

**PART III**  
**CANONS OF ETHICS**

**CHAPTER 1**  
**CODE OF PROFESSIONAL RESPONSIBILITY**  
**PREAMBLE**

In this State, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of this State and of the Republic, of which it is a member, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and motives of the members of our profession are such as to merit approval of all just men.

No code or set of rules can be framed which will particularize all duties of the lawyers in varying phases of litigation or in all the relations of the professional life. The following canons of ethics are adopted by the State Bar of Georgia as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

**Rule 3-101.**

(CANON 1)

*A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession.*

ETHICAL CONSIDERATIONS

**EC 1-1** A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the responsibility of every lawyer.

**EC 1-2** The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of preadmission and post-admission legal education.

**EC 1-3** Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.

**EC 1-4** The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in

violation of the Disciplinary Rules. A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

**EC 1-5** A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

**EC 1-6** An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

**EC 1-7** 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 Standards of Conduct.

**EC 1-8** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Standards of Conduct.

**EC 1-9** 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 Standards of 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 other lawyer practices and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer 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.

## DIRECTORY RULES

### **DR 1-101. Maintaining Integrity and Competence of the Legal Profession.**

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he had deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

**DR 1-102. Misconduct.**

(A) A lawyer shall not:

- (1) violate a Disciplinary Rule;
- (2) circumvent a Disciplinary Rule through actions of another;
- (3) engage in illegal professional conduct involving moral turpitude;
- (4) engage in professional conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (5) engage in professional conduct that is prejudicial to the administration of justice;
- (6) engage in any other professional conduct that adversely reflects on his fitness to practice law.

**DR 1-103. Disclosure of Information to Authorities.**

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

**Rule 3-102.**

(CANON 2)

*A Lawyer Should Assist in the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available.*

ETHICAL CONSIDERATIONS

**EC 2-1** The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

*Recognition of Legal Problems*

**EC 2-2** The legal profession should assist laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noted. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system, with particular reference to legal problems that frequently arise. Preparation of advertisements and professional articles for lay publications, participation in seminars, lectures and civic programs, and other forms of permitted communications by lawyers to the public should be motivated by a desire to increase the public's awareness of legal needs and its ability to select the most appropriate counsel, rather than for the sole purpose of obtaining publicity for particular lawyers.

**EC 2-3** Whether a lawyer acts properly in volunteering advice to a layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal actions could well be in fulfillment of the duty of the legal profession to assist laypersons in recognizing legal problems. The advice is proper whenever it is motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. It is improper if made under circumstances which present a substantial potential for coercion, duress, or overreaching; or which hold out unwarranted promises of benefits, taking into account the mental, physical or emotional condition of

the layperson and the circumstances surrounding the advice. It is also improper if the advice is false, fraudulent, deceptive or misleading.

**EC 2-4** Because of the possibility of fraud, undue influence, intimidation, overreaching and other forms of vexatious conduct, a lawyer should not engage in direct in-person solicitation of legal employment.

**EC 2-5** A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled or misadvised. Talks and writings by lawyers for laypersons should caution them not to attempt to solve individual problems upon the basis of information contained therein.

#### *Selection of Lawyer: Generally*

**EC 2-6** Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

**EC 2-7** Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the qualifications of particular lawyers and the expense of legal representation leads laypersons to avoid seeking legal advice.

**EC 2-8** Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties: relatives, friends, acquaintances, business associates or other lawyers; and disclosure of relevant information about the lawyer and his practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations. Advertisements and public communications should be formulated to convey only information that is necessary to make an appropriate selection that is objective in nature and that is capable of being accurately stated in an advertisement without tending to deceive or mislead. Such information includes: (1) office information, such as, name including name of law firm and names of professional associates, address, telephone numbers, credit card acceptability, fluency in foreign languages, and office hours; (2) relevant biographical information; and (3) permitted fee information. Self-laudation should be avoided.

#### *Selection of a Lawyer: Professional Notices and Listings*

**EC 2-9** The historical ban against advertising by lawyers, which has always been subject to certain limited exceptions, was rooted in the public interest. It was feared that competitive advertising, which encouraged extravagant, artful, self-laudatory brashness in seeking legal business, would tend to mislead the layperson and undermine public confidence in the legal profession and was not in the public interest.

The attorney-client relationship is personal and unique and should not be established as result of pressures and deceptions. Unlike ideological speech, commercial speech is always calculated, not spontaneous. Its benefits depend upon confidence in its reliability. Lawyer advertising must flow not only freely but cleanly. Distortions or omissions which might be overlooked or be deemed unimportant in some advertising are wholly inappropriate in lawyer advertising. Examples include misstatement of facts; suggestions that the ingenuity or prior record of a lawyer, rather than the justice of the claim, are principal factors likely to determine the result; and representations concerning the quality of service, which cannot be measured or verified. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed. To achieve these objectives, advertising must not be false, fraudulent, deceptive or misleading.

**EC 2-10** Permitted communications between a lawyer and a layperson regarding legal problems and the selection of a lawyer should be motivated by a desire to inform the layperson of the availability of competent legal counsel. Similarly, only public communications which are not false, fraudulent, deceptive 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; 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 disciplinary rules or other law; compares the lawyers' services with the other lawyers' services, unless the comparison can be factually substantiated; or makes a claim as to the quality of legal services the lawyer can provide.

**EC 2-11** The name under which a lawyer conducts his practice may be a factor in the selection process. Accordingly a lawyer in private practice should not practice under a firm name that is false, fraudulent, deceptive or that would tend to mislead laypersons as to the identity of the lawyers actually practicing in the firm, the relationship of the lawyers practicing in such firm, or the nature of the firm's law practice. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

**EC 2-12** A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

**EC 2-13** In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer. A partnership for the practice of law may be composed of one or more individual professional corporations. However, the letterhead and professional cards of a lawyer practicing as a professional corporation should be clearly designated to show that he is a professional corporation.

**EC 2-14** In some instances a lawyer confines his practice to a particular field of law. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist or is certified in a particular field of law by experience, specialized training or education, or by certification by a recognized and verifiable professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

**EC 2-15** The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyer competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

*Financial Ability to Employ Counsel: Generally*

**EC 2-16** The legal profession cannot remain a viable force in fulfilling its role in our society unless the members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

*Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees*

**EC 2-17** The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

**EC 2-18** The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. Economic reports of state and local bar associations provide some guidance on the subject of reasonable fees. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

**EC 2-19** As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

**EC 2-20** Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a res out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human

relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same considerations as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a res with which to pay the fee.

**EC 2-21** A lawyer should not accept compensation or anything of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.

**EC 2-22** Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

**EC 2-23** A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject.

*Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees*

**EC 2-24** A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

**EC 2-25** (a) Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

(b) “Pro Bono Publico”, or “Pro Bono”, service includes all uncompensated services performed by attorneys for the public good. Such service includes civic, charitable, and public service activities, as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is the most important and needed type of pro bono service. Direct provision of legal services to the poor includes representation in civil matters and representation in criminal cases.

(c) Although the amount of time which each attorney devotes to pro bono service is a matter of individual conscience, the following are suggested guidelines: each attorney in Georgia should endeavor to perform 40 hours annually, or 120 hours over a three year period, of such service. Of this total, the attorney should endeavor to devote 20 hours annually, or 60 hours over a three year period, to work involving the direct provision of legal services to the poor, without an expectation of compensation.

*Acceptance and Retention of Employment*

**EC 2-26** A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.

**EC 2-27** History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

**EC 2-28** The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

**EC 2-29** When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons.

**EC 2-30** Employment should not be accepted by a lawyer when he is unable to render competent service or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

**EC 2-31** Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

**EC 2-32** A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment.

**EC 2-33** As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, lawyers are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. A lawyer so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization



who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. A lawyer interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization and while so participating should adhere to the highest professional standards of effort and competence.

## DIRECTORY RULES

### **DR 2-101. Publicity.**

(A) A lawyer shall not make any false, fraudulent, deceptive, or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it;

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

(2) 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 disciplinary rules or other law;

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

(4) fails to include the name of at least one lawyer responsible for its content.

(B) If a communication promoting a lawyer's services contains any information regarding contingent fees, then the following language must be conspicuously presented: "Contingent attorneys' fees refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client." Additionally, if the communication contains the phrase "no fee unless you win or collect" or any similar language, the following language must be conspicuously presented: "No fee unless you win or collect" (or insert the similar language in communication) refers only to fees charged by the attorney. Such contingent fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."

(C) In general:

(1) Subject to the requirements of paragraph (A), DR 2-103 and DR 2-104(B), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, or through written communication not involving personal contact.

(2) Written communications to a prospective client for the purposes of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in typesize no smaller than the largest typesize used in the body of the letter.

(3) A copy of any written communication mailed to prospective clients for the purpose of obtaining employment and a list of names and addresses to whom the written communication was sent shall be retained by the lawyer for a period of four (4) years.

(4) A lawyer shall not send, or knowingly permit to be sent, on behalf of himself, his firm, his partner, associate, or any other lawyer affiliated with him or his firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(a) The written communication concerns a specific matter, and the lawyer knows or reasonably should know that a person is represented by a lawyer in the matter;

(b) It has been made known to the lawyer that a person does not desire to receive communications from the lawyer;

(c) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(d) The written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(e) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

(5) A public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is such a communication.

(6) Public communications disseminated to the public by use of electronic media shall be prerecorded and the prerecorded communication shall be approved by the lawyer before it is broadcast. A recording of the actual transmission and a written transcript of the same shall be retained by the lawyer for a period of four (4) years.

**DR 2-102. Professional Notices, Letterheads and Firm Names.**

(A) A lawyer shall not use a firm name, professional card, professional announcement card, office sign letterhead, telephone directory listing, law list, legal directory listing or similar professional notice or designation that includes a statement or claim that is false, fraudulent, deceptive or misleading. A statement or claim is false and misleading if it violates the provisions of DR 2-101.

(B) (1) A lawyer or law firm in private practice shall not practice under a trade name if it is false, fraudulent, deceptive, or misleading as to the lawyer or lawyers practicing under that name or to the type of practice in which the lawyer or lawyers are engaged. A trade name is false or misleading if:

(a) the trade name does not include the name of at least one of the lawyers practicing under said name, but a law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; or

(b) the trade name implies a connection with a government agency, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.

(2) The name of a lawyer holding a public office shall not be used in the name of a 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. A law firm may use or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(3) A law firm shall not simultaneously practice law under more than one name.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers, unless they are, in fact, partners. A partnership for the practice of law may be composed of one or more individual professional corporations. However, the letterhead and professional cards of the professionally incorporated lawyer should show that he is a professional corporation.

(D) A law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the members and associates 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.

**DR 2-103. Recommendation of Professional Employment.**

(A) A lawyer shall not solicit employment as a private practitioner for himself, his partner or associate through direct personal contact with a non-lawyer who has not sought his advice regarding employment of a lawyer.

(B) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR 2-101 and the usual and reasonable fees or dues charged by a bona fide lawyer referral service operated by an organization authorized by law and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board at least annually a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service.

(C) A lawyer may assist in, cooperate with, or offer any qualified legal services plan, or assist in or cooperate with any insurer providing legal services insurance as authorized by law, to promote the use of his services, his partner or association so long as his assistance, cooperation or offer and communications of the organization are not false, fraudulent, deceptive or misleading.

(D) A lawyer may assist and cooperate with a non-profit organization which provides without charge legal services to others as a form of political or associational expression in the promotion of the use of his services or those of his partner or associate provided that his assistance or the communications of the organization on his behalf are not false, fraudulent, deceptive or misleading.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct by any person or organization prohibited under this directory rule.

**DR 2-104. Suggestion of Need of Legal Services.**

(A) A lawyer who has given in-person unsolicited advice to a layperson that he should obtain counsel to take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable legal services organization; or

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

**DR 2-105. Limitation of Practice; Specialists.**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist or is certified in a particular field of law by experience, specialized training or education, or by certification by a recognized and verifiable professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

**DR 2-106. Fees for Legal Services.**

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides 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;

(8) whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

**DR 2-107. Division of Fees Among Lawyers.**

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) the client consents to employment of the other lawyer after a full disclosure that a fee will be made;

(2) the division is made in proportion to the services performed and the responsibility assumed by each;

(3) the total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Directory Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

**DR 2-108. Agreements Restricting the Practice of a Lawyer.**

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law, but may enter into an agreement not to accept any other representation arising out of a transaction or event embraced in the subject matter of the controversy or suit thus settled.

**DR 2-109. Acceptance of Employment.**

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person;

(2) present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

**DR 2-110. Withdrawal from Employment.**

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal. A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) he knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person;

(2) he knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule;

(3) his mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively;

(4) he is discharged by his client.

(C) Permissive withdrawal. If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(b) personally seeks to pursue an illegal course of conduct;

(c) insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules;

(d) by other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively;

(e) insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules;

(f) deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

### **Rule 3-103.**

#### (CANON 3)

#### *A Lawyer Should Assist in Preventing the Unauthorized Practice of Law*

#### ETHICAL CONSIDERATIONS

**EC 3-1** The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

**EC 3-2** The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and firm ethical commitment.

**EC 3-3** A nonlawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

**EC 3-4** A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

**EC 3-5** It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved nonlawyers such as clerks, police officers, abstractors, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

**EC 3-6** A lawyer often delegates tasks to clerks, secretaries, and other laypersons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

**EC 3-7** The prohibition against a nonlawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

**EC 3-8** Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

**EC 3-9** Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client.

#### DIRECTORY RULES

**DR 3-101. Aiding Unauthorized Practice of Law.**

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

**DR 3-102. Dividing Legal Fees with a Nonlawyer.**

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

**DR 3-103. Forming a Partnership with a Nonlawyer.**

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

**Rule 3-104.**

(CANON 4)

*A Lawyer Should Preserve the Confidences and Secrets of a Client*

#### ETHICAL CONSIDERATIONS

**EC 4-1** Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

**EC 4-2** The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his

professional employment, when permitted by a Disciplinary Rule or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential, professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship. Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

**EC 4-3** Unless the client otherwise directs, it is not improper for a lawyer to give nonconfidential information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing or other legitimate purposes, provided he exercises due care in the selection of the agency.

**EC 4-4** The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard thy confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

**EC 4-5** A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purpose. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

**EC 4-6** The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment. Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets. A lawyer should also provide for the protection of confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another lawyer or be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

#### DIRECTORY RULES

**DR 4-401. Preservation of Confidences and Secrets of a Client.**

(A) “Confidence” refers to information by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be



held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

(B) Except where permitted under DR 4-101(C), a lawyer shall not knowingly:

- (1) reveal a confidence or secret of his client;
- (2) use a confidence or secret of his client for the disadvantage of the client;
- (3) use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

- (1) confidences or secrets with the consent of the client or clients affected;
- (2) confidences or secrets when permitted under Disciplinary Rule or required by law or court order;
- (3) the intention of his client to commit a crime and the information necessary to prevent the crime;
- (4) confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

### **Rule 3-105.**

#### (CANON 5)

*A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client*

#### ETHICAL CONSIDERATIONS

**EC 5-1** The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

#### *Interests of a Lawyer That May Affect His Judgment*

**EC 5-2** A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

**EC 5-3** The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of judgment, but the likelihood of interference can be reasonably foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in

an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

**EC 5-4** If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal Case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

**EC 5-5** A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

**EC 5-6** A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

**EC 5-7** The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a propriety interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in instances where the arrangement will be beneficial to the client.

**EC 5-8** A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

**EC 5-9** Occasionally a lawyer is called upon to decide in a particular Case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the case of another, while that of a witness is to state facts objectively.

**EC 5-10** Problems incident to the lawyer-witness relationship arise at different stages; they relate to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectional for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decisions, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying against his becoming or continuing as an advocate.

**EC 5-11** A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and should disclose the reasons for his belief.

**EC 5-12** Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.

**EC 5-13** A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

#### *Interests of Multiple Clients*

**EC 5-14** Maintaining the independence of professional judgment required of a lawyer precludes his acceptance of continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

**EC 5-15** If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment

initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

**EC 5-16** In those instances in which a lawyer is justified in representing two or more clients having different interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should advise all of the clients of those circumstances.

**EC 5-17** Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of the decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

**EC 5-18** A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to the stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

**EC 5-19** A lawyer may represent several clients whose interests are not actually or potentially differing. Nonetheless, he should explain any circumstances that might cause a client to question his undivided loyalty. Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

**EC 5-20** A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

#### *Desires of Third Persons*

**EC 5-21** The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

**EC 5-22** Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

**EC 5-23** A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasion, decisions on priority of work may be made by the employer rather than by the lawyer with the result that prosecution of work already undertaken for the clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

**EC 5-24** To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer; except that the single practitioner may allow a nonlawyer to serve in the capacity of secretary of his professional corporation so long as that nonlawyer is without power to exercise control of the corporation. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstandings as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

#### DIRECTORY RULES

**DR 5-101. Refusing Employment When Interests of the Lawyer May Impair His Independent Professional Judgment.**

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

**DR 5-102. Appearance of Lawyer as Witness for His Client.**

When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

**DR 5-103. Avoiding Acquisition of Interest in Litigation.**

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

- (1) subject to the requirements of Directory Rule 2-110(A), acquire a lien granted by law to secure his fee or expenses;
- (2) contract with a client for a reasonable contingent fee in a civil case.

(B) Except as prohibited by paragraph (a) of this Standard or by other law, a lawyer may accept a retainer or enter an agreement for compensation for services rendered or to be rendered in an action, claim or proceeding, whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof.

(1) Such 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, whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

- (i) the outcome of the matter; and,
- (ii) if there is a recovery:
  - (aa) the remittance to the client;
  - (bb) the method of its determination;
  - (cc) the amount of the attorney fee, and
  - (dd) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the, lawyers firm or law office, the amount of fee received by each and the manner in which the division is determined.

(C) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

**DR 5-104. Limiting Business Relations with a Client.**

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or prospective client which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

**DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.**

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-205(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situation covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation

after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his firm may accept or continue such employment.

**DR 5-106. Settling Similar Claims of Clients.**

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

**DR 5-107. Avoiding Influence by Others Than the Client.**

(A) Except with the consent of his client after full disclosure, a lawyer shall not:

- (1) accept compensation of his legal services from one other than his client;
- (2) accept from one other than his client anything of value related to his representation of or his employment by his client.

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

(C) 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, except that the single practitioner may allow a nonlawyer to serve in the capacity of secretary of his professional corporation so long as that nonlawyer is without power to exercise control of the corporation; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

**Rule 3-106.**

(CANON 6)

*A Lawyer Should Represent a Client Competently*

ETHICAL CONSIDERATIONS

**EC 6-1** Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

**EC 6-2** A lawyer is aided in attending and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

**EC 6-3** While licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he

is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to be so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

**EC 6-4** Having undertaken the representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

**EC 6-5** A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

**EC 6-6** A lawyer should not seek, by contract or other means, to limit the lawyer's individual liability to a client for the lawyer's malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit liability for the lawyer's professional activities and one who does not handle the affairs of clients properly should not be permitted to do so. A lawyer may, however, practice law as a partner, member, or shareholder of a limited liability partnership, professional association, limited liability company, or professional corporation, as authorized by Rule 1-203(4).

#### DIRECTORY RULES

**DR 6-101. Failing to Act Competently.**

(A) A lawyer shall not:

- (1) handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it;
- (2) handle a legal matter without preparation adequate in the circumstances;
- (3) neglect a legal matter entrusted to him.

**DR 6-102. Limiting Liability to Client.**

(A) A lawyer shall not attempt to exonerate himself or herself from or limit liability to a client for the lawyer's personal malpractice.

(B) Notwithstanding (A), a lawyer may practice law as a partner, member, or shareholder of a limited liability partnership, professional association, limited liability company, or professional corporation as authorized by Rule 1-203(4).

**Rule 3-107.**

(CANON 7)

*A Lawyer Should Represent a Client Zealously Within the Bounds of the Law*

#### ETHICAL CONSIDERATIONS

**EC 7-1** The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and



benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law, to seek any lawful objective through legally permissible means, and to present for adjudication any lawful claim, issue, or defense.

**EC 7-2** The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations; inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges well-settled rules through areas of conflicting authority to areas without precedent.

**EC 7-3** Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

#### *Duty of the Lawyer to a Client*

**EC 7-4** The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

**EC 7-5** A lawyer as advisor has a duty to advise the client as to various forms of dispute resolution. When a matter is likely to involve litigation, a lawyer has a duty to inform the client of forms of dispute resolution which might constitute reasonable alternatives to litigation. A lawyer as adviser furthers the interests of his client by giving his professional opinion as to what he believes would-likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision. He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.

**EC 7-6** Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

**EC 7-7** In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of the client, a lawyer is entitled to make decisions on his own. But otherwise the

authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical cases in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

**EC 7-8** A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client and not for himself. In the event that the client in a nonadjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Directory Rules, the lawyer may withdraw from the employment.

**EC 7-9** In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.

**EC 7-10** The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

**EC 7-11** The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

**EC 7-12** Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

**EC 7-13** The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as

in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecution's case or aid the accused.

**EC 7-14** A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having discretionary power who believes there is a lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

**EC 7-15** The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be ex parte in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

**EC 7-16** The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.

**EC 7-17** The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligations to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

**EC 7-18** The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason, a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person.

If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

*Duty of the Lawyer to the Adversary System of Justice*

**EC 7-19** Our legal system for the adjudication of disputes is governed by the rules of substantive, evidentiary and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.

**EC 7-20** In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the basis for standards of professional conduct set forth in the Disciplinary Rules.

**EC 7-21** The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further the person against whom: the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

**EC 7-22** Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

**EC 7-23** The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but having made such disclosure, he may challenge its soundness in whole or in part.

**EC 7-24** In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given

occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

**EC 7-25** Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

**EC 7-26** The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

**EC 7-27** Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

**EC 7-28** Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a nonexpert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.

**EC 7-29** To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

**EC 7-30** Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

**EC 7-31** Communications with or investigations of members of families of veniremen jurors by a lawyer or by anyone on his behalf are subject to restrictions imposed upon the lawyer with respect to his communication with or investigations of veniremen and jurors.

**EC 7-32** Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

**EC 7-33** A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

**EC 7-34** The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or loan to a judge, a hearing officer, or an official or employee of a tribunal.

**EC 7-35** All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of him-self or his client.

**EC 7-36** Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

**EC 7-37** In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

**EC 7-38** A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

**EC 7-39** In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

DIRECTORY RULES

**DR 7-101. Representing a Client Zealously.**

(A) A lawyer shall not intentionally:

(1) fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Directory Rules, except as provided by DR 7-101(8). A lawyer does not violate this Directory Rule, however; by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process;

(2) fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105;

(3) prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) where permissible exercise his professional judgment to waive or fail to assert a right or position of his client;

(2) refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

**DR 7-102. Representing a Client Within the Bounds of the Law.**

(A) In his representation of a client, a lawyer shall not:

(1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows of when it is obvious that such action would serve merely to harass or maliciously injure another;

(2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;

(3) conceal or knowingly fail to disclose that which he is required by law to reveal;

(4) knowingly use perjured testimony or false evidence;

(5) knowingly make a false statement of law or fact;

(6) participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false;

(7) counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent;

(8) knowingly engage in other illegal conduct or conduct contrary to a Directory Rule;

(9) institute, cause to be instituted or settle a legal proceeding or claim without obtaining proper authorization from his client.

(B) A lawyer who receives information clearly establishing that:

(1) his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal;

(2) a person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

**DR 7-103. Performing the Duty of Public Prosecutor or Other Government Lawyer.**

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

**DR 7-104. Communicating with One of Adverse Interest.**

- (A) During the course of his representation of a client a lawyer shall not:
- (1) communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so;
  - (2) give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

**DR 7-105. Threatening Criminal Prosecution.**

- (A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

**DR 7-106. Trial Conduct.**

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

- (1) legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel;
- (2) unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

- (1) State or allude to any matter that he has not reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;
- (2) ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;
- (3) assert his personal knowledge of the facts in issue, except when testifying as a witness;
- (4) assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein;
- (5) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply;
- (6) engage in undignified or discourteous conduct which is degrading to a tribunal;
- (7) intentionally or habitually violate any established rule of procedure or of evidence.

**DR 7-107. Trial Publicity.**

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (1) information contained in a public record;
- (2) that the investigation is in progress;
- (3) the general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim;
- (4) a request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto;
- (5) a warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of the complaint, information, or indictment, the issuance of an arrest warrant



or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

- (1) the character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused;
- (2) the possibility of a plea of guilty to the offense charged or to a lesser offense;
- (3) the existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement;
- (4) the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests;
- (5) the identity, testimony, or credibility of a prospective witness;
- (6) any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

- (1) the name, age, residence, occupation, and family status of the accused;
- (2) if the accused has riot been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (3) a request for assistance in obtaining evidence;
- (4) the identity of the victim of the crime; .
- (5) the fact, time, and place of arrest, resistance, pursuit and use of weapons;
- (6) the identity of investigating and arresting officers or agencies and the length of the investigation;
- (7) at the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement;
- (8) the nature, substance; or text of the charge;
- (9) quotations from or references to public records of the court in the case;
- (10) the scheduling or result of any step in the judicial proceedings;
- (11) that the accused denies the charges made against him.

(D) During the selection of a jury of the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

- (1) evidence regarding the occurrence or transaction involved;
- (2) the character, credibility, or criminal record of a party, witness, or prospective witness;
- (3) the performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

(4) his opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;

(5) any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) evidence regarding the occurrence or transaction involved;

(2) the character, credibility, or criminal record of a party, witness, or prospective witness;

(3) physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

(4) his opinion as to the merits of the claims, defenses, or positions of an interested person;

(5) any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

**DR 7-108. Communication with or Investigation of Jurors.**

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) a lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury;

(2) a lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-105(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) Reserved.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

**DR 7-109. Contact with Witnesses.**

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for his loss of time in attending or testifying;

(3) a reasonable fee for the professional services of an expert witness.

**DR 7-110. Contact with Officials.**

(A) A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal for the purpose of influencing improperly any decision or official action.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

- (1) in the course of official proceedings in the cause;
- (2) in writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer;
- (3) orally upon adequate notice to opposing counsel or the adverse party if he is not represented by a lawyer;
- (4) as otherwise authorized by law.

**Rule 3-108.**

(CANON 8)

*A Lawyer Should Assist in Improving the Legal System*

ETHICAL CONSIDERATIONS

**EC 8-1** Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measure therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

**EC 8-2** Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

**EC 8-3** The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

**EC 8-4** Whenever a lawyer seeks legislative or administrative changes he should identify the capacity in which he appears, whether on behalf of himself, a client or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

**EC 8-5** Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities knowledge he may have of such improper conduct.

**EC 8-6** Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

**EC 8-7** Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

**EC 8-8** Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities which his personal or professional interests are or foreseeably may be in conflict with his official duties.

**EC 8-9** The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

## DIRECTORY RULES

### **DR 8-101. Action as a Public Official.**

(A) A lawyer who holds public office shall not:

(1) use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest;

(2) use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or a client;

(3) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

**DR 8-102. Statements Concerning Judges and Other Adjudicatory Officers.**

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

**Rule 3-109.**

(CANON 9)

*A Lawyer Should Avoid Even the Appearance of Professional Impropriety*

ETHICAL CONSIDERATIONS

**EC 9-1** Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

**EC 9-2** Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

**EC 9-3** After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

**EC 9-4** Because the very essence of the legal system is to provided procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

**EC 9-5** Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

**EC 9-6** Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

DIRECTORY RULES

**DR 9-101. Avoiding Even the Appearance of Impropriety.**

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in matter in which he had substantial responsibility while hew~ a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or: public official.

**DR 9-102. Preserving Identity of Funds and Property of Client.**

(A) All funds of clients paid to a lawyer or law firm, including advances for cost and expenses, shall be deposited in one or more identifiable bank or savings and loan association accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay bank charges may be deposited therein;

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) promptly notify a client of the receipt of his funds, securities, or other properties;

(2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable; .

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them;

(4) pay any final judgment or rule absolute rendered against such lawyer for money collected by him as a lawyer within ten days after the time appointed in the order or judgment. In such case, the record of the judgment is conclusive evidence unless obtained without valid service of process;

(5) account for trust property, including money, held in any fiduciary capacity.

(C) No later than July 1, 1990 (unless a lawyer has elected to exempt some or all of his accounts in accordance with subparagraph (4) below), all client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with or without notice to his clients, create and maintain an interest-bearing trust account with any bank, credit union or savings and loan association which is authorized by federal or state law to do business in Georgia and which is federally insured, with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

(2) With respect to funds which are nominal in amount or which are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

(a) No earnings from such an IOLTA account shall be made available to a lawyer or law firm;

(b) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time;

(c) An interest-bearing trust account may be established with any bank, credit union or savings and loan association authorized by the federal or state law to do business in Georgia and which is federally insured. Funds in each interest-bearing trust account shall be subject to withdrawal upon demand, subject only to any notice period which the institution is required to reserve by law or regulation.

(d) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depositor institution to regular, nonlawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds so long as there is no impairment of the right to withdraw transfer principal immediately.

(e) Lawyers or law firms shall direct the depository institution:

(i) to remit to the Georgia Bar Foundation interest or dividends, net of any charges or fees on that account, on the average monthly balance in that account, or as otherwise computed in accordance with a financial institution's standard accounting practice, at least quarterly. Any bank fees or charges in excess of the interest earned on that account for any month shall be paid by the lawyer or law firm in whose names such account appears, if required by the bank;

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the average monthly balance against which the interest rate is applied, the service charges or fees applied, and the net interest remittance;

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, the average account balance of the period for which the report is made, and such other information provided to nonlawyer customers with similar accounts.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest client's funds in a pooled interest-bearing account.

(4) If an election not to participate in the program is submitted in accordance with the procedure set forth in this paragraph, a lawyer may elect not to maintain some or all of this escrow accounts in accordance with paragraph (B) of this Rule until July 1, 1991. The lawyer must, prior to July 1, 1990, make such election on a Notice of Election form provided by the Georgia Bar Foundation. A lawyer admitted into the Georgia Bar after July 1, 1990, but prior to July 1, 1991, who elects not to maintain such an account shall submit an appropriate Notice of Election within thirty days after admission into the Bar. If a Notice of Election is not submitted within the applicable time, the lawyer shall be required to maintain the account(s) described in paragraph (B) of this standard no later than July 1, 1990. This subparagraph (4) shall become null and void on July 1, 1991.

(5) The Georgia Bar Foundation shall establish procedures to provide that no lawyer or law firm shall be required to maintain an interest-bearing trust account which:

(i) results in a significant cost to the lawyer or law firm; or

(ii) cannot reasonably be expected to or has not produced interest income exceeding the reasonable service charges or fees imposed by the financial institution.

(6) The Georgia Bar Foundation shall also establish Procedures for a lawyer or law firm to be authorized to maintain an interest-free trust account for client funds if such lawyer or law firm has its principal office in a county where no bank, credit union or savings and loan association complying with the requirements of subparagraph (C)(1) above will provide an IOLTA account.

(7) Any lawyer or law firm who has in good faith applied for an exemption pursuant to either subparagraph (5) or (6) above, and has submitted sufficient material for determination by the Georgia Bar Foundation shall be entitled to the exemption and be authorized to maintain interest-free trust accounts. Any exemption granted pursuant to subparagraphs (5), (6) or (7) hereof, shall be valid for three (3) years, but may be granted for additional three (3) year periods upon the filing of supplemental requests.

(8) If the Georgia Bar Foundation determines that the lawyer or law firm is not entitled to the exemption applied for, it shall notify the lawyer or law firm involved which or who will have thirty (30) days to appeal the adverse determination to the Supreme Court of Georgia. Following a final determination that an exemption is not justified, a new exemption pursuant to (5) and (6) above may be applied for if in the good faith determination of the lawyer or law firm, there has been a material change in circumstances since the final adverse determination.

(9) No lawyer or law firm shall be subject to any charge of ethical impropriety or subject to any discipline for noncompliance with IOLTA unless or until a final determination by the Georgia Bar Foundation that the lawyer or law firm is not entitled to same, or unless or until an adverse ruling or determination is made by the Supreme Court that the lawyer or, law firm is not entitled to an exemption from mandatory IOLTA requirements if an appeal is pursued.

(10) The Georgia Bar Foundation, subject to approval by the Supreme Court, shall establish reasonable procedures for the implementation of (5)-(9) above.

(D) Each calendar quarter, the Georgia Bar Foundation shall make a grant to the Indigent Defense Council of at least ten percent (10%) and to the Georgia Civil Justice Foundation of at least fifteen percent (15%) of all IOLTA funds received, less administrative costs, during the immediately preceding calendar quarter pursuant to subparagraph (2)(e)(i), so long as the Indigent Defense Council and the Georgia Civil Justice Foundation remain tax-exempt charitable/educational organizations under Sections 115 and 170(c)(1) or under Section 501(c)(3) of the Internal Revenue Code and the purposes and activities of the organizations are consistent with the exempt purposes of the Georgia Bar Foundation. If either or both organizations are determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be taxable entities at any time, or the purposes and activities of the Indigent Defense Council or the Georgia Civil Justice Foundation become inconsistent with the exempt purposes of the Georgia Bar Foundation, then the Georgia Bar Foundation shall retain all IOLTA funds which would have been granted to the organization(s) pursuant to DR-9-102(D).

(E) As a condition to continued receipt of IOLTA funds, the Georgia Bar Foundation, the Georgia Indigent Defense Council and the Georgia Civil Justice Foundation shall each present a report of its activities and an audit of its finances to the Supreme Court of Georgia at least annually.

(F) The Georgia Bar Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of Standard 65 and DR-9-102.



## PART IV

### DISCIPLINE

#### CHAPTER 1 DISBARMENT, SUSPENSION, REPRIMAND AND ADMONITION

**Rule 4-101. Enforcement of Professional Standards.**

The State Bar of Georgia is hereby authorized to maintain and enforce, as set forth in rules hereinafter stated, standards of conduct to be observed by the members of the State Bar of Georgia and those authorized to practice law in the State of Georgia and to punish the violation thereof.

**Rule 4-102. Disciplinary Action; Levels of Discipline; Standards.**

(a) The Standards of Conduct to be observed by the members of the State Bar of Georgia and those authorized to practice law in Georgia are set forth herein and any violation thereof shall subject the offender to disciplinary action and/or punishment as hereinafter provided.

(b) The levels of discipline are set forth below. The power to administer a greater punishment shall include the power to administer the lesser:

(1) Disbarment: A form of public discipline removing the respondent from the practice of law in Georgia. This level of discipline includes publication as provided by Rule 4-219(b).

(2) Suspension: A form of public discipline which removes the respondent from the practice of law in Georgia for a definite period of time or until satisfaction of certain conditions imposed as a part of the suspension. This level of discipline includes publication as provided by Rule 4-219(b).

(3) Public Reprimand: A form of public discipline which declares the respondent's conduct to have been improper but does not limit his right to practice. A public reprimand shall be administered by a judge of a superior court in open court.

(4) Review Panel Reprimand: A form of public discipline which declares the respondent's conduct to have been improper but does not limit his right to practice. A Review Panel Reprimand shall be administered by the Review Panel at a meeting of the Review Panel.

(5) Investigative Panel Reprimand: A form of confidential discipline which declares the respondent's conduct to have been improper but does not limit his right to practice. An Investigative Panel Reprimand shall be administered by the Investigative Panel at a meeting of the Investigative Panel.

(6) Formal Admonition: A form of confidential discipline which declares the respondent's conduct to have been improper but does not limit his right to practice. A formal admonition shall be administered by letter as provided in Rules 4-205 through 4-208.

(c) (1) The Supreme Court of Georgia may impose any of the levels of discipline set forth above following formal proceedings against a respondent; however, any case where discipline is imposed by the Court is a matter of public record despite the fact that the level of discipline would have been confidential if imposed by the Investigative Panel of the State Disciplinary Board.

(2) As provided in Part IV, Chapter 2 of the State Bar Rules, the Investigative Panel of the State Disciplinary Board may impose any of the levels of discipline set forth above provided that a respondent shall have the right to reject the imposition of discipline by the Investigative Panel pursuant to the provisions of Rule 4-208.3;

(d) The Standards of Conduct are:

**Standard 1.**

A lawyer shall not make a materially false statement in or fail to disclose a material fact requested in connection with his application for admission to the bar. A violation of this standard may be punished by disbarment.

**Standard 2.**

A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute. A violation of this standard may be punished by disbarment.

**Standard 3.**

A lawyer shall not engage in illegal professional conduct involving moral turpitude. A violation of this standard may be punished by disbarment.

**Standard 4.**

A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation. A violation of this standard may be punished by disbarment.

**Standard 5.**

(a) A lawyer shall not make any false, fraudulent, deceptive, or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

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

(2) 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 disciplinary rules or other law;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(4) fails to include the name of at least one lawyer responsible for its content.

(b) If a communication promoting a lawyer's services contains any information regarding contingent fees, then the following language must be conspicuously presented:

"Contingent attorneys' fees refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."

Additionally, if the communication contains the phrase "no fee unless you win or collect" or any similar language, the following language must be conspicuously presented:

"'No fee unless you win or collect' [or insert the similar language in communication] refers only to fees charged by the attorney. Such contingent fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."

A violation of this standard may be punished by disbarment.

**Standard 6.**

(a) Subject to the requirements of Standard 5, a lawyer may advertise services through public media, such as a telephone directory, newspaper or other periodical, radio or television, or through written communication not involving personal contact.

(b) Written communications to a prospective client for the purpose of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in typesize no smaller than the largest typesize used in the body of the letter.

(c) A copy of any written communication mailed to prospective clients for the purpose of obtaining employment and a list of names and addresses to whom the written communication was sent shall be retained by the lawyer for a period of four (4) years.

(d) A lawyer shall not send, or knowingly permit to be sent, on behalf of himself, his firm, his partner, associate, or any other lawyer affiliated with him or his firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(1) the written communication concerns a specific matter, and the lawyer knows or reasonably should know that the person is represented by a lawyer in the matter;

(2) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;

(3) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(4) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(5) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

A violation of any provision of this standard may be punished by disbarment.

#### **Standard 7.**

(a) A public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is such a communication.

(b) Public communications disseminated to the public by use of electronic media shall be prerecorded and the prerecorded communication shall be approved by the lawyer before it is broadcast. A recording of the actual transmission and a written transcript of the same shall be retained by the lawyer for a period of four (4) years.

A violation of this standard may be punished by public reprimand.

#### **Standard 8.**

A lawyer shall not use a firm name, professional card, professional announcement card, office sign, letterhead, telephone directory listing, law list, legal directory listing or similar professional notice or designation that includes a statement or claim that is false, fraudulent, deceptive or misleading. A statement or claim is false and misleading if it violates the provisions of Standard 5. A violation of this standard may be punished by a public reprimand.

#### **Standard 9.**

(a) A lawyer or law firm in private practice shall not practice under a trade name if it is false, fraudulent, deceptive or misleading as to the lawyer or lawyers practicing under that name or to the type of practice in which the lawyer or lawyers are engaged. A trade name is false or misleading if:

(1) the trade name does not include the name of at least one of the lawyers practicing under said name, but a law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; or

(2) the trade name implies a connection with a government agency, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.

(b) The name of a lawyer holding a public office shall not be used in the name of a 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. A law firm may use or continue to include in its name the name or

names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(c) A law firm shall not simultaneously practice law under more than one name.  
A violation of this standard may be punished by a public reprimand.

**Standard 10.**

A lawyer shall not hold himself out as having a partnership with one or more other lawyers, unless they are, in fact, partners. A partnership for the practice of law may be composed of one or more individual professional corporations. However, the letterhead and professional cards of the professionally incorporated lawyer should show that he is a professional corporation. A violation of this standard may be punished by a public reprimand.

**Standard 11.**

A law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the members and associates in any office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. A violation of this standard may be punished by a public reprimand.

**Standard 12.**

A lawyer shall not solicit professional employment as a private practitioner for himself, his partner or associate through direct personal contact with a non-lawyer who has not sought his advice regarding employment of a lawyer. A violation of this standard may be punished by disbarment.

**Standard 13.**

A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client; except that he may pay for public communications permitted by Standard 5 and the usual and reasonable fees or dues charged by a bona fide lawyer referral service operated by an organization authorized by law and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually, a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service.

A violation of this standard may be punished by disbarment.

**Standard 14.**

A lawyer may assist in, cooperate with, or offer any qualified legal services plan or assist in or cooperate with any insurer providing legal services insurance as authorized by law, to promote the use of his services, his partner or associate so long as his assistance, cooperation or offer and the communications of the organization are not false, fraudulent, deceptive or misleading. A violation of this standard may be punished by a public reprimand.

**Standard 15.**

A lawyer may assist and cooperate with a non-profit organization which provides without charge legal services to others, as a form of political or associational expression, in the promotion of the use of his services or those of his partner or associate provided that his assistance or the communications of the organization on his behalf are not false, fraudulent, deceptive, or misleading. A violation of this standard may be punished by a public reprimand.

**Standard 16.**

A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct by any person or organization prohibited under Standards 12, 13, 14 or 15. A violation of this standard may be punished by disbarment.

**Standard 17.**

A lawyer who has given in-person unsolicited advice to a layperson that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except:

- (a) A lawyer may accept employment from a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client;
- (b) Under the auspices of a public or charitable legal services organization; or
- (c) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

A violation of this standard may be punished by a public reprimand.

**Standard 18.**

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 is a specialist 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) A lawyer who has been certified as a specialist in a particular field of law or law practice as a result of having successfully completed a program of legal specialization approved by the State Disciplinary Board of the State Bar of Georgia may publicly communicate the fact that he has satisfied the requirements of that particular program.

A violation of this standard may be punished by a public reprimand.

**Standard 19.**

A lawyer may state, announce or hold himself out as limiting his practice to a particular area or field of law so long as his communication of such limitation of practice is not false, fraudulent, deceptive or misleading. A violation of this standard may be punished by a public reprimand.

**Standard 20.**

A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

- (a) the client consents to employment of the other lawyer after a full disclosure that a division of fees will be made;
- (b) the division is made in proportion to the services performed and responsibility assumed by each;
- (c) the total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.
- (d) This disciplinary standard does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

A violation of this standard may be punished by a public reprimand.

**Standard 21.**

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment and a lawyer representing a client in other matters shall withdraw from

employment, if he is discharged by his client. A violation of this standard may be punished by a public reprimand.

**Standard 22.**

Withdrawal in general:

(a) if permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(b) In any event a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

A violation of this standard may be punished by a public reprimand.

**Standard 23.**

A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. A violation of this standard may be punished by a public reprimand.

**Standard 24.**

A lawyer shall not aid a nonlawyer in the unauthorized practice of law. A violation of this standard may be punished by a public reprimand.

**Standard 25.**

A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. A violation of this standard may be punished by a public reprimand.

**Standard 26.**

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(a) an agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(b) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(c) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit sharing agreement.

A violation of this standard may be punished by disbarment.

**Standard 27.**

A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. A violation of this standard may be punished by disbarment.

**Standard 28.**

A lawyer may not reveal the confidence and secrets of a client.

(a) Except when permitted under Standard 28(b) below, a lawyer shall not knowingly:

(1) use a confidence or secret of his client to the disadvantage of his client;

(2) use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(b) A lawyer may reveal:

(1) confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them;

(2) confidences or secrets when permitted under disciplinary rules or required by law or court order;

(3) the intention of his client to commit a crime and the information necessary to prevent the crime;

(4) confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(c) “Confidence” refers to information protected by the attorney-client privilege under an applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

A violation of this standard may be punished by disbarment.

**Standard 29.**

A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by Standard 28(b) through an employee. A violation of this standard may be punished by disbarment.

**Standard 30.**

Except with the written consent or written notice to his client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests. A violation of this standard may be punished by disbarment.

**Standard 31.**

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides 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.

(8) Whether the fee is fixed or contingent.

(c) 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) subject to the requirements of Standard 22(b), acquire a lien granted by law to secure his fee or expenses;

(2) contract with a client for a reasonable contingent fee in a civil matter.

(d) Except as prohibited by paragraph (a) of this Standard or by other law, a lawyer may accept a retainer or enter an agreement for compensation for services rendered or to be rendered in an action, claim or proceeding, whereby the lawyer’s compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof.

(1) Such 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, whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and,

(ii) if there is a recovery:

(aa) the remittance to the client;

(bb) the method of its determination;

(cc) the amount of the attorney fee, and

(dd) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the lawyer's firm or law office, the amount of fee received by each and the manner in which the division is determined.

A violation of this standard may be punished by a public reprimand.

**Standard 32.**

While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. A violation of this standard may be punished by a public reprimand.

**Standard 33.**

A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client unless the client has consented after full disclosure. A violation of this standard may be punished by a public reprimand.

**Standard 34.**

Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment. A violation of this standard may be punished by a public reprimand.

**Standard 35.**

A lawyer shall decline proffered employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Standard 37. A violation of this standard may be punished by disbarment.

**Standard 36.**

A lawyer shall not continue multiple employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Standard 37. A violation of this standard may be punished by disbarment.



**Standard 37.**

In the situations covered by Standards 35 and 36, a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. A violation of this standard may be punished by disbarment.

**Standard 38.**

If a lawyer is required to decline employment or to withdraw from employment under Standards 35, 36, or 37, no partner or associate of his or his firm may accept or continue such employment. A violation of this standard may be punished by disbarment. This rule does not extend to the partners and associates of part time solicitors or judges of a state court when they represent criminal defendants in courts other than the one in which such part time solicitor or judge serves unless an actual conflict of interest is shown.

**Standard 39.**

A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement. A violation of this standard may be punished by a public reprimand.

**Standard 40.**

Except with the consent of his client after full disclosure, a lawyer shall not:

(a) accept compensation for his legal services from one other than his client or the client's representative;

(b) accept from one other than his client or the client's representative anything of value related to his representation of or his employment by his client.

A violation of this standard may be punished by disbarment.

**Standard 41.**

A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. A violation of this standard may be punished by disbarment.

**Standard 42.**

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

(a) 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; or

(b) a nonlawyer is a corporate director or officer thereof, except that the single practitioner may allow a nonlawyer to serve in the capacity of secretary of his professional corporation so long as that nonlawyer is without power to exercise control of the corporation; or

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

A violation of this standard may be punished by disbarment.

**Standard 43.**

A lawyer shall not handle a matter which he knows or should know that he is clearly incompetent to handle without associating with him a lawyer whom he reasonably believes to be competent to handle it. A violation of this standard may be punished by disbarment.

**Standard 44.**

A lawyer shall not without just cause to the detriment of his client in effect willfully abandon or willfully disregard a legal matter entrusted to him. A violation of this standard may be punished by disbarment.

**Standard 45.**

In his representation of a client, a lawyer shall not:

- (a) knowingly use perjured testimony or false evidence;
- (b) knowingly make a false statement of law or fact;
- (c) participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false;

(d) counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent;

(e) knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule;

(f) institute, cause to be instituted or settle a legal proceeding or claim without obtaining proper authorization from his client.

A violation of this standard may be punished by disbarment.

**Standard 46.**

In his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal. A violation of this standard may be punished by a public reprimand.

**Standard 47.**

During the course of his representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior written consent of the lawyer representing such other party or is authorized by law to do so. A violation of this standard may be punished by a public reprimand.

**Standard 48.**

During the course of his representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client. A violation of this standard may be punished by a public reprimand.

**Standard 49.**

A lawyer shall not present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter. A violation of this standard may be punished by a public reprimand.

**Standard 50.**

In presenting a matter to a court or tribunal a lawyer shall not engage in undignified, discourteous or disruptive conduct which is degrading to the court or tribunal. A violation of this standard may be punished by a public reprimand.

**Standard 51.**

Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case with the intent to influence the outcome of the case. A violation of this standard may be punished by disbarment.

**Standard 52.**

During the trial of a case a lawyer connected therewith shall not communicate with, or cause another to communicate with, any member of the jury, except in the course of official proceedings. A violation of this standard may be punished by disbarment.

**Standard 53.**

After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated to harass or embarrass the juror or to influence his actions in further jury service. A violation of this standard may be punished by a public reprimand.

**Standard 54.**

A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either venireman or juror. A violation of this standard may be punished by a public reprimand.

**Standard 55.**

A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror or a member of his family, of which the lawyer has knowledge. A violation of this standard may be punished by a public reprimand.

**Standard 56.**

A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce. A violation of this standard may be punished by disbarment.

**Standard 57.**

A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein. A violation of this standard may be punished by disbarment.

**Standard 58.**

A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (a) expenses reasonably incurred by a witness in attending or testifying;
- (b) reasonable compensation to a witness for his loss of time in attending or testifying;
- (c) a reasonable fee for the professional services of an expert witness.

A violation of this standard may be punished by disbarment.

**Standard 59.**

A lawyer shall not give or lend anything of value to an official, or employee of a tribunal for the purpose of influencing improperly any decision or official action. A violation of this standard may be punished by disbarment.

**Standard 60.**

In an adversary proceeding, a lawyer shall not initiate communication or cause another to initiate communication as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

- (a) in the course of official proceedings in the cause;
- (b) in writing if he simultaneously delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by an attorney;

(c) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by an attorney;

(d) as otherwise authorized by law or by the Code of Judicial Conduct.

A violation of this standard may be punished by a public reprimand.

**Standard 61.**

A lawyer shall promptly notify a client of the receipt of his funds, securities or other properties and shall promptly deliver such funds, securities or other properties to the client. A violation of this standard may be punished by disbarment.

**Standard 62.**

A lawyer shall identify and label funds, securities and other properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable. A violation of this standard may be punished by disbarment.

**Standard 63.**

A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and promptly render appropriate accounts to his client regarding them. A violation of this standard may be punished by disbarment.

**Standard 64.**

A lawyer shall not fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him as a lawyer within ten (10) days after the time appointed in the order or judgment. In such cases the record of the judgment is conclusive evidence unless obtained without valid service of process. A violation of this standard may be punished by disbarment.

**Standard 65.**

(A) A lawyer shall not commingle his client's funds with his own, and shall not fail to account for trust property, including money and interest paid on the client's money, if any, held in any fiduciary capacity.

(B) No later than July 1, 1991 (unless a lawyer has elected to exempt some or all of his accounts as provided in subparagraph (C) below), all client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with or without notice to his clients, create and maintain an interest-bearing trust account with any bank, credit union or savings and loan association which is authorized by federal or state law to do business in Georgia and which is federally insured, with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

(a) No earnings from such an IOLTA account shall be made available to a lawyer or law firm;

(b) The account shall include all clients' fund which are nominal in amount or which are to be held for a short period of time;

(c) An interest-bearing trust account may be established with any bank, credit union or savings and loan association authorized by federal or state law to do business in Georgia and federally insured. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(d) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(e) Lawyers or law firms shall direct the depository institution:

(i) to remit to the Georgia Bar Foundation interest or dividends, net of any charges or fees on that account, on the average monthly balance in that account, or as otherwise computed in accordance with a financial institution's standard accounting practice, at least quarterly. Any bank fees or charges in excess of the interest earned on that account for any month shall be paid by the lawyer or law firm in whose names such account appears, if required by the bank;

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the average monthly balance against which the interest rate is applied, the service charges or fees applied, and the net interest remittance;

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, the average account balance of the period for which the report is made, and such other information provided to non-lawyer customers with similar accounts.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interest-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may elect to remit all interest earned, or interest earned net of charges, to his client or clients.

(C) If an election not to participate in the program is submitted in accordance with the procedure set forth in this paragraph, a lawyer may elect not to maintain some or all of his escrow accounts in accordance with paragraph (B) of this rule until July 1, 1991. The lawyer must prior to July 1, 1990, make such election on a Notice of Election form provided by the Georgia Bar Foundation. A lawyer admitted into the Georgia Bar after July 1, 1990, but prior to July 1, 1991, who elects not to maintain such an account shall submit an appropriate Notice of Election within thirty days after admission into the Bar. If a Notice of Election is not submitted within the applicable time, the lawyer shall be required to maintain the account(s) described in paragraph (b) of this standard no later than July 1, 1990. This subparagraph (C) shall become null and void on July 1, 1991.

(D) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by Standards 65.1 and 65.2. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account. No personal funds of a lawyer shall ever be deposited in a trust account, except (1) unearned attorney's fees held until earned, and (2) sufficient funds held to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or other fiduciary. No funds shall be withdrawn from such trust account for the personal use of the lawyer maintaining the account except earned attorney's fees debited against the account of a specific client and recorded as such.

A violation of paragraphs (A) or (D) of this standard may be punished by disbarment and a violation of paragraphs (B) or (C) of this standard may be punished by public reprimand.

**Standard 65.1. Required Bank Accounts.**

Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution in Georgia as defined in Standard 65.3(a), in the name of the lawyer or law firm, a trust account or accounts, separate from any business and personal accounts, into which funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited.

A violation of this standard may be punished by disbarment.

**Standard 65.2. Description of Accounts.**

(a) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as either an “Attorney Trust Account,” “Attorney Escrow Account” or “Attorney Fiduciary Account.”

(b) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a “Business Account,” a “Professional Account,” an “Office Account,” a “General Account,” a “Payroll Account” or a “Regular Account.”

(c) Nothing in this Standard shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

A violation of this standard may be punished by public reprimand.

**Standard 65.3.**

(a) **Approved Institutions.**

(i) A lawyer shall maintain his or her trust account only in Georgia financial institutions approved by the State Bar, which shall annually publish a list of approved institutions. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the State Disciplinary Board whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the State Disciplinary Board. The agreement shall be filed with the Office of General Counsel on a form approved by the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds.

(ii) The State Disciplinary Board shall establish procedures for a lawyer or law firm to be excused from the requirements of 65.3(a)(i) above if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree to comply with the provisions of this Standard.

(b) **Timing of Reports**

(i) The financial institution shall file a report with the Office of General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds and said instrument is not honored within three business days of presentation.

(ii) The report shall be filed with the Office of General Counsel within fifteen days of the date of the presentation of the instrument, even if the instrument is subsequently honored after the three business days provided in (b)(i) above.

(c) Pursuant to Standard 63.3(a), nothing in this Standard shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(d) Every lawyer and law firm maintaining a trust account in this State is hereby and shall be conclusively deemed to have consented to the reporting and production requirements mandated by this

Standard and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

The agreement by a financial institution to offer accounts pursuant to this Standard 65.3 shall be a procedure to advise the State Disciplinary Board of conduct by attorneys and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing attorney trust accounts.

A violation of this standard may be punished by disbarment.

**Standard 65.4. Availability of Records.**

A lawyer shall not fail to produce any of the records required to be maintained by these Standards at the request of the Investigative Panel of the State Disciplinary Board or the Supreme Court. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these Rules for the production of documents and evidence.

A violation of this standard may be punished by disbarment.

**Standard 65.5. Audit for Cause.**

A lawyer shall not fail to submit to an Audit for Cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-110.

A violation of this standard may be punished by disbarment.

**Standard 66.**

(a) Conviction of any felony or misdemeanor involving moral turpitude shall be grounds for disbarment.

(b) For purposes of this standard, conviction shall include:

- (1) a guilty plea;
- (2) a plea of nolo contendere;
- (3) a verdict of guilty;
- (4) a verdict of guilty but mentally ill; or
- (5) the imposition of first offender probation.

(c) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty, a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and of infraction of this standard and shall be admissible in proceedings under these disciplinary rules.

(d) This standard shall not be construed to cause any infringement of the existing inherent right of Georgia courts to suspend and disbar lawyers from practice before them based upon a conviction of a crime.

**Standard 67.**

Disbarment or suspension by another state is a ground for disbarment or suspension in the State of Georgia.

**Standard 68.**

During the investigation of a complaint filed under these rules, the lawyer complained against shall not fail to respond in accordance with the State Disciplinary Board rules to disciplinary authorities, including members of the State Disciplinary Board and bar counsel. A violation of this standard may be punished by a public reprimand.

**Standard 69.**

A lawyer shall not represent a client whose interests are adverse to the interests of a former client of the lawyer in any matter substantially related to the matter in which the lawyer represented the former client unless he has obtained written consent of the former client after full disclosure. The term

“client” as used in this Standard shall not include a public agency or public officer or employee when represented by a lawyer who is a full time public official. This provision shall apply retroactively. A violation of this standard may be punished by disbarment.

**Standard 70.**

(a) A lawyer who is a fulltime public official and represents the State, its agencies, or State officials, is bound by the provisions of the Code of Professional Responsibility.

(b) No provision of the Code of Professional Responsibility shall be construed to prohibit such lawyer from taking a legal position adverse to the State, its agencies, or officials, when such action is authorized or required by the Constitution or statutes of this State.

(c) This provision shall apply retroactively.

**Standard 71. Responsibilities of a Partner or Supervisory Lawyer**

A lawyer shall be responsible for another lawyer’s violation of the Standards of Conduct if:

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

(b) the lawyer is a partner in the law firm in which the other lawyer practices and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(c) the lawyer 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.

A violation of this Standard may be punished by disbarment.

**Standard 72. Responsibilities of a Subordinate Lawyer**

A lawyer is bound by the Standards of Conduct notwithstanding that the lawyer acted at the direction of another person.

A violation of this Standard may be punished by disbarment.

**Standard 73.**

A lawyer shall not allow any person who has been suspended or disbarred under Part IV of these Rules and who maintains a presence in an office where the practice of law is conducted by the lawyer, to:

(a) represent himself or herself as a lawyer or person with similar status;

(b) have any contact with the clients of the lawyer either in person, by telephone or in writing;

or

(c) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

A violation of this Standard may be punished by disbarment.

**Standard 74.**

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

A violation of this Standard may be punished by disbarment.