MODEL POLICY ON IMPAIRMENT

We recognize that well-being is essential to a lawyer's duty of competence, and that impairment is antithetical to both competence and quality service expected for our clients. Unfortunately, it is well documented that the legal profession experiences impairment at disproportionately higher rates due to substance use and other mental health disorders. This Firm is committed to the well-being of its personnel, as well as to the prevention of impairments and to assisting our staff in obtaining treatment when needed. Impairment of a personnel member, due to substance use or other mental disorder¹, including cognitive impairment or dementia, adversely affects not only the individual's well-being, but also the Firm's ability to serve our clients capably and responsibly.

The goals of this Policy are: (1) early identification of impairment and proper intervention to assist with preventing, mitigating, or treating the impairment; and (2) preventing our professional standards and the quality of our work for our clients from being compromised by any Firm member's impairment. This Policy is intended to demonstrate compliance with those professional regulations which require firms to establish internal policies and procedures ensuring that all lawyers (including those impaired) conform to the Rules of Professional Conduct ("RPC"), as well as state or federal rule, regulation or statute.

I. <u>Implementation</u>

This Policy applies to all legal professionals, including but not limited to, partners, managing attorneys, associates, staff attorneys, paralegals, and legal assistants, whether full-time, part-time, contract or temporary. This Policy will be publicized in the workplace and placed in the Firm's personnel handbook. A contact person, such as a managing partner, human resources director, or designated person will be responsible for implementing the Policy, but will not undertake/oversee counseling or treatment. The contact person should notify individuals of the availability of lawyers' assistance programs which can refer impaired persons to agencies for counseling and treatment.

II. <u>Definition of Impairment</u>

For purposes of this Policy, the Firm considers "impairment" to be a condition that materially and adversely affects a person's judgment, memory, or reactions, or otherwise interferes with work performance and the rendering of legal services in a manner consistent with the Firm's standards and the RPC. **The diagnosis of an illness does not equate with impairment for purposes of this Policy.** Illness is the existence of a physical or mental disease, while impairment is a functional classification that implies inability (perhaps affected by physical or mental disorder) to render services with reasonable skill and safety. Impairment may be due to the use of alcohol or drugs (prescribed or non-prescribed), a mental health disorder, or a physical illness or condition that would adversely affect cognitive, motor or perceptive skills. Determinations about impairment will be made carefully, following a thorough investigation and based on objective information. The privacy rights of all involved

¹ See <u>https://www.samhsa.gov/disorders</u> for descriptions of mental and substance use disorders.

will be respected.

III. Professional Conduct Requirements and Illegal Activities

While this Policy emphasizes treatment of impaired personnel, it is not intended to condone or excuse illegal activities and/or unprofessional behavior. The Firm expects all personnel to maintain a high level of competence and professionalism, appropriate to their position. This Policy is in effect during times and at places where personnel are in a position to be regarded or identified as representing the Firm, such as traveling on business or participating in community, organizational, or professional meetings and affairs.

Firm personnel who use, possess, distribute, sell (or attempt to sell), transfer, or purchase any illegal substance or controlled substance for which they do not have a physician's prescription while at work or while performing in a work-related capacity may be subjected to internal disciplinary action, up to and including termination, and/or civil penalties and criminal penalties if appropriate. In the event of a criminal law violation, the Firm, in its sole discretion, may cooperate with courts and disciplinary agencies in the disposition of proceedings by affording treatment to the violator under the impairment procedures of this Policy, or under procedures established by the court or agency.

IV. Duty to Report

Firm lawyers shall not practice law or otherwise render legal services while impaired, and staff members shall not assist in providing legal services while impaired. Firm personnel shall not help a colleague conceal his or her impairment, including by knowingly assisting an impaired colleague in providing legal services.

A. Firm personnel who:

1. believe they are themselves impaired or at risk of becoming impaired, or

2. reasonably suspect that another Firm lawyer or staff member may be impaired, shall report their concerns to at least one of the following:

- a. member of the Executive Committee;
- b. General Counsel;
- c. Chief Operating Officer;
- d. leader of the Practice Group or head of the department in which the individual works; or
- e. other person designated to receive such reports
- B. All Firm personnel shall have the obligation to report any incident in which they themselves or any other firm personnel has been arrested or charged with: driving while under the influence, public intoxication, possession or sale of any illegal substance. Such information may be reported to any member listed above in Section IV.A.

- C. The Firm will provide professional training programs to all personnel at regular intervals regarding signs and symptoms of substance use and mental health disorders, including cognitive impairment. The lawyers' assistance program below may be consulted for assistance with this programming.
- D. Upon learning of a lawyer's or a staff member's possible impairment, the Firm will investigate the circumstances and undertake reasonable measures to assist that person on a confidential basis.
- E. Anyone concerned for themselves or for another member are encouraged to also contact their state or local lawyers' assistance program or the Firm's employee assistance program for confidential assistance.²

State lawyers' assistance program	Phone number
State lawyers' assistance program	
Firm's employee assistance program	Phone number

V. <u>Confidentiality</u>

The Firm will treat all communications as confidential to the extent consistent with the Firm's duties to protect clients, as well as to comply with the RPC, state or federal rule, regulation or statute. All protected health information will be handled in accordance with state and federal laws. Communications include those by and between the potentially impaired lawyer and members of the Firm assigned with responsibilities to investigate and assist, as well as any member of the Firm who reports concerns regarding the potential impairment of another.

Please be advised that while the Firm recognizes confidentiality is important for the successful implementation and operation of this Policy, certain matters may not remain confidential (e.g., a threat to harm yourself or others, future criminal conduct, child abuse), but every attempt will be made to keep personal issues confidential.

VI. <u>Prohibition Against Retaliation or Discrimination</u>

A report made in good faith under this Policy, and good-faith participation in the

² The Firm should include the name and phone number of the lawyers assistance program (LAP) in each state in which it operates. Most LAPs provide free consultations, assessments, brief counseling and education, peer support, intervention, monitoring and referrals. A directory of LAPs may be found at: https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html.

investigation of any report, will not result in adverse action against any reporting or participating person. Any concern about retaliation must be reported immediately to one of the individuals listed <u>above in Section IV.A.</u> The Firm will investigate any report of retaliation and take such action as may be appropriate, including disciplinary action, against anyone found to have retaliated against a person for reporting a possible impairment or participating in the investigation of a report.

VII. Procedures Upon Determination of Impairment

The Firm seeks early identification of impairment issues of its personnel in order to provide the impaired individual with qualified treatment services as soon as possible to facilitate that person's recovery. At the same time, the Firm will take such steps as may be necessary to protect the interests of its clients and to comply with the RPC and any state or federal rule, regulation or statute.

- A. <u>Leave of Absence</u>: The Firm will permit impaired individual to use accrued paid leave time for treatment, and will provide accommodations upon a return to work as permitted under the Firm's leave policies and as required under state and federal law.
- B. <u>Referral and Treatment</u>: The Firm will make concerted efforts to assist the impaired individual in obtaining appropriate medical care and treatment. The state's lawyers' assistance program may be consulted for assistance with referrals, evaluations and/or monitoring of lawyers.
- C. <u>Restriction of Work Duties</u>: The Firm may restrict the impaired individual by removal from client or other work matters, supervision of work activities, or any other reasonable restriction of activities or client matters deemed necessary to protect client interests and comply with the RPC.
- D. <u>Review of Lawyer's Activity</u>: After determining that a lawyer is, or has been, suffering from an impairment, the Firm will determine if a review of all matters recently handled by the lawyer is warranted in order to take remedial action on client matters. This review may include: review of client files, the lawyer's time and billing records, electronic communications, telephone records, and interviews with others in the Firm with whom the lawyer worked.
- E. <u>Remedial Action</u>: The Firm shall immediately take any remedial action on client matters deemed necessary to mitigate any violation, or potential violation, of the RPC or other adverse consequences arising as a result of the lawyer's impairment. [*See* state version of Model Rule 5.1(c).] Disclosure to the client may be required and will be done in compliance with the RPC.
- F. <u>Reporting to Disciplinary Authorities</u>: A report will be made to the appropriate professional disciplinary authorities as required by state or federal rule, regulation or statute. [See state version of Model Rule 8.3, ABA Formal Opinion 03-431; ABA Formal Opinion 03-429].

- G. <u>Conditional Employment</u>: Continued employment with the Firm, unless otherwise required by the Family and Medical Leave Act or the Americans with Disabilities Act, may be conditioned upon:
 - 1. Taking a leave of absence,
 - 2. Execution of a Return to Work Agreement (see Appendix A),
 - 3. Evaluation by a healthcare professional,
 - 4. Commitment to treatment plan, if recommended by the healthcare professional,
 - 5. Periodic alcohol or drug testing resulting in consistent negative results,
 - 6. Ongoing participation in peer support recovery programs,
 - 7. Continuing therapy or medication management,
 - 8. Monitoring by a lawyer assistance program or other professional, and/or
 - 9. Disclosure of evaluation results and verification of participation in appropriate treatment and support programs.

Cooperation in all such matters is required, and failure to cooperate may result in Firm discipline, up to and including possible termination.

H. <u>Termination</u>: Personnel who fail or refuse to avail themselves of the opportunity to seek and follow through on treatment of impairment will be subject to internal discipline, up to and including termination.

VIII. Consequences of Policy Violations

Any person, including any staff or attorney, who acts contrary to this Policy, or any other Firm policy, or violates any standards hereby established, will be subject to disciplinary action up to and including termination. The Firm may, however, in its discretion, offer personnel the opportunity to participate in a counseling, treatment or rehabilitation program in lieu of such discipline.

IX. Other Laws

This Policy is in no way intended to interfere with the Firm's obligations to provide reasonable accommodations to those who are disabled under the Americans with Disabilities Act. Please see the Firm's EEO and Reasonable Accommodation policies for further information.