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ABA Model Rules of Professional Conduct (2004)

American Bar Association Model Rules of Professional Conduct (2002 edition)*

As passed by the American Bar Association, House of Delegates February 5, 2002 and amended in August 2002.

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Edition Notes

[This edition incorporates the changes adopted by the ABA House of Delegates, February 5, 2002, in response to the [recommendations of the Ethics 2000 Commission](#), and the further [amendments adopted by the ABA House of Delegates in August 2002](#). There is following each rule a link to the pre-2002 language, at this date still the model for most state rules.]*

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PREAMBLE, SCOPE AND TERMINOLOGY

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., [Rules 1.12](#) and

[2.4](#). In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See [Rule 8.4](#).

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the

approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer,

for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under [Rule 1.6](#), that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See [Rule 1.18](#). Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not

necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

[Pre-2002 version]

Rule 1.0: TERMINOLOGY

(a) "**Belief**" or "**believes**" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "**Confirmed in writing**," when used in reference to the informed consent of a person, denotes informed consent that is given in [writing](#) by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "[informed consent](#)." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a [reasonable](#) time thereafter.

(c) "**Firm**" or "**law firm**" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "**Fraud**" or "**fraudulent**" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "**Informed consent**" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and [reasonably](#) available alternatives to the proposed course of conduct.

(f) "**Knowingly**," "**known**," or "**knows**" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "**Partner**" denotes 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.

(h) "**Reasonable**" or "**reasonably**" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "**Reasonable belief**" or "**reasonably believes**" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the [belief](#) is [reasonable](#).

(j) "**Reasonably should know**" when used in reference to a lawyer denotes that a lawyer of [reasonable](#) prudence and competence would ascertain the matter in question.

(k) "**Screened**" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a [firm](#) that are [reasonably](#) adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "**Substantial**" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "**Tribunal**" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "**Writing**" or "**written**" denotes a tangible or electronic record of a

communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "**signed**" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

[[Comment](#)][[Pre-2002 version](#)]

CLIENT-LAWYER RELATIONSHIP

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation [reasonably](#) necessary for the representation.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by [Rule 1.4](#), shall [consult](#) with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) 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.

(c) A lawyer may limit the scope of the representation if the limitation is [reasonable](#) under the circumstances and the client gives [informed consent](#).

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer [knows](#) is criminal or [fraudulent](#), but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.3: Diligence

A lawyer shall act with [reasonable](#) diligence and promptness in representing a client.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.4: Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's [informed consent](#), as defined in [Rule 1.0\(e\)](#), is required by these Rules;

(2) [reasonably consult](#) with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client [reasonably](#) informed about the status of the matter;

(4) promptly comply with [reasonable](#) requests for information; and

(5) [consult](#) with the client about any relevant limitation on the lawyer's conduct when the lawyer [knows](#) that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent [reasonably](#) necessary to permit the client to make informed decisions regarding the representation.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.5: Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in [writing](#), before or within a [reasonable](#) time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a [writing signed](#) by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same [firm](#) may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is [confirmed in writing](#); and
- (3) the total fee is [reasonable](#).

[Comment][Pre-2002 version][Rule 1.15, as recommended by the Ethics 2000 Commission, would have required that communication of fees and expenses, and changes in them, be communicated to the client in writing unless the "it is reasonably foreseeable that total cost to a client, including attorney fees, will be [\$500] or less." In February 2002 the House of Delegates deleted the requirement of a writing, stating that fee communications be "preferably in writing." As of 2002, five jurisdictions require a written fee agreement for all new clients: Connecticut, District of Columbia, New Jersey, Pennsylvania, and Utah. Two additional states require a written fee agreement in many representations: Alaska (fees in excess of \$500), California (fees for all non-corporate clients in excess of \$1,000).Note][State Narratives]

Rule 1.6: Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives [informed consent](#), the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer [reasonably believes](#) necessary:
 - (1) to prevent [reasonably](#) certain death or [substantial](#) bodily harm;
 - (2) to prevent the client from committing a crime or [fraud](#) that is [reasonably](#) certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is [reasonably](#) certain to result or has resulted from the client's commission of a crime or [fraud](#) in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer [reasonably believes](#) that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) 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](#); and

(4) each affected client gives [informed consent](#), [confirmed in writing](#).

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or [knowingly](#) acquire an

ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and [reasonable](#) to the client and are fully disclosed and transmitted in [writing](#) in a manner that can be reasonably understood by the client;
 - (2) the client is advised in [writing](#) of the desirability of seeking and is given a [reasonable](#) opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives [informed consent](#), in a [writing signed](#) by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) 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 Rules.
- (c) A lawyer shall not solicit any [substantial](#) gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in [substantial](#) part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1) the client gives [informed consent](#);
 - (2) there is no interference with the lawyer's independence of professional judgement or with the

client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by [Rule 1.6](#).

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives [informed consent](#), in a [writing signed](#) by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in [writing](#) of the desirability of seeking and is given a [reasonable](#) opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a [reasonable](#) contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a [firm](#), a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives [informed consent](#), [confirmed in writing](#).

(b) A lawyer shall not [knowingly](#) represent a person in the same or a substantially related matter in which a [firm](#) with which the lawyer formerly was associated had previously represented a client,

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer has acquired information protected by [Rule 1.6](#) and [1.9\(c\)](#) that is material to the matter; unless the former client gives [informed consent](#), [confirmed in writing](#).

(c) A lawyer who has formerly represented a client in a matter or whose present or former [firm](#) has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally [known](#); or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a [firm](#), none of them shall [knowingly](#) represent a client when any one of them practicing alone would be prohibited from doing so by [Rules 1.7](#) or [1.9](#), unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a [firm](#), the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the [firm](#) has information protected by [Rules 1.6](#) and [1.9\(c\)](#) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in [Rule 1.7](#).

(d) The disqualification of lawyers associated in a [firm](#) with former or current government lawyers is governed by [Rule 1.11](#).

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to [Rule 1.9\(c\)](#); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its [informed consent](#), [confirmed in writing](#), to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a [firm](#) with which that lawyer is associated may [knowingly](#) undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely [screened](#) from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) [written](#) notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer [knows](#) is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A [firm](#) with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely [screened](#) from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to [Rules 1.7](#) and [1.9](#); and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its [informed consent](#), [confirmed in writing](#); or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [Rule 1.12\(b\)](#) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) 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, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give [informed consent](#), [confirmed in writing](#).

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a [firm](#) with which that lawyer is

associated may [knowingly](#) undertake or continue representation in the matter unless:

- (1) the disqualified lawyer is [screened](#) from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) [written](#) notice is promptly given to the parties and any appropriate [tribunal](#) to enable them to ascertain compliance with the provisions of this rule.
- (d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.13 Organization as Client

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization [knows](#) that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that [reasonably](#) might be imputed to the organization, and that is likely to result in [substantial](#) injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.
- (c) Except as provided in paragraph (d), if
 - (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
 - (2) the lawyer [reasonably](#) believes that the violation is reasonably certain to result in [substantial](#) injury to the organization, then the lawyer may reveal information relating to the representation whether or not [Rule 1.6](#) permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an

officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who [reasonably believes](#) that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or [reasonably should know](#) that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of [Rule 1.7](#). If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.14 Client With Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as [reasonably](#) possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer [reasonably believes](#) that the client has diminished capacity, is at risk of [substantial](#) physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take [reasonably](#) necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by [Rule 1.6](#). When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent [reasonably](#) necessary to protect the client's interests.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer [reasonably believes](#) is criminal or [fraudulent](#);
- (3) the client has used the lawyer's services to perpetrate a crime or [fraud](#);
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given [reasonable](#) warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a [tribunal](#) when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent [reasonably](#) practicable to protect a client's interests, such as giving [reasonable](#) notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.17 Sale of Law Practice

A lawyer or a [law firm](#) may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which

the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or [law firm](#);

(c) The seller gives [written](#) notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 1.18 Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as [Rule 1.9](#) would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a [firm](#) with which that lawyer is associated may [knowingly](#) undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

- (1) both the affected client and the prospective client have given [informed consent](#), [confirmed in writing](#), or:
- (2) the lawyer who received the information took [reasonable](#) measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
- (i) the disqualified lawyer is timely [screened](#) from any participation in the matter and is apportioned no part of the fee therefrom; and
- (ii) [written](#) notice is promptly given to the prospective client.

[\[Comment\]](#) [\[Pre-2002 version\]](#)[\[State Narratives\]](#)

COUNSELOR

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

[\[Comment\]](#)[\[Pre-2002 version\]](#)[\[State Narratives\]](#)

Rule 2.2 Intermediary

{ Deleted }

[\[Pre-2002 version\]](#)[\[State Narratives\]](#)

Rule 2.3 Evaluation for Use by Third Persons

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer [reasonably believes](#) that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer [knows](#) or [reasonably should know](#) that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the

client gives [informed consent](#).

(c) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by [Rule 1.6](#).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 2.4 Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer [knows](#) or [reasonably should know](#) that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

ADVOCATE

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 3.2 Expediting Litigation

A lawyer shall make [reasonable](#) efforts to expedite litigation consistent with the interests of the client.

[\[Comment\]](#)[\[Pre-2002 version\]](#)[\[State Narratives\]](#)

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not [knowingly](#):

(1) make a false statement of fact or law to a [tribunal](#) or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the [tribunal](#) legal authority in the controlling jurisdiction [known](#) to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer [knows](#) to be false. If 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, the lawyer shall take [reasonable](#) remedial measures, including, if necessary, disclosure to the [tribunal](#). A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer [reasonably believes](#) is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who [knows](#) that a person intends to engage, is engaging or has engaged in criminal or [fraudulent](#) conduct related to the proceeding shall take [reasonable](#) remedial measures, including, if necessary, disclosure to the [tribunal](#).

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by [Rule 1.6](#).

(d) In an *ex parte* proceeding, a lawyer shall inform the [tribunal](#) of all material facts [known](#) to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

[\[Comment\]](#)[\[Pre-2002 version\]](#)[\[State Narratives\]](#)

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) [knowingly](#) disobey an obligation under the rules of a [tribunal](#) except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make [reasonably](#) diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not [reasonably believe](#) is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer [reasonably believes](#) that the person's interests will not be adversely affected by refraining from giving such information.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made [known](#) to the lawyer a desire not to communicate; or

- (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a [tribunal](#).

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer [knows](#) or [reasonably should know](#) will be disseminated by means of public communication and will have a [substantial](#) likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of [substantial](#) harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in the apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the

investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a [reasonable](#) lawyer would believe is required to protect a client from the [substantial](#) undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a [firm](#) or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work [substantial](#) hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's [firm](#) is likely to be called as a witness unless precluded from doing so by [Rule 1.7](#) or [Rule 1.9](#).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor [knows](#) is not supported by probable cause;
- (b) make [reasonable](#) efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information [known](#) to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the [tribunal](#) all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor [reasonably believes](#):

(i) the information sought is not protected from disclosure by any applicable privilege;

(ii) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(iii) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a [substantial](#) likelihood of heightening public condemnation of the accused and exercise [reasonable](#) care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under [Rule 3.6](#) or this Rule.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of [Rules 3.3\(a\) through \(c\)](#), [3.4\(a\) through \(c\)](#), and [3.5](#).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not [knowingly](#):

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or [fraudulent](#) act by a client, unless disclosure is prohibited by [Rule 1.6](#).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer [knows](#) to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer [knows](#) or [reasonably should know](#) that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make [reasonable](#) efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 4.4 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no [substantial](#) purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document relating to the representation of the

lawyer's client and [knows](#) or [reasonably should know](#) that the document was inadvertently sent shall promptly notify the sender.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

LAW FIRMS AND ASSOCIATIONS

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A [partner](#) in a [law firm](#), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make [reasonable](#) efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make [reasonable](#) efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a [partner](#) or has comparable managerial authority in the [law firm](#) in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 5.2 Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's [reasonable](#) resolution of an arguable question of professional duty.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a [partner](#), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a [law firm](#) shall make [reasonable](#) efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make [reasonable](#) efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a [partner](#) or has comparable managerial authority in the [law firm](#) in which the person is employed, or has direct supervisory authority over the person, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 5.4 Professional Independence of a Lawyer

- (a) A lawyer or [law firm](#) shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's [firm](#), [partner](#) or associate may provide for the payment of money, over a [reasonable](#) period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of [Rule 1.17](#), pay to the estate or other representative of that lawyer the agreed-upon purchase price;
 - (3) a lawyer or [law firm](#) may include nonlawyer employees in a compensation or retirement plan,

even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a [reasonable](#) time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal

services on a temporary basis in this jurisdiction that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
- (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

[*\[Comment\]*](#)[*\[Pre-2002 version\]*](#)[*\[State Narratives\]*](#)

Rule 5.6 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

[*\[Comment\]*](#)[*\[Pre-2002 version\]*](#)[*\[State Narratives\]*](#)

Rule 5.7 Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take [reasonable](#) measures to assure that a person obtaining the law-related services [knows](#) that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might [reasonably](#) be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

PUBLIC SERVICE

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a [substantial](#) majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or

charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

[Comment][Pre-2002 version][State Narratives]

Rule 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a [tribunal](#) to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) 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.

[Comment][Pre-2002 version][State Narratives]

Rule 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the [law firm](#) in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not [knowingly](#) participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under [Rule 1.7](#); or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 6.4 Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When 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.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to [Rules 1.7](#) and [1.9\(a\)](#) only if the lawyer [knows](#) that the representation of the client involves a conflict of interest; and

(2) is subject to [Rule 1.10](#) only if the lawyer [knows](#) that another lawyer associated with the lawyer in a [law firm](#) is disqualified by [Rule 1.7](#) or [1.9\(a\)](#) with respect to the matter.

(b) Except as provided in paragraph (a)(2), [Rule 1.10](#) is inapplicable to a representation governed by this Rule.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 7.2 Advertising

- (a) Subject to the requirements of [Rules 7.1](#) and [7.3](#), a lawyer may advertise services through [written](#), recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- (1) pay the [reasonable](#) costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and
 - (3) pay for a law practice in accordance with [Rule 1.17](#); and
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or [law firm](#) responsible for its content.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 7.3 Direct Contact with Prospective Clients

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
- (1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by [written](#), recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made [known](#) to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every [written](#), recorded or electronic communication from a lawyer soliciting professional employment from a prospective client [known](#) to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not [known](#) to need legal services in a particular matter covered by the plan.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 7.4 Communication of Fields of Practice and Specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a [firm](#) name, letterhead or other professional designation that violates [Rule 7.1](#). A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of [Rule 7.1](#).

(b) A [law firm](#) with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of the [law firm](#), or in communications on its behalf, during any [substantial](#) period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

A lawyer or [law firm](#) shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

[[Comment](#)][[Pre-2002 version](#)]

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar

admission application or in connection with a disciplinary matter, shall not:

- (a) [knowingly](#) make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension [known](#) by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by [Rule 1.6](#).

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 8.2 Judicial and Legal Officials

- (a) A lawyer shall not make a statement that the lawyer [knows](#) to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who [knows](#) that another lawyer has committed a violation of the Rules of Professional Conduct that raises a [substantial](#) question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who [knows](#) that a judge has committed a violation of applicable rules of judicial conduct that raises a [substantial](#) question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by [Rule 1.6](#) or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

*[\[Comment\]](#)**[\[Pre-2002 version\]](#)**[\[State Narratives\]](#)*

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[[Comment](#)][[Pre-2002 version](#)][[State Narratives](#)]

Rule 8.5 Disciplinary Authority; Choice of Law

- (a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.
- (b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
 - (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
 - (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

[*\[Comment\]\[Pre-2002 version\]\[State Narratives\]*](#)

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ABA Model Rules of Professional Conduct (pre-2002)

The ABA Model Rules of Professional Conduct, including Preamble, Scope, Terminology and Comment, were adopted by the ABA House of Delegates on August 2, 1983, and amended in 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1997, 1998, and 2000.

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This version of the Model Rules was substantially revised in 2002.

[This edition predates the changes adopted by the ABA House of Delegates, February 5, 2002, in response to the recommendations of the Ethics 2000 Commission, and the further amendments adopted by the ABA House of Delegates in August 2002. Until states have time to deliberate on and, in significant number, adopt the ABA changes this version will remain the model for most state rules. There is following each rule a link to the new 2002 language.]*

Select one of the following starting points by double-clicking on it:

1. [INTRODUCTION](#)
2. [PREAMBLE, SCOPE, TERMINOLOGY](#)
3. [RULES](#)

PREFACE

For more than eighty years, the American Bar Association has provided leadership in legal ethics and professional responsibility through the adoption of professional standards which serve as models of the regulatory law governing the legal profession.

On August 27, 1908, the Association adopted the original Canons of Professional Ethics. These were based principally on the Code of Ethics adopted by the Alabama Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 as *Professional Ethics*, and from the fifty resolutions included in David Hoffman's *A Course of Legal Study* (2d ed. 1836). Piecemeal amendments to the Canons occasionally followed.

In 1913, the Standing Committee on Professional Ethics of the American Bar Association was established to keep the Association informed about state and local bar activities concerning professional ethics. In 1919 the name of the Committee was changed to the Committee on Professional Ethics and Grievances; its role was expanded in 1922 to include issuing opinions "concerning professional conduct, and particularly concerning the application of the tenets of ethics thereto." In 1958 the Committee on Professional Ethics and Grievances was separated into two committees: a

Committee on Professional Grievances, with authority to investigate charges of professional misconduct, and a Committee on Professional Ethics with responsibility to express its opinion concerning proper professional and judicial conduct. The Committee on Professional Grievances was discontinued in 1971. The name of the Committee on Professional Ethics was changed to the Committee on Ethics and Professional Responsibility in 1971 and remains so.

In 1964, at the request of President Lewis F. Powell Jr., the House of Delegates of the American Bar Association created a Special Committee on Evaluation of Ethical Standards (the "Wright Committee") to assess whether changes should be made in the then-current Canons of Professional Ethics. In response, the Committee produced the Model Code of Professional Responsibility. The Model Code was adopted by the House of Delegates on August 12, 1969, and subsequently by the vast majority of state and federal jurisdictions.

In 1977, the American Bar Association created the Commission on Evaluation of Professional Standards to undertake a comprehensive rethinking of the ethical premises and problems of the legal profession. Upon evaluating the Model Code and determining that amendment of the Code would not achieve a comprehensive statement of the law governing the legal profession, the Commission commenced a six-year study and drafting process which produced the Model Rules of Professional Conduct. The Chair's Introduction to the Model Rules, which is reprinted following the Editor's Note to this volume, details the history of this process. The Model Rules were adopted by the House of Delegates of the American Bar Association on August 2, 1983. At the time this edition went to press, more than two-thirds of the jurisdictions had adopted new professional standards based on these Model Rules.

Nineteen amendments have been made to the Rules and Comment since their initial promulgation in 1983. A synopsis of these amendments, most of which, with the notable exception of those dealing with lawyer advertising, have been minor, is included as an appendix to this volume.

The American Bar Association continues to pursue its goal of assuring the highest standards of professional competence and ethical conduct. The Standing Committee on Ethics and Professional Responsibility, charged with interpreting the professional standards of the Association and recommending appropriate amendments and clarifications, issues opinions interpreting the Model Rules of Professional Conduct and the Code of

Judicial Conduct. So long as a significant number of jurisdictions continue to base their professional standards on the predecessor Model Code of Professional Responsibility, the opinions will also continue to refer to the Model Code. The opinions of the Committee are published by the American Bar Association in the 1967 volume *Opinions on Professional Ethics*, the 1975 two volume set *Informal Ethics Opinions*, the 1984 volume *Formal and Informal Ethics Opinions*, and the current loose-leaf subscription service, *Recent Ethics Opinions*.

Requests that the Committee issue opinions on particular questions of professional and judicial conduct should be directed to the American Bar Association, Center for Professional Responsibility, 541 North Fairbanks Court, Chicago, Illinois 60611.

CHAIRPERSON'S INTRODUCTION

The Commission on Evaluation of Professional Standards was appointed in the summer of 1977 by former ABA President William B. Spann, Jr. Chaired by Robert J. Kutak until his death in early 1983, the Commission was charged with evaluating whether existing standards of professional conduct provided comprehensive and consistent guidance for resolving the increasingly complex ethical problems in the practice of law. For the most part, the Commission looked to the former ABA Model Code of Professional Responsibility, which served as a model for the majority of state ethics codes. The Commission also referred to opinions of the ABA Standing Committee on Ethics and Professional Responsibility, as well as to decisions of the United States Supreme Court and of state supreme courts. After thoughtful study, the Commission concluded that piecemeal amendment of the Model Code would not sufficiently clarify the profession's ethical responsibilities in light of changed conditions. The Commission therefore commenced a drafting process that produced numerous drafts, elicited voluminous comment, and launched an unprecedented debate on the ethics of the legal profession.

On January 30, 1980, the Commission presented its initial suggestions to the bar in the form of a Discussion Draft of the proposed Model Rules of Professional Conduct. The Discussion Draft was subject to the widest possible dissemination and interested parties were urged to offer comments and suggestions. Public hearings were held around the country to provide forums for expression of views on the draft.

In the year following the last of these public hearings, the Commission

conducted a painstaking analysis of the submitted comments and attempted to integrate into the draft those which seemed consistent with its underlying philosophy. The product of this analysis and integration was presented on May 31, 1981 as the proposed Final Draft of the Model Rules of Professional Conduct. This proposed Final Draft was submitted in two formats. The first format, consisting of blackletter Rules and accompanying Comments in the so-called restatement format, was submitted with the Commission's recommendation that it be adopted. The alternative format was patterned after the Model Code and consisted of Canons, Ethical Considerations, and Disciplinary Rules. In February, 1982, the House of Delegates by substantial majority approved the restatement format of the Model Rules.

The proposed Final Draft was submitted to the House of Delegates for debate and approval at the 1982 Annual Meeting of the Association in San Francisco. Many organizations and interested parties offered their comments in the form of proposed amendments to the Final Draft. In the time allotted on its agenda, however, the House debated only proposed amendments to Rule 1.5. Consideration of the remainder of the document was deferred until the 1983 Midyear Meeting in New Orleans. The proposed Final Draft, as amended by the House in San Francisco, was reprinted in the November 1982 issue of the *ABA Journal*.

At the 1983 Midyear Meeting the House resumed consideration of the Final Draft. After two days of often vigorous debate, the House completed its review of the proposed amendments to the blackletter Rules. Many amendments, particularly in the area of confidentiality, were adopted. Debate on a Preamble, Scope, Terminology and Comments, rewritten to reflect the New Orleans amendments, was deferred until the 1983 Annual Meeting in Atlanta, Georgia.

On March 11, 1983, the text of the blackletter rules as approved by the House in February, together with the proposed Preamble, Scope, Terminology and Comments, was circulated to members of the House, Section and Committee chairmen, and all other interested parties. The text of the Rules reflected the joint efforts of the Commission and the House Drafting Committee to incorporate the changes approved by the House and to ensure stylistic continuity and uniformity. Recipients of the draft were again urged to submit comments in the form of proposed amendments. The House Committees on Drafting and Rules and Calendar met on May 23, 1983 to consider all of the proposed amendments that had been submitted in response to this draft. In addition, discussions were held among concerned parties in an effort to reach accommodation of the various

positions. On July 11, 1983, the final version of the Model Rules was again circulated.

The House of Delegates commenced debate on the proposed Preamble, Scope, Terminology and Comments on August 2, 1983. After four hours of debate, the House completed its consideration of all the proposed amendments and, upon motion of the Commission, the House voted to adopt the Model Rules of Professional Conduct, together with the ancillary material as amended. The task of the Commission had ended and it was discharged with thanks.

Throughout the drafting process, active participants included not only the members of the Commission but also the Sections and Committees of the American Bar Association and national, state and local bar organizations. The work of the Commission was subject to virtually continuous scrutiny by academicians, practicing lawyers, members of the press, and the judiciary. Consequently, every provision of the Model Rules reflects the thoughtful consideration and hard work of many dedicated professionals. Because of their input, the Model Rules are truly national in derivation. The Association can take immense pride in its continued demonstration of leadership in the area of professional responsibility.

The Model Rules of Professional Conduct are intended to serve as a national framework for implementation of standards of professional conduct. Although the Commission endeavored to harmonize and accommodate the views of all the participants, no set of national standards that speaks to such a diverse constituency as the legal profession can resolve each issue to the complete satisfaction of every affected party. Undoubtedly there will be those who take issue with one or another of the Rules' provisions. Indeed, such dissent from individual provisions is expected. And the Model Rules, like all model legislation, will be subject to modification at the level of local implementation. Viewed as a whole, however, the Model Rules represent a responsible approach to the ethical practice of law and are consistent with professional obligations imposed by other law, such as constitutional, corporate, tort, fiduciary and agency law.

I should not end this report without speaking of the Commission's debt to many people who have aided us in our deliberations, and have devoted time, energy and goodwill to the advancement of our work over the last six years. It would probably be impossible to name each of the particular persons whose help was significant to us, and it surely would be unfortunate if the name of anyone were omitted from the list. We are, and shall remain, deeply grateful to the literally hundreds of people who aided

us with welcome and productive suggestions. We think the bar should be grateful to each of them, and to our deceased members, Alan Barth of the District of Columbia, who we hardly had time to know; Bill Spann, who became a member after the conclusion of his presidential term; and our original chairman, Bob Kutak.

The long work of the Commission and its resulting new codification of the ethical rules of practice demonstrate, it is submitted, the commitment of the American lawyer to his or her profession and to its achievement of the highest standards.

Robert W. Meserve*

September 1983

PREAMBLE, SCOPE AND TERMINOLOGY

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

[3] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[4] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal

affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[5] As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[6] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[7] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[8] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided

by the basic principles underlying the Rules.

[9] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[10] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[11] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[12] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

[2002 version]

SCOPE

[13] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses

not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[14] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[15] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[16] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in

circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

[17] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[18] Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

[19] Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

[20] The lawyer's exercise of discretion not to disclose information under

[Rule 1.6](#) should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative. Research notes were prepared to compare counterparts in the ABA Model Code of Professional Responsibility (adopted 1969, as amended) and to provide selected references to other authorities. The notes have not been adopted, do not constitute part of the Model Rules, and are not intended to affect the application or interpretation of the Rules and Comments. * *

[2002 version]

TERMINOLOGY

"**Belief**" or "**believes**" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"**Consult**" or "**consultation**" denotes communication of information [reasonably](#) sufficient to permit the client to appreciate the significance of the matter in question.

"**Firm**" or "**law firm**" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See [Comment, Rule 1.10](#).

"**Fraud**" or "**fraudulent**" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"**Knowingly**," "**known**," or "**knows**" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"**Partner**" denotes a member of a partnership and a shareholder in a [law firm](#) organized as a professional corporation.

"Reasonable"

"**Reasonable belief**" or "**reasonably believes**" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the [belief](#) is [reasonable](#).

"**Reasonably should know**" when used in reference to a lawyer denotes that a lawyer of [reasonable](#) prudence and competence would ascertain the matter in question.

"**Substantial**" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

[2002 version]

CLIENT-LAWYER RELATIONSHIP

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation [reasonably](#) necessary for the representation.

[[Comment](#)][[History](#)][[Model Code Comparison](#)][[Current Version](#)][[State Narratives](#)]

Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation subject to paragraphs (c), (d) and (e), and shall [consult](#) with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after [consultation](#) with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) 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.

(c) A lawyer may limit the objectives of the representation if the client consents after [consultation](#).

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer

[knows](#) in criminal or [fraudulent](#), but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer [knows](#) that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall [consult](#) with the client regarding the relevant limitations on the lawyer's conduct.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.3 Diligence

A lawyer shall act with [reasonable](#) diligence and promptness in representing a client.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.4 Communication

(a) A lawyer shall keep a client [reasonably](#) informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent [reasonably](#) necessary to permit the client to make informed decisions regarding the representation.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.5 Fees

(a) A lawyer's fee shall be [reasonable](#). The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

- (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the result obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a [reasonable](#) time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- (e) A division of a fee between lawyers who are not in the same [firm](#) may be made only if:
- (1) the division is in proportion to the service performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
 - (2) the client is advised of and does not object to the participation of all the lawyers involved; and

(3) the total fee is [reasonable](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after [consultation](#), except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer [reasonably believes](#) necessary:

(1) to prevent the client from committing a criminal act that the lawyer [believes](#) is likely to result in imminent death or [substantial](#) bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of a client.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.7 Conflict of Interest: General rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer [reasonably believes](#) the representation will not adversely affect the relationship with the other client; and

(2) each client consents after [consultation](#).

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer [reasonably believes](#) the representation will not be adversely affected; and

(2) the client consents after [consultation](#). When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or [knowingly](#) acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and [reasonable](#) to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a [reasonable](#) opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after [consultation](#), except as permitted or required by [Rule 1.6](#) or [Rule 3.3](#).

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any [substantial](#) gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in [substantial](#) part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on

behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after [consultation](#);

(2) there is no interference with the lawyer's independence of professional judgement or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by [Rule 1.6](#).

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after [consultation](#), including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer [knows](#) is represented by the other lawyer except upon consent by the client after [consultation](#) regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in a cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a [reasonable](#) contingent fee in a civil case.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.9 Conflict of Interest: Former Client

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after [consultation](#).
- (b) A lawyer shall not [knowingly](#) represent a person in the same or substantially related matter in which a [firm](#) with which the lawyer formerly was associated had previously represented a client,
- (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer has acquired information protected by [Rule 1.6](#) and [1.9\(c\)](#) that is material to the matter; unless the former client consents after [consultation](#).
- (c) A lawyer who has formerly represented a client in a matter or whose present or former [firm](#) has formerly represented a client in a matter shall not thereafter:
- (1) use information relating to the representation to the disadvantage of the former client except as [Rule 1.6](#) or [3.3](#) would permit or require with respect to a client, or when the information has become generally [known](#); or
 - (2) reveal information relating to the representation except as [Rule 1.6](#) or [3.3](#) would permit or require with respect to a client.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.10 Imputed Disqualification: General Rule

- (a) While lawyers are associated in a [firm](#), none of them shall [knowingly](#) represent a client when any one of them practicing alone would be prohibited from doing so by [Rule 1.7](#), [1.8\(c\)](#), [1.9](#) or [2.2](#).
- (b) When a lawyer has terminated an association with a [firm](#), the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:
- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the [firm](#) has information protected by [Rules 1.6](#) and [1.9\(c\)](#) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in [Rule 1.7](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.11 Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a [matter](#) in which the lawyer participated personally or substantially as a public officer or employee, unless the appropriate government agency consents after [consultation](#). No lawyer in a [firm](#) with which that lawyer is associated may [knowingly](#) undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is screened from any participation in the [matter](#) and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer [knows](#) is [confidential government information](#) about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a [matter](#) in which the information could be used to the material disadvantage of that person. A [firm](#) with which that lawyer is associated may undertake or continue representation in the [matter](#) only if the disqualified lawyer is screened from any participation in the [matter](#) and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

- (1) participate in a [matter](#) in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the [matter](#); or
- (2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a [matter](#) in which the lawyer is participating personally or substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [Rule 1.12\(b\)](#) and subject to the conditions stated in [Rule 1.12\(b\)](#).

(d) As used in this Rule, the term "**matter**" includes:

- (1) 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; and
- (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this Rule, the term "**confidential government information**" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.12 Former Judge or Arbitrator

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after consultation.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a [firm](#) with which that lawyer is associated may [knowingly](#) undertake or continue representation in the matter unless:

- (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon acting, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with [Rule 1.16](#).

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of [Rule 1.7](#). If the organization's consent to the dual representation is required by [Rule 1.7](#), the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.14 Client Under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as [reasonably](#) possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer [reasonably believes](#) that the client cannot adequately act in the client's own interest.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the

lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (1) the client persists in a course of action involving the lawyer's services that the lawyer [reasonably believes](#) is criminal or [fraudulent](#);
- (2) the client has used the lawyer's services to perpetrate a crime or [fraud](#);
- (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
- (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given [reasonable](#) warning that the lawyer will withdraw unless the obligation is fulfilled;
- (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent [reasonably](#) practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.17 Sale of Law Practice

A lawyer or a [law firm](#) may sell or purchase a law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;
- (b) The practice is sold as an entirety to another lawyer or [law firm](#);
- (c) Actual written notice is given to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);
 - (3) the client's right to retain other counsel or to take possession of the file; and
 - (4) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 1.18

[The pre-2002 Model Rules had no Rule 1.18.]

[\[Current Version\]](#)

COUNSELOR

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 2.2 Intermediary

(a) A lawyer may act as intermediary between clients if:

(1) the lawyer [consults](#) with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) the lawyer [reasonably believes](#) that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer [reasonably believes](#) that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall [consult](#) with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 2.3 Evaluation for Use by Third Persons

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

- (1) the lawyer [reasonably believes](#) that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and
- (2) the client consents after [consultation](#).

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by [Rule 1.6](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 2.4

[The pre-2002 Model Rules had no Rule 2.4.]

[\[Current Version\]](#)

ADVOCATE

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of

the case be established.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.2 Expediting Litigation

A lawyer shall make [reasonable](#) efforts to expedite litigation consistent with the interests of the client.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not [knowingly](#):

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or [fraudulent](#) act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction [known](#) to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer [knows](#) to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take [reasonable](#) remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by [Rule 1.6](#).

(c) A lawyer may refuse to offer evidence that the lawyer [reasonably believes](#) is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts [known](#) to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

[*Narratives*](#)

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) [knowingly](#) disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make [reasonably](#) diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not [reasonably believe](#) is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer [reasonably believes](#) that the person's interests will not be adversely affected by refraining from giving such information.

[\[*Comment*\]\[*History*\]\[*Model Code Comparison*\]\[*Current Version*\]\[*State Narratives*\]](#)

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law; or

(c) engage in conduct intended to disrupt a tribunal.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer [knows](#) or [reasonably should know](#) that it will have a [substantial](#) likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is no reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest;

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in the apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work [substantial](#) hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's [firm](#) is likely to be called as a witness unless precluded from doing so by [Rule 1.7](#) or [Rule 1.9](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor [knows](#) is not supported by probable cause;
- (b) make [reasonable](#) efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information [known](#) to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) exercise [reasonable](#) care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under [Rule 3.6](#);

(f) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor [reasonably believes](#):

(i) the information sought is not protected from disclosure by any applicable privilege;

(ii) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(iii) there is no other feasible alternative to obtain the information;

(g) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of [Rules 3.3\(a\) through \(c\)](#), [3.4\(a\) through \(c\)](#), and [3.5](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not [knowingly](#):

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or [fraudulent](#) act by a client, unless disclosure is prohibited by [Rule 1.6](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer [knows](#) to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or [reasonably should know](#) that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 4.4 Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no [substantial](#) purpose other than to embarrass, delay, or burden a third

person, or use methods of obtaining evidence that violate the legal rights of such a person.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[2002 version\]](#)[\[State Narratives\]](#)

LAW FIRMS AND ASSOCIATIONS

Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

(a) A [partner](#) in a [law firm](#) shall make [reasonable](#) efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make [reasonable](#) efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a [partner](#) in the [law firm](#) in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.2 Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's [reasonable](#) resolution of an arguable question of professional duty.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a [partner](#) in a [law firm](#) shall make [reasonable](#) efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make [reasonable](#) efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a [partner](#) in the [law firm](#) in which the person is employed, or has direct supervisory authority over the person, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.4 Professional Independence of a Lawyer

- (a) A lawyer or [law firm](#) shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's [firm](#), [partner](#) or associate may provide for the payment of money, over a [reasonable](#) period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of [Rule 1.17](#), pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
 - (3) a lawyer or [law firm](#) may include nonlawyer employees in a compensation or retirement plan,

even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.5 Unauthorized Practice of Law

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.6 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 5.7 Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) by a separate entity controlled by the lawyer individually or with others if the lawyer fails to take [reasonable](#) measures to assure that a person obtaining the law-related services [knows](#) that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might [reasonably](#) be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

PUBLIC SERVICE

Rule 6.1 Voluntary Pro Bono Publico Service

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a [substantial](#) majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in

matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) 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.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the [law firm](#) in which the lawyer practices, notwithstanding that the organization serves persons having interests

adverse to a client of the lawyer. The lawyer shall not [knowingly](#) participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under [Rule 1.7](#); or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 6.4 Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When 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.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 6.5

[The pre-2002 Model Rules had no Rule 6.5.]

[\[Current Version\]](#)

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 7.2 Advertising

(a) Subject to the requirements of [Rules 7.1](#) and [7.3](#), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the [reasonable](#) costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization; and

(3) pay for a law practice in accordance with [Rule 1.17](#).

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made [known](#) to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client [known](#) to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the outside envelope and at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not [known](#) to need legal services in a particular matter covered by the plan.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 7.4 Communication of Fields of Practice and Certification

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

- (a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;
- (b) a lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation; and
- (c) [for jurisdictions where there is a regulatory authority granting certification or approving organizations that grant certification] a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority but only if:

- (1) such certification is granted by the appropriate regulatory authority to grant such certification;

or

(2) such certification is granted by an an organization that has not yet been approved by, or has been denied the approval available from, the appropriate regulatory authority, and the absence or denial of approval is clearly stated in the communication, and in any advertising subject to [Rule 7.2](#), such statement appears in the same sentence that communicates the certification.

(c) [for jurisdictions where there is no procedure either for certification of specialties or for approval of organizations granting certification] a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in this jurisdiction for approving certifying organizations. If, however, the named organization has been accredited by the American Bar Association to certify lawyers as specialists in a particular field of law, the communication need not contain such a statement.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a [firm](#) name, letterhead or other professional designation that violates [Rule 7.1](#). A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of [Rule 7.1](#).

(b) A [law firm](#) with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of the [law firm](#), or in communications on its behalf, during any [substantial](#) period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

[\[Comment\]](#)[\[History\]](#)[\[Current Version\]](#)

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) [knowingly](#) make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension [known](#) by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by [Rule 1.6](#).

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 8.2 Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer [knows](#) to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of

Professional Conduct that raises a [substantial](#) question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a [substantial](#) question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by [Rule 1.6](#) or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, [knowingly](#) assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, [fraud](#), deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official; or
- (f) [knowingly](#) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[(g) an anti-discrimination provision has been proposed for inclusion at this point on several occasions since 1994 but has not been adopted by the House of Delegates. A new [Comment \[2\]](#) was added in August 1998 dealing with the subject and existing Comments [2] and [3] were renumbered as [3] and [4]. A substantial number of states have adopted rules dealing prohibiting discrimination in legal employment or practice; most of the states that have done so have included the provision as a new paragraph under Rule 8.4: see, *e.g.*, [Florida Rule 8.4\(d\)](#), [Illinois Rule 8.4\(a\)](#)

[\(5\)](#), [Minnesota Rule 8.4\(g\)](#), [New Jersey Rule 8.4\(g\)](#), [Rhode Island Rule 8.4\(d\)](#), Utah 8.4(g), [Washington Rule 8.4\(g\)](#), and West Virginia Rule 8.4(g). Other states that have adopted rules on the subject have created a new rule not included in the Model Rule topical structure. *E.g.*, [Colorado Rule 1.2\(f\)](#), [District of Columbia Rule 9.1](#), Idaho Rule 4.4(a), [Michigan Rule 6.5](#).]

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) for any other conduct,

(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

[\[Comment\]](#)[\[History\]](#)[\[Model Code Comparison\]](#)[\[Current Version\]](#)[\[State Narratives\]](#)

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ABA Model Rules of Professional Conduct (pre-2002)

Comment - [Rule 1.1](#)

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation

and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or [consult](#) with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or [consultation](#) or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that [reasonably](#) necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by [reasonable](#) preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also [Rule 6.2](#)

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Model Code Comparison

DR 6-101(A)(1) provided that a lawyer shall not handle a matter "which he knows or should know that he is not competent to handle, without associating himself with a lawyer who is competent to handle it." DR 6-101(A)(2) required "preparation adequate in the circumstances." Rule 1.1 more fully particularized the elements of competence. Whereas DR 6-101(A)(3) prohibited the "[N]eglect of a legal matter," Rule 1.1 does not contain such a prohibition. Instead, Rule 1.1 affirmatively requires the lawyer to be competent.

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