

## **Chapter 8**

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**ETHICS and**  
PROFESSIONALISM



# Chapter 8

## Ethics and Professionalism

Most lawyers are ethical. Most lawyers strive to be professional. However, lawyers are human. They make mistakes. They do occasionally fall short of both professional and ethical standards. Very generally, ethics is what lawyers absolutely are required to do. Professionalism is what wise lawyers choose to do. A lawyer can be strictly ethical and still fall short of the ideals of professionalism. The good lawyer always strives to be both. Adherence to the Rules of Professional Conduct and the Code of Professionalism will allow a lawyer to practice safely, successfully and honorably.



## **Louisiana Rules of Professional Conduct**

**With amendments through November 27, 2018**

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Louisiana Attorney Disciplinary Board  
2800 Veterans Memorial Boulevard  
Suite 310  
Metairie, Louisiana 70002  
(504) 834-1488 or (800) 489-8411



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With amendments through July 1, 2016

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 Louisiana Attorney Disciplinary Board  
 2800 Veterans Memorial Boulevard Suite 310  
 Metairie, Louisiana 70002

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## Rule 1.0. Terminology

- (a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (c) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- (d) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (g) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.<sup>7</sup>
- (k) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

- (l) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.
- (n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communication. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## Client-Lawyer Relationship

### Rule 1.1. Competence

- (a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.
- (c) A lawyer is required to comply with all of the requirements of the Supreme Court’s rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

### Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

- (a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as



is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, religious, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### **Rule 1.3. Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.4. Communication**

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
- (c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall,

prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

### **Rule 1.5. Fees**

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement 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; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
  - (2) a contingent fee for representing a defendant in a criminal case.
- (e) A division of fee between lawyers who are not in the same firm may be made only if:
- (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;
  - (2) the total fee is reasonable; and
  - (3) each lawyer renders meaningful legal services for the client in the matter.
- (f) Payment of fees in advance of services shall be subject to the following rules:
- (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.
  - (2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.
  - (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the

lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

- (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.
- (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

### **Rule 1.6. Confidentiality of Information**

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
  - (1) to prevent reasonably certain death or substantial bodily harm;
  - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another



and in furtherance of which the client has used or is using the lawyer's services;

- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.
  - (4) to secure legal advice about the lawyer's compliance with these Rules;
  - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
  - (6) to comply with other law or a court order; or
  - (7) to detect and resolve conflicts of interests between lawyers in different firms, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

### **Rule 1.7. Conflict of Interest: Current Clients**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
- (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

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

### **Rule 1.8. Conflict of Interest: Current Clients: Specific Rules**

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift, is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, or grandparent.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.



- (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).
- (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

- (4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.
  - (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.
  - (ii) The advance or loan guarantee, or the offer

thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

- (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.
  - (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.
- (5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.
  - (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.
  - (ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%.
  - (iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
  - (iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges,



including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.

- (v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.
- (vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.
- (vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  - (1) the client gives informed consent, or the compensation is provided by contract with a third person such as an insurance contract or a prepaid legal service plan;
  - (2) there is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship; and
  - (3) information relating to representation of a client is protected as required by Rule 1.6.
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client, or a court approves a settlement in a certified class action. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
  - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
  - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
  - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
  - (2) contract with a client for a reasonable contingent fee in a civil case.
- (j) [Reserved].
- (k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument given in settlement of the client's claim, but only after the client has approved the settlement.
- (l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (k) that applies to any one of them shall apply to all of them.

### **Rule 1.9. Duties to Former Clients**

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that



person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

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

**Rule 1.10. Imputation of Conflicts of Interest: General Rule**

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived

by the affected client under the conditions stated in Rule 1.7.

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

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

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
- (1) is subject to Rule 1.9(c); and
  - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation
- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and
  - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.



- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
- (1) is subject to Rules 1.7 and 1.9; and
  - (2) shall not:
    - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or
    - (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).
- (e) As used in this Rule, the term “matter” includes:
- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
  - (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

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

- (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.
- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer.
- (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.
- (d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.
- (c) Except as provided in paragraph (d), if
- (1) despite the lawyer’s efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
  - (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

**Rule 1.13. Organization as Client**

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.



- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.
- (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.
- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

#### **Rule 1.14. Client with Diminished Capacity**

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

#### **Rule 1.15. Safekeeping Property**

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.



- (f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to “Cash” are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule. [Last sentence added 1/13/2015 and effective 4/1/2015]
- (g) A lawyer shall create and maintain an “IOLTA Account,” which is a pooled interest-bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
- (1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in “eligible” financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least \$250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:
- (A) No earnings from such an account shall be made available to a lawyer or law firm.
- (B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
- (C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
- (2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
- (3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
- (A) Establishing the IOLTA Account as:
- (1) an interest-bearing checking account;
- (2) a money market deposit account with or tied to checking;
- (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or
- (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by



- applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.
- (B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or
- (C) Paying a “benchmark” amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of “allowable reasonable fees.”
- (4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:
- (A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution’s standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;
- (B) To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and
- (C) To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.
- (5) “Allowable reasonable fees” for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not “allowable reasonable fees” include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.
- (6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an “eligible” financial institution.
- (7) “Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.
- (8) “Unclaimed Funds” are client or third person funds on deposit in an IOLTA account for at least two years that after reasonable due diligence the owner cannot be located or the owner refused to accept the funds.
- (h) A lawyer who learns of Unidentified or Unclaimed Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).
- A lawyer who either remits funds in error or later ascertains the ownership of remitted funds, or the owner thereof, may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer or owner, as appropriate.

### **IOLTA Rules**

- (1) The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.
- (2) The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:



- (a) No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.
  - (b) Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non-IOLTA, interest-bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer-client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.
  - (c) Funds of clients or third-persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.
  - (d) In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:
    - (1) The amount of the funds to be deposited;
    - (2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
    - (3) The rates of interest or yield at financial institutions where the funds are to be deposited;
    - (4) The cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
    - (5) The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
    - (6) Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
  - (e) Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public-spirited members of the profession. The placement of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
- (3) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
    - (a) to provide legal services to the indigent and to the mentally disabled;
    - (b) to provide law-related educational programs for the public;
    - (c) to study and support improvements to the administration of justice; and
    - (d) for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.
  - (4) The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income,



grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

### **Rule 1.16. Declining or Terminating Representation**

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the rules of professional conduct or other law;
  - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
  - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take

steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **Rule 1.17. Sale of a Law Practice**

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

- (a) The selling lawyer has not been disbarred or permanently resigned from the practice of law in lieu of discipline, and permanently ceases to engage in the practice of law, or has disappeared or died;
- (b) The entire law practice, or area of law practice, is sold to another lawyer admitted and currently eligible to practice in this jurisdiction;
- (c) At least ninety (90) days in advance of the sale, actual notice, either by in-person consultation confirmed in writing, or by U.S. mail, is given to each of the clients of the law practice being sold, indicating:
  - (1) the proposed sale of the law practice;
  - (2) the identity and background of the lawyer or law firm that proposes to acquire the law practice, including principal office address, number of years in practice in Louisiana, and disclosure of any prior formal discipline for professional misconduct, as well as the status of any disciplinary proceeding currently pending in which the lawyer or law firm is a named respondent;
  - (3) the client's right to choose and retain other counsel and/or take possession of the client's files(s); and
  - (4) the fact that the client's consent to the transfer of the client's file(s) will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the notice.
- (d) In addition to the advance notice to each client described above, at least thirty (30) days in advance of the sale, an announcement or notice of the sale of the law practice, including the proposed date of the sale, the name of the



selling lawyer, the name(s) of the purchasing lawyer(s) or law firm(s), and the address and telephone number where any person entitled to do so may object to the proposed sale and/or take possession of a client file, shall also be published: 1) in the Louisiana Bar Journal; and 2) once a week for at least two (2) consecutive weeks in a newspaper of general circulation in the city or town (or parish if located outside a city or town) in which the principal office of the law practice is located. The announcement or notice required by this Rule does not fall within the scope of Rules 7.1 through 7.10 of these Rules.

- (e) The fees or costs charged clients shall not be increased by reason of the sale.
- (f)(1) A lawyer or law firm that proposes to acquire a law practice may be provided, initially, with only enough information regarding the matters involved reasonably necessary to enable the lawyer or law firm to determine whether any conflicts of interest exist. If there is reason to believe that the identity of a client or the fact of representation itself constitutes confidential information under the circumstances, such information shall not be provided to the purchasing lawyer or law firm without first advising the client of the identity of the purchasing lawyer or law firm and obtaining the client's informed consent in writing to the proposed disclosure.

If the purchasing lawyer or law firm determines that a conflict of interest exists prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the lawyer or law firm shall not review or continue to review the information unless the conflict has been disclosed to and the informed written consent of the client has been obtained.

- (f)(2) A lawyer or law firm that proposes to acquire a law practice shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the clients of the law practice were already the clients of that acquiring lawyer or law firm.
- (g) Consistent with Rule 1.16(c) of these Rules, before responsibility for a matter in litigation can be sold as part of a law practice, any necessary notice to and permission of a tribunal shall be given/obtained.
- (h) Notwithstanding any sale, the client shall retain unfettered discretion to terminate the selling or purchasing lawyer or law firm at any time, and upon termination, the selling or purchasing lawyer in possession shall return such client's file(s) in accordance with Rule 1.16(d) of these Rules.

## **Rule 1.18. Duties to Prospective Client**

- (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph(d).
- (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
  - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
  - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client;and
    - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (ii) written notice is promptly given to the prospective client.

## **Counselor**

### **Rule 2.1. Advisor**

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

### **Rule 2.2. (DELETED)**



### **Rule 2.3. Evaluation for Use by Third Persons**

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

### **Rule 2.4. Lawyer Serving as Third-Party Neutral**

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

## **Advocate**

### **Rule 3.1. Meritorious Claims and Contentions**

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

### **Rule 3.2. Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **Rule 3.3. Candor Toward the Tribunal**

- (a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **Rule 3.4. Fairness to Opposing Party and Counsel**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;



- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
  - (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
    - (1) the person is a relative or an employee or other agent of a client, and
    - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (2) information contained in a public record;
  - (3) that an investigation of a matter is in progress;
  - (4) the scheduling or result of any step in litigation;
  - (5) a request for assistance in obtaining evidence and information necessary thereto;
  - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
  - (7) in a criminal case, in addition to subparagraphs (1) through (6):
    - (i) the identity, residence, occupation and family status of the accused;
    - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
    - (iii) the fact, time and place of arrest; and
    - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

### **Rule 3.5. Impartiality and Decorum of the Tribunal**

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
  - (1) the communication is prohibited by law or court order;
  - (2) the juror has made known to the lawyer a desire not to communicate; or
  - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

### **Rule 3.6. Trial Publicity**

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
  - (b) Notwithstanding paragraph (a), a lawyer may state:
    - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
  - (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

### **Rule 3.7. Lawyer as Witness**

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - (1) the testimony relates to an uncontested issue;
  - (2) the testimony relates to the nature and value of legal services rendered in the case; or
  - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.



### **Rule 3.8. Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
  - (1) the information sought is not protected from disclosure by any applicable privilege;
  - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

### **Rule 3.9. Appearance in Nonadjudicative Proceedings**

A lawyer appearing before a legislative or administrative tribunal in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and

shall conform to the provision of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.

## **Transactions with Persons other than Clients**

### **Rule 4.1. Truthfulness in Statements to Others**

In the course of representing a client a lawyer shall not knowingly:

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

### **Rule 4.2. Communication with Persons Represented by Counsel**

Unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order, a lawyer in representing a client shall not communicate about the subject of the representation with:

- (a) a person the lawyer knows to be represented by another lawyer in the matter; or
- (b) a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and
  - (1) who supervises, directs or regularly consults with the organization's lawyer concerning the matter;
  - (2) who has the authority to obligate the organization with respect to the matter; or
  - (3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

### **Rule 4.3. Dealing with Unrepresented Person**

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



#### **Rule 4.4. Respect for Rights of Third Persons**

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a writing or electronically stored information that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing or electronically stored information was not intended for the receiving lawyer, shall refrain from examining or reading the writing or electronically stored information, promptly notify the sending lawyer, and return the writing or delete the electronically stored information.

### **Law Firms and Associations**

#### **Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers**

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

#### **Rule 5.2. Responsibilities of a Subordinate Lawyer**

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

#### **Rule 5.3. Responsibilities Regarding Nonlawyer Assistance**

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

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

#### **Rule 5.4. Professional Independence of a Lawyer**

- (a) A lawyer or law firm shall not share legal fees with a non lawyer, except that:
  - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
  - (2) a lawyer who 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 non lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and
  - (4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or



other representative of that lawyer the agreed-upon purchase price; and

- (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13).
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:
  - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
  - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

**Rule 5.5. Unauthorized Practice of Law;  
Multijurisdictional Practice of Law**

- (a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
  - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
  - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
  - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
  - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, §14; or
  - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e) (1) A lawyer shall not:
  - (i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or
  - (ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first



preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

- (2) The registration form provided for in Section (e)(1) shall include:
- (i) the identity and bar roll number of the suspended or transferred attorney sought to be hired;
  - (ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney, or the attorney transferred to disability inactive status, throughout the duration of employment or association;
  - (iii) a list of all duties and activities to be assigned to the suspended attorney, or the attorney transferred to disability inactive status, during the period of employment or association;
  - (iv) the terms of employment of the suspended attorney, or the attorney transferred to disability inactive status, including method of compensation;
  - (v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney, or the attorney transferred to disability inactive status; and
  - (vi) a statement by the employing attorney certifying that the order giving rise to the suspension or transfer of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney, or the attorney transferred to disability inactive status.
- (3) For purposes of this Rule, the practice of law shall include the following activities:
- (i) holding oneself out as an attorney or lawyer authorized to practice law;
  - (ii) rendering legal consultation or advice to a client;
  - (iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency,

referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted bylaw;

- (iv) appearing as a representative of the client at a deposition or other discovery matter;
  - (v) negotiating or transacting any matter for or on behalf of a client with third parties;
  - (vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.
- (4) In addition, a suspended lawyer, or a lawyer transferred to disability inactive status, shall not receive, disburse or otherwise handle client funds.
- (5) Upon termination of the suspended attorney, or the attorney transferred to disability inactive status, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

#### **Rule 5.6. Restrictions on Right to Practice**

A lawyer shall not participate in offering or making:

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

## **PUBLIC SERVICE**

#### **Rule 6.1. Voluntary Pro Bono Publico Service**

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

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and



- (b) provide any additional services through:
- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, legal system or the legal profession.

### **Rule 6.2. Accepting Appointments**

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

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

### **Rule 6.3. Membership in Legal Services Organization**

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

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

### **Rule 6.4. Law Reform Activities Affecting Client Interests**

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

affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

### **Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
  - (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

## **INFORMATION ABOUT LEGAL SERVICES**

### **Rule 7.1. General**

- (a) **Permissible Forms of Advertising.** Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with Rule 7.4.
- (b) **Advertisements Not Disseminated in Louisiana.** These rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Louisiana.
- (c) **Communications for Non-Profit Organizations.** Publications, educational materials, websites and other communications by lawyers on behalf of non-profit organizations that are not motivated by pecuniary gain are not advertisements or unsolicited written communications within the meaning of these Rules.



## **Rule 7.2. Communications Concerning a Lawyer's Services**

**[Enforcement of Rule 7.2(c)(1)(D) and Rule 7.2(c)(1)(J) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated April 27, 2011.]**

**[Enforcement of Rule 7.2(c)(1)(J) is reinstated, except for the portion of the Rule prohibiting “the portrayal of a judge or jury”, by order of the Supreme Court of Louisiana, dated April 29, 2011.]**

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

### **(a) Required Content of Advertisements and Unsolicited Written Communications.**

- (1) *Name of Lawyer.* All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.
- (2) *Location of Practice.* All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.
- (3) The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2:
  - (A) Sponsorships. A brief announcement in any public media that identifies a lawyer or law

firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or the law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution, in keeping with Rule 7.8(b);

(B) Gift/Promotional Items. Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4; and

(C) Office Sign(s) for Bona Fide Office Location(s). A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer's services or a law firm's services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.

### **(b) Permissible Content of Advertisements and Unsolicited Written Communications.**

If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

- (1) *Lawyers and Law Firms.* A lawyer or law firm may include the following information in advertisements and unsolicited written communications:
  - (A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney”, “lawyer” or “law firm”;
  - (B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or



committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

- (C) technical and professional licenses granted by the State or other recognized licensing authorities and educational degrees received, including dates and institutions;
- (D) military service, including branch and dates of service;
- (E) foreign language ability;
- (F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;
- (G) prepaid or group legal service plans in which the lawyer participates;
- (H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;
- (I) common salutatory language such as “best wishes,” “good luck,” “happy holidays,” or “pleased to announce”;
- (J) punctuation marks and common typographical marks; and
- (K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background

(2) *Public Service Announcements.* A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

**(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.**

(1) *Statements About Legal Services.* A lawyer shall not make or permit to be made a false, misleading

or deceptive communication about the lawyer, the lawyer’s services or the law firm’s services. A communication violates this Rule if it:

- (A) contains a material misrepresentation of fact or law;
- (B) is false, misleading or deceptive;
- (C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;
- (D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer’s services provided upon request; (Suspended)
- (E) promises results;
- (F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (G) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated;
- (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;
- (I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10); or (iii) a still picture, photograph or other static image that, due to alteration or the context of its use, is false, misleading or deceptive;
- (J) the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;
- (K) resembles a legal pleading, notice, contract or other legal document;
- (L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or
- (M) fails to comply with Rule 1.8(e)(4)(iii).



- (2) *Prohibited Visual and Verbal Portrayals and Illustrations.* A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.
- (3) *Advertising Areas of Practice.* A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.
- (4) *Stating or Implying Louisiana State Bar Association Approval.* A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.
- (5) *Communication of Fields of Practice.* A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.2(c)(1) to communications concerning a lawyer’s services. A lawyer shall not state or imply that the lawyer is “certified,” or “board certified” except as follows:
- (A) **Lawyers Certified by the Louisiana Board of Legal Specialization.** A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” or “board certified in (area of certification).”
- (B) **Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar.** A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified,” or “board certified in (area of certification)” if:
- (i) (i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,
- (ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.
- (C) **Certification by Other State Bars.** A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” or “board certified in (area of certification)” if:
- (i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,
- (ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.
- (6) *Disclosure of Liability For Expenses Other Than Fees.* Every advertisement and unsolicited written communication that contains information about the lawyer’s fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any costs and/or expenses in addition to the fee.
- (7) *Period for Which Advertised Fee Must be Honored.* A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.
- (8) *Firm Name.* A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.
- (9) *Language of Required Statements.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written



communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

- (10) *Appearance of Required Statements, Disclosures and Disclaimers.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. All disclosures and disclaimers required by these Rules shall be clear, conspicuous and clearly associated with the item requiring disclosure or disclaimer. Written disclosures and disclaimers shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and clearly intelligible.
- (11) *Payment by Non-Advertising Lawyer.* No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.
- (12) *Referrals to Another Lawyer.* If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.
- (13) *Payment for Recommendations; Lawyer Referral Service Fees.* A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:
- (A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:
- (i) refers all persons who request legal services to a participating lawyer;
  - (ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

- (iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

**Rule 7.3. [Reserved]**  
**Rule 7.4. Direct Contact with Prospective Clients**

- (a) **Solicitation.** Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer's request or on the lawyer's behalf or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase "prior lawyer-client relationship" shall not include relationships in which the client was an unnamed member of a class action.
- (b) **Written Communication Sent on an Unsolicited Basis.**
- (1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:
    - (A) 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 thirty days prior to the mailing of the communication;
    - (B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;



- (C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;
  - (D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2; or
  - (E) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.
- (2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:
- (A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2.
  - (B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules:
    - (i) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.
    - (ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked “ADVERTISEMENT” in print size at least as large as the largest print used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the “ADVERTISEMENT” mark shall appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet. Written communications solicited by clients or prospective clients, or written communications sent only to other lawyers need not contain the “ADVERTISEMENT” mark.
  - (C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery.
  - (D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.
  - (E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.
  - (F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client’s legal problem.

**Rule 7.5. Advertisements in the Electronic Media other than Computer-Accessed Communications**

**[Enforcement of Rule 7.5(b)(2)(C) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]**

- (a) **Generally.** With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.
- (b) **Appearance on Television or Radio.** Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.
  - (1) *Prohibited Content.* Television and radio advertisements shall not contain:
    - (A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive; or
    - (B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm.



- (2) *Permissible Content.* Television and radio advertisements may contain:
- (A) images that otherwise conform to the requirements of these Rules;
  - (B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or
  - (C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as that spokesperson shall provide a spoken and written disclosure, as required by Rule 7.2(c)(10), identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer and disclosing that the spokesperson is being paid to be a spokesperson, if paid.

### **Rule 7.6. Computer-Accessed Communications**

**[Enforcement of Rule 7.6(d) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]**

- (a) **Definition.** For purposes of these Rules, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on World Wide Web search engine screens and elsewhere.
- (b) **Internet Presence.** All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:
- (1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;
  - (2) shall disclose one or more bona fide office location(s) of the lawyer or law firm or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and
  - (3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

- (c) **Electronic Mail Communications.** A lawyer shall not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:
- (1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;
  - (2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and
  - (3) the subject line of the communication states “LEGAL ADVERTISEMENT”. This is not required for electronic mail communications sent only to other lawyers.
- (d) **Advertisements.** All computer-accessed communications concerning a lawyer’s or law firm’s services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2 when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.

### **Rule 7.7. Evaluation of Advertisements**

**[Enforcement of Rule 7.7 as it pertains to filing requirements for Internet advertising is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]**

- (a) **Louisiana State Bar Association Rules of Professional Conduct Committee.** With respect to said Committee, it shall be the task of the Committee, or any subcommittee designated by the Rules of Professional Conduct Committee (hereinafter collectively referred to as “the Committee”): 1) to evaluate all advertisements filed with the Committee for compliance with the Rules governing lawyer advertising and solicitation and to provide written advisory opinions concerning compliance with those Rules to the respective filing lawyers; 2) to develop a handbook on lawyer advertising for the guidance of and dissemination to the members of the Louisiana State Bar Association; and 3) to recommend, from time to time, such amendments to the Rules of Professional Conduct as the Committee may deem advisable.



- (1) *Recusal of Members.* Members of the Committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or by other lawyers in their firms.
  - (2) *Meetings.* The Committee shall meet as often as is necessary to fulfill its duty to provide prompt opinions regarding submitted advertisements' compliance with the lawyer advertising and solicitation rules.
  - (3) *Procedural Rules.* The Committee may adopt such procedural rules for its activities as may be required to enable the Committee to fulfill its functions.
  - (4) *Reports to the Court.* Within six months following the conclusion of the first year of the Committee's evaluation of advertisements in accordance with these Rules, and annually thereafter, the Committee shall submit to the Supreme Court of Louisiana a report detailing the year's activities of the Committee. The report shall include such information as the Court may require.
- (b) **Advance Written Advisory Opinion.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer's voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.
- (c) **Regular Filing.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.
- (d) **Contents of Filing.** A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:
- (1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);
  - (2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;
  - (3) a printed copy of all text used in the advertisement;
  - (4) an accurate English translation, if the advertisement appears or is audible in a language other than English;
  - (5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;
  - (6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and
  - (7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer's first dissemination of the advertisement or unsolicited written communication.
- (e) **Evaluation of Advertisements.** The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or



unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the thirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

- (f) **Additional Information.** If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of non-compliance for insufficient information.
- (g) **Notice of Noncompliance; Effect of Continued Use of Advertisement.** When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.
- (h) **Committee Determination Not Binding; Evidence.** A finding by the Committee of either compliance or noncompliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.
- (i) **Change of Circumstances; Re-filing Requirement.** If a change of circumstances occurring subsequent to the Committee's evaluation of an advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or a modified advertisement with the Committee along with an explanation of the change in circumstances and an additional fee as set by the Court.
- (j) **Maintaining Copies of Advertisements.** A copy or recording of an advertisement or written or recorded communication shall be submitted to the Committee in accordance with the requirements of Rule 7.7, and the lawyer shall retain a copy or recording for five years after its last dissemination along with a record of when and where it was used. If

identical unsolicited written communications are sent to two or more prospective clients, the lawyer may comply with this requirement by filing a copy of one of the identical unsolicited written communications and retaining for five years a single copy together with a list of the names and addresses of all persons to whom the unsolicited written communication was sent.

### **Rule 7.8. Exemptions from the Filing and Review Requirement**

The following are exempt from the filing and review requirements of Rule 7.7:

- (a) any advertisement or unsolicited written communication that contains only content that is permissible under Rule 7.2(b).
- (b) a brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this Rule and the Rule setting forth permissible content of advertisements, the following are criteria that may be considered:
  - (1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;
  - (2) whether the announcement contains information concerning the lawyer's or law firm's area(s) of practice, legal background, or experience;
  - (3) whether the announcement contains the address or telephone number of the lawyer or law firm;
  - (4) whether the announcement concerns a legal subject;
  - (5) whether the announcement contains legal advice; and
  - (6) whether the lawyer or law firm paid to have the announcement published.
- (c) A listing or entry in a law list or bar publication.
- (d) A communication mailed only to existing clients, former clients, or other lawyers.
- (e) Any written communications requested by a prospective client.



- (f) Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients.
- (g) Computer-accessed communications as described in subdivision (b) of Rule 7.6.
- (h) **Gift/Promotional Items.** Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4; and
- (i) **Office Sign(s) for Bona Fide Office Location(s).** A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer's services or a law firm's services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.

### **Rule 7.9. Information about a Lawyer's Services Provided upon Request**

- (a) **Generally.** Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rule 7.2 unless otherwise provided in this Rule 7.9.
- (b) **Request for Information by Potential Client.** Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:
  - (1) The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client.
  - (2) The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client includes a contingency fee contract, the top of each page of the contract shall be marked "SAMPLE" in print size at least as large as the largest print used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.
  - (3) Notwithstanding the provisions of subdivision (c)(1)(D) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are

not otherwise false, misleading or deceptive.

- (c) **Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm.** A statement and any information furnished to a prospective client, as authorized by subdivision (b) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

### **Rule 7.10. Firm Names and Letterhead**

- (a) **False, Misleading, or Deceptive.** A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.
- (b) **Trade Names.** A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.
- (c) **Advertising Under Trade Name.** A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.
- (d) **Law Firm with Offices in More Than One Jurisdiction.** A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.
- (e) **Name of Public Officer or Former Member in Firm Name.** The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.



- (f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.
- (g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession.
- (b) A lawyer who knows that a judge has committed a violation of the applicable rules of judicial conduct that raises a question as to the judge's honesty, trustworthiness or fitness for office shall inform the Judiciary Commission. Complaints concerning the conduct of federal judges shall be filed with the appropriate federal authorities in accordance with federal laws and rules governing federal judicial conduct and disability.
- (c) This rule does not require the disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program or while serving as a member of the Ethics Advisory Service Committee.

## MAINTAINING THE INTEGRITY OF THE PROFESSION

### Rule 8.1. Bar Admission and Disciplinary Matters

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

- (a) Knowingly make a false statement of material fact;
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

### Rule 8.2. Judicial and Legal Officials

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

### Rule 8.3. Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

### Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
- (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

### Rule 8.5. Disciplinary Authority; Choice of Law

- (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.



- (b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
  - (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.



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Rules of Professional Conduct with  
amendments through November 27, 2018.  
Visit [www.ladb.org](http://www.ladb.org) for the most recent  
version and updates.

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# Overview of the Disciplinary Process: From Complaint Through Louisiana Supreme Court Opinion

*The following is a general description of the attorney discipline process from the inception of a complaint through the imposition of the sanction by the Louisiana Supreme Court. Most complaints do not result in a sanction. Many complaints result in the imposition of admonitions or reprimands which are imposed by the Louisiana Attorney Disciplinary Board rather than the Court. This overview, however, pertains to those complaints which travel completely through the system and result in a suspension or disbarment, which can only be imposed by the Court.*

## The Disciplinary System

The Louisiana Supreme Court has the exclusive right to regulate lawyers who practice in this state under the authority of Article V, Section 5(A) and (B), of the Louisiana Constitution of 1974 and the inherent power of the Court. The rules for lawyer discipline are set forth in Louisiana Supreme Court Rule XIX (effective April 1, 1990), wherein the Court created the statewide agency called the Louisiana Attorney Disciplinary Board. That agency consists of the Board, Hearing Committees, Disciplinary Counsel and staff. *Rule XIX, § 2A.* While the agency is a unitary one, the prosecutorial and adjudicative functions are separated within the agency:

- The investigative and prosecutorial functions are directed by a lawyer employed by the Board and performed by employees of the agency; the Office of Disciplinary Counsel; and
- The adjudicative functions are conducted by the Disciplinary Board, consisting of ten practicing lawyers and four public members appointed by the Louisiana Supreme Court. *Rule XIX, § 2A, B.*

Further, the Disciplinary Board is divided into an adjudicative committee of nine members and an administrative committee of five members. The adjudicative committee consists of three panels with two lawyer members and a public member on each board panel. *Rule XIX, § 2G.* While the Disciplinary Board serves an appellate function in the system, hearing committees serve as the triers of fact.

There are over fifty hearing committees around the state. Each hearing committee consists of two lawyer members and one public member. One of the lawyer members is appointed as chair of the committee. Hearing committee members serve for three years and may not serve more than two consecutive terms. *Rule XIX, § 3A-B.* The hearing committees have assigned powers and duties. Primarily, the committees conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status. Following the hearings, the committees submit to the Board written findings of fact, conclusions of law and recommendations for proposed discipline. Hearing committees also review dismissals of complaints by the Office of Disciplinary Counsel upon a request for review by the complainant. The chair of the hearing committee has additional duties, such as conducting pre-hearing conferences, ruling on pre-hearing motions and reviewing admonitions proposed by disciplinary counsel and accepted by a respondent. *Rule XIX, § 3E(1)-(4).*

## The Disciplinary Process

A complaint is any information which comes to the attention of the Office of Disciplinary Counsel concerning a lawyer subject to the jurisdiction of the agency (*i.e.*, lawyers admitted to practice in the state, lawyers specially admitted by a court for a particular proceeding, lawyers not admitted but who render or offer to render any legal services in the state, and former judges who have resumed the status of lawyer). Every complaint is screened by the Office of Disciplinary Counsel to determine whether the information relates to lawyer misconduct or incapacity. If the information alleges facts which, if true, would constitute misconduct or incapacity, the complaint is investigated unless, in the discretion of Disciplinary Counsel, the matter qualifies for referral to the Louisiana State Bar Association's Practice Assistance and Improvement Program (Attorney-Client Assistance Program). *Rule XIX, § H(a).* Otherwise, the complaint is dismissed.

If an investigation is conducted, deputy disciplinary counsel forwards the complaint to the respondent, informs him or her that the Office of Disciplinary Counsel has received a complaint, and requests a response. Deputy Disciplinary Counsel then conducts an investigation and evaluates the matter. After completing the investigation, Deputy Disciplinary Counsel may:

- suggest that respondent agree to an admonition - a private, confidential sanction issued by the Board (although complainant is informed that respondent has been admonished);
- request approval by a Hearing Committee to file formal charges (this approval essentially constitutes a determination of probable cause by the committee);
- petition for respondent's transfer to disability inactive status which, if ordered by the Court, would result in a stay of the proceedings until the disability is resolved;
- close the case (complainants have 30 days to appeal closures); or
- in some instances of minor misconduct, the subject attorney may be referred into the Louisiana State Bar Association's Diversion Program, an educational monitoring program coordinated by the LSBA's Practice Assistance Counsel. The primary element of the diversion program is an Ethics School.

Assuming that formal charges are approved, disciplinary counsel will serve or attempt to serve the charges on respondent at his primary registration statement address. Respondent has 20 days after service in which to respond (unless a continuance is requested and granted) with his answer to the formal charges. If respondent answers, a hearing on the merits is set. If there is no answer within the prescribed period, the factual allegations contained within the formal charges are "deemed admitted" and deemed proven by clear and convincing evidence. The only issue at that juncture is for the committee to determine the appropriate sanction based on the charges as "deemed admitted."

The hearing committee order deeming the charges admitted shall be served on respondent. He or she then has 20 days from the mailing of the order to request that the "deemed admitted" order be recalled upon a showing of good cause. Additionally, even when the formal charges are deemed admitted and the order is not recalled, respondent may submit mitigating evidence and/or request a hearing in mitigation.

Whether there is a hearing on the merits or merely a determination of sanction based on charges "deemed admitted," the Hearing Committee will render an opinion recommending a certain sanction. The Hearing Committee opinion is served on the respondent and Disciplinary Counsel. Either may object to the recommended sanction, findings of fact and/or conclusions of law. The hearing committee report is then reviewed by one of three panels of the adjudicative board and oral argument is conducted before the board panel. An opinion from the entire nine-member adjudicative committee of the Board is rendered recommending certain findings and any sanction(s) to the Louisiana Supreme Court. The Board opinion is filed with the Court and served on both parties. Again, either side may object and, if the Court receives objections, the case usually will be docketed for oral argument.

In any event, the Court renders the final decision imposing the sanction, usually in the form of a *per curiam* opinion. Sanctions from the Court may include a public reprimand<sup>1</sup>, suspension or disbarment. The Court also could order the entire matter be dismissed, finding that no sanction is appropriate. Probation may follow a suspension or reprimand, or may be imposed in lieu of discipline in rare circumstances. After the Court has rendered its opinion, either side may file a motion for rehearing, but these are rarely granted.

<sup>1</sup> Although the Board may order a reprimand without the case going up to the Court, if the Board has recommended a suspension or disbarment which requires filing the recommendation with the Court, the Court can always lessen the sanction to a reprimand. Respondents and the Office of Disciplinary Counsel also can object to the Board's imposition of a reprimand and seek review by the Louisiana Supreme Court.

## 10 Frequently Alleged Rule Violations

1. Lack of communication.
2. Lack of diligence.
3. Misrepresentation/dishonesty.
4. Unearned fees.
5. Scope of representation/failure to recognize client authority.
6. Failure to promptly release a client file/client property.
7. Improper funds handling.
8. Ineffective assistance of counsel.
9. Conflict of interest.
10. Unreasonable/excessive fees.

# The Office of Disciplinary Counsel Generally Receives More Than 3,000 Complaints a Year!

## When a complaint arrives, what should I do?

The Louisiana State Bar Association's Practice Assistance and Improvement Committee has prepared a video entitled *"What to Expect if you Receive a Disciplinary Complaint"*

See also **"Demystifying the Office of Disciplinary Counsel"**

<https://www.lsba.org/Public/AttorneyDisciplinaryProcedures.aspx>

1. **Don't panic.** More than 85 percent of complaints are dismissed. Review the complaint calmly and completely.
2. **Don't ignore the complaint.** The worst thing an attorney can do is to stick his or her head in the sand and ignore a complaint. If Disciplinary Counsel doesn't receive a substantive response to its inquiry within 15 days, it will often issue a subpoena for the attorney's appearance and take his or her sworn statement. A failure to initially reply may be treated as independent misconduct in violation of Rule 8.1 of the Rules of Professional Conduct and can result in sanctions even if the respondent's initial complaint has been dismissed on the merits.
3. **Do not attack the messenger.** Many attorneys are furious when they first receive what they believe may be a spurious complaint. However, disciplinary counsel is obligated to investigate all complaints which allege misconduct. Disciplinary counsel does not know there is nothing to the complaint until the attorney provides counsel with that information. Generally, the Office of Disciplinary Counsel wants to close files as soon as possible.
4. **Do you need help?** Upon receiving the complaint, make a reasoned determination whether you should seek counsel to represent you in the investigation. Most complaints are dismissed with or without the respondent obtaining counsel. At the very least, you should consult with another attorney whose opinion you respect for an independent review of the complaint.
5. **Cooperate with disciplinary counsel as much as possible.** As stated earlier, failure to cooperate can be considered as independent misconduct. It also can be used as aggravating evidence on the issue of sanction. Answer queries and forward any documentation requested as soon as possible. In your initial response, submit any documentation that can help resolve your complaint.
6. **Keep the lines of communication open.** Most complaints are by former or current clients. If the complaint is one by the client, it usually involves issues of communication and diligence. Unless your client now has new counsel, there may be no reason why you cannot still be diligently representing the client. In fact, you are required to continue with the representation unless and until the representation is terminated - a complaint does not terminate representation. If you keep the complainant reasonably informed and complete his matter during the pendency of the investigation, the Disciplinary Counsel may dismiss the matter based on the client's satisfaction. Also, consider enrolling in the Louisiana State Bar Association Legal Fee Dispute Resolution Program if the matter appears to be a fee dispute.
7. **Be patient.** Sometimes investigations take longer than expected. Further, even if the matter is dismissed, the complainant can appeal the dismissal. Remain cooperative and reasonable throughout the process even when you do not feel like doing so.
8. **Finally, do not retaliate against the client or complainant.** Respondents are forbidden under Louisiana Supreme Court Rule XIX from suing a complainant for the filing of a complaint against them, whether the complaint has merit or not.

# When Formal Charges Are Filed Against Me, What Should I Do?

1. It has been said that the lawyer who represents himself has a fool for his client. Take that advice to heart. Yes, representing yourself is cheaper in the short run. But losing your license is a high price to pay in the end. It is virtually impossible for a lawyer to represent himself or herself properly. There are many top-notch lawyers who represent other attorneys in the disciplinary system.
2. **Notify your malpractice carrier promptly of the complaint.** Your policy may cover all or part of your legal expenses.
3. **Answer the charges within the prescribed time limit of 20 days.** If you need additional time, request an extension of time from the committee chair. The disciplinary counsel and committee chair will rarely oppose reasonable requests for additional time. If you fail to answer, the charges can be deemed admitted against you.
4. **Cooperate and participate in discovery.** Under Louisiana Supreme Court Rule XIX, there are at least 60 days in which to utilize discovery before the matter gets to trial. Few respondents utilize discovery and, as a result, they do not know what evidence disciplinary counsel has against them.
5. **Comply** with the provisions of Louisiana Supreme Court Rule XIX concerning submissions and time limitations. Hearing committee chairs are very similar to judges. They don't appreciate or respect late answers, dilatory and incomplete discovery, and missing pre-hearing memoranda. Under Rule XIX, both parties are obligated to file pre-hearing memoranda within 10 days of the hearing. Disciplinary counsel always submits it. Respondents often do not. However, the pre-hearing memorandum is one of the first places where respondents can get their side of the story before the hearing committee.
6. **Utilize evidence of mitigation as much as possible.** Mitigating factors can be:
  - Absence of a prior disciplinary record.
  - Absence of dishonest or selfish motive.
  - Personal or emotional problems.
  - Timely good faith effort at restitution or rectifying consequences of misconduct.
  - Cooperation with disciplinary proceedings.
  - Inexperience in the practice of law.
  - Character or reputation.
  - Physical or mental disability.
  - Delay in disciplinary proceedings.
  - Interim rehabilitation.
  - Imposition of other penalties or sanctions.
  - Remorse.
  - Remoteness of prior offenses.

## Remorse and restitution are especially important.

7. Soften aggravating factors as much as possible. Aggravating factors can be:
  - Prior disciplinary record.
  - Dishonest or selfish motive.
  - Patterns of misconduct.
  - Multiple offenses.
  - Bad faith obstruction of disciplinary proceedings,
  - Submission of false evidence during the disciplinary process.
  - No remorse.
  - Vulnerability of victim.
  - Substantial experience in the practice of law.
  - No restitution.

## Again, if possible, give restitution and show remorse.

8. **Consider consent discipline.** Consents can often be worked out with disciplinary counsel provided the respondent will admit to all or part of the misconduct. If the evidence is clearly against you, consent may be a way to get a slightly better sanction.
9. **Show up.** It is amazing how many respondents:
  - Fail to file an initial response.
  - Fail to file an answer.
  - Fail to show up for the hearing.

Hearing committees, the Board and the Court take very dim views of the attorney who clearly has abandoned his or her practice. The lawyer who does not care enough about his or her license to participate in the process will not keep that license for long.

# Louisiana State Bar Association Publications Subcommittee

The Publications Subcommittee of the Rules of Professional Conduct Committee, with the assistance of Ethics Counsel, regularly reviews select ethics advisory opinions for issues and topics of interest, importance and/or significance to the general bar which are not highly fact-sensitive, with an eye towards developing them into advisory opinions which may be published for the benefit of the general bar. Public Opinions have been rendered as follows:

- **05-RPCC-001**, Lawyer Retirement—Ethical Requirements to Client  
<http://files.lsba.org/documents/Ethics/LeavingPracticePublicationProof.pdf>
- **05-RPCC-002**, Contingency Fees in Domestic Relations Cases  
<http://files.lsba.org/documents/Ethics/ContingencyFeesDomesticCases.pdf>
- **05-RPCC-003**, Surrender of Client File Upon Termination of Representation  
<http://files.lsba.org/documents/Ethics/FileSurrenderPublicationProof.pdf>
- **05-RPCC-004**, Safekeeping the Property of Clients and Third Parties  
<http://files.lsba.org/documents/Ethics/SafekeepingProperty.pdf>
- **05-RPCC-005**, Lawyer Providing “Hotline” Advice in the Wake of a Natural Disaster (*published on an expedited basis, following Hurricane Katrina*)  
<http://files.lsba.org/documents/Ethics/05005RPCC.pdf>
- **05-RPCC-006**, Client Confidentiality vs. Subpoena/Court Order to Testify  
<http://files.lsba.org/documents/Ethics/05006RPCCPublic.pdf>
- **05-RPCC-007**, Lawyer as a Witness  
<http://files.lsba.org/documents/Ethics/05LSBARPCC007.pdf>
- **06-RPCC-008**, Client File Retention  
<http://files.lsba.org/documents/Ethics/06LSBARPCC008.pdf>
- **06-RPCC-009**, Funds or Property of Missing Client  
<http://files.lsba.org/documents/Ethics/FundsPropertyMissingClient06009RPCCPub.pdf>
- **06-RPCC-010**, Lawyer’s Duty to Report Professional Misconduct of Another Lawyer  
<http://files.lsba.org/documents/Ethics/06010RPCCPublication.pdf>
- **07-RPCC-011**, Conflicts of Interest and the Part-Time Prosecutor  
<http://files.lsba.org/documents/Ethics/PartProsecutor07011Publication.pdf>
- **07-RPCC-012**, Identification of a Law Practice - Fictitious or Trade Names  
<http://files.lsba.org/documents/Ethics/07012RPCCPublicationPro.pdf>
- **07-RPCC-013**, Sharing Office Space Without Sharing Liabilities and Conflicts  
<http://files.lsba.org/documents/Ethics/SharingOffice07013RPCC.pdf>
- **07-RPCC-014**, Permissible Communications with Persons Already Represented by Counsel  
<http://files.lsba.org/documents/Ethics/SecondOpinionsPermitted07014RPCC.pdf>
- **07-RPCC-015**, Gifts to Clients  
<http://files.lsba.org/documents/Ethics/GiftstoClients07015RPCC.pdf>
- **08-RPCC-016**, Conflicts of Interest: Simultaneous Representation of Driver and Guest-Passenger  
<http://files.lsba.org/documents/Ethics/DriverGuestPassengerConflicts08016RPCC.pdf>
- **08-RPCC-017**, Sharing Office Space with Non-Lawyers  
<http://files.lsba.org/documents/Ethics/08RPCC017.pdf>
- **12-RPCC-018**, Sharing Legal Fees with Suspended or Disbarred Lawyers  
<http://files.lsba.org/documents/Ethics/LSBAAdvisoryOpinionFeeSharingredli113012.pdf>
- **12-RPCC-019**, Accepting Credit Cards for Payment of Fees and Costs  
<http://files.lsba.org/documents/Ethics/12LSBARPCC019.pdf>
- **16-RPCC-020**, Communication Regarding Potential Malpractice  
<http://files.lsba.org/documents/Ethics/PublicOpinion020.pdf>

# Louisiana State Bar Association

## Ethics Advisory Service

The Ethics Advisory Service provides confidential, informal, non-binding advice and opinions on matters of legal ethics to all eligible LSBA members (i.e., whose law license is active and in good standing with the LSBA). The service is provided by the Ethics Advisory Service Subcommittee of the Rules of Professional Conduct Committee, with the assistance of the LSBA's Ethics Counsel. The Subcommittee consists of experienced volunteer members of the LSBA.

Lawyers seeking advice or written opinions on matters of legal ethics may telephone, email, fax or write letters (with their requests for advice/opinions) to:

**Richard P. Lemmler, Jr.**  
**Ethics Counsel**  
601 St. Charles Avenue  
New Orleans, LA 70130

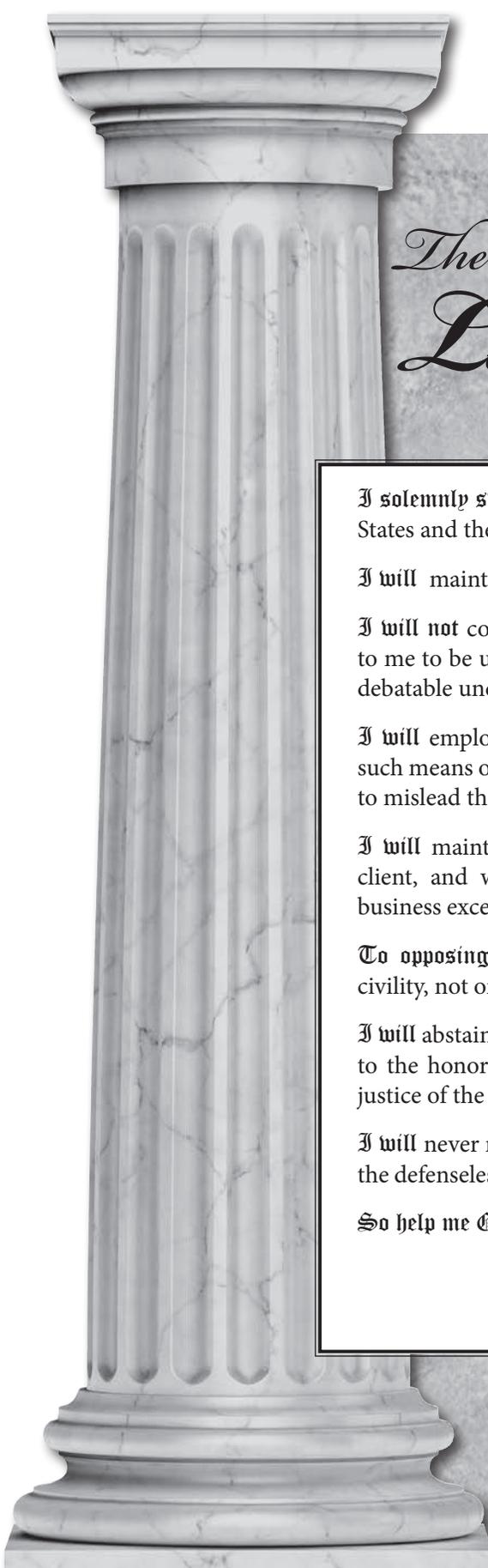
*or*

**Eric K. Barefield**  
**Ethics Counsel**  
601 St. Charles Avenue  
New Orleans, LA 70130

direct dial: (504)619-0144  
fax: (504)598-6753  
email: rlemmler@lsba.org

direct dial: (504)619-0122  
fax: (504)598-6753  
email: ebarefield@lsba.org

The request must pertain to the lawyer's own prospective conduct—the Ethics Advisory Service does not evaluate or comment upon past or on-going conduct, on matters which are themselves the subject of pending litigation or disciplinary action, or on the conduct of a lawyer other than that of the requesting lawyer. Requests that are routine or of a repetitive nature can be answered by Ethics Counsel almost immediately.



# *The Lawyer's Oath*

**I solemnly swear** (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

**I will** maintain the respect due to courts of justice and judicial officers;

**I will not** counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

**I will** employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

**I will** maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

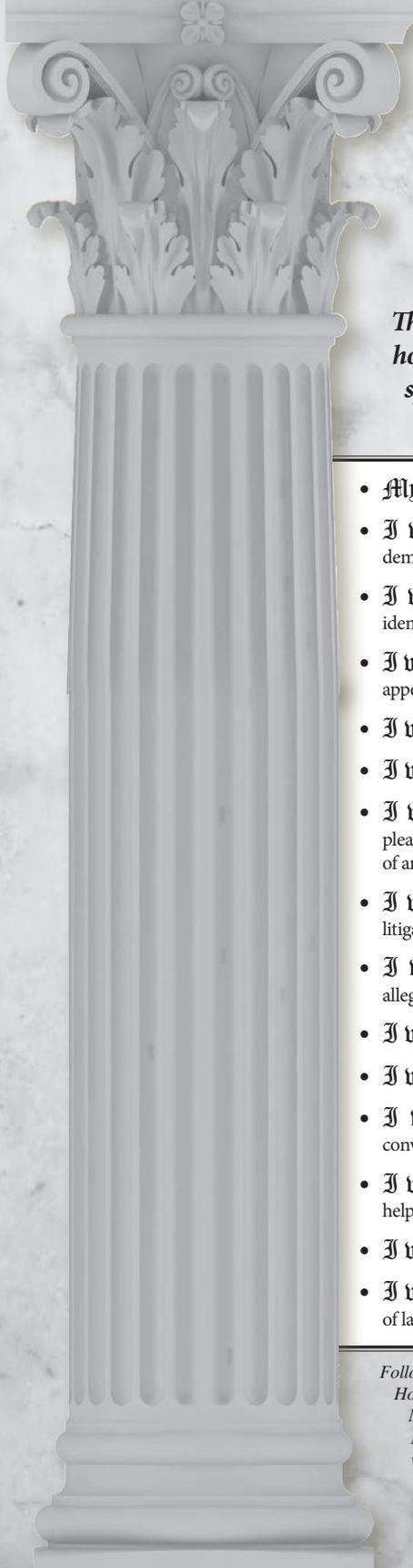
**To opposing** parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

**I will** abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

**I will** never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

**So help me God.**





# Code of Professionalism

*The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.*

- **My word** is my bond.
- **I will** conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- **I will not** knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- **I will** be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- **I will** allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- **I will not** abuse or misuse the law, its procedures or the participants in the judicial process.
- **I will** cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.
- **I will not** engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- **I will** support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- **I will** work to protect and improve the image of the legal profession in the eyes of the public.
- **I will** endeavor to improve our system of justice.
- **I will** use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- **I will** seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- **I will** be supportive of new members in the profession.
- **I will** stay informed about changes in the law, communication, and technology which affect the practice of law.

*Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee, and was revised in June 2018.*



**Louisiana**<sup>®</sup>  
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Association

*Serving the Public. Serving the Profession.*

# Louisiana State Bar Association Committee on the Profession

The Committee on the Profession is charged with conducting the Bar's professionalism programs and has numerous professionalism articles and information. For information on the Committee, visit <http://www.lsba.org/goto/committeeontheprofession>

The mission of the Committee will be to support and encourage lawyers to exercise the highest standards of integrity, ethics and professionalism in their conduct; to examine systemic issues in the legal system arising out of the lawyer's relationship and duties to his/her clients, other lawyers, the courts, the judicial system and the public good; to provide the impetus and means to positively impact those relationships and duties; to improve access to the legal system; and to improve the quality of life and work/life balance for lawyers.