Tennessee Law Course:
Professional Responsibility

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I. PRELIMINARY MATTERS

A. The Tennessee Rules of Professional Conduct are in Rule 8 of the Rules of the Tennessee Supreme Court

1. Official citation form is: "Tenn. Sup. Ct. R. 8, RPC ____." – Preamble, paragraph 24

2. In these materials, the Tennessee Rules of Professional Conduct are referenced as "TN Rule ___" or "Rule ___"

B. The Preamble to the TN Rules begins with a descriptive paragraph that is not in the ABA Model Rules of Professional Conduct (MRPC). It identifies lawyers as essential to the pursuit of justice for clients and the public good, and lists characteristics of an ethical lawyer:

> "A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good. Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good."

C. We all know lawyers cannot participate in fraudulent conduct –

1. ABA MRPC definition of "fraud" is limited to conduct that is fraudulent under substantive law and has a purpose to deceive

2. TN Rule 1.0(d) provides a broader definition of "fraud" – it is not tied to the legal definition of "fraud" but is expanded to also include intentionally false or misleading statements of material fact, intentional omissions that are materially misleading, and "other conduct by a person intended to deceive a person or tribunal with respect to a material issue"

3. And, interestingly, the ABA MRPC do not have a definition of "material," but our TN Rules do: "Material or materially" means "something that a reasonable person would consider important in assessing or determining how to act in a matter" – Rule 1.0(o)

D. ABA MRPC do not address whether a lawyer or law firm may employ suspended or disbarred lawyers, but TN has a specific rule governing this situation. A lawyer or law firm shall not employ "a disbarred or suspended lawyers as an attorney, legal

consultant, law clerk, paralegal or in any other position of a quasi-legal nature" – Rule 5.5(h)

II. FEES AND COSTS

A. Rule 1.5 requires fees to be reasonable. It tracks the ABA MRPC factors for "reasonableness," but adds 2 factors:

1. Prior ads or statements by the lawyer regarding fees to be charged – Rule 1.5(a)(9)

2. Whether the fee agreement is in writing – Rule 1.5(a)(10)

B. Contingent fees are regulated by TN Rule 1.5 –

1. Regarding contingent fees in domestic relations matters, TN Rule 1.5(d) has more detail about when such a fee may or may not be used

2. Rule 1.5(d) includes the ABA prohibition on contingent fees in "domestic relations" matters, but further prohibits contingent fees in matters involving awarding of custodial rights, the amount of alimony or support, or the value of a property division or settlement – with the exception that a contingent fee may be used if the matter "relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court"

3. Rule 1.5, Comment [5a] points that there are some Tennessee statutory limitations on contingent fees (as in medical malpractice cases; see T.C.A. § 29-26-120)

C. Fees that are non-refundable in whole or part are expressly permitted if the fee arrangements comply with Rule 1.5(f) and Comment [4a] –

1. The non-refundable fee must be agreed to in a writing signed by the client that "explains the intent of the parties"

2. Like all fees, a non-refundable fee must be reasonable under the terms of Rule 1.5(a)

3. A non-refundable fee is considered earned upon receipt, and so it does not get deposited into the lawyer's trust account

D. There are Tennessee-specific provisions regarding dividing fees with lawyers from other firms –

1. This can be done with client consent pursuant to an agreement confirmed in writing, regardless of whether the fee is shared in proportion to the work performed by the participating lawyers or otherwise – Rule 1.5(e)

2. Unlike the ABA MRPC, the agreement does not have to disclose "the share that each lawyer is to receive" – Rule 1.5, Comment [7]

E. TN Rules have some provisions that address sharing legal fees with clients –

1. A lawyer may share court-awarded fees with clients, regardless of whether the client is a non-profit organization – Rule 5.4(a)(4)

2. Full-time employees of a client (that is, in-house counsel) whom the client allows to represent another client for a fee may share that fee with the employer "to the extent necessary to reimburse the client for the actual cost" to the employer of that service – Rule 5.4(a)(5)

a. This could apply where the legal department of a parent corporation sends one of its house counsel out to do some work for a subsidiary, and wants to charge the sub for the lawyer's work

F. Lawyers may also pay a percentage of a fee to a "registered non-profit intermediary organization" that has referred a client to the lawyer – Rule 5.4(a)(6). (More on "intermediary organizations" under the advertising section.)

III. TRUST ACCOUNTING

A. ABA MRPC have only very general regulations for a lawyer's handling of money or property that belong to others

B. Most states, including TN, provide a lot of detail in their version of Rule 1.15, regarding "Safekeeping Property and Funds"

1. All funds held in trust must be deposited in a separate account insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Association (NCUA) that participates in the "overdraft notification program" required by Tenn. Sup. Ct. R. 9, § 35.1 – Rule 1.15(b)

2. All funds of clients and third persons that are nominal in amount or held for a short period of time must be deposited in an "Interest on Lawyers Trust Accounts" (IOLTA) account per Tenn. Sup. Ct. R. 43 – Rule 1.15(b)(2)

3. Tennessee lawyers must report their compliance regarding IOLTA accounts per Tenn. Sup. Ct. R. 43 – Rule 1.15, Comment [3]

4. For more information and trust accounting specifics, please see THE TENNESSEE ATTORNEY'S TRUST ACCOUNT HANDBOOK (available on the Board of Professional Responsibility's website at www.tbpr.org). Feel free to contact BPR Ethics Counsel Laura Chastain at 1-800-486-5714, ext. 212 or lchastain@tbpr.org with trust accounting questions.

IV. CONFIDENTIALITY (AND ITS IMPORTANCE IN TENNESSEE)

A. Tennessee places a high priority on protecting attorney-client confidentiality – this is shown in a variety of provision found in the TN version of the Rules

B. Occasionally there can be confusion between attorney-client privilege under the law and client confidentiality under the ethics rules. These are distinct doctrines that apply in different arenas –

1. "The attorney-client privilege and 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. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law." – Rule 1.6, Comment [3]

2. In a paragraph unique to Tennessee, the Preamble to the Rule explicitly states that the Rules "are not intended to govern or affect judicial application of either the attorney-client or work product privilege" – Preamble [22]

C. A major difference between evidentiary privilege and ethical confidential lies in the very broad definition of what is treated as "confidential information" under the ethics rules –

1. All "information relating to the representation of a client," regardless of the source of that information, is ethically confidential per Rule 1.6(a), and a lawyer must not reveal it unless the client consents OR one of the exceptions in the Rule applies

2. But, as specified by a comment not in the ABA MRPC, confidential information "does not include what a lawyer learns about the law, legal institutions such as courts and administrative agencies, and similar public matters in the course of representing clients" (things like legal research that discovers an important precedent or the preferable way to frame an argument before a particular judge) – Rule 1.6, Comment [3b]

D. Contrast between ABA MRPC and TN Rules approach to exceptions to the confidentiality rule –

1. ABA MRPC contain exceptions to the ethical duty of confidentiality, but all of the ABA exceptions are permissive – that is, disclosure of confidential information under one of those exceptions is discretionary on the part of the lawyer. A lawyer cannot be disciplined for reasonably exercising, or not exercising, that discretion.

2. TN Rules have both permissive and mandatory confidentiality exceptions.

E. There are a couple of important mandatory exceptions to lawyer-client confidentiality under the TN Rules –

1. "A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary: . . . to prevent reasonably certain death or substantial bodily harm." – Rule 1.6(c)(1)

2. "A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary: . . . to comply with an order of a tribunal requiring disclosure, but only if ordered to do so by the tribunal after the lawyer has asserted on behalf of the client" all non-frivolous claims to protect the information under attorney-client privilege, work product, or other law – Rule 1.6(c)(2)

F. Most of the TN permissive exceptions to confidentiality are similar to those in the ABA MRPC, but all of the exceptions are subject to the provisions of TN Rule 3.3, concerning a lawyer's duty of candor toward the court (which is applied in a manner protective of attorney-client confidentiality) –

1. In one key area of difference, lawyers are permitted to disclose confidential information to prevent anyone from committing a crime – Rule 1.6(b)(1) (ABA MRPC only apply to prevent the client from committing the act)

G. Consistent with the TN emphasis on confidentiality, our Rules give lawyers an affirmative obligation to try to protect privileged information from compelled disclosure in court proceedings – Rule 1.6(c)(2) and Comment [14b]

H. Sometimes confidential information or documents inadvertently end up somewhere other than where they are supposed to go –

1. Rule 1.6(d) gives all lawyers the ethical obligation to try to keep this from happening – but sometimes it happens anyway

2. ABA MRPC give limited guidance for the receiving lawyer (just "promptly notify the sender")

3. Consistent with the TN focus on protecting confidentiality, our Rule 4.4 provides specific guidance for the lawyer who receives the information that was inadvertently sent to him or her and that reasonably appears to be confidential or privileged

4. Per Rule 4.4(b) the receiving lawyer must:

a. Immediately stop reading the information

b. Notify the sender that it has been received, and

c. Either follow the sender's instructions regarding disposition of the materials or "refrain from using the written information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction"

V. DUTIES TO COURTS

A. Consistent with TN's emphasis on the importance of client confidentiality, TN Rule 3.3 is significantly more protective of confidential information than the ABA MRPC counterpart

B. As under the ABA MRPC, TN lawyers have ethical obligations to refrain from making false statements to a court and to not use "or affirm the validity of" any evidence the lawyer knows to be false – TN Rule 3.3(c)

C. And, before the end of the proceeding, if a lawyer learns that someone other than the lawyer's client has lied or otherwise provided evidence that the lawyer now knows to be false, and with which the client was not implicated, the lawyer has a mandatory duty to promptly notify the court, even if doing so results in disclosure of otherwise-confidential information – Rule 3.3 (h)

1. The same is true if the lawyer learns that someone other than the client has engaged in improper conduct toward a juror – Rule 3.3(i)

2. Rule 3.3, Comment [14] explains the rationale for these ethical obligations: "The client's interest in protecting the wrongdoer is not sufficiently important as to override the lawyer's duty of candor to the court and to take affirmative steps to prevent the administration of justice from being tainted by perjury, fraud, or other improper conduct."

D. But TN differs sharply from the ABA MRPC when it comes to disclosure of misconduct involving a client –

1. If the lawyer's client wants to testify falsely, the lawyer must try to dissuade the client. If that is unsuccessful, then the lawyer must attempt to withdraw. If the court will not allow withdrawal, the lawyer may allow the client to testify in a narrative form – Rule 3.3(b)

2. What about where the client testifies falsely without the lawyer knowing it at the time, but the lawyer learns later that it was false? In that situation, the lawyer must try to convince the client to rectify the misconduct – Rule 3.3(e)

a. Then, if the client won't cooperate, the lawyer must withdraw but may not disclose anything protected by the confidentiality rule – Rule 3.3(f)

3. Rule 3.3, Comment [9] makes it clear that the Rules deliberately elevate client confidentiality above the duty of candor to the court: "Confidentiality under RPC 1.6 prevails over the lawyer's duty of candor to the tribunal. Only if the client is implicated in misconduct by or toward a juror or a member of the jury pool does the lawyer's duty of candor to the tribunal prevail over confidentiality."

E. Similarly, if the lawyer unknowingly introduced "false tangible or documentary evidence" and later learns of its falsity, the lawyer must "withdraw or disaffirm" the

evidence but may not disclose confidential information when doing so – Rule 3.3(g)

VI. CONFLICTS OF INTEREST

A. TN Rules regarding conflicts of interest roughly track those in the ABA MRPC, but do have some changes and additions that are peculiar to TN

B. In Rule 1.7, the basic TN provisions defining a conflict of interest involving current clients and spelling out how to effectively waive conflicts are the same as the ABA MRPC, but with an added section dealing specifically with multiple representation in criminal or juvenile delinquency proceedings –

1. In order to ethically represent multiple clients in the same criminal or juvenile delinquency case, each client must give informed consent and the lawyer must demonstrate to the court that "good cause exists to believe" that no present or foreseeable conflict of interest exists – Rule 1.7(c), and Comments [35]-[37]

2. The proceedings before a judge to determine the lack of a conflict may be held in the form of an *ex parte* hearing – Rule 3.5, Comment [3]

C. Multiple representation of family members in estate matters is discussed in a Comment that is unique to TN:

"It is often appropriate for a lawyer to represent more than one member of the same family in connection with their estate plans, more than one beneficiary with common interests in an estate or trust administration matter, or co-fiduciaries of an estate or trust. Multiple representation in such contexts often can result in more economical and better coordinated plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations. Multiple representations of these kinds are appropriate where the interests of the clients in cooperation and achieving common objectives predominate over any inconsistent interests and where the lawyer complies with Rule 1.7's requirements as to informed consent. A lawyer may not represent clients whose interests actually conflict to such a degree that the lawyer cannot adequately represent their individual interests. . . ." – Rule 1.7, Comment [27a]

D. Conflict rules for former clients are similar to the ABA MRPC, but there are a few Tennessee-specific points to note –

1. TN Rule 1.9 allows lawyers to use OR reveal confidential information about former clients if: the former client consents; the Rules permit it; or it has become "generally known" – Rule 1.9(c)

2. "Generally known" is broadly defined in Comment [8a] to include "[i]nformation contained in books or records in public libraries, public-record depositaries, such as government offices, or in publicly accessible electronic-data storage . . . if the particular information is obtainable through publicly available indexes and similar methods of access."

3. Comments to TN Rule 1.9 make it clear that the rule protects not only confidentiality but also provides for a limited duty of loyalty to former clients. See Comment [3a]:

> "The lawyer's duty of loyalty survives the termination of the former representation to the extent that it precludes the lawyer from acting to deprive the former client of the benefit of the lawyer's prior work on the former client's behalf."

E. Special types of conflict issues are covered in Rule 1.8 –

1. In representing clients in an aggregate settlement and in settling malpractice claims with former clients, a lawyer must advise clients to seek advice of independent counsel regarding the matter – Rule 1.8(g)(1) and Rule 1.8 (h)(2)

2. Conflicts arising from sexual relations with clients are covered in Rule 1.7, Comments [12]-[12b], rather than in a rule (as with ABA MRPC 1.8)

F. Imputation of conflicts –

1. Like the ABA MRPC, the general rule is that most conflicts of one lawyer in a firm are imputed to all other lawyers in that firm – Rule 1.10(a)

2. In TN, however, conflicts of not only lawyers but other firm personnel (e.g., law clerks, paralegals, secretaries, and other staff) also are imputed within the firm – Rule 1.10, Comment [10a]

3. But there are exceptions to the general rule of imputing conflicts. Like the ABA MRPC, in certain situations the TN Rules allow for screening of a conflicted lawyer in order to prevent that lawyer's conflict from being imputed to his or her entire law firm – but TN Rule 1.10 differs in several ways from its ABA counterpart. Key TN screening procedures as set out in Rule 1.10(c) are –

a. Screening can be used only when lawyers move between organizations in private practice – that is, when the lawyer who personally has the conflict joins a new firm

b. No one in the conflicted lawyer's new firm may have obtained confidential information about the conflicted lawyer's former client from that lawyer

c. The conflicted lawyer must "promptly" be effectively screened off to ensure that no information flows from that lawyer to others in the firm

d. The former client of the conflicted lawyer must be informed in writing of the measures that have been taken to prevent disclosure of any confidential information

e. But, unlike the ABA MRPC, a screened lawyer may still participate in the fee from the case in question (that is also true when a lawyer is screened under the

"prospective client" rule, Rule 1.18)

4. The TN Rule 1.10(d) adds some limitations that are not in the ABA MRPC, providing that screening may not be used if the conflicted lawyer "was substantially involved in the representation of a former client" in a case in which that former client's interests are "directly adverse" to those of the firm's current client in a case that is still pending when the lawyer joins the new firm – Rule 1.10(d)

a. These TN restrictions are based on the Supreme Court's decision in *Clinard v. Blackwood*, 46 S.W.3d 177 (Tenn. 2001) (keeping the "appearance of impropriety" standard alive in TN, although it is no longer expressly stated in the Rules)

G. ABA MRPC previously had a specific rule governing lawyers acting in an "intermediary role," but that rule was withdrawn a few years. TN, however, chose to retain Rule 2.2 –

1. Rule 2.2 recognizes that sometimes lawyers represent multiple clients who appear to have common interests and goals

2. This Rule applies in relatively limited situations – when a lawyer "provides impartial legal advice and assistance to . . . clients who are engaged in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them"

3. Because the Rule governs the situation where clients are forming or affecting "legal relations," it does not apply to "gratuitous transfers," such as estate planning or estate administration – Rule 2.2, Comment [4]

4. Per Rule 2.2(b), in order to ethically act as an "intermediary" between clients the lawyer must: –

a. Reasonably believe the clients' interests are compatible

b. Tell each client the advantages and disadvantages of the common representation, including any effect on attorney-client privilege

c. Obtain each client's informed consent, confirmed in writing, to the representation, AND obtain client authorization to share confidential information among the common clients as needed

5. If any of these conditions cease to exist, the lawyer must withdraw from the entire representation and treat each client as a "former client" under the conflict rules – Rule 2.2(d) and Comment [15]

VII. SOME SPECIFIC TYPES OF REPRESENTATIONS

A. Representing organizational clients

1. Rule 1.13 is the primary rule spelling out the ethical obligations of a lawyer who represents a client that is an organization.

2. In keeping with the high regard TN places on confidentiality, a lawyer representing an organization is more limited in his or her response to questionable activity within the client organization than is the case under the ABA MRPC –

a. Under both rules, a lawyer who sees violations of legal obligations or of law occurring within the client organization should go "up the ladder" to higher authority in the organization

b. But if that does not resolve the problem, and the lawyer reasonably believes that the conduct "is likely to result in substantial injury to the organization," Rule 1.13(c)) expressly limits the lawyer's response to withdrawing without disclosing confidential information (unless authorized by another Rule, such as Rule 1.6)

c. In sharp contrast, ABA MRPC allow the lawyer to "reveal information relating to the representation whether or not Rule 1.6 permits such disclosure"

B. Representing governmental clients

1. Representation of governmental entities can differ in a number of ways from the typical lawyer-client relationship in private practice. The Preamble to the ABA MRPC touches on this, but TN has substantially revised this provision and it appears in our Rules as paragraph [19] –

a. For example, these lawyers "may have authority to represent the 'public interest' in circumstances where a private lawyer would not be authorized to do so"

b. And "[c]ertain government lawyers may be authorized to represent several government agencies, officers, or employees in legal controversies in circumstances where a private lawyer could not represent multiple private clients"

The Preamble also points out that government lawyers in Tennessee are subject to the Open Meetings Act

2. On a more specific level, the TN Rules make it clear that governmental entities are permitted to waive conflicts (unless there is a law to the contrary) – Rule 1.7, Comment [19a]

3. And, the Comments to the confidentiality rule specify that government lawyers are obligated to honor confidentiality even if they "disagree with the policy goals that their representation is designed to advance" – Rule 1.6, Comment [3a]

VIII. DUTIES TO NON-CLIENTS AND TO THE PUBLIC

A. A lawyer's duty of diligence is a little less exacting in Tennessee –

1. While ABA MRPC requires making reasonable efforts to expedite litigation only

if "consistent with the interests of the client," TN Rule 3.1 does NOT contain that "interests of the client" qualifier

B. TN duty to refrain from assisting clients in criminal or fraudulent conduct is broader than it is under ABA MRPC –

1. Lawyer must refrain from counseling or assisting a client in conduct the lawyer knows or reasonably should know is criminal or fraudulent – Rule 1.2(d) (in contrast with ABA MRPC, which limit the duty to where the lawyer "knows")

C. Related requirements (in Rule 4.1) apply when a lawyer represents a client in a non-adjudicative matter and comes to know that the client intends to commit a crime or fraud on a third party, or has already done so during the course of the representation without the lawyer knowing it –

1. If the lawyer learns of the client's intention or action while the lawyer is still representing the client, the lawyer must withdraw

2. In addition to withdrawing, if the lawyer reasonably believes that the client intends to use or has used written materials prepared by the lawyer (e.g., opinions or other documents) to perpetrate a crime or fraud on someone, the lawyer must "give notice to any such person" of the lawyer's withdrawal and disaffirmance of the documents

3. Although the lawyer is required to give notice of withdraw and disaffirm any written materials that the client may use in a crime or fraud, the lawyer may not make any further disclosure of confidential information

D. Communicating with persons represented by counsel is governed by TN Rule 4.2, which is similar to its ABA counterpart –

1. Comments to the TN Rule clarify who within an organization is considered to be "represented" for purposes of the prohibition on contacting someone who is represented without the consent of their counsel

2. These are board members, officers, and agents or employees who direct the organizations lawyers, have the authority to contractually obligate the organization, or "otherwise participate[] substantially in the determination of the organization's position in the matter" – Rule 4.2, Comment [7]

E. ABA MRPC do not address making threats to file criminal or disciplinary charges, but TN Rule 4.4(a)(2) expressly prohibits lawyers from threatening or making criminal or disciplinary charges "for the purpose of obtaining an advantage in a civil matter"

F. TN has added some specific provisions regarding dealing with witnesses –

1. TN Rule 3.4 expands on the ABA MRPC's general admonition against unlawful inducements to witnesses by more specifically spelling out what is and is not permitted

2. Witnesses (fact or expert) may not be paid on a contingent basis – but a lawyer may compensate the witness for expenses reasonably incurred in attending or testifying and also may pay "reasonable compensation to a witness for that witness's loss of time in attending or testifying" – Rule 3.4(h)

G. As under the ABA MRPC, the TN Rules address a lawyer's responsibility regarding providing pro bono legal services –

1. TN Rules encourage lawyers to provide pro bono service – Rule 6.1 says lawyers "should aspire to render at least 50 hours" of pro bono legal services per year

2. This is an aspirational goal and is NOT enforceable through the disciplinary system – Rule 6.1, Comment [12]

IX. ADVERTISING AND SOLICITATION

A. In the past year the ABA significantly revamped its MRPC on advertising and solicitation –

1. TN has not yet responded to that, although our TBA Ethics Committee is considering whether to recommend any changes – but any changes are still a long way off, since the Committee's recommendations would have to go to the full TBA Board of Governors and then to the Supreme Court

2. So, rather than talk about differences between the ABA MRPC and the TN Rules, it will be more efficient to summarize key provisions of the TN Rules on advertising and solicitation

B. The basic principle is that a lawyer may permit no false or misleading communications about the lawyer or the lawyer's services (regardless of whether it is a false statement or a misleading omission) – Rule 7.1

C. Lawyers who advertise through any medium must keep a copy or recording of the ad for 2 years after its last dissemination, along with records of where and when the ad was run – Rule 7.2(b)

D. Ads must include the "name and office address of at least one lawyer or law firm assuming responsibility" for the ad – Rule 7.2(d)

E. Lawyers may pay reasonable charges for advertising, including the "usual charges" of a registered intermediary organization (more below), but may not otherwise pay or "give anything of value" for referrals or recommendations or publicity – Rule 7.2(c)

F. Subject to a few limited exceptions, lawyers may not "solicit" employment from potential clients in person, by telephone, or by "real-time electronic contact" when "a significant motive" is the lawyer's pecuniary gain – Rule 7.3

1. Exceptions: other lawyers; family members; and persons with whom the lawyer

has a "close personal, or prior professional relationship"

G. Lawyers are permitted to send written, electronic, or recorded communications to potential clients if they follow certain specific rules –

1. The words "Advertising Material" must be on the outside (if it is mailed) and at the beginning and end of the communication – Rule 7.3(c)(1)

2. Contracts for employment may not be included, and anything that looks like a contract must be marked "SAMPLE" and "DO NOT SIGN" – Rule 7.3(c)(3)

3. If an ad is sent to "a specific potential client in a specific matter," these additional requirements apply –

a. It must disclose how the lawyer got the information prompting the communication – Rule 7.3(c)(6)(i)

b. The first sentence must state, "If you have already hired or retained a lawyer in this matter, please disregard this message" – Rule 7.3(c)(6)(iii)

4. And any communication sent to a potential client in connection with certain specified actions may not be sent until 30 days after the triggering event – Rule 7.3(b)(3)

a. These matters include divorce, worker's compensation, and personal injury, wrongful death or other accident- or disaster-related claims involving the recipient of the communication or a member of his or her family

H. Lawyers generally may not state that they are specialists or that they specialize or are certified in a particular area of law, unless they are certified by an organization accredited by the ABA and have registered that certification with the TN CLE Commission – Rule 7.4

1. Even then, the ad may only state that the lawyer "is certified as a specialist in [field of law] by [accredited organization]"

I. If a lawyer is in a firm with offices in more than one state, letterhead and other communications (like websites) must indicate where the lawyer is licensed to practice – Rule 7.5

J. Finally, as mentioned, lawyers in TN may pay to accept cases from a "registered intermediary organization" –

1. These include organizations like lawyer-advertising cooperatives, lawyer referral services, prepaid legal insurance providers, and similar organizations

2. Requirements for those organizations are in Supreme Court Rule 44 – if you want to work with one of these organizations, check to make sure that it is registered with the Board of Professional Responsibility

X. OTHER "BUSINESS OF LAW" REGULATIONS

A. The sale of a law practice is permissible if performed in compliance with Rule 1.17

B. In TN, a seller may sell an entire practice (as with the ABA MRPC) or a sell only a "subject-area of practice" – Rule 1.17(a)

C. But when there is a sale, all fee agreements and "any other agreements" that the seller had with his or her clients must be honored by the buyer – Rule 1.17(e)

XI. LAWYER SERVING AS A "DISPUTE RESOLUTION NEUTRAL"

A. TN has a much more detailed version of Rule 2.4, which applies when a lawyer is serving as a dispute resolution neutral, mediator, arbitrator in non-binding arbitration, or judge or juror in a "mini-trial or summary jury trial as described in Supreme Court Rule 31"

B. The lawyer must fully disclose any potential conflicts of interest to the parties (including relevant conflicts of others in the neutral's firm), must treat as confidential all information disclosed to the lawyer in a caucus with a party or its lawyer, must not give legal advice to the parties, and must withdraw if any of these or the other stated conditions no longer exist

C. Upon termination of the matter or relationship, the lawyer/neutral must treat the parties as if they were former clients for conflicts and confidentiality purposes – Rule 2.4(e)(2)