the relationship between the joint clients "has already assumed antagonism," one would think that the possibility of continuing a joint representation is at best "very unlikely."	

ABA MODEL RULE 1.7 cmt. [30]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [30]'s second sentence describes "the prevailing rule" governing "the attorney-client privilege" between "commonly represented clients" as follows: "the privilege does not attach." The word "attach" seems inapt when addressing the attorney-client privilege. And ABA Model Rule 1.7 cmt. [30] would be more clear if it explained that as to the rest of the world, the privilege still applies – allowing either of the joint clients to successfully assert privilege if a stranger to the joint representation (other than the other joint client) seeks to discover the communications among the joint clients and their joint lawyer. The privilege "does not attach" (to use ABA Model Rule 1.7 cmt. [30]'s awkward phrase) if the now-adverse former joint clients seek discovery of their joint communications with their joint lawyer, or even communications one of the joint clients had on the subject of the joint representation with their joint lawyer in the absence of the other joint client. In other words, the now-adverse former joint clients generally must disclose all of the related joint-representation communications, as must their joint lawyer. But the rest of the world may not discover those.	

ABA MODEL RULE 1.7 cmt. [31]	
Note # 1	**Code # 2**
ABA Model Rule 1.7 cmt. [31]'s third sentence suggests that lawyers beginning a joint representation "advise each client that information will be shared." But ABA LEO 450 (4/9/08) explained that such a prospective consent generally will not be effective, and thus the joint lawyer generally will not be able to share one joint client's communication or information with the other joint client if doing so would harm the joint client who gave the lawyer that information.	

ABA MODEL RULE 1.7 cmt. [31]	
Note # 2	**Code # 2**
ABA Model Rule 1.7 cmt. [31]'s third sentence explains that lawyers should advise their joint clients that "the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other." This does not answer the key question – must the lawyer disclose that information to the other client before withdrawing? ABA Model Rule 1.7 cmt. [31]'s third sentence seems to say "yes," but LEO 450 (4/9/08) seemed to say "no."	

ABA MODEL RULE 1.7 cmt. [34]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [34]'s concluding sentence addresses lawyers who represent an entity and also represent another client "adverse to an affiliate" of that client entity." ABA Model Rule 1.7 cmt. [34]'s concluding sentence contains the term "new client," referring to the lawyer's other client. The term "other client" would be more appropriate than "new client" here, because it would not add a temporal aspect to the analysis.	

ABA MODEL RULE 1.7 cmt. [35]	
Note # 1	**Code # 3**
ABA Model Rule 1.7 cmt. [35]'s concluding sentence suggests that lawyers who both represent an organizational entity and serve on its board of directors "should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present" might not deserve attorney-client privilege protection. The "board meeting" scenario is only a subset of situations in which the privilege might not apply, so it might be appropriate to explain the broader inapplicability of the attorney-client privilege when lawyers serve in that dual role. Otherwise, the organizational client's constituents might mistakenly think that the privilege's inapplicability applies only to board meeting communications.	

ABA MODEL RULE 1.8(c)	
Note #	**Code # 4**
ABA Model Rule 1.8(c)'s first sentence contains the word "lawyer" four times. The last three references are preceded by the word "the." It might reduce any possible confusion by using the word "that" rather than "the" to precede the word "lawyer" in those last three spots.	

ABA MODEL RULE 1.8(e)	
Note # 1	**Code # 4**
ABA Model Rule 1.8(e)'s introductory sentence contains the term "pending or contemplated litigation." This is a mismatch with ABA Model Rule 1.8 cmt. [13]'s concluding sentence, which contains the term "contemplated or pending litigation." Black letter ABA Model Rule 1.8(e)'s introductory sentence's term correctly place the words in order of significance, but they are out of order chronologically.	

ABA MODEL RULE 1.8(e)(3)(i)	
Note # 1	**Code # 3**
ABA Model Rule 1.8(e)(3)(i)'s indicates that lawyers "may not promise, assure or imply the availability of such [modest] gifts prior to retention." That seems like a strange restriction. Lawyers "representing an indigent client pro bono" under ABA Model Rule 1.8(e)(3) has no financial incentive to attract such clients by making such promises, assurances or implications. There is nothing in it for those lawyers, other than perhaps increased prestige for assisting such indigent clients.	

ABA MODEL RULE 1.8(e)(3)(ii)	
Note # 1	**Code # 3**
Under ABA Model Rule 1.8(e)(3)(ii), "a lawyer representing an indigent client pro bono . . . may not seek or accept reimbursement from . . . anyone affiliated with the client" (emphasis added). It is unclear what the phrase "affiliated with the client" means.	

ABA MODEL RULE 1.8(e)(3)(iii)	
Note # 1	**Code # 3**
ABA Model Rule 1.8(e)(3)(iii) states that "a lawyer representing an indigent client pro bono . . . may not publicize or advertise or willingness to provide such [modest] gifts to prospective clients." As with ABA Model Rule 1.8(e)(3)(i)'s similar prohibition, that restriction seems odd – because lawyers have no financial incentive to publicize or advertise their willingness to pay such clients modest gifts. There would seem to be no reason to prohibit such publication or advertisement.	

ABA MODEL RULE 1.8(e)(3)(iii)	
Note # 2	**Code # 2**
ABA Model Rule 1.8(e)(3)(iii) contains the term "prospective clients." That term seems inapt in this setting. ABA Model Rule 1.18(a) defines as "a prospective client" "[a] person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter." In other words, a "prospective" client (indigent or not) has already begun a dialogue with the lawyer about a possible representation. In that one-on-one setting, one would think that ABA Model Rule 1.8(e)(3)(i) would apply. ABA Model Rule 1.8(e)(3)(iii)'s words "publicize" and "advertise" would seem to apply before such a dialogue begins. If ABA Model Rule 1.8(e)(3)(iii) was meant to focus on typical advertisements for publications directed at the would-be clients, the word "prospective" would be unnecessary.	

ABA MODEL RULE 1.8(g)	
Note # 1	**Code # 3**
ABA Model Rule 1.8(g) addresses aggregate settlements. ABA Model Rule 1.8(g)'s first sentence contains the word "participate" when referring to lawyers' involvement in aggregate settlements. ABA Model Rule 1.8(g)'s concluding sentence uses the word "participation" in a totally different way – denoting each person's involvement in the aggregate settlement. Replacing the word "participation" with the word "involvement" or other synonym might avoid possible confusion.	

ABA MODEL RULE 1.8(k)	
Note # 1	**Code # 2**
ABA Model Rule 1.8(k) imputes to a lawyer's associated law firm colleagues all ABA Model Rule 1.8 prohibitions except ABA Model Rule 1.8(j)'s sexual relations prohibition. As the ABA Model Rules General Notes discuss, the ABA Model Rules do not define the word "associated." It seems clear that some lawyers in a law firm are associated with their colleagues, and some are not. Thus, ABA Model Rule 1.8(k) does not impute any ABA Model Rule 1.8 prohibition applicable to lawyers who are not "associated" with their colleagues. And a prohibition applicable to a lawyer "associated" in the law firm is not imputed to law firm colleagues who are not "associated" with that lawyer.	

ABA MODEL RULE 1.8 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 1.8 cmt. [1]'s third sentence addresses lawyers' business relations with clients. ABA Model Rule 1.8 cmt. [1] includes in its list of "goods or services related to the practice of law," "the sale of title insurance" and "investment services." The former seems related to the "practice of law," but "investment services" does not.	

ABA MODEL RULE 1.8 cmt. [1]	
Note # 2	**Code # 4**
ABA Model Rule 1.8 cmt. [1]'s concluding sentence explains that restricting "standard commercial transactions" between lawyers and their clients is "impracticable." The word "impracticable" usually denotes difficulty or even impossibility. The word "impractical" might be more appropriate. That word normally focuses on the wisdom of an action.	

ABA MODEL RULE 1.8 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 1.8 cmt. [2]'s second sentence states that a lawyer "should discuss" business relations with clients. The word "discuss" seems to imply an oral dialogue. As in ABA Model Rule 1.18(a)'s switch from the word "discusses" to the word "consults," the same switch would be appropriate here.	

ABA MODEL RULE 1.8 cmt. [2]	
Note # 2	**Code # 1**
ABA Model Rule 1.8 cmt. [2]'s concluding sentence states that "[w]hen necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable" (emphases added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. ABA Model Rule 1.8 cmt. [2]'s third sentence's introductory clause "[w]hen necessary" illustrates that the word "must" would be more appropriate than the words "should."	

ABA MODEL RULE 1.8 cmt. [4]	
Note # 1	**Code # 3**
ABA Model Rule 1.8 cmt. [4] addresses required disclosures when lawyers do business with their clients. ABA Model Rule 1.8 cmt. [4]'s first sentence states that the "requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel." It is unclear whether that satisfaction comes from: (1) the client being advised by independent counsel, or instead; (2) requires independent counsel's written disclosure.	

ABA MODEL RULE 1.8 cmt. [6]	
Note # 1	**Code # 2**
ABA Model Rule 1.8 cmt. [6]'s concluding sentence prohibits lawyers from "suggest[ing] that a substantial gift be made to the lawyer or for the lawyer's benefit" (emphasis added). That is a broader prohibition than black letter ABA Model Rule 1.8(c)'s prohibition "giving the lawyer or person related to the lawyer any substantial gift." For example, a client establishing a college scholarship fund named for the lawyer would not be "giving the lawyer…any substantial gift (black letter ABA Model Rule 1.8(c)), but presumably would be giving "a substantial gift . . . for the lawyer's benefit." The black letter ABA Model Rule presumably would trump ABA Model Rule 1.8 cmt. [6]'s language.	

ABA MODEL RULE 1.8 cmt. [9]	
Note # 1	**Code # 1**
ABA Model Rule 1.8 cmt. [9]'s first sentence addresses lawyers' acquisition of "literary or media rights concerning the conduct of the representation" (emphasis added). That is a much narrower range than black letter ABA Model Rule 1.8(d) – which prohibits under certain circumstances lawyers' acquisition of "literary or media rights a portrayal or account based in substantial part on information relating to the representation" (emphasis added). Black letter ABA Model Rule 1.8(d)'s scope presumably includes "a portrayal or account" other than one "concerning the conduct of the representation" (which seems to focus on the attorney-client relationship).	

ABA MODEL RULE 1.8 cmt. [9]	
Note # 2	**Code # 2**
ABA Model Rule 1.8 cmt. [9]'s second sentence states that "[m]easures suitable in the representation of the client may detract from the publication value of an account of the representation." That seems to express an understandable worry, but the wrong way. Presumably the concern is that lawyers hoping to maximize the publication value will take unsuitable steps in the representation. In other words, presumably the risk is that a lawyer would avoid "[m]easures suitable in the representation of the client" to enhance "the publication value of an account of the representation."	

ABA MODEL RULE 1.8 cmt. [10]	
Note # 1	**Code # 3**
ABA Model Rule 1.8 cmt. [10]'s first sentence explains that lawyers "may not subsidize lawsuits or administrative proceedings brought on behalf of their clients." This is only a subset of ABA Model Rule 1.8(e)'s limitations – which apply to lawyers bringing actions on their client's behalf, or defending actions brought by others.	

ABA MODEL RULE 1.8 cmt. [11]	
Note # 1	**Code # 4**
ABA Model Rule 1.8 cmt. [11]'s second sentence lists the lawyers who may ethically provide "modest gifts" under ABA Model Rule 1.8(e). The list matches black letter ABA Model Rule 1.8(e)(3), but ABA Model Rule 1.8 cmt. [11] identifies the first category of lawyers as those "representing an indigent client without fee" – rather than using black letter ABA Model Rule 1.8(e)(3)'s phrase "a lawyer representing an indigent client pro bono." This variation is especially odd, because ABA Model Rule 1.8 cmt. [11]'s list contains the term "pro bono" two times in the same sentence.	

ABA MODEL RULE 1.8 cmt. [12]	
Note # 1	**Code # 4**
ABA Model Rule 1.8 cmt. [12]'s concluding sentence contains the term "contemplated or pending litigation." This is a mismatch with ABA Model Rule 1.8(e)'s introductory sentence's term "pending or contemplated litigation" – but makes more sense chronologically.	

ABA MODEL RULE 1.8 cmt. [12]	
Note # 2	**Code # 3**
ABA Model Rule 1.8 cmt. [12]'s concluding sentence addresses the settings in which lawyers may provide "modest gifts" to indigent clients "in connection with contemplated or pending litigation or administrative proceedings" (emphasis added). Black letter ABA Model Rule 1.8(e)'s introductory sentence, (1) and (2) do not include the "administrative proceedings" reference.	

ABA MODEL RULE 1.8 cmt. [13]	
Note # 1	**Code # 4**
ABA Model Rule 1.8 cmt. [13]'s second sentence contains the term "contingent-fee personal injury cases" – with a hyphen. As the ABA Model Rules General Notes discuss, ABA Model Rule 1.5(c)'s first, second, and concluding sentence contain the term "contingent fee" – without a hyphen.	

ABA MODEL RULE 1.8 cmt. [14]	
Note # 1	**Code # 4**
ABA Model Rule 1.8 cmt. [14] concludes with the following reference: "[s]ee also [ABA Model] Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another)." This does not contain an Oxford comma between "employs" and "or pays." ABA Model Rule 5.4(c) itself has the Oxford comma.	

ABA MODEL RULE 1.8 cmt. [16]	
Note # 1	**Code # 1**
ABA Model Rule 1.8 cmt. [16]'s second sentence suggests that lawyers "should" discuss with their joint clients the risk of a joint representation. As the ABA Model Rules General Notes discuss, the word "must" would be more appropriate here.	

ABA MODEL RULE 1.8 cmt. [15]	
Note # 1	**Code # 3**
ABA Model Rule 1.8 cmt. [18]'s second sentence explains that lawyers must advise client or former client "of the appropriateness of independent representation" before settling a malpractice claim or potential claim (emphasis added). This is a different standard from black letter ABA Model Rule 1.8(h)(2) – which uses the word "desirability." The word "desirability" seems to denote more encouragement than the word "appropriateness."	

ABA MODEL RULE 1.8 cmt. [18]	
Note # 1	**Code # 4**
ABA Model Rule 1.8 cmt. [18]'s concluding sentence explains that lawyers must give clients or former clients "a reasonable opportunity to find and consult independent counsel." This may be synonymous with black letter ABA Model Rule 1.8(h)(2)'s phrase "to seek the advice of independent legal counsel" – but it might make sense to use the same formulation.	

ABA MODEL RULE 1.8 cmt. [19]	
Note # 1	**Code # 3**
ABA Model Rule 1.8 cmt. [19]'s second sentence describes the worry of "giving the lawyer too great an interest in the representation" (emphasis added). The term "too great" seems inapt. That term seems to focus on the magnitude of the interest, rather than its type. Black letter ABA Model Rule 1.8(i) presumably focuses on lawyer's personal or business interest, not on the magnitude of the lawyer's interest.	

ABA MODEL RULE 1.9(a)	
Note # 1	**Code # 2**
ABA Model Rule 1.9(a) describes a lawyer "who has formerly represented a client in a matter" (emphasis added). The phrase "in a matter" differs linguistically from ABA Model Rule 1.11(a)(2)'s and ABA Model Rule 1.12(a)'s phrase "in connection with a matter" (emphasis added). It is unclear whether representing a client "in a matter" is synonymous with representing a client "in connection with" a matter. Presumably the different formulations in successive ABA Model Rules were intended to have some significance.	

ABA MODEL RULE 1.9(a)	
Note # 2	**Code # 3**
ABA Model Rule 1.9(a) prohibits lawyers from representing a "person" if that person's interests are "materially adverse to the interests of" certain former clients in specified circumstances. The word "person" is inconsistent with ABA Model Rule 1.7(a)'s prohibition on a lawyer representing a "client" in specified circumstances. Under either ABA Model Rule, the "person" may not be a "client" – at least in the prohibited representation. So it is odd that the core current-client ABA Model Rule 1.7 and the core former-client ABA Model Rule 1.9 use different formulations.	

ABA MODEL RULE 1.9(a)	
Note # 3	**Code #**
ABA Model Rule 1.9(a) prohibits lawyers from representing a client against a former client under specified conditions if the client's "interests are materially adverse to the interests of the former client" (emphasis added). As the ABA Model Rules General Notes discuss, ABA Model Rules contain several variations of adversity: adversity to a client; adversity to a client's interests; material adversity to a client's interests; direct adversity to a client or to the client's interests, etc. It is unclear whether these deliberately chosen linguistic differences are intended to have substantively different meanings.	

ABA MODEL RULE 1.9(b)	
Note # 1	**Code # 2**
ABA Model Rule 1.9(b) governs lawyers' representation of clients who had been represented by a firm "with which the lawyer formerly was associated" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules do not define the word "associated." But it seems clear that some lawyers in the law firm are "associated" with their colleagues and some are not. ABA Model Rule 1.9(b) thus on its face does not apply to lawyers formerly employed by the law firm but not associated "with" the firm. As the ABA Model Rules General Notes also discuss, the ABA Model Rules use two formulations describing lawyers' association with law firms: "in" and "with." The former appears to denote lawyers who are employed by the law firm. The latter appears to denote lawyers who are not employed by the law firm (such as lawyers acting as co-counsel, lawyers assisting a lawyer from another jurisdiction, etc.).	

ABA MODEL RULE 1.9(b)(2)	
Note # 1	**Code # 3**
ABA Model Rule 1.9(b)(2) describes a lawyer who "had acquired information by [ABA Model] Rules 1.6 and 1.9(c)" (emphasis added). The word "and" seems to denote the information's protection by both of those ABA Model Rules. The word "or" might be more appropriate here.	

ABA MODEL RULE 1.9(c)(1) and (2)	
Note # 1	**Code # 3**
ABA Model Rule 1.9(c)(1) and (2) use the same formulation as ABA Model Rule 1.6(a) in describing "information relating to the representation." As in ABA Model Rule 1.6(a), that scope seems too narrow. For instance, a client's hateful use of the "n" word to describe a waiter serving the client and his lawyer at lunch presumably would not be "information relating to the representation" – although it would be information "gained in" or "gained during" the representation. Thus, that potentially significant information would not fall within ABA Model Rule 1.9(c)(1) or (2)'s prohibition.	

ABA MODEL RULE 1.9 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 1.9 cmt. [1]'s second sentence explains that "a lawyer could not properly seek to rescind" a specified contract (emphasis added). The word "properly" is unnecessary.	

ABA MODEL RULE 1.9 cmt. [1]	
Note # 2	**Code # 4**
ABA Model Rule 1.9 cmt. [1]'s third sentence addresses a former prosecutor's representation of an accused person (the lawyer had earlier prosecuted) in "a subsequent civil action against the government concerning the same transaction" (emphasis added). It is unclear what the word "transaction" denotes. A white-collar "accused" might have been involved in an illegal "transaction," but that word seems inappropriate for a blue-collar criminal's bank robbery, etc. The word "incident" or "matter" might be more appropriate.	

ABA MODEL RULE 1.9 cmt. [1]	
Note # 3	**Code # 1**
ABA Model Rule 1.9 cmt. [1]'s concluding sentence prohibits lawyers who had jointly represented several clients from representing one of the clients against the others in a substantially related matter – "unless all affected clients give informed consent." The term "all affected clients" seems to denote all of the clients – including those represented by the lawyer, and the former clients against whom the lawyer wishes to represent some of the former clients. This informed consent requirement seems appropriate, but is broader than black letter ABA Model Rule 1.9(a)'s consent requirement – which only requires "the former client [to] give[ ] informed consent."	

ABA MODEL RULE 1.9 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 1.9 cmt. [2]'s second sentence explains that lawyers' "involvement in a matter can also be a question of degree" (emphasis added). It is unclear why ABA Model Rule 1.9 cmt. [2]'s second sentence focuses on a lawyer's "involvement" in a matter. Black letter ABA Model Rule 1.9 applies to lawyers who represent or have represented clients in a matter – not lawyers who were somehow "involved" in a matter. Black letter ABA Model Rule 1.9 does not apply to lawyers "involved" in a matter.	

ABA MODEL RULE 1.9 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 1.9 cmt. [2]'s second sentence states that "[t]he lawyer's involvement in a matter can also be a question of degree" (emphasis added). Even if a lawyer's "involvement" in a matter was relevant, it is unclear what the word "degree" denotes.	

ABA MODEL RULE 1.9 cmt. [3]	
Note # 1	**Code # 2**
ABA Model Rule 1.9 cmt. [3]'s fourth sentence explains that "[i]nformation that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying" (emphasis added). Such disclosure would seem irrelevant in assessing whether "[m]atters are 'substantially related' for purposes of" ABA Model Rule 1.9(a) – which is ABA Model Rule 1.19 cmt. [3]'s focus. Such information's disclosure to others might justify a different prohibition or disqualification standard, but would not seem to affect a "substantial relationship" analysis.	

ABA MODEL RULE 1.9 cmt. [3]	
Note # 2	**Code # 2**
ABA Model Rule 1.9 cmt. [3]'s fifth sentence states that "[i]nformation acquired in a prior representation may have been rendered obsolete by the passage of time" (emphasis added) – which "may be relevant in determining whether two representations are substantially related." As with a possible disclosure to others of protected client confidential information, the passage of time would seem irrelevant in assessing the "substantial relationship" between matters – which is ABA Model Rule 1.9 cmt. [3]'s focus. Such information's obsolescence might justify a different prohibition or disqualification standard, but would not seem to affect a "substantial relationship" analysis.	

ABA MODEL RULE 1.9 cmt. [4]	
Note # 1	**Code # 2**
ABA Model Rule 1.9 cmt. [4]'s first sentence contains the phrase "associated within a firm" (emphasis added). As the ABA Model Rules General Notes discuss, ABA Model Rules and their Comments provide provisions using the word "with" and the word "in" in describing a lawyer's "association" with a firm or other persons. ABA Model Rule 1.9 cmt. [4]'s word "within" is strange amalgam of those two separate and presumably deliberately chosen words "with" and "in."	

ABA MODEL RULE 1.9 cmt. [5]	
Note # 1	**Code # 2**
ABA Model Rule 1.9 cmt. [5]'s second sentence contains the phrase "the same or a related matter" (emphasis added). That standard contrasts with black letter ABA Model Rule 1.9(a)'s standard: "the same or a substantially related matter" (emphasis added).	

ABA MODEL RULE 1.9 cmt. [6]	
Note # 1	**Code # 1**
ABA Model Rule 1.9 cmt. [6]'s first sentence mentions "a situation's particular facts, aided by inferences, deductions or working presumptions" (emphasis added). That loose standard seems to conflict with ABA Model Rule 1.9 cmt. [5]'s first sentence's standard: "when the lawyer involved has actual knowledge of information" (emphasis added). Perhaps ABA Model Rule 1.9 cmt. [6]'s looser standard reflects ABA Model Rule 1.0(f)'s statement that "[a] person's [actual] knowledge may be inferred from circumstances." But "inferred from circumstances" seems to denote a narrower range than ABA Model Rule 1.9 cmt. [6]'s "aided by inferences, deductions or working presumptions." Neither ABA Model Rule 1.9 cmt. [5] nor ABA Model Rule 1.9 cmt. [6] mentions ABA Model Rule 1.0(f)'s definition of "knows" and its reference to inferences.	

ABA MODEL RULE 1.9 cmt. [8]	
Note # 1	**Code # 3**
ABA Model Rule 1.9 cmt. [8]'s second sentence explains that in certain circumstances, lawyers are not precluded "from using generally known information about [a former] client when later representing another client." It is unclear whether that explanation defines the limits of such lawyers' use of a former client's protected client confidential information, or merely provides an example of such permissible use. Black letter ABA Model Rule 1.9(c)(2) frees such lawyers from using former clients' protected client confidential information "when the information has become generally known" – without limiting such use when lawyers are "later representing another client."	

ABA MODEL RULE 1.10(a)	
Note # 1	**Code # 2**
ABA Model Rule 1.10(a) addresses the imputation to all "lawyers [who] are associated in a firm . . . when any one of them practicing alone would be prohibited from" a representation (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules do not define the word "associated," although it seems clear that some lawyers in a law firm are "associated" with their law firm colleagues, and some lawyers are not. This means that ABA Model Rule 1.10(a) imputes to other "associated lawyers" in the firm only the individual prohibition of another lawyer who is "associated" in the firm. Thus, on its face, ABA Model Rule 1.10(a) does not impute the individual prohibition of a lawyer who is not "associated" in a law firm, and does not impute an "associated" lawyer's prohibition to lawyers who are not "associated" in the firm. Perhaps that is intentional, but it is difficult to tell that without knowing exactly what the word "associated" means, whom it applies to and whom it does not apply to. It would be helpful if ABA Model Rule 1.10(a) was more clear.	

ABA MODEL RULE 1.10(a)	
Note # 2	**Code # 3**
ABA Model Rule 1.10(a) states that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client," except under specified circumstances (emphasis added). The word “client” contrasts with ABA Model Rule 1.10 (b)’s word “person” as someone a lawyer may not represent under specified conditions. Because such a “person” may not be a “client,” it might be appropriate for ABA Model Rule 1.10(a) to also use the word “person” rather than the word “client.”	

ABA MODEL RULE 1.10(a)	
Note # 3	**Code # 3**
ABA Model Rule 1.10(a) addresses the imputation of a prohibition to all "lawyers [who] are associated in a firm . . . when any one of them practicing alone would be prohibited from" a representation (emphasis added). It is unclear why ABA Model Rule 1.10(a) contains the phrase "when any one of them practicing alone." It would seem that the same imputation analysis would apply whether the lawyer was "practicing alone" or not.	

ABA MODEL RULE 1.10(a)(1)	
Note # 1	**Code # 3**
ABA Model Rule 1.10(a)(1) contains the phrase “remaining lawyers in the firm.” This presumably refers to lawyers in the firm other than the individually disqualified lawyer mentioned in ABA Model Rule 1.10(a)(1). The word “other” would be much better here. This is because ABA Model Rule 1.10(b)(2) contains the word “remaining in the firm” to mean something totally different – lawyers who continue to practice in a firm rather than having left the firm.	

ABA MODEL RULE 1.10(a)(2)	
Note # 1	**Code # 2**
ABA Model Rule 1.10(a)(2) contains the phrase "the disqualified lawyer's association with a prior firm" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rules refer to lawyers associated "in" a firm and some refer to lawyers associated "with" a firm. ABA Model Rule 1.10(a)(2)'s word "with" contrasts ABA Model Rule 1.10(a)'s phrase "associated in a firm" (emphasis added). The term "associated with" includes lawyers who are not employed by the firm – such as lawyers in other firms who are jointly representing a client, a local lawyer who "associates" with an out-of-state lawyer for ABA Model Rule 5.5 purposes, and perhaps others. It is unclear whether this deliberate word choice was intended to have a different substantive meaning.	

ABA MODEL RULE 1.10(a)(2)(ii)	
Note # 1	**Code # 3**
ABA Model Rule 1.10(a)(2)(ii) requires that lawyers provide notice in certain circumstances that (among other things) "a statement that review may be available before a tribunal" (emphasis added). It is unclear what that statement means. Perhaps it refers to a disqualification motion. It seems unlikely that a tribunal would provide an advisory opinion.	

ABA MODEL RULE 1.10(b)	
Note # 1	**Code # 3**
ABA Model Rule 1.10(b) contains the phrase "[w]hen a lawyer has terminated an association with a firm" (emphasis added). The phrase "association with a firm" matches ABA Model Rule 1.10(a)(2)'s formulation, but contrasts with ABA Model Rule 1.10(a)'s phrase "associated in a firm" (emphasis added). It is unclear whether the deliberate word choice intends to have a different substantive meaning. It would be helpful if ABA Model Rule 1.10 clarified any intended difference.	

ABA MODEL RULE 1.10(b)	
Note # 2	**Code # 3**
ABA Model Rule 1.10(b) contains the phrase "a person with interests materially adverse to those of a client" (emphasis added). As the ABA Model Rules General Notes discuss, this is one of several formulations the ABA Model Rules contain – both in their identity of the object of adversity ("interests") (rather than a client or former client), the type of adversity, and the degree of adversity ("materially").	

ABA MODEL RULE 1.10(b)(2)	
Note # 1	**Code # 3**
ABA Model Rule 1.10(b)(2) contains the phrase "any lawyer remaining in the firm" (emphasis added). The phrase "remaining in the firm" clearly refers to lawyers who are still practicing in the firm, as opposed to lawyers who have left the firm. This meaning of the word "remaining" contrasts with the meaning of ABA Model Rule 1.10(a)(1)'s phrase "the remaining lawyers in the firm" – which presumably means other lawyers in the firm, not lawyers who have remained in the firm when others have left.	

ABA MODEL RULE 1.10(b)(2)	
Note # 2	**Code # 3**
ABA Model Rule 1.10(b)(2) describes "information protected by [ABA Model] Rule 1.6 and 1.9(c)" (emphasis added). On its face, this phrase describes information protected by both of those ABA Model Rules, not by either but not both of them. The word "or" presumably would be more appropriate than the word "and."	

ABA MODEL RULE 1.10(b)(2)	
Note # 3	**Code # 2**
ABA Model Rule 1.10(b)(2) focuses only on the presence of lawyers in the law firm who have "information protected by [ABA Model] Rules 1.6 and 1.9(c) that is material to the matter." In other words, as long as all of the lawyers with protected client confidential information have left the firm, the lawyers remaining in the firm may represent clients adverse to former clients who had been represented by the lawyers who have since left the firm. This focus only on lawyers would on its face allow remaining lawyers in the firm to represent a client adverse to one of the firm's former clients (even in the same matter) – if: (1) non-lawyers with material protected client confidential information remain at the firm; and (2) even if the firm has in its possession materials containing such protected client confidential information. Even more remarkably, lawyers remaining in the firm may undertake such a representation adverse to one of the firm's former clients (even in the same matter) without screening those non-lawyers from working on the matter, and without denying anyone at the firm access to such materials remaining in the firm. Presumably other ABA Model Rules (such as ABA Model Rule 1.7(a)(2)'s "material limitation" provision) would apply, but one would think that ABA Model Rule 1.10(b)(2) would acknowledge the impact of confidence-laden non-lawyers and material remaining at the firm.	

ABA MODEL RULE 1.10(d)	
Note # 1	**Code # 3**
ABA Model Rule 1.10(d) refers to "lawyers associated in a firm with former or current government lawyers" (emphasis added). It seems unlikely that a private law firm could have a "current government lawyer" "associated" in the firm. Perhaps ABA Model Rule 1.10(d) intends to apply to part-time government lawyers, or perhaps it intends to rely on ABA Model Rule 1.0(c)'s expansive definition of the word "firm" (which ABA Model Rule 1.0 cmt. [3] describes as "including the government"). That seems unlikely, but it would be helpful if ABA Model Rule 1.10(d) clarified that issue.	

ABA MODEL RULE 1.10 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 1.10 cmt. [4]'s second sentence states that ABA Model Rule 1.10(a) does not apply to lawyers "because of events before the "person became a lawyer" (emphasis added). The word "events" seems inapt. A word such as "experience" might be more appropriate.	

ABA MODEL RULE 1.10 cmt. [10]	
Note # 1	**Code # 4**
ABA Model Rule 1.10 cmt. [10]'s concluding sentence states that "[i]f compliance cannot be certified, the certificate must describe the failure to comply" (emphasis added). The word "certificate" normally denotes a physical or electronic object. The word "certification" might be more appropriate here. That is the word used elsewhere in ABA Model Rule 1.10 cmt. [10].	

ABA MODEL RULE 1.10 cmt. [11]	
Note # 1	**Code # 4**
ABA Model Rule 1.10 cmt. [11]'s second sentence refers to ABA Model Rule 1.11(d)'s application "where a lawyer represents the government after having served clients in private practice" (emphasis added). That description denotes only a subset of ABA Model Rule 1.11(d)'s application. ABA Model Rule 1.11(d) on its face applies to "a lawyer [who is] currently serving as a public officer or employee." In other words, it is not limited to government-employed lawyers who are representing the government.	

ABA MODEL RULE 1.11(a)	
Note # 1	**Code # 4**
ABA Model Rule 1.11(a) applies to "a lawyer who has formerly served as a public officer or employee of the government." It is easy to identify who is a government employee, but the term "public officer" is not defined. On its face, ABA Model Rule 1.11(a) does not apply only to lawyers who have "served" in a representational role. For example, on its face ABA Model Rule 1.11 applies to a lawyer who has served in a non-representational role as head of an agency or even as a mail-delivery person, etc. It would be helpful if ABA Model Rule 1.11(a) defined the term "public official."	

ABA MODEL RULE 1.11(a)(2)	
Note # 1	**Code # 3**
ABA Model Rule 1.11(a)(2) contains the phrase "represent a client in connection with a matter" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules contain a variety of terms to describe a lawyer's representation of a client. For instance, ABA Model Rule 1.7(a) contains the phrase "represent a client." ABA Model Rule 1.9(a) understandably contains the phrase "represented a client in a matter." ABA Model Rule 1.11(a)(2)'s phrase "represent a client in connection with a matter" presumably describes a different relationship. Otherwise, it would seem that those ABA Model Rules would contain the same phrase.	

ABA MODEL RULE 1.11(c)	
Note # 1	**Code # 4**
ABA Model Rule 1.11(c)'s first sentence prohibits lawyers who possess certain government information from representing "a private client" in specified situations. It is unclear whether the term "private client" refers to: (1) a non-governmental client or (2) either a non-governmental or governmental client represented by a lawyer practicing in the private sector (rather than practicing in the government).	

ABA MODEL RULE 1.11(c)	
Note # 2	**Code # 3**
ABA Model Rule 1.11(c)'s first sentence prohibits lawyers from representing clients in certain specified situations in which information the lawyer learned (while in the government) about a private person "could be used to the material disadvantage of that person" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules contain a variety of phrases to describe presumably different types of adversity: adverse to a person; directly adverse to a person; adverse to the interests of a person; "materially adverse" to a person, etc. ABA Model Rule 1.11(c)'s term "material disadvantage of that person" is one of these variations. It is unclear if the presumably deliberately articulated variations intend to define different standards.	

ABA MODEL RULE 1.11(d)(2)(ii)	
Note # 1	**Code # 2**
ABA Model Rule 1.11(d)(2)(ii) prohibits a lawyer "currently serving as a public officer or employee" from negotiating for "private employment with any person who is involved as a party or as a lawyer for a party" in specified situations (emphasis added). The word "involved" is not defined. Eighteen words later, ABA Model Rule 1.11(d)(2)(ii) contains the undefined word "participating" to describe the government-employed lawyer's role in a matter (emphasis added). Presumably the deliberately chosen word "involved" to describe private sector lawyers' and parties' role differs from the word "participating" used later in the same sentence. But neither ABA Model Rule 1.11 nor any of its Comments provides any guidance.	

ABA MODEL RULE 1.11(d)(2)(ii)	
Note # 2	**Code # 3**
ABA Model Rule 1.11(d)(2)(ii) allows "a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator" to "negotiate for private employment" under certain conditions. Although it is not clear, that description presumably denotes law clerks who are serving in one of three capacities: law clerk to a judge; law clerk to an "adjudicative officer" who is not a judge; or law clerk to an arbitrator. The alternative reading of that phrase would apply the exception to adjudicative officers and arbitrators themselves, rather than to their clerks. That would not be consistent with the presumed principle – making it easier for law clerks to obtain employment after their clerkships. But it would be helpful if ABA Model Rule 1.11 provided some guidance.	

ABA MODEL RULE 1.11(d)(2)(ii)	
Note # 3	**Code # 1**
ABA Model Rule 1.11(d)(2)(ii) allows "a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator [to] negotiate for private employment as permitted by [ABA Model Rules] Rule 1.12(b) and subject to the conditions stated in [ABA Model] Rule 1.12(b)." This doubly-emphasized reference to ABA Model Rule 1.12(b) is somewhat ironic. On its face, ABA Model Rule 1.12(b) does not permit law clerks to arbitrators to negotiate for private employment. So one of the three types of law clerks specifically identified in ABA Model Rule 1.11(d)(2)(ii) are not included in the ABA Model Rule provision twice referred to as providing guidance.	

ABA MODEL RULE 1.11 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 1.11 cmt. [2]'s first sentence contains the term "former government or private client" (emphasis added). Unlike ABA Model Rule 1.11(a), ABA Model Rule 1.11 cmt. [2] thus seems to apply only to government-employed lawyers serving in a representational role. But this could be more clearly explained.	

ABA MODEL RULE 1.11 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 1.11 cmt. [2]'s third sentence and fourth sentence refer to "special problems raised by imputation within a government agency" (emphasis added). ABA Model Rule 1.11 cmt. [2] does not give any guidance about what those "special problems" are.	

ABA MODEL RULE 1.11 cmt. [2]	
Note # 3	**Code # 3**
ABA Model Rule 1.11 cmt. [2]'s concluding sentence addresses imputation of an individual government-employed lawyer's conflict "to other associated government officers or employees" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules do not define the word "associated," despite its key role in many ABA Model Rules. ABA Model Rule 1.11 cmt. [2] confirms that lawyers can be "associated" with non-lawyers, and vice versa. It would be helpful if ABA Model Rule 1.11 cmt. [2] provided some guidance.	

ABA MODEL RULE 1.11 cmt. [9]	
Note # 1	**Code # 3**
ABA Model Rule 1.11 cmt. [9] states that ABA Model Rule 1.11(a) and (d) "do not prohibit a lawyer from jointly representing a private party and a government agency" under specified conditions. That freedom makes sense for a private sector lawyer, who can represent private sector clients and also represent the government. But it is unclear whether a government-employed lawyer may represent a private sector client.	

ABA MODEL RULE 1.11 cmt. [10]	
Note # 1	**Code # 3**
ABA Model Rule 1.11 cmt. [10] states that a “matter” (defined in ABA Model Rule 1.11(e)) “may continue in another form.” ABA Model Rule 1.11 and its Comments do not explain that intriguing statement.	

ABA MODEL RULE 1.11 cmt. [10]	
Note # 2	**Code # 4**
ABA Model Rule 1.11 cmt. [10] provides some guidance about how to "determin[e] whether two particular matters are the same." The word "particular" seems superfluous. ABA Model Rule 1.11 repeatedly uses the word "matter" in the singular or the plural, without adding the adjective "particular."	

ABA MODEL RULE 1.11 cmt. [10]	
Note # 3	**Code # 3**
ABA Model Rule 1.11 cmt. [10] points to “the time elapsed” as a factor in “determining whether two particular matters are the same.” That temporal factor would seem to be irrelevant. ABA Model Rule 1.11 cmt. [10] itself explains that lawyers “should consider the extent to which the matters involve the same basic facts, the same or related parties.” That substantive overlap is clearly appropriate, but “time elapsed” seems irrelevant.	

ABA MODEL RULE 1.12(a)	
Note # 1	**Code # 3**
ABA Model Rule 1.12(a)'s first sentence prohibits lawyers who previously acted in another specified role (as a judge, etc.) from "representing anyone in connection with a matter" under certain circumstances. As the ABA Model Rules General Notes discuss, ABA Model Rules use several variations to describe a representation. For instance, ABA Model Rule 1.7(a) contains the phrase "represent a client." ABA Model Rule 1.9(a) understandably contains the phrase "represented a client in a matter." ABA Model Rule 1.12(a)'s phrase "representing anyone in connection with the matter" is similar to ABA Model Rule 1.11(a)'s phrase "represent a client in connection with a matter." It is unclear whether these different formulations describe a different relationship between a lawyer, a client and a matter.	

ABA MODEL RULE 1.12(a)	
Note # 2	**Code # 3**
ABA Model Rule 1.12(a)'s first sentence prohibits a lawyer from representing anyone "in connection with a matter" in which the lawyer previously played a specified role as a judge, etc. – "unless all parties to the proceeding give informed consent" (emphasis added). The term "proceeding" could either mean: (1) the "proceeding" in which the lawyer previously served as a judge, etc.; or (2) the "proceeding" in which the former judge, etc., wishes to represent a client. The former probably makes the most sense. Lawyers serve as judges, etc., in a "proceeding." ABA Model Rule 1.12(a)'s prohibition on former judges, etc., representing "anyone in connection with a matter" seems to describe a broader range of representations – which are not limited to a "proceeding." But it would be helpful if ABA Model Rule 1.12(a) was more clear.	

ABA MODEL RULE 1.12(b)	
Note # 1	**Code # 3**
ABA Model Rule 1.12(b)'s first sentence prohibits lawyers who are then serving in a specified role (judge, etc.) from "negotiat[ing] for employment" with a specified type of person (emphasis added). The word "negotiate" is not defined. Presumably it does not denote only the normal "give and take" negotiation for employment. Otherwise, a former judge, etc., could demand a certain salary from a person who is out of bounds for such employment "negotiation" – and accept such employment if the proposed employer accepts the demand without any back-and-forth negotiation about the amount. Similarly, otherwise an off-limits employer could hire a former judge, etc., by offering a "take it or leave it" employment offer, without a back-and-forth negotiation. So a broader term such as "seek" or "communicate about" might be better than the potentially ambiguous word "negotiate."	

ABA MODEL RULE 1.12(b)	
Note # 2	**Code # 2**
ABA Model Rule 1.12(b)'s first sentence prohibits lawyers who are then serving in specified roles (judge, etc.) from "negotiate[ing] for employment" with a specified type of person (emphasis added). The word "employment" is not defined, but seems somewhat inapt. Otherwise, one of the specified lawyers could negotiate with one of the off-limits persons for a consultant job. A better phrase might be "employment or retention" – a variation of the broader and more generic ABA Model Rule 5.3 phrase.	

ABA MODEL RULE 1.12(b)	
Note # 3	**Code # 2**

ABA Model Rule 1.12(b)'s first sentence prohibits lawyers who are then serving in specified roles (judge, etc.) from "negotiat[ing] for employment with any person who is involved as a party or as a lawyer for a party in a matter" in which the lawyer (judge, etc.) is "participating personally and substantially" in the specified role (judge, etc.). The phrase "involved as a party or as a lawyer for a party" is not defined. Perhaps it would be impossible to precisely define it, but it would have been helpful for ABA Model Rule 1.12 to provide some guidance. For instance, it is difficult to imagine that a judge hearing a case would be free to negotiate for employment with a law firm whose named partner is litigating a case before the judge – by negotiating for that employment with another law firm partner who is not personally litigating the case. In other words, presumably both of those law firm partners (and probably all other lawyers and non-lawyers in the firm) are "involved" in the litigation before the judge. But ABA Model Rule 1.12(b) does not explain that or provide any guidance.

ABA MODEL RULE 1.12(b)	
Note # 4	**Code # 1**
ABA Model Rule 1.12(b)'s second sentence contains an exception for lawyers otherwise prohibited from seeking employment under ABA Model Rule 1.12(b)'s terms. The exception covers "[a] lawyer serving as a law clerk to a judge or other adjudicative officer." This list does not include arbitrators' law clerks. Notably, ABA Model Rule 1.11(d)(2)(ii) assures that "a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [ABA Model] Rule 1.12(b) and subject to the conditions stated in [ABA Model] Rule 1.12(b) (emphasis added). Yet arbitrators' law clerks are not mentioned in ABA Model Rule 1.12(b). And it is clear that ABA Model Rule 1.12(b)'s term "other adjudicative officer" does not include arbitrators. ABA Model Rule 1.12(b)'s limitation to "a law clerk to a judge or other adjudicative officer" presumably is deliberate – because the preceding sentence describes lawyers serving as "a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral" (emphasis added). ABA Model Rule 1.11(d)(2)(ii) also differentiates arbitrators from adjudicative officers: "a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator" (emphasis added).	

ABA MODEL RULE 1.12(c)	
Note # 1	**Code # 2**
ABA Model Rule 1.12(c) imputes the individual disqualification of a lawyer who is disqualified under ABA Model Rule 1.12(a) – subject to ABA Model Rule 1.12(c)(1) and (2)'s exceptions. As the ABA Model Rules General Notes discuss, this is one of the ABA Model Rule provisions in which the imputed disqualification applies to all lawyers "in a firm" – even if those lawyers are not "associated" in or with that firm (by containing the phrase "no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter"). In other words, only a lawyer "associated" with her law firm colleagues can be the source of the imputed prohibition, but the prohibition extends to every one of her law firm colleagues – even those who are not "associated" in the firm.	

ABA MODEL RULE 1.12(c)	
Note # 2	**Code # 4**
ABA Model Rule 1.12 cmt. [1]'s second sentence begins with the phrase "[t]he term 'personally and substantially' signifies that a judge who was a member of a multimember court" is not prohibited from certain post-judicial roles. The word "signifies" seems inapt. It would be more clear if ABA Model Rule 1.12 cmt. [1] described how the term "personally and substantially" applied, rather than what it "signifies."	

ABA MODEL RULE 1.12 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 1.12 cmt. [1]'s fifth sentence refers to "[p]aragraphs C(2), D(2) and E(2) of the Application Section of the Model Code of Judicial Conduct." As the ABA Model Rules General Notes discuss, this is a mismatch with the ABA Model Rule online version.	

ABA MODEL RULE 1.12 cmt. [3]	
Note # 2	**Code # 3**
ABA Model Rule 1.12 cmt. [3]'s concluding sentence warns that under ABA Model Rule 1.12(c), an individually disqualified lawyer's disqualification "will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met" (emphasis added). Presumably the word "this" is a mistake. The word "that" would be more appropriate.	

ABA MODEL RULE 1.13(b)	
Note # 1	**Code # 2**
ABA Model Rule 1.13(b)'s first sentence describes an organization's constituents who might engage in wrongdoing—including "other person associated with the organization" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules do not define "associated." But it seems clear some lawyers in a law firm are "associated" with their fellow law firm colleagues, and some are not. In addition, lawyers can be "associated" with lawyers from other firms, and "associated" with non-lawyers in their firms. ABA Model Rule 1.13(b)'s use of the word "associated" persumably refers to non-lawyers having some role in an organization. But that role is not defined.	

ABA MODEL RULE 1.13(c)(2)	
Note # 1	**Code # 2**
ABA Model Rule 1.13(c)(2) allows lawyers to disclose an organizational client's protected client confidential information in certain circumstances—"whether or not [ABA Model] Rule 1.6 permits such disclosure." Thus ABA Model Rule 1.13(c)(2) supplements those circumstances where lawyers may disclose protected client confidential information (but are not required to). Black Letter ABA Model Rule 1.6(b) does not include or refer to ABA Model Rule 1.13(c)(2)'s supplemental discretion to disclose protected client confidential information. ABA Model Rule 1.6 cmt. [7]'s fourth sentence mentions ABA Model Rule 1.13(c), but almost as an afterthought—explaining that ABA Model Rule 1.13(c) "permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances." Interestingly, ABA Model Rule 1.13(c)(2) only allows such disclosure if and only if, and to the extent the lawyer reasonably believes necessary, to prevent substantial injury <u>to the organization</u>" (emphasis added). This means that if a lawyer's disclosure would harm the organizational client rather than "prevent substantial injury to the organization," presumably the lawyer may not disclose the protected client confidential information. Under this standard, the lawyer may not do so, even if disclosure would prevent harm to other persons—such as persons living near an organization that is polluting a river, buyers of an organization's products that may be injured by them, an organization's shareholders, etc.	

ABA MODEL RULE 1.13(d)	
Note # 1	**Code # 4**
ABA Model Rule 1.13(d) explains that ABA Model Rule 1.13(c) "shall not apply with respect to information" described in that provision (emphasis added). It is unclear whether the phrase "with respect to" changes the intended meaning of ABA Model Rule 1.13(d), but it seems superfluous.	

ABA MODEL RULE 1.13(f)	
Note # 1	**Code # 2**
ABA Model Rule 1.13(f) requires lawyers dealing with an organizational client's listed constituents to "explain the identity of the client" (as being the organization, not the constituent) under certain circumstances. But only requiring such a lawyer to "explain the identity of the client" does not seem to go far enough in those circumstances. It make more sense for ABA Model Rule 1.13(f) to require an explanation about the implications of the lawyer's representation of the client (the organization) that the lawyer represents. This issue is discussed further below (in connection with ABA Model Rule 1.13 cmt. [10]).	

ABA MODEL RULE 1.13 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.13 cmt. [1]'s first sentence lists persons through whom an organization can act: "its officers, directors, employees, shareholders and other constituents." ABA Model Rule 1.13 cmt. [3]'s third sentence inexplicably contains a shorter list of persons who might engage in wrongdoing: "an officer or other constituent."	

ABA MODEL RULE 1.13 cmt. [6]	
Note # 1	**Code # 3**
ABA Model Rule 1.13 cmt. [6]'s second sentence acknowledges that ABA Model Rule 1.13(c) "supplements [ABA Model] Rule 1.6(b) by providing an additional basis upon which the lawyer" may disclose protected client confidential information. But ABA Model Rule 1.13 cmt. [6] does not provide any explanation of the "additional basis." And black letter ABA Model Rule 1.6 does not acknowledge or explain this supplemental discretion to disclose protected client confidential information.	

ABA MODEL RULE 1.13 cmt. [6]	
Note # 2	**Code # 3**
ABA Model Rule 1.13 cmt. [6]'s second sentence explains that ABA Model Rule 1.13 "does not modify, restrict, or limit the provisions of [ABA Model] Rule 1.6(b)(1) – (6)." That seems inconsistent with the same sentence's earlier statement that ABA Model Rule 1.13 "provid[es] an additional basis" for permissible disclosure (emphasis added).	

ABA MODEL RULE 1.13 cmt. [6]	
Note # 3	**Code # 4**
ABA Model Rule 1.13 cmt. [6]'s second sentence assures that ABA Model Rule 1.13 "does not modify, restrict, or limit the provisions of ABA Model Rule 1.6(b)(1) – (6)." The word "restrict" would seem to be a synonym for the word "limit," so it is unclear why both are necessary.	

ABA MODEL RULE 1.13 cmt. [7]	
Note # 1	**Code # 2**
ABA Model Rule 1.13 cmt. [7]'s first sentence identifies persons a lawyer might investigate: "an officer, employee or other person associated with the organization." This is only a subset of ABA Model Rule 1.13(f)'s list of an organization's persons a lawyer may deal with: "directors, officers, employees, members, shareholders or other constituents." It would seem possible for an organization's lawyer might also investigate an organization's "directors" and "members."	

ABA MODEL RULE 1.13 cmt. [7]	
Note # 2	**Code # 2**
ABA Model Rule 1.13 cmt. [7]'s first sentence identifies persons a lawyer might investigate: "an officer, employee or other person associated with the organization." It is unclear whether the term "other person associated with the organization" is synonymous with the term "other constituents" (which ABA Model Rule 1.13(f) and (g) identify) or whether it includes non-constituents.	

ABA MODEL RULE 1.13 cmt. [9]	
Note # 1	**Code # 3**
ABA Model Rule 1.13 cmt. [9]'s third and fourth sentences list undefined terms describing government entities: "specific agency;" "a branch of government;" "the government as a whole;" "a bureau;" "the department of which the bureau is a part." It would be helpful if ABA Model Rule 1.13 provided guidance about the meaning of those terms.	

ABA MODEL RULE 1.13 cmt. [9]	
Note # 2	**Code # 3**
ABA Model Rule 1.13 cmt. [9] concludes with a reference: “See Scope.” Presumably the reference is to ABA Model Rule Scope [18]. It would help if the reference identified the pertinent Scope paragraph.	

ABA MODEL RULE 1.13 cmt. [10]	
Note # 1	**Code # 1**
ABA Model Rule 1.13 cmt. [10]'s second sentence states that "a lawyer should advise the constituent" that the lawyer "cannot represent such constituent" when adversity develops between the organizational client and that constituent (emphasis added). This contrasts with black letter ABA Model Rule 1.13(f)'s requirement that such a lawyer "shall explain the identity of the client" in that circumstance (emphasis added). As the ABA Model Rule General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if required. In most of those situations, it is clear from the context that the word "must" is required. In ABA Model Rule 1.13 cmt. [10], the word "must" is explicitly required by black letter ABA Model Rule 1.13(f) itself—not just from the overall context.	

ABA MODEL RULE 1.13 cmt. [10]	
Note # 2	**Code # 2**

ABA Model Rule 1.13 cmt. [10] contains an odd mixture of scenarios where adversity exists or may exist. ABA Model Rule 1.13 cmt. [10]'s first sentence addresses a scenario where the organization's "interest may be or become adverse to those of one or more of its constituents." ABA Model Rule 1.13 cmt. [10] explains that a lawyer in that setting "should advise" any constituent – "whose interest the lawyer finds adverse to that of the organization" (emphasis added) – "of the conflict or potential conflict of interest" (emphasis added). This is a remarkable scenario: (1) it begins with a scenario where the corporate client's interest "may be or become adverse" to that of a corporate constituent; then (2) switches to a scenario in which a lawyer "finds" a constituent's interest to be "adverse to that of the organization." So the new scenario is quite different from the beginning description. The corporate client's interests which were first described as "may be or [may] become adverse" to a constituent's interest is now clearly adverse – because the lawyer "finds" adversity. Presumably this would satisfy the "knows" or "reasonably should know" standard contained in black letter ABA Model Rule 1.13(f).

Under black letter ABA Model Rule 1.13(d), the lawyer in such a circumstance "shall explain the identity of the client." But ABA Model Rule 1.13 cmt. [10] does not mention that required disclosure. Instead, ABA Model Rule 1.13 cmt. [10] states that such a lawyer "should advise" such a constituent (whose interest the lawyer "finds adverse" to that of the organization) of "the conflict or potential conflict of interest." But black letter

ABA Model Rule 1.13 does not really address conflicts. It would not be a conflict (other than perhaps an ABA Model Rule 1.7(a)(2) "material limitation" conflict) if a lawyer only represents the organization, and does not also represent one of the referenced constituents.

All of this is internally inconsistent. And it also seems inconsistent with black letter ABA Model Rule 1.13(f)'s requirement that "a lawyer shall explain the identity of the client" in that circumstance.

Thus, ABA Model Rule 1.13 cmt. [10] (in just its first two sentences) mentions: (1) the possibility of adversity ("may be . . . adverse;" "potential conflict of interest"); (2) possible future adversity ("may . . . become adverse"); and (3) actual adversity ("the lawyer finds adverse"; "the conflict"). In the next sentence, ABA Model Rule 1.13 cmt. [10] again mentions actual adversity ("when there is such adversity of interest").

ABA Model Rule 1.13 cmt. [10]'s confusion continues in its description of what such a lawyer must disclose. ABA Model Rule 1.13 cmt. [10] states that a lawyer in that situation "<u>should advise</u>" (emphasis added) the constituent: (1) "of the conflict or potential conflict of interest"; (2) "that the lawyer cannot represent such constituent" (which ABA Model Rule 1.13 cmt. [10] mentions at the end of one sentence and repeats at the beginning of the next sentence); (3) "that such person may wish to obtain independent representation;" and (4) "that discussions between the lawyer for the organization and the individual may not be privileged."

Ironically, ABA Model Rule 1.13 cmt. [10]'s list of disclosures (which lawyers "should" or "must" make, depending on the sentence) does not include the one disclosure required by black letter ABA Model Rule 1.13(f): "the identity of the client." Presumably

that disclosure would be incorporated into one of the other disclosures listed in ABA Model Rule 1.13 cmt. [10], but that could be clearer.

ABA Model Rule 1.13 cmt. [10]'s concluding sentence repeats the same disclosure that "the lawyer for the organization cannot provide legal representation for that constituent individual") – but this time saying that "[c]are must be taken to assure that the individual understands" that point (emphasis added) – in contrast to the previous sentence's guidance that lawyers "should" provide such a disclosure. And those two sentences use three different terms to describe the same person: "constituent;" "person;" "individual."

Overall, ABA Model Rule 1.13 cmt. [10] is a mishmash of scenarios that differ from black letter ABA Model Rule 1.13 itself.

ABA MODEL RULE 1.13 cmt. [11]	
Note # 1	**Code # 2**
ABA Model Rule 1.13 cmt. [11] begins with the phrase "[whether] such a warning should be given" is a fact-intensive issue (emphasis added). The term "such a warning" is unclear, because the preceding ABA Model Rule 1.13 cmt. [10] contains four warnings, two of which are repetitive. So it is unclear what the singular phrase "such a warning" refers to.	

ABA MODEL RULE 1.13 cmt. [12]	
Note # 1	**Code # 3**
ABA Model Rule 1.13 cmt. [12] notes that an organization's lawyer "may also represent a principal officer" (emphasis added) – referring to ABA Model Rule 1.13(g). But black letter ABA Model Rule 1.13(g) contains the word "officers" rather than "principal" officers. ABA Model Rule 1.13 cmt. [12]'s thus describes only a subset of black letter ABA Model Rule 1.13(g)'s permissible representations.	

ABA MODEL RULE 1.13 cmt. [12]	
Note # 2	**Code # 3**
ABA Model Rule 1.13 cmt. [12] notes that an organization's lawyer "may also represent a "major shareholder"—referring to black letter ABA Model Rule 1.13(g). But black letter ABA Model Rule 1.13(g) acknowledges that an organization's lawyer may represent an organization's "shareholders," not just its "major shareholder." So ABA Model Rule 1.13 cmt. [12]'s thus describes only a subset of black letter ABA Model Rule 1.13(g)'s permissible representations.	

ABA MODEL RULE 1.14 cmt. [2]	
Note # 1	**Code # 1**
ABA Model Rule 1.14 cmt. [2]'s second sentence explains that when dealing with "a client [who] suffers a disability," lawyers "should as far as possible accord the represented person the status of client" (emphasis added). This suggestion contrasts with black letter ABA Model Rule 1.14(a), which requires that lawyers dealing with such a client "shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (emphasis added).	

ABA MODEL RULE 1.14 cmt. [2]	
Note # 2	**Code # 2**
ABA Model Rule 1.14 cmt. [2] addresses lawyers' representation of a client who "suffers a disability." ABA Model Rule 1.14 cmt. [2]'s second sentence indicates that "[e]ven if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client" (emphasis added). That person is a client, so describing the lawyer's duty that way seems odd. ABA Model Rule 1.14 cmt. [2] would be more helpful if it focused on the lawyer's required actions, not stating the common sense and obvious notion that a "client" should be accorded "the status of client."	

ABA MODEL RULE 1.14 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 1.14 cmt. [5]'s second sentence contains a list of lawyers' possible "protective measures" in certain circumstances. The second possible protective measure is described as follows: "using a reconsideration period to permit clarification or improvement of circumstances." It is unclear what that means. Presumably the lawyer would not be "using a reconsideration period"—perhaps the client would do so. And if something required "clarification or improvement of circumstances," presumably it would require some action, not "using a reconsideration period."	

ABA MODEL RULE 1.14 cmt. [5]	
Note # 2	**Code # 3**
ABA Model Rule 1.14 cmt. [5]'s concluding sentence explains that lawyers should be guided by several factors in certain circumstances. One of the listed factors is: "maximizing client capacities." It is unclear what this means, or how a lawyer can "maximize" a client's "capacities."	

ABA MODEL RULE 1.14 cmt. [10]	
Note # 1	**Code # 2**
ABA Model Rule 1.14 cmt. [10] addresses lawyers' duties when "act[ing] on behalf of a person with seriously diminished capacity in an emergency." Among other things, ABA Model Rule 1.14 cmt. [10]'s third sentence explains that lawyers "should take steps to regularize the relationship." It is unclear what this means, especially in light of ABA Model Rule 1.14 cmt. [10]'s limitation to a relationship with a person of such "seriously diminished capacity" that according to ABA Model Rule 1.14 cmt. [9]'s first sentence is "a person [who] is unable to establish a client-lawyer relationship."	

ABA MODEL RULE 1.15(e)	
Note # 1	**Code # 4**
ABA Model Rule 1.15(e)'s first sentence contains the phrase "the course of representation." As the ABA Model Rules General Notes discuss, elsewhere the ABA Model Rules and Comments contain the phrases "the representation (as in ABA Model Rule 1.16(a)(1)), and "a representation" (as in ABA Model Rule 1.16(c)) (emphases added).	

ABA MODEL RULE 1.15 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 1.15 cmt. [1]'s first sentence states that lawyers "should hold the property of others with the care required of a professional fiduciary" (emphasis added). Although the word "must" might not be required in this sentence, the phrase used elsewhere (in ABA Model Rule Comments) such as "ordinarily should" would be more appropriate here.	

ABA MODEL RULE 1.15 cmt. [1]	
Note # 2	**Code # 1**
ABA Model Rule 1.15 cmt. [1]'s concluding sentence states that "[a] lawyer <u>should</u> … comply with any recordkeeping rules established by law or court order" (emphasis added). Presumably the choice of "should" in this concluding sentence is deliberate, because two sentences earlier ABA Model Rule 1.15 cmt. [1] contains the word "must." The word "must" would also be appropriate in ABA Model Rule 1.15 cmt. [1]'s concluding sentence.	

ABA MODEL RULE 1.15 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 1.15 cmt. [2] only addresses the impermissible commingling of "the lawyer's own funds with client funds." That is a subset of impermissible commingling – which lawyers likewise must avoid when handling "property of … third persons" (as confirmed in ABA Model Rule 1.15(a)).	

ABA MODEL RULE 1.15 cmt. [3]	
Note # 1	**Code # 4**
ABA Model Rule 1.15 cmt. [3]'s first sentence begins with the plural "[l]awyers," but then later uses the singular "the lawyer's." It would be more linguistically correct for the latter reference to also use the plural possessive.	

ABA MODEL RULE 1.15 cmt. [3]	
Note # 2	**Code # 4**
ABA Model Rule 1.15 cmt. [3]'s second sentence ends with reference to "the lawyer's contention" (emphasis added). That is an odd word in this context. A word such as "claim" or "demand" would seem more appropriate.	

ABA MODEL RULE 1.15 cmt. [3]	
Note # 3	**Code # 4**
ABA Model Rule 1.15 cmt. [3]'s concluding sentence states that disputed funds "shall be promptly distributed" (emphasis added). Most ABA Model Rule Comments contain the less ambiguous word "must" when describing mandatory conduct.	

ABA MODEL RULE 1.15 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 1.15 cmt. [4]'s first sentence mentions claims that "third parties" may have against trust account funds or other property (emphasis added). The word "persons" might be more appropriate here. ABA Model Rule 1.15 cmt. [4] uses the word "party" in two other places later in that Comment.	

ABA MODEL RULE 1.15 cmt. [4]	
Note # 2	**Code # 4**
ABA Model Rule 1.15 cmt. [4]'s fourth sentence notes that lawyers "should not unilaterally assume to arbitrate" disputes between a client and "a third party" involving trust account funds or property (emphasis added). Both the word "unilaterally" and the word "assume" seem inapt. It is difficult to see how a lawyer could "unilaterally" arbitrate a dispute between a client and a third person. And arbitration is not conducted on an assumption.	

ABA MODEL RULE 1.15 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 1.15 cmt. [5]'s concluding sentence warns that lawyers serving only as escrow agents must comply with "applicable law relating to fiduciaries even though" the lawyer is not acting in a representational role (emphasis added). The phrase "even though" might be inapt. It would seem that lawyers who are not acting in a representational role would be more likely to be governed by the applicable law relating to fiduciaries.	

ABA MODEL RULE 1.16	
Note # 1	**Code # 2**
ABA Model Rule 1.16 uses several different words describing clients' relationship with their lawyers' services: "involving the lawyer's services" (ABA Model Rule 1.16(b)(2)); "used the lawyer's services" (ABA Model Rule 1.16(b)(3)); "regarding the lawyer's services" (ABA Model Rule 1.16(b)(5)); "associated with such [client] conduct" (ABA Model Rule 1.16 cmt. [7]). Some of these differing terms raise questions. For instance, is a client's "course of action involving the lawyer's services" (ABA Model Rule 1.16(b)(2)) the same conduct as that in which the client "has used the lawyer's services," (the word contained in the next ABA Model Rule 1.16(b)(3)). It would be helpful to provide further guidance about differences among these formulations, if any.	

ABA MODEL RULE 1.16(b)(2)	
Note # 1	**Code # 3**
ABA Model Rule 1.16(b)(2) allows lawyer's to withdraw from a representation if "the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent" (emphasis added). As the ABA Model Rules General Notes discuss, it is unclear how the phrase "course of action" differs from the word "action" (which appears two provisions later in ABA Model Rule 1.6(b)(4)). One might think that lawyer's discretionary withdrawal option would be triggered by one client action "involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent" – not just a "course of action."	

ABA MODEL RULE 1.16 cmt. [1]	
Note # 1	**Code # 1**
ABA Model Rule 1.16 cmt. [1]'s first sentence indicates that "[a] lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion" (emphasis added). The word "must" would be more appropriate than the word "should."	

ABA MODEL RULE 1.16 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 1.16 cmt. [2]'s first sentence states that lawyers "ordinarily must decline or withdraw from representation" in specified circumstances. The phrase "from representation" is inconsistent with the phrases "the representation" contained in ABA Model Rule 1.16(a)1), and "a representation" contained in ABA Model Rule 1.16(c) (emphases added).	

ABA MODEL RULE 1.16 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 1.16 cmt. [2]'s first sentence warns that lawyers "ordinarily" must decline or withdraw from representing a client "if the client demands" that the lawyer engage in specific improper conduct. Although lawyers may exercise their discretion in that situation, one would think that the lawyer's refusal to comply with the client's "demands" would allow the lawyer to initiate or continue a representation.	

ABA MODEL RULE 1.16 cmt. [2]	
Note # 3	**Code # 4**
ABA Model Rule 1.16 cmt. [2]'s first sentence describes a type of client demand that "ordinarily must" trigger a lawyer's refusal to represent a client or withdraw from a representation: "conduct that is illegal or violates the Rules of Professional Conduct, or other law" (emphases added). The word "illegal" and the phrase "violates … other law" would seem to be synonymous.	

ABA MODEL RULE 1.16 cmt. [2]	
Note # 4	**Code # 4**
ABA Model Rule 1.16 cmt. [2]'s concluding sentence describes a scenario in which a client hopes that "a lawyer will not be constrained by a professional obligation" (emphasis added). The plural "professional obligations" might be more appropriate here.	

ABA MODEL RULE 1.16 cmt. [2]	
Note # 5	**Code # 4**
ABA Model Rule 1.16 cmt. [2]'s concluding sentence contains the phrase "professional obligation." That generic term presumably denotes lawyers' obligation to comply with "the Rules of Professional Conduct" – the term used in the preceding sentence. But the linguistic variation hints at a difference, which might cause confusion. It might be more appropriate for the concluding sentence to also refer to the "Rules of Professional Conduct."	

ABA MODEL RULE 1.16 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 1.16 cmt. [3]'s first sentence describes a scenario in which a tribunal has "appointed" a lawyer to represent a client. But ABA Model Rule 1.16 cmt. [3]'s other sentences seem to describe lawyers' obligations whether or not they were appointed to represent a client. So the introductory sentence might erroneously lead lawyers to think that the obligations only apply to appointed counsel.	

ABA MODEL RULE 1.16 cmt. [3]	
Note # 2	**Code # 3**
ABA Model Rule 1.16 cmt. [3]'s third sentence describes "the client's demand that the lawyer engage in unprofessional conduct" (emphasis added). It is unclear whether the term "unprofessional conduct" is the same conduct that "violates the Rules of Professional Conduct" (contained in ABA Model Rule 1.16 cmt. [2]). If those phrases are intended to be synonymous, it would be helpful to use the same phrase in both places. And a reference to the "Rules of Professional Conduct" would provide clearer guidance than the more generic phrase "unprofessional conduct."	

ABA MODEL RULE 1.16 cmt. [3]	
Note # 3	**Code # 4**
ABA Model Rule 1.16 cmt. [3]'s concluding sentence describes lawyers' "obligations to both clients and the court" (emphases added). The plural "clients" is linguistically inconsistent with the singular "a client" contained in ABA Model Rule 1.16 cmt. [3]'s first sentence, and the term "the client's" contained in ABA Model Rule 1.16 cmt. [3]'s third sentence. In addition, it seems odd to use the plural "clients" but the singular "court" just three words later. Lawyers owe obligations both to the clients and to courts.	

ABA MODEL RULE 1.16 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 1.16 cmt. [4]'s first sentence describes clients' "right to discharge" lawyers (emphasis added). ABA Model Rule 1.16 cmt. [4]'s second sentence advises that lawyers may wish to "prepare a written statement reciting the circumstances" – where they anticipate a "future dispute about the withdrawal" (emphasis added). Though discharged lawyers must withdraw, it would seem more appropriate for ABA Model Rule 1.16 cmt. [4]'s concluding sentence to use the phrase "future dispute about the discharge" (emphasis added).	

ABA MODEL RULE 1.16 cmt. [6]	
Note # 1	**Code # 3**
ABA Model Rule 1.16 cmt. [6] describes a scenario in which "the client has severely diminished capacity" (emphasis added). It is unclear what the adjective "severely" means. ABA Model Rule 1.14 cmt. [10] uses the same phrase "severely diminished capacity" – but in describing non-clients, rather than clients.	

ABA MODEL RULE 1.16 cmt. [7]	
Note # 1	**Code # 3**
ABA Model Rule 1.16 cmt. [7]'s third sentence mirrors black letter ABA Model Rule 1.16(b)(2)'s provision allowing a lawyer's discretionary withdrawal "if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent" (emphasis added). As explained in connection with black letter ABA Model Rule 1.16(b)(2), it would seem that even a single client action of that type would justify a lawyer's discretionary withdrawal. That standard seems especially appropriate, because ABA Model Rule 1.16(b)(4) allows a lawyer's discretionary withdrawal if the client insists "upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement" (emphasis added).	

ABA MODEL RULE 1.16 cmt. [7]	
Note # 2	**Code # 3**
ABA Model Rule 1.16 cmt. [7]'s fourth sentence explains that lawyers may withdraw "if the lawyer's services were misused in the past" (emphasis added). This reference presumably is to ABA Model Rule 1.16(b)(3)'s description of client misconduct in the past: "the client has used the lawyer's services to perpetuate a crime or fraud" (emphases added). The word "misused" seems broader than black letter ABA Model Rule 1.16(b)(3)'s more specific phrase "to perpetuate a crime or fraud." Presumably the particular black letter description of misuse trumps the more generic ABA Model Rule 1.16 cmt. [7] undefined word "misused."	

ABA MODEL RULE 1.16 cmt. [7]	
Note # 3	**Code # 3**
ABA Model Rule 1.16 cmt. [7]'s fourth sentence explains that lawyers may withdraw "if the lawyer's services were misused in the past even if that would materially prejudice the client" (emphasis added). That is a linguistic mismatch with black letter ABA Model Rule 1.16(b)(1)'s phrase: "material adverse effect on the interests of the client" (emphasis added). Using the same terms would avoid any possible confusion about whether a lawyer's action could be materially adverse to "the interest of the client" without being materially adverse to "the client" (or vice versa).	

ABA MODEL RULE 1.16 cmt. [7]	
Note # 4	**Code # 3**
ABA Model Rule 1.16 cmt. [7]'s fourth sentence explains that lawyers may withdraw if their services were "misused in the past <u>even if that would materially prejudice the client</u>" (emphasis added). The phrase "even if that would materially prejudice the client" is accurate, but superfluous. Black letter ABA Model Rule 1.16(b)(2) – (7) all implicitly allow withdrawal even if the withdrawal would cause "material adverse effect on the interests of the client."	

ABA MODEL RULE 1.17	
Note # 1	**Code # 2**

ABA Model Rule 1.17 contains a confusing list of undefined terms. Those terms define what a lawyer or a law firm might sell (and thus transfer to the purchasing lawyer or law firm).

First, ABA Model Rule 1.17 uses the term "practice" (or a synonym) in ABA Model Rule 1.17's introductory sentence, and ABA Model Rule 1.17(b), and in ABA Model Rule 1.17 cmts: [1], [2], [4], [5], [6], [11], [13].

Second, ABA Model Rule 1.17 uses the term "area of practice" (or a synonym) in several places. Presumably that term denotes a subset of a lawyer's "practice." ABA Model Rule 1.17 uses the term "area of practice" (or a synonym) in ABA Model Rule 1.17's introductory sentence, ABA Model Rule (a) and (b), and in ABA Model Rule cmts.: [2], [4], [5], [6], [11].

Third, ABA Model Rule 1.17 uses the term "representation." ABA Model Rule 1.17 uses the term "representation" in ABA Model Rule 1.17(c)(3) and in ABA Model Rule 1.17 cmts.: [1], [7], [9]. Although undefined, the term "representation" would seem to denote a lawyer's attorney-client relationship. Presumably the term would be synonymous with "practice" if the lawyer represented only one client. Otherwise, the term "representation" presumably denotes a subset of a lawyer's "practice" or "area of practice." But a

lawyer's "representation" of a client might involve more than one "area of practice." For example, a lawyer might handle an estate matter and a litigation matter for the same client. So that lawyer's "representation" of that client would involve two areas of practice.

Fourth, ABA Model Rule 1.17 uses the terms "matter" and its plural form "matters." The singular term "matter" or its plural form "matters" presumably are synonyms for the term "representation" (or its plural) if a lawyer represents a client on only one "matter." But if the lawyer represents a client on several matters, then the term "matter" or its plural form called "matters" presumably denotes a subset of such lawyer's "representation" of a client.

The term "matter" appears several times in the ethics rules. For instance, ABA Model Rule 1.9 cmt. [2] explains that the scope of a "matter" for purposes of that former-client conflict rule "depends on the facts of a particular situation or transaction." The term "matter" is defined in ABA Model Rule 1.11(e)(1) in the context of former and current government lawyers as: "any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties." That definition seems narrower than the normal definition of "matter" in a non-governmental setting. ABA Model Rule 1.7 uses the singular term "matter" in ABA Model 1.17 cmts.: [5], [6], [12]. ABA Model Rule 1.17 uses the plural term word "matters" in ABA Model Rule 1.17 cmts.: [2], [5], [6].

Fifth, ABA Model Rule 1.17 uses the singular term “file” and its plural form “files” in several places. The term “file” seems to denote a hard copy or electronic collection of documents and communications. But lawyers also use the term colloquially to refer to a client’s “matter,” although probably not to a “representation.” ABA Model Rule 1.17 uses the singular term “file” in ABA Model Rule 1.17(c)(2), ABA Model Rule 1.17(c)(3) and in ABA Model Rule 1.17 cmts.: [7], [8]. ABA Model Rule 1.17 uses the plural term “files” in ABA Model Rule 1.17(c)(3) and in ABA Model Rule 1.17 cmt [8].

ABA Model Rule 1.17’s use of this array of undefined terms is more than linguistically unfortunate. The ABA Model Rules use the terms interchangeably, as if they are synonymous. But common usage and common sense indicates otherwise. Taking these various terms in decreasing order of size, it is fair to say that a lawyer’s “practice” consists of all of her representations, matters and files. An “area of practice” denotes a subset of such a “practice.” The term “representation” presumably denotes a lawyer’s relationship with a client. It could refer either to a lawyer’s relationship on all of the matters that the lawyer is handling, or a subset of that relationship. A “representation” could include several “matters” (although those terms might also be synonyms). The term “file” might be synonymous with “matter” (and perhaps even with “representation”). But the term might also denote a physical collection of documents – in which case a “matter” might generate more than one “file.”

This terminology confusion could have real consequences. For instance, a former client may need access to a closed “file” at some point in the future – as with estate planning

files or contract files containing original documents that might affect the client's future rights. That former client might want the "file" transferred from a retired lawyer to a lawyer who will continue practicing, and therefore retain possession of the closed file – perhaps with the hope that the client will need future work on that matter or some other matter. So there may be situations in which a file will be transferred, but an active "matter" or a full "representation" will not be transferred – because there is nothing going on in the "matter," and the "representation" is currently dormant.

It would be helpful for ABA Model Rule 1.17 to be clarified.

ABA MODEL RULE 1.17(a)	
Note # 1	**Code # 4**
ABA Model 1.17 (a) contains the term “geographic area.” This contrasts at least linguistically with ABA Model Rule 1.17 cmts. [4] and [5]’s term “geographical area.” Presumably those terms are intended to be synonymous. But there is already confusion about ABA Model Rule 1.17’s application to undefined and sometime illogical descriptions of areas, and this linguistic inconsistency potentially compounds the confusion.	

ABA MODEL RULE 1.17(b)(1)	
Note # 1	**Code # 3**
ABA Model Rule 1.17(b)(1) explains that the selling lawyer must "give[ ] written notice to each of the seller's clients" (emphasis added). That would seem to denote every client represented by the selling lawyer, even if the lawyer does not represent a client in the "area of practice" that the lawyer is selling. But that interpretation seems inconsistent with black letter ABA Model Rule 1.17(b)(2)'s requirement that such notice include an explanation of "the client's right to retain other counsel or to take possession of the file." That explanation clearly describes a notice to a client currently represented by a lawyer in an area of practice that the lawyer is selling. Still, black letter ABA Model Rule 1.17(c)'s introductory sentence seems more appropriate. It makes sense for a lawyer to advise all of her clients that she is selling an "entire area of practice" – even if the lawyer is not selling her entire practice. ABA Model Rule 1.4 generally requires lawyers to keep their clients fully informed about their matters. It would be easy to see that a client represented by a lawyer who is selling certain areas of practice (but not that client's matter) would want to know of the lawyer's sale of other areas of practice. Such a client might understandably worry that his lawyer is beginning to phase out of practicing law, etc. That would seem like the sort of material information that lawyers should be required to disclose to all of their clients.	

ABA MODEL RULE 1.17 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 1.17 cmt. [1]'s first sentence haughtily states that "[t]he practice of law is a profession, not merely a business" (emphasis added). This arguably insulting statement is ironic, because ABA Model Rule 1.17 cmt. [3] explains that the general requirement that lawyers selling their practice "cease to engage in the private practice of law does not prohibit employment . . . as in-house counsel to a business" (emphasis added).	

ABA MODEL RULE 1.17 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 1.17 cmt. [2]'s second sentence assures that clients' retention of other lawyers rather than acquiescence in the proposed purchasing lawyer's purchase of their matter "does not result in a violation" (emphasis added). It is unclear what the term "a violation" means. On its face, ABA Model Rule 1.17 only requires that selling lawyers take the required steps, even if their clients do not agree to retain the lawyers seeking to purchase their matters.	

ABA MODEL RULE 1.17 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 1.17 cmt. [2]'s second sentence assures that a lawyer's "[r]eturn to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation" (emphasis added). Presumably a lawyer who appropriately complies with ABA Model Rule 1.17(a)'s obligation to "cease[ ] to engage in the private practice of law" could later change her mind and return to private practice. And that change of mind presumably could be deliberate, rather than triggered "as a result of an unanticipated change in circumstances."	

ABA MODEL RULE 1.17 cmt. [3]	
Note # 1	**Code # 1**
ABA Model Rule 1.17 cmt. [3] explains that the obligation of a lawyer selling her entire practice to "cease to engage in the private practice of law" does not prohibit that lawyer from serving "as in-house counsel to a business." That seems like an inappropriate restriction. The term "business" (which ABA Model Rule 1.17 cmt. [1] derisively contrasts with lawyers' "profession") presumably excludes labor unions, universities, etc. So ABA Model Rule 1.17 cmt. [3] would not allow lawyers who have sold their entire practice to serve as "in-house counsel" to such non-business entities. That does not make much sense.	

ABA MODEL RULE 1.17 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 1.17 cmt. [4]'s first sentence explains that ABA Model Rule 1.17 "permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction." It might be clearer and less pretention to use a term like "occurring upon" rather than the seldom-used "attendant upon" (emphasis added).	

ABA MODEL RULE 1.17 cmt. [4]	
Note # 2	**Code # 3**
ABA Model Rule 1.17 cmt. [4] itself contains four different words to describe four different areas: "jurisdiction"; "state"; "locale"; "geographical area." As the ABA Model Rules General Notes discuss, ABA Model Rule 1.17 and its Comments contain a myriad of undefined terms, which leaves ABA Model Rule 1.17's meaning ambiguous.	

ABA MODEL RULE 1.17 cmt. [4]	
Note # 3	**Code # 3**
ABA Model Rule 1.17 cmt. [4]'s second sentence explains that "[s]ome states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law." It is unfortunate that this sentence does not provide any examples. A state like Alaska or Texas presumably would clearly meet that standard. But even a very small state like Delaware might meet the standard – because it includes the intensely urban city of Wilmington, but also includes remote farmland south of Wilmington.	

ABA MODEL RULE 1.17 cmt. [4]	
Note # 4	**Code # 3**
ABA Model Rule 1.17 cmt. [4]'s concluding sentence invites states adopting ABA Model Rule 1.17 to choose (as indicated in black letter ABA Model Rule 1.17(a)) between the terms "geographic area" and "jurisdiction." This is somewhat ironic, because the preceding sentence uses the term "jurisdiction" and the term "geographical area." (presumably a variation of "geographic area"). It is inexplicable why ABA Model Rule 1.17 cmt. [4] would not contain black letter ABA Model Rule 1.17(a)'s term - "geographic area." It is also ironic, because the sentence before that one does not contain either of those optional terms ("geographical area" or "jurisdiction") – instead introducing yet another undefined and essentially undefinable word: "locale."	

ABA MODEL RULE 1.17 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 1.17 cmt. [5]'s third sentence provides an example of "a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases" (emphases added). Presumably the same ABA Model Rule 1.17 principles would apply if such a lawyer had just one of each kind of matter. In other words, ABA Model Rule 1.17's application does not depend on the number of matters.	

ABA MODEL RULE 1.17 cmt. [5]	
Note # 2	**Code # 2**
ABA Model Rule 1.17 cmt. [5]'s concluding sentence describes a lawyer "who leaves a jurisdiction or geographical area" and who "continue[s] practice in the areas of practice that were not sold." That seems like a tiny subset of likely scenarios. And it seems out of place in ABA Model Rule 1.17 cmt. [5], which focuses on lawyers selling "an area of practice" rather than an entire practice. It would be more appropriate to include that example in ABA Model Rule 1.17 cmt. [4] – which focuses on ABA Model Rule 1.17's geographic implications rather than "area of practice" implications.	

ABA MODEL RULE 1.17 cmt. [7]	
Note # 1	**Code # 2**
ABA Model Rule 1.17 cmt. [7]'s second sentence describes "detailed information relating to the representation, such as the client's file" (emphasis added). That phrase seems to confirm that a "representation" differs from a "file" – although ABA Model Rule 1.17 and its Comments confusingly use those terms interchangeably.	

ABA MODEL RULE 1.17 cmt. [8]	
Note # 1	**Code # 3**
ABA Model Rule 1.17 cmt. [8] addresses steps for matters involving clients who "cannot be given actual notice of the proposed purchase" (emphasis added). Both ABA Model Rule 1.17 cmt. [8]'s first and second sentences use the word "purchase" in describing the event about which those clients cannot be given notice. To those clients, the key event is the "sale" of their matter – although obviously the "sale" of those clients' matters is a "purchase" from the buyer's perspective. But because ABA Model Rule 1.17 cmt. [8] focuses on the clients whose matters will be "sold," the word "sale" would seem more appropriate than the word "purchase" in ABA Model Rule 1.17 cmt. [8]'s first two sentences.	

ABA MODEL RULE 1.17 cmt. [10]	
Note # 1	**Code # 2**
ABA Model Rule 1.17 cmt. [10] begins by stating that "[t]he sale may not be financed by increases in fees charged to the clients of the practice" (emphasis added). The word "purchase" would seem more appropriate here – the "purchase" presumably would be financed, not the "sale."	

ABA MODEL RULE 1.17 cmt. [11]	
Note # 1	**Code # 4**
ABA Model Rule 1.17 cmt. [11]'s second sentence requires lawyers selling all or part of their practice "to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (emphases added). Presumably the phrase "assume the practice" and "undertake the representation" are intended to be synonymous. If so, it would might be more appropriate to use the same term or write that sentence differently.	

ABA MODEL RULE 1.17 cmt. [11]	
Note # 2	**Code # 3**
ABA Model Rule 1.17 cmt. [11]'s concluding sentence requires lawyers selling all or part of their practice "to secure the client's informed consent for those conflicts that can be agreed to" (emphasis added). The phrase "conflicts that can be agreed to" seems awkward. Clients do not "agree to" a conflict – they "consent to" a representation despite a conflict.	

ABA MODEL RULE 1.17 cmt. [13]	
Note # 1	**Code # 4**
ABA Model Rule 1.17 cmt. [13]'s concluding sentence states that "the representatives of the seller [a deceased, disabled or disappeared lawyer] as well as the purchasing lawyer can be expected to see to it that they ["these Rules"] are met." It would have been more appropriate to require that the "representatives of the seller" and "the purchasing lawyer" "see to it" that the ABA Model Rules' requirements are met – not predict that they will do so.	

ABA MODEL RULE 1.18(c)	
Note # 1	**Code # 4**
ABA Model Rule 1.18(c)'s first sentence prohibits lawyers from representing a client adverse to a "prospective client" "if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter," except under specified conditions. Presumably the terms "prospective client" and "that person" are intended to be synonymous. But ABA Model Rule 1.18(c) might be more clear if it contained the same term to describe the same person.	

ABA MODEL RULE 1.18(c)	
Note # 2	**Code # 2**
ABA Model Rule 1.18(c)'s second sentence imputes to all lawyers in a firm an individual lawyer's ABA Model Rule 1.18(c) disqualification – but only if "that lawyer is associated" with the firm. As the ABA Model Rules General Notes discuss, the ABA Model Rules' failure to define the key term "associated" could cause confusion. It is clear that under the ABA Model Rules some lawyers working in a firm are "associated" with their law firm colleagues, and some lawyers are not. An "associated" lawyer might be the source of a disqualification that might be imputed to others in her law firm. Sometimes that imputed disqualification extends to all lawyers in the firm, and sometimes only to lawyers "associated" in the firm. Under ABA Model Rule 1.18(c), only a lawyer "associated" with the firm might be the source of an imputed ABA Model Rule 1.18(c) disqualification. If so, her individual disqualification is imputed to all of her law firm colleagues, even those that are not "associated" with her. Perhaps this is what ABA Model Rule 1.18(c) intends, but that is not clear.	

ABA MODEL RULE 1.18(d)(2)(i)	
Note # 1	**Code # 4**
ABA Model Rule 1.18(d)(2)(i) allows an individually disqualified lawyer's screened colleagues to represent an adversary of a "prospective client" if (among other things) "the disqualified lawyer…is apportioned no part of the fee" the firm earns from representing the adversary (emphasis added). This ABA Model Rule 1.18(d)(2)(i)'s explanation is linguistically awkward – because it starts with the affirmative word "apportioned" rather than the negative impact of the provision. Beginning that phrase with a negative (such as "is not apportioned…") might be clearer.	

ABA MODEL RULE 1.18 cmt. [3]	
Note # 1	**Code # 4**
ABA Model Rule 1.18 cmt. [3]'s concluding sentence explains that a lawyer who consults with but does not later represent a "prospective client" must comply with a confidentiality duty that "exists regardless of how brief the initial conference may be" (emphasis added). The term "may be" seems inapt. The word "was" would seem more appropriate than the conditional and future-looking phrase "may be."	

ABA MODEL RULE 1.18 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 1.18 cmt. [5] does not refer to ABA Model Rule 1.17 cmt. [22] – which provides useful guidance about such prospective consents. That reference would be helpful.	

ABA MODEL RULE 1.18 cmt. [7]	
Note # 1	**Code # 4**
ABA Model Rule 1.18 cmt. [7]'s first sentence contains the term "the lawyer" (singular) in referring to a lawyer who obtains "significantly harmful" information from a "prospective client" (emphasis added). But ABA Model Rule 1.18 cmt. [7]'s second sentence refers to "all disqualified lawyers" (plural) being screened under ABA Model Rule 1.18(d)(2). ABA Model Rule 1.18 cmt. [7]'s third sentence returns to the singular – explaining that ABA Model Rule 1.18(d)(2)(i) does not prohibit "the screened lawyer" (singular) from receiving certain money. ABA Model Rule 1.18 cmt. [7] would be more clear if it included a consistent approach.	

ABA MODEL RULE 1.18 cmt. [9]	
Note # 1	**Code # 2**
ABA Model Rule 1.18 cmt. [9]'s concluding sentence addresses "a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15" (emphasis added). ABA Model Rule 1.15 does not contain the word "valuables" or the word "papers." It would make more sense to use black letter ABA Model Rule 1.18 cmt. [1] first sentence's term "documents or other property" or ABA Model Rule 1.15's term "property." That would avoid any confusion resulting from the inexplicably narrow and seldom - used words "valuables or papers." And it would avoid the question about what a lawyer should do if she has been entrusted with a prospective client's property that is not valuable.	

ABA MODEL RULE 2.1 cmt. [4]	
Note # 1	**Code # 1**
ABA Model Rule 2.1 cmt. [4]'s third sentence states that if "a competent lawyer" would recommend consultation with another professional, "the lawyer <u>should</u> make such a recommendation" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rules Comments contain the word "should" where the word "must" would be more appropriate, it not required. Under ABA Model Rule 1.1's competence requirement, it would seem that a lawyer "must" make such a recommendation if a competent lawyer would do so.	

ABA MODEL RULE 2.1 cmt. [4]	
Note # 2	**Code # 3**
ABA Model Rule 2.1 cmt. [4]'s concluding sentence states that "a lawyer's advice at its best <u>often</u> consists of recommending a course of action in the face of conflicting recommendations of experts" (emphasis added). The word "often" seems like an overstatement. A word such as "sometimes" or "occasionally" would seem more appropriate.	

ABA MODEL RULE 2.3(a)	
Note # 1	**Code # 2**
ABA Model Rule 2.3(a) begins by explaining that lawyers "may provide an evaluation" if the lawyers "reasonably believe[ ] that making the evaluation is compatible with other aspects of the lawyer's relationship with the client" (emphases added). That seems like an odd order of consideration. Presumably the word "provide" denotes a lawyer giving the evaluation to someone ("other than the client"). That action would seem to follow the lawyer's "making the evaluation." In other words, the lawyer would first "make" the evaluation, and then "provide" the evaluation to someone (either the client or "someone other than the client"). And those two actions seem to involve two different considerations. It might be "compatible with" a lawyer's relationship with a client to "make" an evaluation, but not "provide" the evaluation to someone other than the client. ABA Model Rule 2.3(a) would make more sense logically starting with the "making" standard and then addressing the "provide" standard.	

ABA MODEL RULE 2.3(b)	
Note # 1	**Code # 3**
ABA Model Rule 2.3(b) addresses the "provide the evaluation" issue. That means that both ABA Model Rule 2.3(a) and ABA Model Rule 2.3(b) both address the "provide" issue – which does not make much sense. It would have been more appropriate for ABA Model Rule 2.3(a) to address only the "making" standard and ABA Model Rule 2.3(b) to then address the temporally-laden "provide" issue.	

ABA MODEL RULE 2.3(b)	
Note # 2	**Code # 3**
ABA Model Rule 2.3(b) requires the client's consent for a lawyer to "provide the evaluation" (presumably to a third person) if "the evaluation is likely to affect the client's interest materially and adversely." One might wonder why a client would ever consent to that, and whether the lawyer competently representing a client would ever seek such consent. If there are any situations where that would be appropriate, some ABA Model Rule 2.3(c) Comment guidance would have been helpful.	

ABA MODEL RULE 2.3 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 2.3 cmt. [1] begins by explaining circumstances when "[a]n evaluation may be performed" (emphasis added). The word "performed" presumably is intended to be synonymous with black letter ABA Model Rule 2.3(a)'s word "making." If so, it would be appropriate for ABA Model Rule 2.3 and its Comments to use the same word for the same action.	

ABA MODEL RULE 2.3 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 2.3 cmt. [2]'s fourth sentence states that "[t]he question is whether the lawyer is retained by the person whose affairs are being examined." That seems inapt. The more appropriate question would seem to focus on who is the subject of the investigation – the client or a third person.	

ABA MODEL RULE 2.3 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 2.3 cmt. [3]'s third sentence contains the phrase "making the evaluation," while ABA Model Rule 2.3 cmt. [3]'s fourth sentence contains the phrase "perform an evaluation." As explained above, if those two words were intended to be synonymous, it would have been preferable for ABA Model Rule 2.3 cmt. [3] to use the same word.	

ABA MODEL RULE 2.3 cmt. [4]	
Note # 1	**Code # 1**
ABA Model Rule 2.3 cmt. [4]'s fifth sentence states that lawyers conducting an evaluation for use by a third person "should . . . describe[ ] in the report" [a]ny…limitations that are material to the evaluation" (emphasis added). The phrase "ordinarily should" or the word "must" would seem more apropriate here.	

ABA MODEL RULE 2.4(a)	
Note # 1	**Code # 2**
ABA Model Rule 2.4(a) concluding sentence describes a lawyer's "service as an arbitrator" as constituting "[s]ervice as a third-party neutral." ABA Model Rule 1.0(m) includes in its definition of "tribunal" an "arbitrator in a binding arbitration proceeding." It is unclear whether ABA Model Rule 2.4(a)'s word "arbitrator" includes a "binding arbitrator" – thus implicating all of the ABA Model Rules and their Comments applicable to tribunals. If that was not intended, it would be appropriate for ABA Model Rule 2.4(a) to contain the term "non-binding arbitrator" rather than "arbitrator."	

ABA MODEL RULE 2.4 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 2.4 cmt. [1]'s third sentence contains the word "facilitator." It is unclear what that word means. Some guidance would be helpful.	

ABA MODEL RULE 2.4 cmt. [1]	
Note # 2	**Code # 3**
ABA Model Rule 2.4 cmt. [1]'s third sentence contains the word "decisionmaker." It is unclear what that word means. Some guidance would be helpful.	

ABA MODEL RULE 2.4 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 2.4 cmt. [5] addresses lawyers "who represent clients in alternative dispute-resolution processes." ABA Model Rule 2.4 cmt. [5] provides helpful reminders, but seems somewhat out of place in a Comment to ABA Model Rule 2.4. ABA Model Rule 2.4 addresses lawyers serving as third-party neutrals – with a duty under ABA Model Rule 2.4(b) to "inform unrepresented parties that the lawyer is not representing them" (emphasis added).	

ABA MODEL RULE 3.1 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 3.1 cmt. [2]'s first sentence contains the word "action" twice – to mean two different things: "[t]he filing of an action or defense or similar action taken for a client . . ." (emphases added). The first "action" presumably is synonymous with "proceeding" contained in black letter ABA Model Rule 3.1's first sentence (and which itself is somewhat confusing). The second "action" presumably is a more generic description of some other litigation-related conduct. It might be more clear if the first "action" was replaced with the presumably synonymous term "proceeding" contained in black letter ABA Model Rule 3.1.	

ABA MODEL RULE 3.1 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 3.1 cmt. [2] uses the word “action” six times (to mean at last two different things). ABA Model Rule 3.1 cmt. [2]’s repeated word “action” contrast with ABA Model Rule 3.2 cmt. [1]’s presumably deliberately chosen term “course of action.” It is unclear whether they are intended to mean different things.	

ABA MODEL RULE 3.1 cmt. [2]	
Note # 3	**Code # 2**
ABA Model Rule 3.1 cmt. [2]'s first sentence explains that certain conduct is not "frivolous" if (among other things) "the lawyer expects to develop vital evidence only by discovery" (emphasis added). The word "vital" seems unnecessary, and presumably does not limit that principle only to scenarios involving "vital" evidence. The same presumably would be true even if the material evidence is not "vital."	

ABA MODEL RULE 3.1 cmt. [2]	
Note # 4	**Code # 4**
ABA Model Rule 3.1 cmt. [2]'s first sentence explains that certain conduct is not "frivolous" if (among other things) "the lawyer expects to develop vital evidence only by discovery" (emphasis added). The word "through" might be more appropriate than the word "by."	

ABA MODEL RULE 3.1 cmt. [2]	
Note # 4	**Code # 2**
ABA Model Rule 3.1 cmt. [2]'s concluding sentence seems to be a mismatch with black letter ABA Model Rule 3.1. Black letter ABA Model Rule 3.1 seems to apply an objective "not frivolous" standard for lawyers advancing factual or legal positions. But ABA Model Rule 3.1 also includes a more subjective "good faith argument" standard for legal assertions (but pointedly, not for factual assertions). ABA Model Rule 3.1 cmt. [2]'s concluding sentence appears to apply the subjective "good faith argument" standard to both legal and factual assertions.	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 3.2 cmt. [1]'s second sentence describes scenarios "when a lawyer may properly seek a postponement for personal reasons" (emphasis added). That sentence does not explain what the lawyer expects to postpone. Presumably it is litigation, but it would be more clear if that were explicitly stated.	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 2	**Code # 4**
ABA Model Rule 3.2 cmt. [1]'s second sentence explains that "it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates" (emphasis added). It would seem to allow lawyers to occasionally take such action (or inaction). It might make more sense to use the phrase "it normally is not proper," and delete the word "routinely."	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 3	**Code # 4**
ABA Model Rule 3.2 cmt. [1] explains that "it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates" (emphases added). On its face, this sentence describes a scenario in which one lawyer delays litigation "solely for the convenience" of himself and other lawyers (presumably lawyers representing the adversary). That would seem unlikely – usually one side or the other seeks a delay to advantage that side.	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 4	**Code # 4**
ABA Model Rule 3.2 cmt. [1]'s second sentence contains the word "lawyer" twice, but also contains the word "advocates." Although that word choice presumably is deliberate, it would be more consistent for the sentence to conclude with the word "lawyers" rather than the presumably synonymous (but oddly different) word "advocates."	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 5	**Code # 4**
ABA Model Rule 3.2 cmt. [1]'s third sentence begins by explaining that "[n]or will a failure to expedite be reasonable if done" for specified improper purposes (emphasis added). The word "done" seems inapt. A lawyer does not "do" a "failure to expedite." The word "motivated" might be better.	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 6	**Code # 4**
ABA Model Rule 3.2 cmt. [1]'s fourth sentence begins by explaining that "[t]he question . . ." (emphasis added). That seems like an odd way to start the sentence. It might be preferable to start the sentence with a phrase such as this: "The analysis focuses on . . ."	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 7	**Code # 3**
ABA Model Rule 3.2 cmt. [1]'s fourth sentence articulates a standard of "whether a competent lawyer acting in good faith" would consider her action appropriately supported (emphasis added). It is unclear why this is a question of competence. The word "competent" seems unnecessary.	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 8	**Code # 3**
ABA Model Rule 3.2 cmt. [1]'s fourth sentence contains the phrase "course of action" in describing a lawyer's conduct. That term contrasts with ABA Model Rule 3.1 cmt. [2]'s "action" – which that Comment uses six times. As the ABA Model Rules General Notes discuss, it is unclear whether ABA Model Rule 3.2 cmt. [1]'s term "course of action" intends to have a different meaning from the more generic "action." If not, it would be more consistent to use the word "action" rather than the term "course of action."	

ABA MODEL RULE 3.2 cmt. [1]	
Note # 9	**Code # 3**
ABA Model Rule 3.2 cmt. [1]'s concluding sentence warns that "[r]ealizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client" (emphasis added). It is unclear what the term "otherwise improper" means. It would seem that "otherwise improper" delay would never be a legitimate tactic. Delay that is not "otherwise improper" might justifiably advance "a legitimate interest of the client" – as when a tenant's lawyer delays an eviction action to benefit her tenant client.	

ABA MODEL RULE 3.3(a)(1)	
Note # 1	**Code # 3**
ABA Model Rule 3.3(a)(1) prohibits lawyers from "knowingly . . . mak[ing] a false statement of fact . . . to a tribunal." On its face, ABA Model Rule 3.3(a)(1) would prohibit lawyers from telling harmless socially customary "white lies" such as responding favorably if a judge asks the lawyer whether the judge's secretary was polite, whether the lawyer liked the judge's new decorations in chambers, etc. To that extent, ABA Model Rule 3.3(a)(1) matches ABA Model Rule 8.4(c)'s absolute and unrealistic condemnation as "professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation" (such as telling a party's host that the lawyer enjoyed the party when the lawyer really did not enjoy the party, etc.)	

ABA MODEL RULE 3.3 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [2]'s second sentence explains that lawyers have "an obligation to present the client's case with <u>persuasive</u> force" (emphasis added). The word "persuasive" seems to focus more on style than content. This contrasts with ABA Model Rule 3.3's focus on content.	

ABA MODEL RULE 3.3 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 3.3 cmt. [3]'s first sentence addresses an advocate's responsibility "for pleadings and other documents prepared for litigation" (emphasis added). Those presumably do not include pleadings, which are mentioned earlier in that sentence. But it is unclear what those "other documents" are.	

ABA MODEL RULE 3.3 cmt. [3]	
Note # 2	**Code # 3**
ABA Model Rule 3.3 cmt. [3]'s concluding substantive sentence reminds that "[t]he obligation prescribed in [ABA Model] Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation." ABA Model Rule 3.3 cmt. [3] then contains the following: "[r]egarding compliance with [ABA Model] Rule 1.2(d), see the Comment to that Rule" (emphasis added). It is unclear what specific Comment "the Comment" refers to. ABA Model Rule 1.2 cmts. [9] - [13] all address ABA Model Rule 1.2(d). It would be helpful to know which Comment ABA Model Rule 3.3 cmt. [3] identifies as "the Comment."	

ABA MODEL RULE 3.3 cmt. [3]	
Note # 3	**Code # 3**
ABA Model Rule 3.3 cmt. [3] concludes with a vague reference to an unidentified Comment: "[s]ee also the Comment to [ABA Model] Rule 8.4(b)" (emphasis added). ABA Model Rule 8.4 cmt. [1] and [2] are possible candidates. It would be helpful to know which Comment ABA Model Rule 3.3 cmt. [3] identifies as "the Comment."	

ABA MODEL RULE 3.3 cmt. [3]	
Note # 4	**Code # 3**
In addition to unhelpful general references to other ABA Model Rules' Comments, ABA Model Rule 3.3 cmt. [3] does not mention ABA Model Rule 4.1(b) – which indicates that lawyers' failure to disclose a material fact might violate that ABA Model Rule. Such a reference might have been appropriate to provide additional guidance about ABA Model Rule 3.3 cmt. [3]'s third sentence: "[t]here are circumstances where failure to make a disclosure is equivalent of an affirmative misrepresentation."	

ABA MODEL RULE 3.3 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [4]'s second sentence warns that a lawyer "must recognize the existence of pertinent legal authorities" (emphasis added). That seems like an odd requirement. ABA Model Rule 3.3 focuses on what lawyers must do once they "recognize the existence of pertinent legal authorities."	

ABA MODEL RULE 3.3 cmt. [6]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [6]'s first sentence contains the word "introduce" to describe a lawyer's introduction of false evidence – but also contains the different word "offered" to presumably describe the same thing. It would be more clear if the same word were used to describe the same conduct.	

ABA MODEL RULE 3.3 cmt. [7]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [7]'s first sentence contains the word "lawyers," and ABA Model Rule 3.3 cmt. [7]'s second sentence contains the word "counsel." Those words are presumably intended to be synonymous, so it might be more appropriate to use the same word in both sentences.	

ABA MODEL RULE 3.3 cmt. [7]	
Note # 2	**Code # 3**
ABA Model Rule 3.3 cmt. [7]'s second sentence contains the phrase "the testimony or statement" – referring to "the accused as a witness." It is unclear whether the words "testimony" and "statement" are intended to be synonymous. Presumably an accused's "statement" is "testimony."	

ABA MODEL RULE 3.3 cmt. [8]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [8]'s first sentence contains the phrase "offering . . . evidence" (emphasis added). ABA Model Rule 3.3 cmt. [8]'s second sentence contains the word "presentation" – referring to evidence (emphasis added). If the words "offering" and "presentation" are intended to be synonymous, it would have been more consistent to use the same word in both sentences.	

ABA MODEL RULE 3.3 cmt. [8]	
Note # 2	**Code # 4**
ABA Model Rule 3.3 cmt. [8]'s second sentence addresses presentation of evidence "to the trier of fact" (emphasis added). This contrasts with the more generic term "tribunal" contained in several black letter ABA Model Rule 3.3 provisions. The word "tribunal" presumably would be more appropriate in ABA Model Rule 3.3 cmt. [8].	

ABA MODEL RULE 3.3 cmt. [9]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [9]'s first sentence contains the words "evidence," "testimony," and "proof." The word "testimony" presumably is a subset of "evidence," but it is unclear whether the word "proof" is intended to be synonymous with the word "evidence." If so, it would be appropriate to use the same word to mean the same thing.	

ABA MODEL RULE 3.3 cmt. [9]	
Note # 2	**Code # 4**
ABA Model Rule 3.3 cmt. [9]'s third sentence describes a scenario "<u>where</u> the lawyer reasonably believes but does not know that the testimony will be false" (emphasis added). The word "when" might be more appropriate than the word "where."	

ABA MODEL RULE 3.3 cmt. [10]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [10] contains in several places the word “lawyer” and the word “advocate.” If those repeated references are intended to be synonymous, it would seem appropriate to use the same word to mean the same thing.	

ABA MODEL RULE 3.3 cmt. [10]	
Note # 2	**Code # 2**
ABA Model Rule 3.3 cmt. [10]'s third sentence addresses lawyers' obligation to "take reasonable remedial measures" in a scenario in which the lawyer "knows of the falsity of testimony elicited from the client during a deposition" (emphasis added). This is only a subset of black letter ABA Model Rule 3.3(a)(3)'s reach. Under ABA Model Rule 3.3(a)(3), lawyers presumably have the same duty if they have elicited false testimony from "a witness called by the lawyer" to be deposed.	

ABA MODEL RULE 3.3 cmt. [10]	
Note # 3	**Code # 4**
ABA Model Rule 3.3 cmt. [10]'s fourth sentence contains the phrase "the false statements or evidence." The word "or" would seem to differentiate between "statements" and "evidence." But it would seem that "statements" are a subset of "evidence," so the term "other evidence" might be more appropriate there.	

ABA MODEL RULE 3.3 cmt. [10]	
Note # 4	**Code # 2**
ABA Model Rule 3.3 cmt. [10]'s sixth sentence describes lawyers' duties "[i]f withdrawal from the representation . . . will not undo the effect of the false evidence." It is difficult to imagine any scenario in which a lawyer's withdrawal would "undo the effect of the false evidence," and ABA Model Rule 3.3 cmt. [10] does not provide any guidance on that issue.	

ABA MODEL RULE 3.3 cmt. [14]	
Note # 1	**Code # 4**
ABA Model Rule 3.3 cmt. [14]'s first sentence describes lawyers' "limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision" (emphasis added). That is an odd phrase. A phrase such as "presenting the client's position in a matter" might be more appropriate.	

ABA MODEL RULE 3.3 cmt. [15]	
Note # 1	**Code # 3**
ABA Model Rule 3.3 cmt. [15]'s first sentence assures that "[n]ormally" a lawyer need not withdraw from representing a client "whose interests will be or have been adversely affected by the lawyer's disclosure" required by ABA Model Rule 3.3's "duty of candor" (emphasis added). The word "normally" seems like an overstatement. A word such as "occasionally" might be more appropriate.	

ABA MODEL RULE 3.3 cmt. [15]	
Note # 2	**Code # 3**
ABA Model Rule 3.3 cmt. [15]'s second sentence describes a scenario in which a lawyer might withdraw because she "can no longer competently represent the client" (emphasis added). The word "competently" seems inapt. ABA Model Rule 1.1 describes "competence" as focusing on "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Those attributes do not seem pertinent in ABA Model Rule 3.3 cmt. [15]'s scenario.	

ABA MODEL RULE 3.4(a)	
Note # 1	**Code # 3**
ABA Model Rule 3.4(a) prohibits lawyers from doing three things to "a document or other material having potential evidentiary value" "alter, destroy or conceal." That seems like an odd order, if the intent is to list the actions in order of increasingly egregious conduct. A document or other material that is "concealed" might be discovered in its original form. "Altering" such a document or other material is worse, because presumably it changes the document or other material. "Destroying" a document or other material is worse than the other two kinds of misconduct. ABA Model Rule 3.4 cmt [2]'s third sentence contains a more appropriate order: "altered, concealed or destroyed," although "conceal, alter, or destroy" might be even better in ABA Model Rule 3.4(a).	

ABA MODEL RULE 3.4(c)	
Note # 1	**Code # 3**
ABA Model Rule 3.4(c) allows lawyers to "knowingly disobey an obligation under the rules of a tribunal" – if it is "an open refusal based on an assertion that no valid obligation exist" (emphasis added). The word "open" seems superfluous. Presumably disobeying a tribunal's obligation would always be "open."	

ABA MODEL RULE 3.4 (d)	
Note # 1	**Code # 2**
ABA Model Rule 3.4(d) prohibits lawyers from specified misconduct “in pretrial procedure” (emphasis added). Although clearly more rare than in a “pretrial” setting, lawyers sometimes engage in post-trial discovery. So the phrase “in pretrial procedure” seems to unnecessarily limit ABA Model Rule 3.4(d)’s reach.	

ABA MODEL RULE 3.4(d)	
Note # 2	**Code # 4**
ABA Model Rule 3.4(d) prohibits lawyers from "fail[ing] to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party" (emphasis added). Linguistically, it might be preferable to use either the phrase "fail to make a reasonably diligent effort" or "fail to make reasonably diligent efforts" (emphases added).	

ABA MODEL RULE 3.4(d)	
Note # 3	**Code # 3**
ABA Model Rule 3.4(d) refers to "a legally proper discovery request by an opposing party" (emphasis added). It unclear what the word "legally" means here – it seems superfluous.	

ABA MODEL RULE 3.4(d)	
Note # 4	**Code # 3**
ABA Model Rule 3.4(d) refers to "a legally proper discovery request by an opposing party" (emphasis added). A third party might make a "discovery request," so the phrase "by an opposing party" would seem to improperly limit ABA Model Rule 3.4(d)'s reach.	

ABA MODEL RULE 3.4 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 3.4 cmt [2]'s third sentence reflects a prohibition on lawyers doing specific things to "a document or other material having potential evidentiary value:" "altered, concealed or destroyed." This list seems to be a somewhat better order of increasingly egregious conduct than black letter ABA Model Rule 3.4(a)'s list: "alter, destroy, or conceal." But using an ascending order of misconduct might make more sense: "concealed, altered, or destroyed."	

ABA MODEL RULE 3.5 cmt. [2]	
Note # 2	**Code # 4**
ABA Model Rule 3.4 cmt. [2]'s fourth sentence contains the phrase "an offense to destroy material for purpose of impairing its availability." Adding the word "the" between the word "for" and the word "purpose" would seem more linguistically correct.	

ABA MODEL RULE 3.4 cmt. [2]	
Note # 3	**Code # 4**
ABA Model Rule 3.4 cmt [2]'s sixth sentence contains an archaic term: "computerized information" (emphasis added).	

ABA MODEL RULE 3.4 cmt. [3]	
Note # 1	**Code # 2**
ABA Model Rule 3.4 cmt [3]'s second sentence states that "[t]he common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying." That statement of law may be incorrect now. Most states' legal ethics opinions normally allow lawyers to pay a fact witness for her time, as long as the amount is reasonable and transparent.	

ABA MODEL RULE 3.4 cmt. [4]	
Note # 1	**Code # 1**
ABA Model Rule 3.4 cmt [4] states that ABA Model Rule 3.4(f) "permits a lawyer to advise employees of a client to refrain from giving information to another party" (emphasis added). This contrasts with black letter ABA Model Rule 3.4(f)(1) – which permits lawyers to "request a person other than a client to refrain voluntarily giving relevant information to another party [if] the person is… an employee or agent of a client" (emphasis added). Black letter ABA Model Rule 3.4(f)'s word "request" differs from ABA Model Rule 3.4 cmt [4]'s word "advise." There seems to be a material difference between a corporate client's lawyer stating to an employee "I request that you not provide information," and (2) "I advise you not to provide information" (emphases added). The word "request" refers to voluntary compliance, while the word "advise" seems more mandatory. It might be preferable for ABA Model Rule 3.4 cmt [4] to use the same word as black letter ABA Model Rule 3.4(f).	

ABA MODEL RULE 3.4 cmt. [4]	
Note # 2	**Code # 3**
ABA Model Rule 3.4 cmt [4] concludes with a reference to ABA Model Rule 4.2. It is unclear why ABA Model Rule 3.4 cmt [4] would refer to the ABA Model Rule addressing ex parte communications with a represented person. A better reference would seem to be ABA Model Rule 4.3, which addresses communications with an unrepresented person. Presumably the "employees of a client" are not themselves represented. Rather, it is likely that they are unrepresented, thus implicating ABA Model Rule 4.3's provisions.	

ABA MODEL RULE 3.5(b)	
Note # 1	**Code # 4**
ABA Model Rule 3.5(b) contains the phrase “during the proceeding” (emphasis added). The phrase “during a proceeding” would seem more appropriate, because ABA Model Rule 3.5 has not already referred to a proceeding (emphasis added). ABA Model Rule 3.5 cmt. [2] begins with this more appropriate phrase “[d]uring a proceeding” (emphasis added).	

ABA MODEL RULE 3.5(c)(3)	
Note # 1	**Code # 4**
ABA Model Rule 3.5(c)(3) prohibits a communication with a "juror or prospective juror" if "the communication involves misrepresentation, coercion, duress or harassment" (emphasis added). The "involves" is not defined, and is not clear. Words such as "constitutes" or "includes" might be more appropriate.	

ABA MODEL RULE 3.5 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 3.5 cmt [1] concluding sentence that "[a] lawyer is required to avoid contributing to a violation" of specified provisions (emphasis added). ABA Model Rule 3.5 [1]'s first sentence describes "forms of improper influence upon a tribunal" (emphasis added), which seems to focus on improper conduct by lawyers and others, not by the tribunal. So it would seem more appropriate for ABA Model Rule 3.4 cmt [1]'s concluding sentence to describe the prohibition on lawyers' direct misconduct, rather than on their contribution to some other person's misconduct.	

ABA MODEL RULE 3.5 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 3.5 cmt [2] contains a list of persons with whom lawyers may not communicate ex parte except under certain circumstances: "such as judges, masters or jurors" (emphasis added). The word "masters" is undefined, and is not in black letter ABA Model Rule 3.5(a)'s list of such off-limits persons.	

ABA MODEL RULE 3.6(a)	
Note # 1	**Code # 3**
ABA Model Rule 3.6(a) applies to "[a] lawyer who <u>is participating or has participated</u> in the investigation or litigation of a matter" (emphasis added). The words "participating" and "participated" are defined. Presumably they extend beyond lawyers "representing a client" in the investigation or litigation of a matter, or else ABA Model Rule 3.6(a) would have used that phrase. Various forms of the word "participate" beg the question of how those words differ if at all from other words such as "involved" – which is contained in ABA Model Rule 1.12(b), among others. It would be helpful for ABA Model Rule 3.6 or its Comments to provide some guidance.	

ABA MODEL RULE 3.6(d)	
Note # 1	**Code # 2**
ABA Model Rule 3.6(d) prohibits any lawyer "associated" in a firm or government agency with a lawyer subject to ABA Model Rule 3.6(a)'s prohibition from making the same statement. As the ABA General Notes discuss, the word "associated" is not defined in the ABA Model Rules or Comments – which can generates some confusion. Here, for instance, it is unclear why ABA Model Rule 3.6(a)'s prohibition would not apply to all lawyers practicing in a firm with lawyers governed by that black letter ABA Model Rule, even those not "associated" with those lawyers.	

ABA MODEL RULE 3.6(d)	
Note # 2	**Code # 3**
ABA Model Rule 3.6(d) prohibits any lawyer "associated" in a firm or government agency with a lawyer subject to ABA Model Rule 3.6(a)'s prohibition from making the same statement. ABA Model Rule 3.6(d) does not explain that those other lawyers are also free to make statements described an ABA Model Rule 3.6(b) and (c) – both of which start with the phrase "notwithstanding paragraph (a)."	

ABA MODEL RULE 3.6 cmt. [6]	
Note # 1	**Code # 4**
ABA Model Rule 3.6 cmt [6]'s third sentence states that "[t]he [ABA Model] Rule [3.6] will still place limitations on prejudicial comments in these cases" (emphasis added). The phrase "will still place" seems inapt. The phrase "still places" would see more appropriate.	

ABA MODEL RULE 3.6 cmt. [7]	
Note # 1	**Code # 1**
ABA Model Rule 3.6 cmt [7]'s third sentence states that ABA Model Rule 3.6(c) responsive statements "should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others" (emphasis added). This contrasts with black letter ABA Model Rule 3.6(c)'s requirement that such responsive statements "shall be limited to such information as is necessary to mitigate the recent adverse publicity" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. In ABA Model Rule 3.6 cmt. [7], the word "must" would appear to be required.	

ABA MODEL RULE 3.7(a)	
Note # 1	**Code # 4**
ABA Model Rule 3.7(a) states that "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness," except under specified conditions. Linguistically, using the term "an advocate" (emphasis added) rather than just the word "advocate" might be more appropriate.	

ABA MODEL RULE 3.7(a)(3)	
Note # 1	**Code # 4**
ABA Model Rule 3.7(a)(3) describes a scenario in which "disqualification of the lawyer would work substantial hardship on the client" (emphasis added). The word "work" seems inapt. The word "cause" might be preferable.	

ABA MODEL RULE 3.7(b)	
Note # 1	**Code # 4**
ABA Model Rule 3.7(b) contains the same words “as advocate” contained in black letter ABA Model Rule 3.7(a). The words “as an advocate” might be preferable (emphasis added).	

ABA MODEL RULE 3.7 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 3.7 cmt [4]'s first sentence contends that ABA Model Rule 3.7(a)(3) "recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party" (emphasis added). ABA Model Rule 3.7(a)(3) on its face does not "recognize" any required "balancing." Presumably ABA Model Rule 3.7 cmt [4] refers to an implicit "balancing" reflected in black letter ABA Model Rule 3.7(a)(3). But the word "recognizes" seems inapt – stating that ABA Model Rule 3.7(a)(3) "reflects" such a balancing might be preferable.	

ABA MODEL RULE 3.7 cmt. [4]	
Note # 2	**Code # 2**
ABA Model Rule 3.7 cmt [4]'s second sentence describes a scenario in which "the tribunal is likely to be misled." ABA Model Rule 3.7 cmt [4]'s preceding sentence refers to black letter ABA Model Rule 3.7(a)(3), but that provision does not seem to address a tribunal being misled. It is unclear under what circumstance black letter ABA Model Rule 3.7 implicitly describes such a scenario.	

ABA MODEL RULE 3.7 cmt. [4]	
Note # 3	**Code # 2**
ABA Model Rule 3.7 cmt [4]'s third sentence explains that "[i]t is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness" (emphases added). Such a "reasonabl[e] foreseeab[ility]" standard might affect lawyers' tactical decisions, but black letter ABA Model Rule 3.7 does not seem to recognize such a "reasonabl[e] foreseeab[ility]" standard in any of its provisions.	

ABA MODEL RULE 3.7 cmt. [5]	
Note # 1	**Code # 2**
ABA Model Rule 3.7 cmt [5] begins with another reference to whether the tribunal is or is not “likely to be misled.” As with a similar reference in ABA Model Rule 3.7 cmt [4], it is unclear where and how that issue arises, and how it affects ABA Model Rule 3.7’s analysis.	

ABA MODEL RULE 3.7 cmt. [6]	
Note # 1	**Code # 2**
ABA Model Rule 3.7 cmt [6]'s fourth sentence addresses "a lawyer who might be permitted to simultaneously serve as an advocate and a witness" (emphases added). A lawyer can "serve as an advocate," but it does not seem appropriate to say that a lawyer can "serve as… a witness" (emphasis added). Black letter ABA Model Rule 3.7(a) uses a more appropriate phrase: "the lawyer is likely to be a necessary witness" (emphasis added).	

ABA MODEL RULE 3.8(b)	
Note # 1	**Code # 3**
ABA Model Rule 3.8(b) contains the word “accused.” Elsewhere, ABA Model Rule 3.8 contains the word “defendant” (ABA Model Rule 3.8(g)(2)(i)) and “suspect” (ABA Model Rule 3.8 cmt. [2]’s concluding sentence). Presumably, a “suspect” is a person who has not yet been accused, and an “accused” is a person who is not yet a “defendant.” It might have been helpful for an ABA Model Rule 3.8 Comment to explain this distinction.	

ABA MODEL RULE 3.8(f)	
Note # 1	**Code # 2**
ABA Model Rule 3.8(f) describes persons "associated with the prosecutor" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Rules' failure to define the term "associated" could cause confusion. For instance, in ABA Model Rule 3.8(f), it seems clear that persons "associated with the prosecutor" do not include: (1) "investigators, law enforcement personnel, employees;" and (2) "other persons assisting…the prosecutor." Otherwise, presumably ABA Model Rule 3.8(f) would not contain the word "or" just before the phrase "associated with the prosecutor." It would be helpful for an ABA Model Rule 3.8 comment to provide guidance about the scope of the term "associated" in this context.	

ABA MODEL RULE 3.8(g)	
Note # 1	**Code # 3**
ABA Model Rule 3.8(g) describes a prosecutor's duty "[w]hen a prosecutor" has certain knowledge. ABA Model Rule 3.8(h) begins the same way. The word "when" seems to imply that such an event is inevitable or likely – the only question is the timing. The word "if" might be more appropriate. For instance, black letter ABA Model Rule 3.3(a)(3)'s second sentence describes a lawyer's duty to "take reasonable remedial measures" – "[i]f a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity" (emphasis added). Similarly, ABA Model Rule 3.3 cmt. [6]'s first sentence describes lawyers' responsibilities "[i]f a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence."	

ABA MODEL RULE 3.8 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 3.8 cmt. [1]'s first sentence states that "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate" (emphasis added). The word "simply" could be seen as demeaning to advocates. The word "just" might be less offensive.	

ABA MODEL RULE 3.8 cmt. [1]	
Note # 2	**Code # 3**
ABA Model Rule 3.8 cmt. [1]'s third and fourth sentences describe the "debate" about prosecutor's responsibilities "in different jurisdictions." That and similar language in other ABA Model Rule Comments are interesting and perhaps instructive, but of course lawyers in a specific jurisdiction would be helped by knowing what their jurisdiction requires.	

ABA MODEL RULE 3.8 cmt. [1]	
Note # 3	**Code # 4**
ABA Model Rule 3.8 cmt. [1]'s penultimate sentence explains that "[c]ompetent" representation of the sovereignty may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation" (emphases added). The concluding term "as a matter of obligation" seems unnecessary.	

ABA MODEL RULE 3.8 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 3.8 cmt. [2]'s first sentence indicates that a defendant "may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause" (emphasis added). The word "valuable" is unnecessary – and the absence of a similar adjective in other black letter ABA Model Rule 3.8 provisions and Comments might be seen as implying that other opportunities are not "valuable."	

ABA MODEL RULE 3.8 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule 3.8 cmt. [4] states that black letter ABA Model Rule 3.8(e) “is intended to” have a specified impact. The phrase is “intended to” seems unnecessary. All black letter ABA Model Rule 3.8 provisions intend to have the specified impact.	

ABA MODEL RULE 3.8 cmt. [4]	
Note # 2	**Code # 4**
ABA Model Rule 3.8 cmt. [4] describes "situations in which there is a genuine need to intrude into the client-lawyer relationship" (emphasis added). The word "genuine" seems to carry a non-legal implication. A word such as "legitimate" or "justified" might be more appropriate.	

ABA MODEL RULE 3.8 cmt. [6]	
Note # 1	**Code # 2**
ABA Model Rule 3.8 cmt. [6]'s first sentence identifies "lawyers and nonlawyers who work for or are associated with the lawyer's office" (emphasis added). As in other ABA Model Rule contexts, the word "associated" is not defined and could be confusing.	

ABA MODEL RULE 3.8 cmt. [6]	
Note # 2	**Code # 4**
ABA Model Rule 3.8 cmt. [6]'s first sentence describes lawyers and nonlawyers who work for or are "associated with the lawyer's office" (emphasis added). Elsewhere, ABA Model Rules and Comments describe lawyers or nonlawyers working for or "associated with" lawyers – not those lawyers' "office."	

ABA MODEL RULE 3.8 cmt. [6]	
Note # 3	**Code # 3**
ABA Model Rule 3.8 cmt. [6]'s third sentence describes "persons assisting or associated with the prosecutor" (emphasis added). As in other contexts, the word "associated" is not defined, but presumably does not include "persons assisting" prosecutors – or else ABA Model Rule 3.8 cmt. [6]'s third sentence would not contain the word "or."	

ABA MODEL RULE 3.8 cmt. [8]	
Note # 1	**Code # 4**
ABA Model Rule 3.8 cmt. [8]'s first sentence states that ABA Model Rule 3.8(h) applies "once" the prosecutor has specified knowledge (emphasis added). The word "once" seems to imply an inevitability or at least a likelihood. Black letter ABA Model Rule 3.8(h) begins with the slightly more appropriate word "[w]hen." The word "if" might be even more appropriate.	

ABA MODEL RULE 3.9	
Note # 1	**Code # 3**
ABA Model Rule 3.9 requires lawyers representing a client in specified non-adjudicative proceedings to "disclose that the appearance is in a representative capacity." That mandate seems unnecessary. Presumably everyone involved in such a non-adjudicative proceeding would know that the lawyer is acting in a "representative capacity." A lawyer explicitly or implicitly holding herself out as acting in a personal rather than a representative capacity also would presumably violate (among other things) ABA Model Rule 8.4(c)'s prohibition on "conduct involving dishonesty, fraud, deceit or misrepresentation."	

ABA MODEL RULE 3.9	
Note # 2	**Code # 2**
ABA Model Rule 3.9 requires lawyers representing clients before specified bodies to "conform to the revisions of [ABA Model] Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5." ABA Model Rule 3.3(d) is explicitly excluded from the list. It is unclear why. ABA Model Rule 3.3(d) applies to lawyers "[i]n an ex parte proceeding." Such lawyers "shall inform the tribunal of all material facts known to the lawyer that will enable a tribunal to make an informed decision, whether or not the facts are adverse." ABA Model Rule 3.9's Comments do not explain why that ABA Model Rule does not apply to lawyers representing clients in the specified non-adjudicative proceedings.	

ABA MODEL RULE 3.9 cmt. [1]	
Note # 1	**Code # 2**
ABA Model Rule 3.9 cmt. [1] contains a non-exclusive list of "bodies" before which lawyers are governed by ABA Model Rule 3.9: "bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity." On its face, that list does not match black letter ABA Model Rule 3.9's list: "a legislative body or administrative agency in a non-adjudicative proceeding." And it does not match ABA Model Rule 3.9 cmt. [2]'s list: "legislatures and administrative agencies." Perhaps ABA Model Rule 3.9 cmt. [1]'s and ABA Model Rule 3.9 cmt. [2]'s lists of bodies are all included in black letter ABA Model Rule 3.9's shorter list.	

ABA MODEL RULE 3.9 cmt. [1]	
Note # 2	**Code # 4**
ABA Model Rule 3.9 cmt. [1] contains a list of lawyers' actions before specified bodies – the list includes a mismatch of plural and singular: "lawyers present facts, formulate issues and advance argument in the matters under consideration" (emphasis added). Using the plural "arguments" would assure linguistic consistency and accurately reflect what such lawyers do.	

ABA MODEL RULE 3.9 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 3.9 cmt. [2]'s first sentence states that "[l]awyers have no exclusive right to appear before non-adjudicative bodies, as they do before a court" (emphasis added). However, in all if not most states, lawyers do not enjoy an "exclusive right to appear before a court." In those states, non-lawyers (often including nonlawyer corporate employees) may appear in small claims courts to present facts (and in some courts, arguments). In addition, federal and state statutes allow some non-lawyers to represent third persons in adjudicative proceedings such as Social Security proceedings, etc.	

ABA MODEL RULE 3.9 cmt. [3]	
Note # 2	**Code # 4**
ABA Model Rule 3.9 cmt. [3]'s second sentence contains the term "income-tax returns" – with a hyphen. ABA Model Rule 8.4 cmt. [2]'s contains the same term ("income tax return") – without the hyphen. As the ABA Model Rules General Notes discuss, ABA Model Rules and their Comments are not consistent in their use of hyphens.	

ABA MODEL RULE 4.1	
Note # 1	**Code # 3**
ABA Model Rule 4.1(a) applies to lawyers' conduct "[i]n the course of representing a client." This contrasts with ABA Model Rule 4.2's and ABA Model Rules 4.4(a)'s application to lawyers' conduct "[i]n representing a client" and ABA Model Rule 4.3's application to lawyers' conduct "[i]n dealing on behalf of a client." It is unclear whether these different standards intend to apply to a substantively different scope of lawyers' conduct. Presumably, the ABA Model Rules deliberately chose these consecutive ABA Model Rules' different formulations, but none of the Rules or Comments provide any guidance about the different standards' impact.	

ABA MODEL RULE 4.1(a)	
Note # 1	**Code # 3**
ABA Model Rule 4.1(a) prohibits lawyers from "knowingly…mak[ing] a false statement of a material fact or law to a third person" (emphasis added). The phrase "to a third person" seems unnecessary.	

ABA MODEL RULE 4.1 cmt. [3]	
Note # 1	**Code # 4**
ABA Model Rule 4.1 cmt. [3]'s fourth sentence states that lawyers must sometimes "give notice of <u>the fact of</u> withdrawal" (emphasis added). The words "the fact of" seem unnecessary - presumably the lawyer would give notice of his "withdrawal." The same language appears in ABA Model Rule 1.2 cmt. [10]'s concluding sentence.	

ABA MODEL RULE 4.1 cmt. [3]	
Note # 2	**Code # 4**
ABA Model Rule 4.1 cmt. [3]'s fourth sentence explains that "[s]ometimes it may be necessary for the lawyer…to disaffirm an opinion, document, affirmation or the like" (emphasis added). This list slightly contrasts with a similar list in ABA Model Rule 1.2 cmt. [10]'s concluding sentence, which contains the identical guidance except that it contains the phrase "any opinion" rather than "an opinion."	

ABA MODEL RULE 4.1 cmt. [3]	
Note # 3	**Code # 3**
ABA Model Rule 4.1 cmt. [3]'s fifth sentence states that "[i]n extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud" (emphasis added). ABA Model Rule 4.1's next sentence states that "[i]f the lawyer can avoid assisting a client's crime or fraud only by disclosing this information," lawyers must do so – "unless the disclosure is prohibited by [ABA Model] Rule 1.6." Thus, it would seem that a lawyer complying with ABA Model Rule 1.6 by declining to make the required disclosure will "be [] deemed to have assisted the client's crime or fraud." Presumably this would make the lawyer a criminal as well. The ABA Model Rules do not explain this implication.	

ABA MODEL RULE 4.2	
Note # 1	**Code # 3**
ABA Model Rule 4.2 applies to lawyers' conduct "[i]n representing a client." This matches ABA Model Rule 4.4(a)'s application to lawyers' conduct. But it contrasts with ABA Model Rule 4.1's application to lawyers' conduct "[i]n dealing on behalf of a client," and also contrasts with ABA Model Rule 4.3's application to lawyers' conduct "[i]n dealing on behalf of a client." It is unclear whether these different standards intend to apply to a substantively different scope of lawyers' conduct. Presumably the ABA Model Rules deliberately chose these consecutive ABA Model Rules' different formulations, but none of the Rules or Comments provide any guidance about the different standards' possible impact.	

ABA MODEL RULE 4.2	
Note # 2	**Code # 2**
ABA Model Rule 4.2 prohibits lawyers from communicating "about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter" (emphases added). Presumably the phrase "the subject of the representation" is intended to be synonymous with the term "the matter." But in this important ABA Model Rule, it might have been more appropriate to use the same term to describe the same thing. For instance, using the phrase "a matter" instead of the phrase "the subject of the representation" would have used consistent language.	

ABA MODEL RULE 4.2	
Note # 3	**Code # 3**
ABA Model Rule 4.2 prohibits lawyers' ex parte communications with a represented person in specified circumstances – "unless the lawyer has the consent of the other lawyer or is authorized to do by law or a court order." The ABA Model Rules and Comments normally use the term "informed consent" in describing necessary consents (emphasis added). ABA Model Rule 1.0(e) defines "informed consent" as "denot[ing] the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation of the material risks of and reasonably available alternatives to the proposed course of conduct." ABA Model Rule 1.0 cmt. [6] and [7] provide additional guidance. It is unclear whether ABA Model Rule 4.2 deliberately excludes the word "informed" – to avoid those other obligations.	

ABA MODEL RULE 4.2 cmt. [4]	
Note # 1	**Code # 3**
ABA Model Rule 4.2 cmt. [4]'s second sentence contains the term "private party" (emphasis added). The term "private person" would be more appropriate, in light of ABA Model Rule 4.2's explicit references to persons rather than "parties" (to avoid the implication that ABA Model Rule 4.2 only applies in the litigation context).	

ABA MODEL RULE 4.2 cmt. [4]	
Note # 2	**Code # 3**
ABA Model Rule 4.2 cmt. [4]'s fifth sentence contains the word "[p]arties." The word "[p]ersons" would be more appropriate.	

ABA MODEL RULE 4.2 cmt. [4]	
Note # 3	**Code # 2**
ABA Model Rule 4.2 cmt. [4]'s concluding sentence assures that lawyers "having independent justification or legal authorization for communicating with a represented person is permitted to do so" (emphasis added). The term "independent justification" is not defined, and there is no guidance about what it means.	

ABA MODEL RULE 4.2 cmt. [7]	
Note # 1	**Code # 4**
ABA Model Rule 4.2 cmt. [7]'s second sentence refers to an "organization's lawyer," while the next sentence refers to an organization's constituent's "own counsel" (emphases added). As the ABA Model Rules General Notes discuss, the ABA Model Rules and Comments use varying terms to identify lawyers: "lawyer"; "attorney"; "counsel." These linguistic variations are unlikely to cause any confusion, but are unfortunate.	

ABA MODEL RULE 4.3	
Note # 1	**Code # 3**
ABA Model Rule applies to 4.3 lawyers' conduct "[i]n dealing on behalf of a client." This contrasts with ABA Model Rule 4.1's application to lawyer's conduct "[i]n the course of representing a client" and with ABA Model Rule 4.2's and ABA Model Rule 4.4(a)'s application to lawyers' conduct "[i]n representing a client." It is unclear whether these different standards intend to apply to a substantively different scope of lawyers' conduct. Presumably the ABA Model Rules deliberately chose these consecutive ABA Model Rules' different formulations, but none of the Rules or Comments provide any guidance about the different standards' impact.	

ABA MODEL RULE 4.3	
Note # 2	**Code # 3**
ABA Model Rule 4.3's first sentence describes a scenario in which lawyers must comply with ABA Model Rule 4.3's prohibitions and requirements: "[i]n dealing on behalf of a client with a person who is not represented by counsel" (emphasis added). That scenario presumably describes a person who is not "represented by counsel" in the matter on which that communicating lawyer deals with that person. For example, ABA Model Rule 4.3 applies to a lawyer communicating with a person about a car accident, even if that person is "represented by counsel" in a real estate matter. Perhaps that is obvious, but clarification would avoid any confusion.	

ABA MODEL RULE 4.3	
Note # 3	**Code # 3**
ABA Model Rule 4.3's third sentence states that lawyers "shall not give legal advice to an unrepresented person, other than the advice to secure counsel" under specified circumstances (emphases added). That formulation would seem to allow lawyers to provide advice other than "legal" advice. Deleting the word "legal" would make this clearer.	

ABA MODEL RULE 4.3	
Note # 4	**Code # 3**
ABA Model Rule 4.3's third sentence states that lawyers "shall not give legal advice to an unrepresented person, other than the advice to secure counsel" (emphasis added). The "advice to secure counsel" does not necessarily seem like "legal advice." A non-lawyer might give such advice to a neighbor, without being accused of improperly providing "legal advice." Deleting the word "legal" would make this clearer.	

ABA MODEL RULE 4.3	
Note # 5	**Code # 4**
ABA Model Rule 4.3's third sentence states that "[t]he lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel" under specified circumstances (emphases added). Although presumably the word "lawyer" is intended to be synonymous with the word "counsel," using two different words to describe the same thing just sixteen words apart seems awkward. Using a consistent word such as "lawyer" might be more appropriate.	

ABA MODEL RULE 4.3 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 4.3 cmt. [1] begins by referring to “an unrepresented person” (singular). This contrasts with ABA Model Rule 4.3 cmt. [2]’s opening description of “situations involving unrepresented persons” (plural).	

ABA MODEL RULE 4.3 cmt. [1]	
Note # 2	**Code # 3**
ABA Model Rule 4.3 cmt. [1]'s second sentence describes circumstances in which a lawyer must "explain that the [lawyer's] client has interests opposed to those of the unrepresented person" with whom the client's lawyer is dealing (emphasis added). The term "opposed to" contrasts with ABA Model Rule 4.3 cmt. [2] first sentences' terms "adverse to." Although presumably those three terms are intended to have the same meaning, using the same term might avoid confusion.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 4.3 cmt. [2] begins by describing “situations involving unrepresented persons” (plural). This contrasts with ABA Model Rule 4.3 cmt. [1]’s opening description of a situation involving “[a]n unrepresented person” (singular).	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 2	**Code # 4**
ABA Model Rule 4.3 cmt. [2]'s first sentence describes a scenario "involving unrepresented persons whose interests may be adverse to those of the lawyer's client (emphasis added). The term "adverse to" contrasts with ABA Model Rule 4.3 cmt. [1]'s term "opposed to." Although presumably those different terms are intended to have the same meaning, using the same terms might avoid confusion.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 3	**Code # 4**
ABA Model Rule 4.3 cmt. [2] first sentence "distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. Thus, there is a mismatch between situations involving "unrepresented persons" (plural) and situations involving the "person's interests" (singular).	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 4	**Code # 3**
ABA Model Rule 4.3 cmt. [2]'s first sentence distinguishes between situations in which unrepresented persons' "interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's" (emphases added). Presumably the terms "adverse to" and the term "in conflict with" are intended to be synonymous (and also synonymous with ABA Model Rule 4.3 cmt. [1]'s term "interests opposed to"), but it would have been more appropriate to use consistent terms.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 5	**Code # 4**
ABA Model Rule 4.3 cmt. [2]'s first sentence describes "situations involving unrepresented persons" (emphasis added). ABA Model Rule 4.3 cmt. [2]'s second sentence warns of a possibility that the lawyer will "compromise the unrepresented person's interests" (emphasis added). Thus, ABA Model Rule 4.3 cmt. [2] first describes a scenario involving multiple persons, and then describes the same scenario as involving a single person.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 6	**Code # 2**
ABA Model Rule 4.3 cmt. [2]'s second sentence explains that in certain circumstances (when an unrepresented person's interests are adverse to the communicating lawyer's client's interests), "the [ABA Model] Rule [4.2] prohibits the giving of <u>any advice</u>, apart from the advice to obtain counsel" (emphasis added). This is a mismatch with black letter ABA Model Rule 4.3 – which prohibits lawyers from "giv[ing] <u>legal advice</u>" in that setting, not "<u>any advice</u>" (emphases added).	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 7	**Code # 4**
ABA Model Rule 4.3 cmt. [2]'s second sentence allows a communicating lawyer to give "the advice to <u>obtain</u> counsel" (emphasis added). Presumably ABA Model Rule 4.3 cmt. [2]'s term "obtain counsel" is intended to be synonymous with black letter ABA Model Rule 4.3's term "<u>secure</u> counsel" (emphasis added).	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 8	**Code # 3**
ABA Model Rule 4.3 cmt. [2]'s third sentence addresses the standard for determining "[w]hether a lawyer is giving impermissible advice" (emphasis added). It is unclear what the word "impermissible" means. Presumably it means any advice other than "advice to secure counsel." It might be clearer if the "phrase "giving impermissible advice" was replaced with the phrase "for giving advice other than to secure counsel."	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 9	**Code # 2**
ABA Model Rule 4.3 cmt. [2]'s third sentence explains that determining "[w]hether a lawyer is giving impermissible advice" may depend on several factors – including "the experience and sophistication of the unrepresented person." Black letter ABA Model Rule 4.3 does not include that standard. And the standard does not make much sense. ABA Model Rule 4.3's prohibition on giving any "legal advice" other than the advice to secure counsel" in the specified circumstances focuses exclusively on the content of the lawyer's advice, not the represented person's attributes.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 10	**Code # 3**
ABA Model Rule 4.3 cmt. [2]'s third sentence explains that determining "[w]hether a lawyer is giving impermissible advice" may also depend on "the setting in which the behavior "occurs" (emphasis added). It is unclear what the word "behavior" means. Presumably that word refers to the communicating lawyer's "behavior." But black letter ABA Model Rule 4.3 does not deal with the communicating lawyer's "behavior." Instead, black letter ABA Model Rule 4.3 only addresses the content of the communicating lawyer's communication.	

ABA MODEL RULE 4.3 cmt. [2]	
Note # 11	**Code # 3**
ABA Model Rule 4.3 cmt. [2]'s third sentence explains that determining "[w]hether a lawyer is giving impermissible advice" may also depend on "the setting in which the…comments occur" (emphasis added). It is unclear what the word "comments" refers to. Presumably it refers to the communicating lawyer's communications. But labeling those as "comments" seems inappropriate.	

ABA MODEL RULE 4.4(a)	
Note # 1	**Code # 3**
ABA Model Rule 4.4(a) applies to lawyers's conduct "[i]n representing a client." That matches ABA Model Rule 4.2's application to lawyers' conduct. But it contrasts with ABA Model Rule 4.1's application to lawyers' conduct "[i]n the course of representing a client" and ABA Model Rule 4.3's application to lawyers's conduct "[i]n dealing on behalf of a client." It is unclear whether these different standards intend to apply to a substantively different scope of lawyers' conduct. Presumably the ABA Model Rules deliberately chose these consecutive ABA Model Rules' different formulations, but none of the Rules or Comments provide any guidance about the different standards' impact.	

ABA MODEL RULE 4.4(a)	
Note # 2	**Code # 2**
ABA Model Rule 4.4(a) prohibits lawyers from (among other things) using "means that have no substantial purpose other than to embarrass, delay, or burden a third person." Oddly missing from the list of impermissible motives is harassment of a third person. Other ABA Model Rules and Comments include harassment in similar lists: ABA Model Rule 3.5(c)(3); ABA Model Rule 7.3(c)(2); ABA Model Rule 7.3 cmt. [6]'s first sentence; ABA Model Rule 8.4(g); ABA Model Rule 8.4 cmt. [3] (every sentence). It is unclear why ABA Model Rule 4.4(a)'s list does not include this additional type of misbehavior.	

ABA MODEL RULE 5.1(b)(1)	
Note # 1	**Code # 3**
ABA Model Rule 5.1(b)(1) addresses a lawyer's responsibility for another lawyer's ethics violations. Such responsibility arises if the lawyer "orders or, with knowledge of the specific conduct, ratifies the conduct involved" (emphasis added). Notably, ABA Model Rule 5.1(b)(1) does not require the lawyer to know that the misbehaving lawyer's contact violates the ABA Model Rules. Perhaps that is a deliberate distinction, but ABA Model Rule 5.1 Comments do not address it.	

ABA MODEL RULE 5.1(b)(1)	
Note # 2	**Code # 4**
ABA Model Rule 5.1(b)(1) addresses a lawyer's responsibility for another lawyer's ethics violations. Such responsibility arises if "the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved" (emphasis added). The word "involved" seems unnecessary.	

ABA MODEL RULE 5.1 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 5.1 cmt. [3]'s concluding sentence explains that "the ethical atmosphere of a firm can influence the conduct of all its members." The word "members" is not defined. In common usage, the word "members" usually refers to owners of a law firm. That ABA Model Rule 5.1 cmt. [3] sentence would make more sense if the word "members" referred to "all lawyers in the firm" (the phrase in ABA Model Rule 5.1(a)). The ABA Model Rules General Notes discuss the inconsistent use of such terms.	

ABA MODEL RULE 5.1 cmt. [3]	
Note # 2	**Code # 4**
ABA Model Rule 5.1 cmt. [3]'s concluding sentence warns that "the partners [of a firm] may not assume that all lawyers associated with the firm will inevitably conform to the [ABA Model] Rules" (emphasis added). It is unclear whether the word "partners" differs in meaning from the word "members" appearing just three words earlier. Notably, ABA Model Rule 5.1(a) also uses the word "partner," but then refers to other lawyers who "possess[ ] comparable managerial authority in a law firm." Presumably ABA Model Rule 5.1 cmt. [3] would extend the same warning to those other non-partners. But it is unclear why ABA Model Rule 5.1 cmt. [3] on its face only extends the warning to a subset of the institutional managerial lawyers described in ABA Model Rule 5.1(a).	

ABA MODEL RULE 5.1 cmt. [3]	
Note # 3	**Code # 2**
ABA Model Rule 5.1 cmt. [3]'s concluding sentence warns that "the partners may not assume that all lawyers associated with the firm will inevitably conform to the [ABA Model] Rules" (emphasis added). The "associated with the firm" phrase contrasts with ABA Model Rule 5.1(a)'s very different phrase: "all lawyers in the firm." As the ABA Model Rules General Notes discuss, and as also mentioned above, the ABA Model Rules and Comments do not define the term "associated." But it is clear that some lawyers are "associated" with their law firm colleagues, and some are not. So ABA Model Rule 5.1 cmt. [3]'s warning only refers to a subset of lawyers in the firm - which seems inappropriate.	

ABA MODEL RULE 5.1 cmt. [6]	
Note # 1	**Code # 4**
ABA Model Rule 5.1 cmt. [6] explains that a subordinate lawyer's misconduct "could reveal" a direct supervisory lawyer's ethics violation (emphasis added). The word "reveal" presumably means to "bring to light" or "uncover." Notably, this is a more common-sense definition use of the word "reveal" than ABA Model Rule 1.6(a)'s use of the word "reveal" to mean "disclose." But given ABA Model Rule 1.6(a)'s use of the word "reveal," ABA Model Rule 5(d) cmt. [6]'s use of that word might cause confusion.	

ABA MODEL RULE 5.2 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 5.2 cmt. [2]'s first sentence contains the phrase "a matter involving professional judgment as to ethical duty." That sentence would be more readable if it contained the term "an ethical duty" (emphasis added).	

ABA MODEL RULE 5.2 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 5.2 cmt. [2]'s second sentence warns that "in a supervisor-subordinate relationship," "a consistent course of action or position could not be taken" unless "the supervisor . . . assume[s] responsibility for making the judgment" (emphasis added). That warning seems inapt. ABA Model Rule 5.2 cmt. [2]'s warning does not describe a scenario in which the subordinate and the direct supervisory lawyer disagree. So it seems possible (if not normal) for those two lawyers to agree on "a consistent course of action or position."	

ABA MODEL RULE 5.3	
Note # 1	**Code # 2**
ABA Model Rule 5.3 fails to mention ABA Model Rule 5.7. ABA Model Rule 5.7 cmt. [8]'s second and third sentences explain that when "the legal and law-related services [are] so closely entwined that they cannot be distinguished from each other," "a lawyer will be responsible for assuring . . . to the extent required by [ABA Model] Rule 5.3 that . . . non-lawyer employees['] [conduct] in the distinct entity that the lawyer controls complies in all respects with the [ABA Model] Rules of Professional Conduct." The requirement such non-lawyers' conduct "complies in all respects" with the ABA Model Rules contrasts linguistically with ABA Model Rule 5.3(b)'s phrase "is compatible with the professional obligations of the lawyer." Lawyers understandably would expect such guidance to deserve a reference in ABA Model Rule 5.3.	

ABA MODEL RULE 5.3	
Note # 2	**Code # 2**
ABA Model Rule 5.3 addresses supervision of, and lawyers' possible derivative liability for misconduct by, "a nonlawyer employed or retained by or associated with a lawyer" (emphasis added). Presumably the word "associated" differs from an employment relationship or a retention relationship. As the ABA Model Rules General Notes discuss, the ABA Model Rules and Comments do not define the term "associated," despite its key role in many ABA Model Rules' and Comments' analyses. But it seems clear that some lawyers are "associated" with their law firm colleagues, and some lawyers are not. It also seems clear that lawyers can be "associated" with lawyers from other firms (as when they share fees under ABA Model Rule 1.5(e) - addressed in ABA Model Rule 1.5 cmt. [7]), or even lawyers in a different state (described in ABA Model Rule 5.5(c)(1)). ABA Model Rule 5.3 introduces yet another expansion of the undefined term "associated." It would be helpful for ABA Model Rule 5.3 or some other ABA Model Rule or Comment to provide guidance on the word "associated"'s implication in the context of nonlawyers.	

ABA MODEL RULE 5.3(a)	
Note # 1	**Code # 2**

ABA Model Rule 5.3(a) requires specified lawyers to "make reasonably efforts to ensure" that classified "nonlawyers'" "conduct is compatible with the professional obligations of the lawyer" (emphasis added). The word "compatible" differs from ABA Model Rule 5.1(a)'s word "conform" – referring to similar steps lawyers must take to assure that lawyers (rather than nonlawyers) "conform" to lawyers' ethics rules. Presumably the ABA Model Rules deliberately chose different words.

There are three possibilities. First, the word "compatible" might intend exactly the same meaning as "comply" – but recognizes that technically nonlawyers are not bound by lawyers' ethics rules. As explained below, ABA Model Rule 5.3(c) seems to imply the identical conduct requirement. But people can "comply" with a rule that does not legally require such behavior. Compliance might be voluntary – but would still be considered "compliance." So if ABA Model Rule 5.3 and ABA Model Rule 5.1 intended to have the same meaning, ABA Model Rule 5.3(a) presumably could have contained the word "comply."

Second, perhaps ABA Model Rule 5.3(a)'s word "compatible" was intended to define a somewhat lower standard of compliance with the ABA Model Rule ethics rules. In other words, ABA Model Rule 5.3(a) requires nonlawyers to come pretty close to compliance with lawyers ethics rules but, not strictly "comply" with every ethics rule in the same way as lawyers (as ABA Model Rule 5.1(a) requires of lawyers).

ABA MODEL RULE 5.3(a)	
Note # 1	**Code # 2**

Third, perhaps ABA Model Rule 5.3(a)'s word "compatible" is intended to define nonlawyers' compliance with some but not all of the ABA Model Rules applicable to lawyers. In other words, the word "compatible" would demand nonlawyers' compliance with the ABA Model Rules applicable to lawyers' conduct when those nonlawyers engage in the same conduct in which lawyers engage – but not other conduct. For example, nonlawyers would be required to protect client confidential information in the same way lawyers would. But nonlawyers would not be required to comply with those ABA Model Rules governing lawyers' non-representational and even non-professional roles (primarily found in ABA Model Rule 8.4).

This approach does not require nonlawyers' watered-down compliance with lawyer ethic rules when such nonlawyers do what lawyers do when representing their clients. Instead, it entirely excludes nonlawyers' obligation to comply with the ethics rules applicable to lawyers when they act outside their representational role.

This third option sounds like the most logical. But if so, the word "compatible" is inapt. That word seems to imply a watered-down obligation - rather than obligation to comply with some of the ethics rules applicable to lawyers, but not others. ABA Model Rule 5.3 could have used the word "comply" – but make it clear that such compliance is only required when nonlawyers do what lawyers do when lawyers are representing their clients.

ABA MODEL RULE 5.3(a)	
Note # 1	**Code # 2**
So it remains unclear whether the words “compatible” and “comply” are intended to be synonymous, or intended to describe different levels or different areas of required conduct.	

ABA MODEL RULE 5.3(b)	
Note # 1	**Code # 4**
ABA Model Rule 5.3(b) describes the responsibility of "a lawyer having direct supervisory authority over the nonlawyer" (emphasis added). The word "a" might be more appropriate than the word "the." ABA Model Rule 5.3's introductory clause uses the better-sounding term "a nonlawyer" (emphasis added).	

ABA MODEL RULE 5.3(c)	
Note # 1	**Code # 4**
ABA Model Rule 5.3(c) addresses a lawyer's responsibility for certain specified "conduct of such a person" (emphasis added). The term "a nonlawyer" would seem more appropriate here than "such a person" (emphasis added).	

ABA MODEL RULE 5.3(c)(1)	
Note # 1	**Code # 4**
ABA Model Rule 5.3(c)(1) addresses lawyers' responsibility for nonlawyers' misconduct if "the lawyer orders or with the knowledge of a specific conduct, ratifies the conduct involved" (emphasis added). The word "the" seems unnecessary. Parallel ABA Model Rule 5.1(c)(1) (addressing the identical situation involving lawyers rather than nonlawyers) does not contain the word "the."	

ABA MODEL RULE 5.3(c)(1)	
Note # 2	**Code # 3**
ABA Model Rule 5.3(c)(1) addresses lawyers' responsibility for nonlawyers' misconduct if "the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved" (emphasis added). Thus, ABA Model Rule 5.3(c)(1)'s knowledge requirement only includes knowledge of the nonlawyers' "specific conduct" – not knowledge of the conduct's "violation of the [ABA Model] Rules of Professional Conduct if engaged in by a lawyer." Presumably that limited "knowledge" requirement is deliberate. If so, an explanatory Comment would be helpful.	

ABA MODEL RULE 5.3(c)(1)	
Note # 3	**Code # 4**
ABA Model Rule 5.3(c)(1) addresses a lawyer's responsibility for certain nonlawyer misconduct if the lawyer "orders or, with the knowledge of a specific conduct, ratifies the conduct involved" (emphasis added). Although it does no harm, the word "involved" seems unnecessary.	

ABA MODEL RULE 5.3(c)(2)	
Note # 1	**Code # 2**
ABA Model Rule 5.3(c)(2) addresses lawyers' responsibility for certain nonlawyer misconduct if the lawyer has a specified role in "the law firm in which the person is employed, or has direct supervisory authority over" the nonlawyer (emphasis added). ABA Model Rule 5.3(c)(2)'s "employed" condition describes only one of ABA Model Rule 5.3's introductory sentence's three types of relationships between nonlawyers and lawyers: "employed or retained by or associated with a lawyer" (emphasis added). It is unclear why ABA Model Rule 5.3(c)(2) does not similarly make partners or managerial lawyers responsible for nonlawyers' misconduct if their law firms have nonlawyers "retained by or associated with" those law firms. If that limitation was intended, it would be helpful to have a comment explaining the limitation.	

ABA MODEL RULE 5.3 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 5.3 cmt. [1]'s first sentence states that "[l]awyers generally employ" nonlawyers to assist in their practice (emphasis added). The word "employ" on its face refers to only one of three ABA Model Rule 5.3 introductory sentence's relationships between nonlawyers and lawyers: "employed or retained by or associated with a lawyer." ABA Model Rule 5.3 cmt. [1]'s second sentences confusingly refers to "[s]uch assistants, whether employees or independent contractors" (emphasis added). Presumably, "independent contractors" are not "employed" – but instead are either "retained by" or otherwise "associated with a lawyer" (as listed in ABA Model Rule 5.3's introductory sentence). It would be helpful for ABA Model Rule 5.3 cmt. [1] to be more clear and more complete.	

ABA MODEL RULE 5.3 cmt. [2]	
Note # 2	**Code # 2**
ABA Model Rule 5.3 cmt. [2]'s second sentence states that specified non-lawyers "act for the lawyer in rendition of the lawyer's professional services" (emphasis added). This seems incorrect. Such nonlawyers assist lawyers, they do not "act for" lawyers. This description is surprising, because the very next ABA Model Rule 5.3 Comment's first sentence correctly explains that lawyers "may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client" (emphasis added). It is unclear why ABA Model Rule 5.3 cmt. [2] deliberately uses the inapt "act for" phrase, rather than the more appropriate word "assist."	

ABA MODEL RULE 5.3 cmt. [2]	
Note # 3	**Code # 2**
ABA Model Rule 5.3 cmt. [2]'s third sentence states that lawyers "should be responsible for [employed nonlawyers] work product" (emphasis added). It is unclear what the word "responsible" means in this context. Black letter ABA Model Rule 5.3(c) contains the word "responsible" to describe lawyers' vulnerability for ethics discipline based on certain specified nonlawyer conduct. Presumably ABA Model Rule 5.3 cmt. [2]'s second sentence's word "responsible" is not intended to have that meaning. Instead, presumably the word "responsible" refers to a lawyer's obligation to supervise nonlawyers' creation of work product, and perhaps such lawyers' malpractice liability for any improper work product. A phrase such as "should supervise such nonlawyers' work" might be more appropriate (emphasis added).	

ABA MODEL RULE 5.3 cmt. [2]	
Note # 4	**Code # 3**
ABA Model Rule 5.3 cmt. [2]'s third sentence refers to nonlawyers' "work product." Presumably the term "work product" is intended to describe all the fruits of nonlawyers' work. If so, the term "work product" is inapt. Used elsewhere in the law, the term "work product" normally (but not always) refers to the fruits of lawyers and also nonlawyers work protected by the work product doctrine (the legal doctrine mentioned in ABA Model Rule 1.6 cmt. [3]). Thus, as commonly used, the term "work product" constitutes only a small subset of documents generated by nonlawyers' (and lawyers') work. ABA Model Rule 5.3 cmt. [2]'s third sentence's term "work product" probably would be more appropriate without the word "product" in it – so ABA Model Rule 5.3 cmt. [2]'s third sentence would end with the phrase "should supervise the nonlawyer's work."	

ABA MODEL RULE 5.4(a)(1)	
Note # 1	**Code # 3**
ABA Model Rule 5.4(a)(1) allows fee sharing with a deceased lawyer's "estate or [with] one or more specified persons" after the lawyer's death (emphasis added). That term contrasts with a different term in ABA Model Rule 5.4(a)(2): "the estate or other representative of that ['deceased, disabled, or disappeared'] lawyer (emphasis added)." Perhaps the latter is intended to be a subset of the former, but that is unclear.	

ABA MODEL RULE 5.4(a)(2)	
Note # 2	**Code # 3**
ABA Model Rule 5.4(a)(2) allows fee sharing with "the estate or other representative of that ["deceased, disabled, or disappeared"] lawyer" (emphasis added). That term contrasts with ABA Model Rule 5.4(a)(1)'s reference to a deceased lawyer's "estate or" "one or more specified persons" (emphasis added). Perhaps the former is intended to be a subset of the latter, but that is not clear.	

ABA MODEL RULE 5.4(c)	
Note # 1	**Code # 3**
ABA Model Rule 5.4(c) prohibits lawyers from allowing specified persons "to direct or regulate the lawyer's professional judgment in rendering . . . legal services" (emphasis added). That phrase (which also appears in ABA Model Rule 5.4 cmt. [2]), contrasts with the phrase "direct or control" in ABA Model Rule 5.4(d)(3), and the more generic words "interfere" (in ABA Model Rule 5.4 cmt. [1]'s fourth sentence) and "interference" (in ABA Model Rule 5.4 cmt. [2]'s concluding sentence). The generic word "interfere" would seem more appropriate in all of those places.	

ABA MODEL RULE 5.4(d)(2)	
Note # 1	**Code # 4**
ABA Model Rule 5.4(d)(2) describes a non-lawyer who "is a corporate director or officer thereof or occupies the position of similar responsibility" (emphasis added). The word "a" would seem more appropriate than the word "the."	

ABA MODEL RULE 5.4(d)(3)	
Note # 1	**Code # 3**
ABA Model Rule 5.4(d)(3) prohibits lawyers from allowing specified persons "to direct or control" the lawyer's professional judgment (emphasis added). That phrase contrasts with ABA Model Rule 5.4(c)'s phrase "direct or regulate," which also appears in ABA Model Rule 5.4 cmt. [2]'s first sentence, and the more generic words "interfere" (in ABA Model Rule 5.4 cmt. [1]'s concluding sentence) and "interference" (in ABA Model Rule 5.4 cmt. [2]'s concluding sentence). The generic word "interfere" would seem more appropriate in all of those places.	

ABA MODEL RULE 5.4 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 5.4 cmt. [1] warns that a non-client's payment of a lawyer's fee or salary (among other things) "does not modify the lawyer's obligation to the client" (emphasis added). The word "modify" seems somewhat inapt, because modification can be either an expansion or a contraction. The word "reduce" or "diminish" would seem more appropriate.	

ABA MODEL RULE 5.4 cmt. [1]	
Note # 2	**Code # 1**
ABA Model Rule 5.4 cmt. [1]'s first sentence refers to ABA Model Rule 5.4(c)'s warning that "such arrangements [under which a non-client "recommends, employs or pays the lawyer"] should not interfere with the lawyer's professional judgment" (emphasis added). As the ABA Model Rules General Notes discuss, some ABA Model Rule Comments contain the word "should" where the word "must" would be more appropriate, if not required. Here, the word "must" would be more appropriate, if not required.	

ABA MODEL RULE 5.4 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 5.4 cmt. [2] contains a reference to and summary of ABA Model Rule 1.8(f). Because that ABA Model Rule focuses on lawyers being paid by non-clients, it might be more appropriate in ABA Model Rule 5.4 cmt. [1]. ABA Model Rule 5.4 cmt. [2] seems to focus on black letter ABA Model Rule 5.4(d)'s description of permissible and impermissible practice arrangements (rather than payments from non-clients).	

ABA MODEL RULE 5.5(c)(4)	
Note # 1	**Code # 2**
ABA Model Rule 5.5(c)(4) describes a "lawyer's practice in a jurisdiction in which the lawyer is admitted to practice" (emphasis added). As the ABA Model Rules General Notes discuss, ABA Model Rule 5.5 contains various potentially confusing terms about lawyers' relationships with jurisdictions: "licensed"; "admitted"; "authorized." For instance, the word "admitted" can describe a lawyer's admission to practice law in a jurisdiction for all purposes, or for a limited purpose (such as lawyers admitted *pro hac vice*). Presumably ABA Model Rule 5.5(c)(4)'s phrase "admitted to practice" includes admission for all purposes. But the Rule would be clearer if that were explicitly stated.	

ABA MODEL RULE 5.5(d)(1)	
Note # 1	**Code # 3**
ABA Model Rule 5.5(d)(1) allows non-U.S. lawyers to provide advice "on the law of this or another U.S. jurisdiction or of the United States," as long as "such advice [is] based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice" (emphasis added). That would seem to prohibit (for example) an in-house lawyer permissibly practicing in Texas to rely on a Texas-licensed lawyer to provide advice about Delaware law. That Texas lawyer presumably would not be "duly licensed and authorized" by Delaware to provide advice about Delaware law.	

ABA MODEL RULE 5.5 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 5.5 cmt. [3]'s first sentence assures that lawyers "may provide professional advice and instruction" to various specified non-lawyers. That is what lawyers do, so that sentence seems superfluous.	

ABA MODEL RULE 5.5 cmt. [3]	
Note # 2	**Code # 3**
ABA Model Rule 5.5 cmt. [3]'s second sentence contains the term "independent nonlawyers." It is unclear what that terms means, although perhaps it distinguishes those non-lawyers from employed non-lawyers mentioned in the previous sentence. It would have been helpful for this Comment to provide some guidance.	

ABA MODEL RULE 5.5 cmt. [3]	
Note # 3	**Code # 3**
ABA Model Rule 5.5 cmt. [3]'s concluding sentence assures that "a lawyer may counsel non-lawyers who wish to proceed *pro se*." It might be helpful to warn lawyers that bars and (especially) courts often limit such activities as ghostwriting pleadings, etc.	

ABA MODEL RULE 5.5 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 5.5 cmt. [5]'s concluding sentence addresses lawyers' "systematic and continuous presence in this jurisdiction." ABA Model Rule 5.5 cmt. [5] otherwise addresses lawyers' temporary presence in the jurisdiction, so this concluding sentence might be more appropriately placed in ABA Model Rule 5.5 cmt. [4], which addresses lawyers' "systematic and continuous presence" issues.	

ABA MODEL RULE 5.5 cmt. [10]	
Note # 1	**Code # 2**
ABA Model Rule 5.5 cmt. [10]'s first sentence allows lawyers to temporarily practice in a jurisdiction in anticipation of a proceeding or hearing" in another specified jurisdiction (emphasis added). That permissible conduct would seem to be a subset of conduct in "connection with" a proceeding or hearing. For instance, lawyers might have to engage in conduct after (rather than before) "a proceeding or hearing" – such as reporting on the proceeding or hearing, etc. The phrase "in connection" might be more appropriate than "in anticipation of."	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 1	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s first sentence explains that black letter ABA Model Rule 5.5(c)(3) and (c)(4) require that the lawyer's services be related to the lawyer's practice "in a jurisdiction in which the lawyer is admitted" (emphasis added). Lawyers can be admitted in a jurisdiction for all purposes, or for limited purposes (such as admitted *pro hac* or under some other regulation). Presumably ABA Model Rule 5.5 cmt. [14]'s word "admitted" means that the lawyer is "admitted" for all purposes. But that could be made more clear.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 2	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s fifth sentence identifies as one sufficient relationship to a lawyer's home state "significant aspects of the lawyer's work might be conducted in that jurisdiction" (meaning the lawyer's home state). That seems like a strange sufficient relationship, because lawyers often if not usually conduct "significant aspects" of their work in their office. Transactional lawyers and litigators presumably work primarily in their office, and travel to other jurisdictions from time to time. So if that established sufficient relationship with their home state, it would seem that nearly every lawyer could easily satisfy the "reasonably related" standard. If that was intended, ABA Model Rule 5.5 cmt. [14] could be more explicit.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 3	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s sixth sentence explains that the "necessary relationship" between a lawyer's practice and her home state "might arise when the client's activities or the legal issues involve multiple jurisdictions." That it would seem irrelevant when analyzing whether a lawyer's services are "reasonably related" to the lawyer's practice in her home state. Theoretically that situation could be relevant if the lawyer was admitted in one of those "multiple jurisdictions", but ABA Model Rule 5.5 cmt. [14] does not require that.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 4	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s sixth sentence explains that the "necessary relationship" with the lawyer's home state "might arise" when "the officers of a multinational corporation" retain a lawyer to assess the merits of business sites in "multiple jurisdictions" (emphasis added). The fact that "officers" of such a multinational corporation retain a lawyer seems irrelevant. Corporate constituents other than "officers" can retain lawyers.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 5	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s sixth sentence explains that the "necessary relationship" with the lawyer's home state "might arise" when the officers of a multinational corporation" retain a lawyer to assess the merits of business sites in "multiple jurisdictions" (emphasis added). The fact that the corporation client is "multinational" would seem irrelevant in analyzing the "reasonable relationship" between a lawyer and her home jurisdiction.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 6	**Code # 2**
ABA Model Rule 5.5 cmt. [14]'s seventh sentence identifies as establishing the required "necessary relationship" with a lawyer's home jurisdiction the following: "the [lawyer's] services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law" (emphasis added). Whether the lawyer's expertise is "recognized" would seem irrelevant when assessing a relationship between the lawyer's services and her practice in her home jurisdiction.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 7	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s seventh sentence identifies as establishing the required "necessary relationship" with a lawyer's home jurisdiction the following: "the [lawyer's] services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law" (emphasis added). Whether the lawyer's recognized expertise is developed through the "regular" practice of law would seem irrelevant. A new lawyer or former professor might meet the required standard without having developed it through the "regular" practice of law.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 8	**Code # 3**
ABA Model Rule 5.5 cmt. [14]'s seventh sentence identifies as establishing the required "necessary relationship" with a lawyer's home jurisdiction the following: "the [lawyer's] services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law" (emphasis added). The term "particular body" seems inapt. Lawyers by definition always deal with "a particular body" of law.	

ABA MODEL RULE 5.5 cmt. [14]	
Note # 9	**Code # 2**
ABA Model Rule 5.5 cmt. [14]'s seventh sentence identifies as establishing the required "necessary relationship" with a lawyer's home jurisdiction the following: "the [lawyer's] services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law" (emphasis added). This possible scenario meeting the "necessary relationship" with a lawyer's home jurisdiction presumably does not need to have anything to do with the lawyer's home jurisdiction. In other words, a lawyer's expertise in those areas of law need not be "related to the lawyer's practice in the jurisdiction in which the lawyer is admitted to practice" - other than perhaps that the lawyer acquired that expertise while physically in such a jurisdiction. So ABA Model Rule 5.5 cmt. [14] essentially creates an exception that it not supported by black letter ABA Model Rule 5.5(c)(4).	

ABA MODEL RULE 5.5 cmt. [15]	
Note # 1	**Code # 1**
ABA Model Rule 5.5 cmt. [15]'s concluding sentence contains the phrase "systematic or continuous presence" (emphasis added). That phrase contrasts with black letter ABA Model Rule 5.5(b)(1) and even with ABA Model Rule 5.5 cmt. [15]'s first sentence – which contains the proper phrase "systematic and continuous presence" (emphasis added).	

ABA MODEL RULE 5.5 cmt. [15]	
Note # 2	**Code # 4**
ABA Model Rule 5.5 cmt. [15]'s concluding sentence explains that in certain situations lawyers "must become admitted to practice law generally in this jurisdiction (emphasis added). The phase "must become admitted" seems awkward. A phrase such as "must gain admission" or "must obtain admission" would seem more linguistically appropriate.	

ABA MODEL RULE 5.5 cmt. [16]	
Note # 1	**Code # 3**
ABA Model Rule 5.5 cmt. [16]'s second sentence begins with the phrase "[t]his paragraph" (emphasis added). That seems incorrect. Presumably ABA Model Rule 5.5 cmt. [16]'s second sentence intends to refer to black letter ABA Model Rule "[p]aragraph (d)(1)" – referred to in the preceding sentence. So the term "[t]hat paragraph" would be more clear.	

ABA MODEL RULE 5.5 cmt. [16]	
Note # 3	**Code # 4**
ABA Model Rule 5.5 cmt. [16]'s concluding sentence explains that a foreign lawyer "needs to base" advice about U.S. law on a U.S.'s lawyer's advice. The phrase "needs to" seems awkward. The word "must" might be more appropriate.	

ABA MODEL RULE 5.5 cmt. [17]	
Note # 1	**Code # 3**
ABA Model Rule 5.5 cmt. [17] describes an in-house lawyer who "establishes an office or other systematic presence" in a jurisdiction. That is a mismatch with black letter ABA Model Rule 5.5(d)'s phrase "office or other systematic and continuous presence" (emphasis added).	

ABA MODEL RULE 5.6(a)	
Note # 1	**Code # 4**
ABA Model Rule 5.6(a) contains a list of possible employment-related agreements: "partnership, shareholders, operating, employment, or other similar type of agreement" (emphasis added). It is unclear why the word "shareholders" is in the plural while the other words are in the singular.	

ABA MODEL RULE 5.7	
Note # 1	**Code # 2**
ABA Model Rule 5.7 essentially requires lawyers providing law-related services (rather than legal services) to provide all of the client protections required of lawyers when they provide legal services – unless those lawyers take "reasonable measures" warning the recipients of such law-related services that they will not receive such protections. Thus, there is no requirement that the recipients of such law-related services actually understand that they will not receive those protections. It might make sense to safeguard those recipients by requiring the type of written assistance and written consents required when lawyers "enter into a business transaction with a client" under ABA Model Rule 1.8(a). In essence, that is factually similar to the scenario covered by ABA Model Rule 5.7, and it is unclear why the same disclosure and consent requirements do not apply in the ABA Model Rule 5.7 scenario.	

ABA MODEL RULE 5.7(a)	
Note # 1	**Code # 4**
ABA Model Rule 5.7(a)(1) contains the word “provision” in describing lawyers’ law-related services. As the ABA Model Rules General Notes discuss, ABA Model Rules sometimes contain different words in describing the same actions. For instance, ABA Model Rule 5.4(c) contains the word “render” and “rendering” in describing legal services. Perhaps ABA Model Rule 5.7(a) intends to distinguish between law services and law-related services by using these different words, but that seems unlikely. Using a consistent word (either “providing” or “rendering”) would be more clear.	

ABA MODEL RULE 5.7(a)(2)	
Note # 1	**Code # 3**
ABA Model Rule 5.7(a)(2) imposes on lawyers providing law-related services all of the ABA Model Rules' requirements imposed on lawyers providing legal services if the lawyer "fails to take reasonable measures to assure" that the person receiving the law-related services knows that she will not receive the normal client-lawyer relationship protections. (emphasis added) The word "assure" seems inapt. Usually, the word "assure" has a positive meaning, promising some benefit. But in ABA Model Rule 5.7(a)(2) the word "assure" describes a scenario benefitting the lawyer, but depriving the recipient of law-related services of the client-lawyer protections. The word "warn" would be more appropriate if ABA Model Rule 5.7 intends to focus on clients rather than on lawyers. The same is true of the word "assure" in ABA Model Rule 5.7 cmt. [6] and the word "desired" in ABA Model Rule 5.7 cmt. [7] (explained below).	

ABA MODEL RULE 5.7(a)(2)	
Note # 2	**Code # 3**
ABA Model Rule 5.7(a)(2) does not require lawyers to warn recipients of law-related activity in writing they will not receive normal client-lawyer protections. The absence of a writing requirement contrasts with ABA Model Rule 1.18(a), which requires such writing in a somewhat analogous scenario (in which lawyers and clients do business together).	

ABA MODEL RULE 5.7(b)	
Note # 1	**Code # 3**
ABA Model Rule 5.7(b) defines "law-related services" as "services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services" (emphasis added). That uncertain standard could generate confusion. The words "are often performed" might be more appropriate.	

ABA MODEL RULE 5.7 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 5.7 cmt. [1]'s first sentence describes the scenario "[w]hen a lawyer performs law-related services" (emphasis added). The word "performs" presumably is intended to be synonymous with the word "provides" (variations of which appear throughout ABA Model Rule 5.7 and its Comments) – but which differs from the word "render" contained in ABA Model Rule 5.4 and elsewhere. Presumably all three of those terms are intended to be synonymous, but using the same word might be appropriate.	

ABA MODEL RULE 5.7 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 5.7 cmt. [6]'s first sentence contains the word "assure" twice, as in ABA Model Rule 5.7(a)(2). As explained above, the word "assure" normally describes a beneficial explanation. As in black letter ABA Model Rule 5.7(a)(2), ABA Model Rule 5.7 cmt. [6]'s first sentence uses the word "assure" in a way that is harmful to the recipient of law-related services – who will not receive normal client-lawyer relationship protections. The word "warn" would be more appropriate if the focus is on the client rather than the lawyer.	

ABA MODEL RULE 5.7 cmt. [6]	
Note # 2	**Code # 2**
ABA Model Rule 5.7 cmt. [6]'s concluding sentence claims that lawyers should warn the recipients of law-related services that they will not receive client-lawyer relationship protections – "preferably… in writing." If ABA Model Rule 5.7's goal is to protect those recipients, it might be appropriate to require such warning to be in writing (as in ABA Model Rule 1.8(a)(2) and (3)).	

ABA MODEL RULE 5.7 cmt. [7]	
Note # 1	**Code # 3**
ABA Model Rule 5.7 cmt. [7]'s first sentence explains that "[t]he burden is upon the lawyer" to explain to law-related services recipients that they will not receive client-lawyer relationship protections – described at the end of the sentence as "the desired understanding" (emphasis added). As with black letter ABA Model Rule 5.7(a)(2)'s and ABA Model Rule 5.7 cmt. [6]'s use of the word "assure," ABA Model Rule 5.7 cmt. [7] use of the word "desired" seems inapt. Like the word "assure," the word "desired" normally describes a good, or a benefit. ABA Model Rule 5.7 cmt. [7]'s "desired understanding" is harmful to law-related service recipients, although it is desirable for the lawyer hoping to avoid giving such recipients client-lawyer relationship protections.	

ABA MODEL RULE 5.7 cmt. [8]	
Note # 1	**Code # 3**
ABA Model Rule 5.7 cmt. [8]'s first sentence and second sentence both contain the word "risk" in describing law-related service recipients' expectation that they will receive client-lawyer relationship protections. As with the words "assure" and "desired" discussed above, the word "risk" seems inapt. The words "assure" and "desired" normally refer to a benefit or a good, but ABA Model Rule 5.7 and its Comments use them to describe a detriment to the client (although a benefit to the lawyer). The word "risk" normally refers to a bad situation. ABA Model Rule 5.7 cmt. [8] uses the word "risk" when referring to a bad situation for the lawyer – but a good situation for law-related service recipients. Thus, that word continues ABA Model Rule 5.7's theme favoring lawyers rather than law-related service recipients.	

ABA MODEL RULE 5.7 cmt. [8]	
Note # 2	**Code # 4**
ABA Model Rule 5.7 cmt. [8]'s second sentence contains the word "renders" in describing lawyers' services and law-related services. As explained above, ABA Model Rule 5.7 and its Comments contain both the word "provide" and "performed" – presumable intended to be synonymous with the word "render." But using the same word to describe the same thing might be appropriate.	

ABA MODEL RULE 5.7 cmt. [10]	
Note # 1	**Code # 4**
ABA Model Rule 5.7 cmt. [10]'s first sentence and concluding sentence contains the term "special care." It is unclear what the word "special" adds to the requirement that lawyers take the required "care." Using the word "special" in this ABA Model Comment risks distinguishing such "special care" from the word "care" used elsewhere.	

ABA MODEL RULE 5.7 cmt. [10]	
Note # 2	**Code # 4**
ABA Model Rule 5.7 cmt. [10] first sentence contains the phrase "scrupulously adhere" (emphasis added). It is unclear what the word "scrupulously" adds to the requirement that lawyers "adhere" to the ABA Model Rule 1.6's requirements. Use of the word "scrupulously" has the same risk that using the word "special" and the phrase "in all respects" (discussed above and discussed below).	

ABA MODEL RULE 5.7 cmt. [10]	
Note # 3	**Code # 4**
ABA Model Rule 5.7 cmt. [10]'s concluding sentence contains the phrase "in all respects comply" in describing lawyers' obligation to comply with specified ABA Model Rules (emphasis added). As with ABA Model Rule 5.7 cmt. [10]'s use "special" and "scrupulously" (discussed above), the words "in all respects" seem unnecessary, and runs the risk of distinguishing ABA Model Rule 5.7 cmt. [10]'s scenario from other ABA Model Rules scenarios requiring that lawyers "comply" with ABA Model Rules.	

ABA MODEL RULE 6.1	
Note # 1	**Code # 4**
ABA Model Rule 6.1 contains the word “provide” in describing lawyers’ legal services. As the ABA Model Rules General Notes discuss, the ABA Model Rules and Comments contain several different words when describing lawyers’ services: “render,” “provide,” “perform.” Those words presumably are intended to be synonymous, but using the same word to mean the same thing might be appropriate.	

ABA MODEL RULE 6.1	
Note # 2	**Code # 4**
ABA Model Rule 6.1 contains the term "(50) hours." ABA Model Rule 6.1(a) contains the same term. But ABA Model Rule 6.1 cmt. [1]'s second sentence contains the term "50 hours" without the parentheses. Elsewhere, ABA Model Rule 1.17(c)(3) contains a different format for describing a number: "within ninety (90) days of receipt of the notice," as explained in ABA Model Rule 1.7 cmt. [4]'s concluding sentence. Presumably the parentheses do not signify a jurisdiction's ability to choose from among several ABA Model Rule options. The ABA Model Rules use brackets for that purpose (such as in ABA Model Rule 1.17(a) – which invites states to choose between "[in a geographic area]" and "[in that jurisdiction], as explained in ABA Model Rule 1.7 cmt. [4]'s concluding sentence."	

ABA MODEL RULE 6.1(b)	
Note # 1	**Code # 3**
ABA Model Rule 6.1(b) explains that lawyers should "provide any <u>additional</u> services" in specified ways (emphasis added). ABA Model Rule 6.1(b)'s word "additional" presumably refers to the minority of ABA Model Rule 6.1(a)'s suggested 50 hours of legal services might be more clear if ABA Model 6.1(b)'s phase "provide any additional services through" was replaced with "provide the additional hours of legal services through." This would also tend to clarify the meaning of ABA Model Rule 6.1(b)'s final sentences' phrase "[i]n addition" – which presumably refer to lawyers' efforts above and beyond the 50 hours of suggested pro bono services.	

ABA MODEL RULE 6.1(b)	
Note # 2	**Code # 4**
ABA Model Rule 6.1(b)'s final sentence might be more clear if it were given a separate heading: ABA Model Rule 6.1(c).	

ABA MODEL RULE 6.1(b)	
Note # 3	**Code # 3**
ABA Model Rule 6.1(b)'s concluding sentences contains the term "[i]n addition." Unlike ABA Model Rule 6.1(b)'s first sentence's word "additional" (which presumably refers to a minority of the suggested 50 hours of legal services), ABA Model Rule 6.1(b)'s concluding sentence's word "addition" presumably means above and beyond the 50 hours of suggested legal services. Changing ABA Model Rule 6.1(b)'s first use of the phrase "any additional" to the phrase "the remainder of the" would clarify that reference and this reference.	

ABA MODEL RULE 6.1 cmt. [3]	
Note # 1	**Code # 4**
ABA Model Rule 6.1 cmt. [3]'s first sentence describes persons "whose incomes and financial resources and slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel." The comma would seem more appropriate after the word "programs" and before the word "but."	

ABA MODEL RULE 6.1 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 6.1 cmt. [5] contains a reference to “government and public sector lawyers and judges.” It is unclear how the word “government” differs from the word “public sector” – those words normally are intended to be synonymous.	

ABA MODEL RULE 6.1 cmt. [5]	
Note # 2	**Code # 4**
ABA Model Rule 6.1 cmt.[5]'s concluding sentence claims that "government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b)" (emphasis added). Judges may not practice law, so presumably judges may only provide services described in ABA Model Rule 6.1(b)(3). No judge is likely to be confused by the more general reference, but a more specific explanation might be helpful.	

ABA MODEL RULE 6.1 cmt. [7]	
Note # 1	**Code # 3**
ABA Model Rule 6.1 cmt. [7]'s concluding sentence ends with a reference to "this section" (emphasis added). It is unclear what the word "section" means.	

ABA MODEL RULE 6.1 cmt. [9]	
Note # 1	**Code # 4**
ABA Model Rule 6.1 cmt. [9]'s second sentence explains that "there may be times when it is not feasible for a lawyer to engage in pro bono services" (emphasis added). The word "times" seems inapt. The word "times" has a temporal aspect that may not be intended. Words such as "circumstances" or "occasions" might be more appropriate.	

ABA MODEL RULE 6.1 cmt. [9]	
Note # 2	**Code # 4**
ABA Model Rule 6.1 cmt. [9]'s second sentence explains that "there may be times when it is not feasible for a lawyer to engage in pro bono services" (emphasis added). As the ABA Model Rules General Notes discuss, the ABA Model Rules and Comments use different words to describe what are presumably intended to mean the same thing in describing lawyers' legal services: "render;" "provide;" and "perform." Presumably the words "engage in" are intended to mean the same thing. Using the same word to mean to the same thing might be more appropriate.	

ABA MODEL RULE 6.1 cmt. [9]	
Note # 3	**Code # 3**
ABA Model Rule 6.1 cmt. [9]'s third sentence refers to organizations "providing free legal services to persons of limited means" (emphasis added). This definition excludes organizations that provide reduced-fee legal services. Perhaps that is the intended approach, but it seems arguably inappropriate.	

ABA MODEL RULE 6.2	
Note # 1	**Code # 3**
ABA Model Rule 6.2 fails to mention ABA Model Rule 1.16 cmt. [5], which provides specific guidance for clients' "discharge [of] appointed counsel." It would be helpful for ABA Model Rule 6.2 to explicitly point to that possibly applicable guidance.	

ABA MODEL RULE 6.2	
Note # 2	**Code # 3**
ABA Model Rule 6.2 fails to mention ABA Model Rule 1.2(b) and ABA Model Rule 1.2 cmt. [5], which specifically address lawyers representing clients "by appointment." It seems especially unfortunate that ABA Model Rule 6.2 does not reference ABA Model Rule 1.2(b)'s assurance that "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities" (emphasis added).	

ABA MODEL RULE 6.2 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 6.2 cmt. [2]'s second sentence describes a scenario that presumably would result in an improper conflict of interest: "when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client" (emphasis added). If ABA Model Rule 6.2 cmt. [2]'s standard intends to incorporate ABA Model Rule 1.7(a)(2)'s so-called "material limitation" conflict, it misses the mark. ABA Model Rule 1.7(a)(2) considers is it a conflict "if there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer (emphasis added).	

ABA MODEL RULE 6.2 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 6.2 cmt. [2]'s concluding sentence explains that lawyers may decline an appointment "when it would impose a financial sacrifice so great as to be unjust" (emphasis added). The word "unjust" seems inapt. That word normally refers to something other than money. It might be more appropriate for ABA Model Rule 6.2 cmt. [2] to use the ABA Model Rule 1.16(b)(6) discretionary withdrawal standard: "the representation will result in an unreasonable financial burden on the lawyer" (emphasis added).	

ABA MODEL RULE 6.3 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 6.3 cmt. [2]'s concluding sentence begins with the phrase "[e]stablished, written policies." It is unclear whether that phrase requires a comma.	

ABA MODEL RULE 6.4	
Note # 1	**Code # 3**
ABA Model Rule 6.4 addresses situations in which a lawyer's involvement in a law reform organization "may affect the interests of a client of the lawyer" (emphasis added). But black letter ABA Model Rule 6.4 and ABA Model Rule 6.4 cmt. [1] only describe such an involvement that will benefit the lawyer's client, not harm the lawyer's client. It is unclear whether ABA Model Rule 6.4 applies in the latter scenario.	

ABA MODEL RULE 6.4	
Note # 2	**Code # 4**
ABA Model Rule 6.4's second sentence contains the word "benefitted" – with two t's. ABA Model Rule 6.4 cmt. [1]'s concluding sentence also contains the word "benefitted." The spelling apparently is commonly used in the United Kingdom, but in the United States it seems the word "benefited" (with one "t") is more common.	

ABA MODEL RULE 6.4	
Note # 3	**Code # 4**
ABA Model Rule 6.4's second sentence describes a lawyer's duty if her client's interests "may be materially benefitted by a decision in which the lawyer participates" (emphasis added). The word "decision" seems somewhat inapt. Presumably the client's interests would be "materially benefitted" by organization's resulting action or inaction – not the organization's "decision."	

ABA MODEL RULE 6.4	
Note # 4	**Code # 2**
ABA Model Rule 6.4's concluding sentence explains that "[w]hen the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client" (emphasis added). It might be more appropriate for ABA Model Rule 6.4 to instead require the lawyer's recusal from such a "decision" – especially if the lawyer's required disclosure does not include the potentially material identity of the lawyer's client that "may be materially benefitted by a decision in which the lawyer participates."	

ABA MODEL RULE 6.4	
Note # 5	**Code # 2**

ABA Model Rule 6.4's second sentence explains that "[w]hen the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client" (emphasis added). It seems inappropriate for a lawyer to participate in such an organization's decision after merely disclosing the fact that the decision might materially benefit one of her clients – but without identifying that client. The client's identity (or at least additional facts) might be material to the lawyer's organizational colleagues participating in the decision. For instance, another lawyer serving in the same role might view the disclosing lawyer's vote differently if the disclosing lawyer's client who "may be materially benefitted" represented 90% of the disclosing lawyer's fee income rather than 1%. In the former situation, the disclosing lawyer's colleagues might understandably suggest or even insist that the lawyer recuse herself from the decision.

ABA MODEL RULE 6.4 cmt. [1]	
Note # 1	**Code # 3**
ABA Model Rule 6.4 cmt. [1]'s second sentence describes a lawyer's involvement "in a bar association law reform program that might indirectly affect a client" (emphasis added). It is unclear what the word "program" refers to. Black letter ABA Model Rule 6.4 does not mention programs – it mentions "a decision."	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 2	**Code # 3**
ABA Model Rule 6.4 cmt. [1]'s second sentence is followed by a reference to ABA Model Rule 1.2(b). That seems like an inapt reference. ABA Model Rule 1.2(b) states that "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities" (emphasis added). ABA Model Rule 6.4 does not apply to lawyers who represent "an organization involved in reform of the law or its administration." Instead, it applies to a lawyer who serves "as a director, officer or member" of such an organization.	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 3	**Code # 3**
ABA Model Rule 6.4 cmt. [1] provides the example of "a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject" (emphasis added). In this strangely specific example, the phrase "might be regarded as disqualified" seems inapt. It would seem that the issue is whether she is (or should be) disqualified from such participation – not whether she "might be regarded as disqualified" from such participation.	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 4	**Code # 4**
ABA Model Rule 6.4 cmt. [1]'s concluding sentence states that "[a] lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted" (emphasis added). The word "professionally" seems superfluous.	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 5	**Code # 4**
ABA Model Rule 6.4 cmt. [1]'s concluding sentence states that "[a] lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted" (emphasis added). It is unclear what the word "integrity" means here.	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 6	**Code # 3**
ABA Model Rule 6.4 cmt. [1]'s concluding sentence states that "[a] lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted" (emphasis added). As explained above (in connection with ABA Model Rule 6.4 cmt. [1]'s second sentence's use of the word "program"), it is unclear what that word means. It might be appropriate to instead use the word "activities," which appears in the preceding sentence.	

ABA MODEL RULE 6.4 cmt. [1]	
Note # 7	**Code # 3**
ABA Model Rule 6.4 cmt. [1]'s concluding sentence states that "[a] lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a <u>private</u> client might be materially benefitted" (emphasis added). It is unclear what the word "private" means here. The word "private" does not precede the word "client" in black letter ABA Model Rule 6.4 or the word "clients" appearing in the preceding ABA Model Rule 6.4 cmt. [1] sentence.	

ABA MODEL RULE 6.5(a)(1)	
Note # 1	**Code # 3**
ABA Model Rule 6.5(a)(1) describes a scenario when "the representation of the client involves a conflict of interest" (emphasis added). The word "involves" (which is also used in ABA Model Rule 1.7(a)) contrasts with the word "presents" – which appears in ABA Model Rule 6.5 cmt. [3]. Presumably those words are intended to be synonymous, but if not the ABA Model Rules should explain any intended differences.	

ABA MODEL RULE 6.5 cmt. [1]	
Note # 1	**Code # 2**
ABA Model Rule 6.5 cmt. [1]'s concluding sentence describes a scenario "in which it is not feasible for a lawyer to systematically screen for conflicts of interest" (emphasis added). The word "screen" seems inapt. ABA Model Rule 1.0(k) defines the similar word "[s]creened." ABA Model Rule 1.0 cmts. [8] – [10] also use the word "screen." That black letter ABA Model Rule and its Comments use the word "screen" to mean a specified separation of law firm colleagues from each other. Because the word "screen" is an ABA Model Rule defined term, it would be preferable (if not necessary) for ABA Model Rule 6.5 cmt. [1]'s concluding sentence to use the word "check" or some other similar word.	

ABA MODEL RULE 7.1 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 7.1 cmt. [3]'s second sentence describes a standard for determining if a lawyer's communication about her services "may be misleading:" "if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated" (emphasis added). ABA Model Rule 7.1 cmt. [3]'s concluding sentence articulates a different standard when addressing "[t]he inclusion of an appropriate disclaimer or qualifying language," which "may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public" (emphasis added). It is unclear whether ABA Model Rule 7.1 cmt. [3] second sentence's "would lead a reasonable person to conclude" standard is intended to be the same as or different from ABA Model Rule 7.1 cmt. [3]'s concluding sentence's standard: "likely to create unjustified expectations or otherwise mislead the public." If so, ABA Model Rule 7.1 cmt. [3] should explain the difference.	

ABA MODEL RULE 7.1 cmt. [5]	
Note # 1	**Code # 4**
ABA Model Rule 7.1 cmt. [5]'s second sentence assures that the law firm's name "may be designated by the names of all or some of its current members" (emphasis added). It is unclear what the word "members" means. ABA Model Rule 1.0(g) defines "partner" as "denot[ing] a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law" (emphases added). ABA Model Rule 7.1 cmt. [5] thus on its face may not allow a professional corporation to include in its name the name of its shareholders – because that shareholder apparently would be a "partner," but not a "member," of the professional corporation.	

ABA MODEL RULE 7.1 cmt. [5]	
Note # 2	**Code # 3**
ABA Model Rule 7.1 cmt. [5]'s fourth sentence prohibits a law firm from using in its name the name of "a lawyer not associated with the firm" (emphasis added). As the ABA Model Rule General Notes discuss, the ABA Model Rules do not define the word "associated," although that relationship plays a key role in many ABA Model Rules' application and analysis. However, it seems clear that some lawyers are "associated" with their law firm colleagues and some are not. ABA Model Rule 7.1 cmt. [5] does not allow a law firm to use in its name a lawyer who is not "associated" with the law firm. That may be an intentional exclusion, but the ABA Model Rules' ambiguous and inconsistent use of the word "associated" does not provide assurance that the exclusion is intentional.	

ABA MODEL RULE 7.1 cmt. [7]	
Note # 1	**Code # 4**
Under ABA Model Rule 7.1 cmt. [7], lawyers may not "imply" or "hold" themselves out as practicing together in <u>one</u> firm when they are not a firm" (emphasis added). The word "a" might be more appropriate than the word "one" here.	

ABA MODEL RULE 7.2 cmt. [4]	
Note # 1	**Code # 2**
ABA Model Rule 7.2 cmt. [4]'s first sentence addresses lawyers' nominal gifts to a person for (among other things) "referring a prospective client" (emphasis added). ABA Model Rule 1.18(a) defines "a prospective client" as "[a] person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter." Presumably ABA Model Rule 7.2 cmt. [4] contained the term "prospective client" before the ABA adopted ABA Model Rule 1.18(a)'s explicit and limiting definition. The term "possible client" or some other similar term might now be more appropriate here.	

ABA MODEL RULE 7.2 cmt. [6]	
Note # 2	**Code # 2**
ABA Model Rule 7.2 cmt. [6]'s first three sentences use the singular when referring to "a legal service plan" and a "not-for-profit or qualified lawyer referral service." ABA Model Rule 7.2 cmt. [6] then inexplicably switches to the plural when referring to "[q]ualified referral services."	

ABA MODEL RULE 7.2 cmt. [6]	
Note # 2	**Code # 2**
ABA Model Rule 7.2 cmt. [6]'s fourth sentence defines "[q]ualified referral services." It is unclear whether such a "[q]ualified referral service[]" is the same as a "qualified lawyer referral service" – which is referenced in ABA Model Rule 7.2 cmt. [6]'s next sentence. ABA Model Rule 7.2 cmt. [6]'s fifth sentence defines "[a] qualified lawyer referral service." It is unclear whether that definition supplements ABA Model Rule 7.2 cmt. [6]'s fourth sentence's definition, or whether it instead defines a different type of entity.	

ABA MODEL RULE 7.2 cmt. [6]	
Note # 3	**Code # 4**
ABA Model Rule 7.2 cmt. [6]'s fifth sentence begins with the word "[c]onsequently." It is unclear why that sentence is a consequence of the earlier sentences.	

ABA MODEL RULE 7.2 cmt. [6]	
Note # 4	**Code # 3**
ABA Model Rule 7.2 cmt. [6]'s sixth sentence seems to add another condition to the definition of "a qualified lawyer referral services." ABA Model Rule 7.2 cmt. [6]'s fourth sentence purports to define such "[q]ualified referral services." But two sentences later, ABA Model Rule 7.2 cmt. [6]'s sixth sentence presumably adds another condition: "[a] qualified lawyer referral service is one that is approved by appropriate regulatory authority as affording adequate protections for the public." ABA Model Rule 7.2 cmt. [6] would be clearer if just one sentence defined a "qualified lawyer referral service."	

ABA MODEL RULE 7.2 cmt. [8]	
Note # 1	**Code # 3**
ABA Model Rule 7.2 cmt. [8]'s concluding sentence explains that ABA Model Rule 7.2 "does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities" (emphasis added). It would be helpful if ABA Model Rule 7.2 cmt. [8] provided further guidance about such firms.	

ABA MODEL RULE 7.3(b)	
Note # 1	**Code # 4**
ABA Model Rule 7.3(b) contains the term “live person-to-person contact.” This slightly contrasts with ABA Model Rule 7.3 cmt. [6]’s second sentence, which contains the phrase “[l]ive, person-to-person contact” – including a comma between the word “[l]ive” and the term “person-to-person.”	

ABA MODEL RULE 7.3 cmt. [4]	
Note # 1	**Code # 4**
ABA Model Rule7.3 cmt. [4]'s first sentence states that "[t]he <u>contents</u> of live person-to-person contact can be disputed" (emphasis added). The singular word "content" might be more appropriate than the plural "contents."	

ABA MODEL RULE 7.3 cmt. [5]	
Note # 1	**Code # 3**
ABA Model Rule 7.3 cmt. [5]'s first sentence states that lawyers are less likely to engage in overreaching when soliciting "a former client." This is a mismatch with black letter ABA Model Rule 7.3(b)(2), which allows specified solicitation with "a . . . person who has a . . .prior business or professional relationship with the lawyer or law firm" (emphasis added). A lawyer's "former client" presumably falls within the definition of a person "who has a . . .prior . . . professional relationship with the lawyer." But ABA Model Rule 7.3 cmt. [5] does not include within its list a "a . . . person who has a . . . prior . . . professional relationship with the . . . law firm."	

ABA MODEL RULE 7.3 cmt. [5]	
Note # 2	**Code # 3**
ABA Model Rule 7.3 cmt. [5]'s first sentence states that lawyers are less likely to engage in overreaching when soliciting work from a person "with whom the lawyer has a close personal, family, business or professional relationship." That lists contrasts with black letter ABA Model Rule 7.3(b)(2)'s list "a . . . person who has a family, close personal, or prior business or professional relationship with the lawyer" (emphasis added). The lists are in different order, but more significantly ABA Model Rule 7.3 cmt. [5]'s list does not contain the word "prior."	

ABA MODEL RULE 7.3 cmt. [6]	
Note # 1	**Code # 4**
ABA Model Rule 7.3 cmt. [6]'s first sentence cites and summarizes the prohibition in black letter ABA Model Rule 7.3(c)(2) before citing and describing the prohibition in the previous black letter ABA Model Rule 7.3(c)(1). Logically, one would expect ABA Model Rule 7.3 cmt. [6] to follow the black letter ABA Model Rule 7.3 order – starting with ABA Model Rule 7.3(c)(1), then returning to ABA Model Rule 7.3(c)(2).	

ABA MODEL RULE 7.3 cmt. [6]	
Note # 1	**Code # 4**
ABA Model Rule 7.3 cmt. [6]'s concluding sentence addresses "[l]ive, person-to-person contact." That slightly contrasts with black letter ABA Model Rule 7.3(b)'s reference to "live person-to-person contact" – which does not contain a comma between the word "live" and the term "person-to-person."	

ABA MODEL RULE 8.1(b)	
Note # 1	**Code # 2**
ABA Model Rule 8.1(b) prohibits lawyer applicants for a bar admission from failing to disclose specified facts, but there is an exception: "except that this rule does not require disclosure of information otherwise protected by [ABA Model] Rule 1.6." As a matter of policy, that seems inappropriately broad. ABA Model Rule 1.6(a) protects all "information relating to the representation of a client." Notably, ABA Model Rule 8.1(b)'s exception allows lawyers to withhold the specified information even if ABA Model Rule 1.6(b) would allow its disclosure. Thus, it contrasts with ABA Model Rule 4.1(b), which contains a much narrower exception – allowing lawyers to withhold specified information only if "disclosure is prohibited by [ABA Model] Rule 1.6." In other words, ABA Model Rule 4.1(b) requires disclosure unless ABA Model Rule 1.6 prohibits such disclosure – ABA Model Rule 8.1(b) requires disclosure unless ABA Model Rule 1.6 protects it.	

ABA MODEL RULE 8.1 cmt. [1]	
Note # 1	**Code # 4**
ABA Model Rule 8.1 cmt. [1]'s concluding sentence requires lawyers involved in a bar admission process to "correct[]…any prior misstatement in the matter that the applicant or lawyer may have made" (emphasis added). The applicant or lawyer either made a misstatement or didn't make a misstatement – so the word "made" would be more appropriate than the phrase "may have made."	

ABA MODEL RULE 8.1 cmt. [1]	
Note # 2	**Code # 3**
ABA Model Rule 8.1 cmt. [1]'s concluding sentence requires applicants and lawyers to correct their "prior misstatement[s]," and also requires such applicants and lawyers to make "affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware." The latter requirement might render superfluous the former requirement. Presumably an applicant's or lawyer's misstatements would automatically render them "aware" of the admissions or disciplinary authority's "misunderstanding."	

ABA MODEL RULE 8.1 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 8.1 cmt. [2]'s first sentence assures applicants and lawyers that they may assert their Fifth Amendment right (and state parallels). But ABA Model Rule 8.1 cmt. [2]'s concluding sentence warns them that they "should . . . not use the right of nondisclosure as a justification for failure to comply with this [ABA Model Rule 8.1]." Those two sentences seem to conflict. The Fifth Amendment and state parallels presumably exist to justify failure to disclose certain information.	

ABA MODEL RULE 8.1 cmt. [3]	
Note # 1	**Code # 3**
ABA Model Rule 8.1 cmt. [3] reminds lawyers representing applicants and other lawyers in "a disciplinary inquiry or proceeding" that they are "governed by the rules applicable to the client-lawyer relationship" (including ABA Model Rule 1.6 and "in some cases, [ABA Model] Rule 3.3." Perhaps it should go without saying that a lawyer representing a client must comply with the ABA Model Rules governing such a relationship. But if it is to be said, it is incorrect to say that such lawyers are governed by ABA Model Rule 3.3 "in some cases." Presumably those lawyers are governed by ABA Model Rule 3.3 in all cases – although ABA Model Rule 3.3's provisions might not require them or prohibit them from taking some action in their representations.	

ABA MODEL RULE 8.2	
Note # 1	**Code # 3**
ABA Model Rule 8.2's title contains the term "[l]egal [o]fficials." It is unclear what that term means. For instance, it is unclear whether the term "legal officials" is intended to be synonymous with ABA Model Rule 8.2(a)'s term "public legal officer."	

ABA MODEL RULE 8.2(a)	
Note # 1	**Code # 4**
ABA Model Rule 8.2(a) contains the phrase “the qualifications or integrity of a judge” and other specified persons. The term “integrity” seems unnecessary – presumably “integrity” is an important part of such persons’ “qualifications.”	

ABA MODEL RULE 8.2(a)	
Note # 2	**Code # 4**
ABA Model Rule 8.2(a) contains the term “public legal officer.” It is unclear what that term means. For instance, it is unclear whether that term is intended to be synonymous with the term “Legal Officials” contained in ABA Model Rule 8.2’s title.	

ABA MODEL RULE 8.2(a)	
Note # 4	**Code # 3**
ABA Model Rule 8.2(a) ends with a reference to "a candidate for election or appointment to . . . legal office" (emphasis added). It is unclear whether the term "legal office" is intended to refer to an office held by a "public legal officer" – referred to earlier in that sentence by ABA Model Rule 8.2 title's term "[l]egal [o]fficials."	

ABA MODEL RULE 8.2 cmt. [2]	
Note # 1	**Code # 2**
ABA Model Rule 8.2 cmt. [2] describes a lawyer's duty "[when] a lawyer seeks judicial office" (emphasis added). ABA Model Rule 8.2(a) contains the term "candidate for election or appointment to judicial or legal office" (emphasis added). ABA Model Rule 8.2(b) also contains the word "candidate." It is unclear whether the word "seeks" is intended to be synonymous with the word "candidate," which presumably refers to a person who has officially announced an intent to seek an office. The word "seeks" seems to imply a less formal role – one might "seek" an office before becoming an official "candidate" for that office.	

ABA MODEL RULE 8.2 cmt. [2]	
Note # 2	**Code # 1**
ABA Model Rule 8.2 cmt. [2] suggests that "[w]hen a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity" (emphasis added). As explained in the ABA Model Rules General Notes, numerous ABA Model Rule Comments contain the word "should" when the word "must" would be more appropriate. This is one of those examples – especially because black letter ABA Model Rule 8.2(b) requires that a "candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct" (emphasis added).	

ABA MODEL RULE 8.3 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 8.3 cmt. [2]'s second sentence suggests that "a lawyer should encourage a client to consent to disclosure [of another lawyer's specified ethics violations] where prosecution would not substantially prejudice the client's interests" (emphasis added). The word "prosecution" seems somewhat inapt. The word "discipline" might be more appropriate.	

ABA MODEL RULE 8.3 cmt. [2]	
Note # 2	**Code # 3**
ABA Model Rule 8.3 cmt. [2]'s second sentence suggests that "a lawyer should encourage a client to consent to disclosure [of another lawyer's specified ethics violations] where prosecution would not substantially prejudice the client's interests" (emphasis added). Focusing on prejudice to the client's interests resulting from their lawyer's "prosecution" seems misplaced. Focusing on possible prejudice to the client's interest triggered by the client's lawyer's "inform[ing] the appropriate professional authority" under ABA Model Rule 8.3(a) would seem more appropriate. In other words, any prejudice to the client's interests is likelier to come from the reporting of a misbehaving lawyer's ethical violation than from his prosecution for that ethics violation.	

ABA MODEL RULE 8.3 cmt. [5]	
Note # 1	**Code # 2**
ABA Model Rule 8.3 cmt. [5]'s concluding sentence states that "[t]hese [ABA Model] Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program." That statement seems incorrect. Black letter ABA Model Rule 8.3(c) bluntly states that "[t]his [ABA Model] Rule does not require disclosure of information . . . gained by a lawyer or judge while participating in an approved lawyer's assistance program" (emphasis added).	

ABA MODEL RULE 8.4(c)	
Note # 1	**Code # 2**
ABA Model Rule 8.4(c) contains an absolute and unconditional statement that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." On its face, ABA Model Rule 8.4(c) prohibits social niceties, generally accepted "white lies," etc. Though ABA Model Rule Scope [14]'s first sentence assures that the ABA Model Rules "are rules of reason," ABA Model Rule 8.4(c) seems overbroad and unenforceable.	

ABA MODEL RULE 8.4(g)	
Note # 1	**Code # 3**
ABA Model Rule 8.4(g) contains a *per se* prohibition on "conduct that the lawyer knows or reasonably should know is . . . discrimination on the basis of race, sex" and other specified attributes – "in conduct related to the practice of law." On its face, ABA Model Rule 8.4(g) thus prohibits minority hiring fairs, "top women lawyer" awards, etc.	

ABA MODEL RULE 8.4(g)	
Note # 2	**Code # 4**
ABA Model Rule 8.4(g)'s second sentence assures that ABA Model Rule 8.4(g) "does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with [ABA Model] Rule 1.16" (emphasis added). The word "ability" seems inapt. The word "ability" seems to focus on skill, talent or proficiency. The word "discretion" might be more appropriate here.	

ABA MODEL RULE 8.4 cmt. [2]	
Note # 1	**Code # 4**
ABA Model Rule 8.4 cmt. [2]'s first sentence contains the term "income tax return" (without a hyphen). ABA Model Rule 3.9 cmt. [3]'s second sentence contains the term "income-tax returns," with a hyphen.	

ABA MODEL RULE 8.4 cmt. [2]	
Note # 2	**Code # 2**
ABA Model Rule 8.4 cmt. [2]'s third sentence explains that the "concept [presumably of offenses involving 'moral turpitude'] can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law" (emphasis added). The word "include" seems incorrect. The listed offenses "concerning matters of personal morality" would seem to be defined outside those "involving 'moral turpitude'." So the word "exclude" would seem more appropriate than the word "include." In addition, the word "include" might appear to "include" "matters of personal morality" as the "kinds of illegal conduct [that] reflect adversely on fitness to practice law." Presumably such "matters of personal morality" are excluded from the type of such illegal conduct that "reflect[s] adversely on fitness to practice law."	

ABA MODEL RULE 8.4 cmt. [2]	
Note # 3	**Code # 2**
ABA Model Rule 8.4 cmt. [2]'s fifth sentence contains a list of offenses for which lawyers should be professionally answerable for – including "serious interference with the administration of justice" (emphasis added). The word "serious" seems inappropriate here. One might think that lawyers should be professionally answerable for any "interference with the administration of justice," however "serious."	

ABA MODEL RULE 8.4 cmt. [2]	
Note # 4	**Code # 3**
ABA Model Rule 8.4 cmt. [2]'s concluding sentence states that "[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation" (emphasis added). That presumably means that at some point "repeated offenses, even ones of minor significance" will trigger a lawyer's reporting obligation. But there is no guidance on how many of those must occur to trigger such an obligation.	

ABA MODEL RULE 8.4 cmt. [2]	
Note # 5	**Code # 3**
ABA Model Rule 8.4 cmt. [2]'s concluding sentence states that "a pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation" (emphasis added). It is unclear how that undeniably accurate axiom affects ABA Model Rule 8.4's application. ABA Model Rule 8.4 does not define as "professional misconduct" a lawyer's "indifference to legal obligation."	

ABA MODEL RULE 8.4 cmt. [4]	
Note # 1	**Code # 3**
ABA Model Rule 8.4 cmt. [4]'s concluding sentence states that "[l]awyers may engage in conduct undertaken to promote diversity and inclusion without violating this [ABA Model Rule 8.4(g)] by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations." ABA Model Rule 8.4 cmt. [4]'s language presumably cannot trump black letter ABA Model Rule 8.4(g), and permit lawyers to "engage in conduct that the lawyer knows or reasonably should know is . . . discrimination" on the basis of black letter ABA Model Rule 8.4(g)'s listed attributes. For instance, ABA Model Rule 8.4 cmt. [4]'s concluding sentence presumably would not allow a law firm to sponsor a male-only hiring fair or have a special law firm program designed to retain and advance only Catholics.	

ABA MODEL RULE 8.4 cmt. [5]	
Note # 1	**Code # 2**
ABA Model Rule 8.4 cmt. [5]'s third sentence inexplicably focuses on lawyers' fees and expenses: "[a] lawyer may charge and collect reasonable fees and expenses for a representation." That sentence seems out of place in an ABA Model Rule Comment focusing on ABA Model Rule 8.4(g)'s prohibition on harassment and discrimination.	

ABA MODEL RULE 8.4 cmt. [5]	
Note # 2	**Code # 4**
ABA Model Rule 8.4 cmt. [5]'s fourth sentence reminds lawyers of their ABA Model Rule 6.2 obligation – following that sentence with "[s]ee Rule 6.2(a), (b) and (c)." ABA Model Rule 6.2 only has (a), (b) and (c) – so referring to those subparts seems unnecessary.	

ABA MODEL RULE 8.4 cmt. [7]	
Note # 1	**Code # 3**
ABA Model Rule 8.4 cmt. [7]'s second sentence explains that "[a] lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers" (emphasis added). It is unclear what that standard means. Perhaps it is intended to by synonymous with ABA Model Rule 8.4(b)'s phrase "fitness as a lawyer in other respects," but that is not clear.	

ABA MODEL RULE 8.5 cmt. [2]	
Note # 1	**Code # 3**
ABA Model Rule 8.5 cmt. [2]'s second sentence explains that a "lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court . . ." (emphases added). ABA Model Rule 5.5 and other ABA Model Rules contain the terms "licensed," "admitted," and "authorized" – often without distinguishing between their meanings. ABA Model Rule 8.5 cmt. [2]'s second sentence presents an example of this potentially confusing use of differing undefined terms. Lawyers can be "licensed" in a jurisdiction, but not authorized to practice there (for instance, if the lawyer is on inactive status). Lawyers can be authorized to practice but not licensed in a jurisdiction (under ABA Model Rule 5.5, and many other situations). Lawyers can be generally "admitted" to practice in a jurisdiction or only "admitted" to a court or for some other limited purpose. It would be helpful to have more specific guidance on such terms' meaning in the ABA Model Rules' and Comments' contexts.	