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Ethics Refresher 2018

This CLE covers the Rules of Professional Conduct as adopted in Nebraska, Iowa, Wisconsin, Minnesota, and other states. Most states have adopted rules that are substantially similar. Therefore, this course gives a good refresher for attorneys in other states. During the program, we'll cover some of the differences in the rules adopted in neighboring states. Of course, especially in other states, lawyers should consult the actual rules as adopted in the particular state, since most states have made at least some modifications to the ABA model rules upon which they are based.

In these materials, a reference to "Rule ___" is a reference to the Rules of Professional Conduct. The full rules can be found in a volume of the state statutes, in the state rules of court pamphlet, and online at:

Iowa: https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/11-30-2017.32.pdf

Nebraska: https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-5-nebraska-rules-professional

The Rules of Professional Conduct begin with a Preamble which states, in general terms, the obligations of lawyers. It also contains some advice as to how the rules should be construed. Paragraph 9 concedes that in many cases, various requirements of the rules can be seemingly in conflict with one another:

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

In short, there are many situations where a lawyer needs to step back, and perhaps get outside legal advice as to how to proceed.

One new resource that will be of special interest to Minnesota lawyers, but also to lawyers in other states, is the e-book Minnesota Legal Ethics by William Wernz. You can request a free copy at: http://tinyurl.com/MinnesotaEthics

Rule 1.0: Terminology.

The first section of the rules contains definitions of many terms used elsewhere in the rules.

Rule 1.1: Competence

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

ABA Comment: “Expertise in a particular field of law may be required in some circumstances”, but a lawyer “may accept representation where the requisite level of competence can be achieved by reasonable preparation.”

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

A lawyer “shall abide by a client's decisions”, and the representation “does not constitute an endorsement of the client's political, economic, social or moral views or activities.” However, a lawyer may not assist in “conduct that the lawyer knows is criminal or fraudulent”. However, a lawyer may discuss the legal consequences of any proposed course of conduct and assist a client to make a good faith effort to determine the scope, meaning, or application of the law.

A lawyer may limit the scope of the representation if reasonable and if the client gives informed consent. This consent must be confirmed in writing except in limited circumstances, such as when the representation consists solely of a telephone consultation, or certain non-profit settings.

Nebraska has adopted a rule governing the situation of a lawyer who is asked to prepare pro se pleadings that will be used by the client:

> A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are “Prepared By” and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the filing.

Nebraska also has special rules governing a limited appearance in a court matter. The court and opposing counsel must be notified that the appearance is limited, and the lawyer must file a certificate of completion of limited representation within 10 days after concluding the services. Such a withdrawal does not require court approval, as it would normally under rule 1.16.

Rule 1.3: Diligence.

This rule states in its entirety, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

As the ABA Comment notes: “Perhaps no professional shortcoming is more widely resented than procrastination.”

Rule 1.4: Communication

A lawyer must communicate with his client in the following situations:

1. Any time the client needs to consent to some action under the rules.
2. Tell the client how his or her objectives are going to be carried out.
3. Keep the client informed about the status of the matter.
4. Comply with reasonable requests for information.
5. Let the client know of any relevant limitations on the lawyer's conduct.

ABA Comment: The client should have “sufficient information to participate intelligently in decisions. However, “not be expected to describe trial or negotiation strategy in detail.”

Rule 1.5: Fees.

Fees and expenses must not be "unreasonable". The following factors are relevant to determine whether the fee is reasonable: Time and labor required, novelty and difficulty, whether the representation will prevent the lawyer from taking other employment, customary charge in the locality, amount involved and results obtained, time limitations, nature and length of relationship with the client, the lawyer's experience and reputation, and whether fixed or contingent.

These factors are not exclusive.

Fee and scope of representation shall be communicated, preferably in writing. In Wisconsin, however, if the reasonably foreseeable cost will be less than $1000, this may be communicated orally.

Contingent fee agreements must be in writing and signed by the client, and the rule contains specific requirements for this written contract.

Contingency fees are not allowed in the following types of cases:

1. Family law cases
2. Criminal cases

Splitting fees between more than one attorney must be "in proportion to the services provided by each lawyer" or in cases in which both attorneys maintain responsibility for the case. While Minnesota has not specifically defined the level of responsibility that is required, the identical Wisconsin rule notes that the level of responsibility must be comparable to that of a partner.

Rule 1.6: Confidentiality:

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated" elsewhere in the rule.

However, as the ABA comment states, “Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions.” Different states handle this exception differently. In Nebraska, a lawyer **may** reveal information if the lawyer believes it is necessary to prevent the client from committing a criminal or fraudulent act that will result in death or serious bodily injury or substantial financial or property damage. In Minnesota, the lawyer “shall” reveal the information in this circumstance. Iowa takes a somewhat middle ground. Like in Nebraska, the lawyer “may” reveal the information, but is required to do so “to the extent the lawyer reasonably believes necessary to prevent imminent death or serious bodily harm.”

Note that the Minnesota version of this rule does not provide any “safe harbor”. In certain cases, the information must remain confidentiality. In other cases, the information must be disclosed. There is no gray area in which the information may be disclosed. (It should be noted that Wisconsin has a small gray area in which information may be disclosed, but in which disclosure is not necessary.)

Iowa uses the word “may,” but then uses the word “shall” in certain cases in which the harm is imminent.

A lawyer may also reveal client confidences in certain disputes with clients, "to secure legal advice about the lawyer's conduct under these rules." and "to comply with other law or a court order". However, in the case of a court order, the ABA comment points out that even then, “the lawyer must consult with the client about the possibility of appeal”.

A limited amount of otherwise confidential information may be disclosed to the extent necessary to ascertain if a conflict of interest exists.

Rule 1.7: Conflicts of Interest with current clients.

A lawyer may not represent a client if the representation is directly adverse to another client, or if there is a "significant risk" that the representation of one or more clients may be "materially limited".

If the clients give informed consent, the lawyer may represent both parties (as long as he or she believes he can proceed competently) unless the representation involves the assertion of a claim by one client against another client in the same litigation. Iowa adds that “in no event shall a lawyer represent both parties in dissolution of marriage proceedings.”

As might be expected, the seemingly simple rule prohibiting conflicts of interest can lead to many gray areas. The ABA comments regarding this rule are quite lengthy, and do discuss a number of specific situations that might arise.

Joint Representation

Obviously, one lawyer cannot represent two clients if the two clients are A and B, the plaintiff and defendant in the case *A v. B*. Indeed, this is the one case in which the conflict may never be consented to. But in many cases, it is both necessary and desirable for one attorney to represent two clients in a related matter. Therefore, it is not uncommon for one attorney to represent both plaintiffs in a civil case, if their claims are both based on the same theory and their interests are aligned. But when undertaking any joint representation, it is important to keep in mind that a time might come when those interests are no longer aligned. At such time as the parties have a dispute, then the lawyer's responsibilities to one of the clients may be limited by the responsibilities to another.

For example, in a perfect world, an attorney in Minnesota, Wisconsin, or Nebraska could agree to represent both spouses in a divorce proceeding, as long as they've agreed upon everything and amicably come to the lawyer's office to draw up the necessary papers. Minnesota, for example, has provisions for a joint petition for dissolution of marriage. See, for example, the court's pro se instructions for filing in cases without children and cases with children.

In states such as Minnesota, an attorney could theoretically jointly help the clients fill out these forms. This is probably a bad idea, because of the risk inherent in any divorce case that one spouse will become disgruntled and raise some claim against the other spouse. This could be accompanied by a claim that the lawyer was favoring the other spouse during the joint representation. The better practice seems to be codified by the Iowa rule, which forbids joint representation in all divorce cases.

See also In The Matter of Disciplinary Proceedings Against Widule, 660 N.W.2d 686 (Wis. 2003).Attorney had ongoing consulting relationship with one client which later became involved in dispute with second client.

Driver and Passenger

Figueroa-Olmo v. Westinghouse Elec. Corp., 616 F. Supp. 1445 (D.P.R. 1985):

> Given the possibility of negligence of the deceased, Westinghouse contends that non-heir plaintiffs should have the opportunity to present a case against the other plaintiffs who are heirs of the driver or of the passengers in the truck for their part in causing the accident while the heir plaintiffs should have the opportunity to litigate among themselves the other decedents' negligence in order to reduce their own and protect their compensation instead of resting their entire case against Westinghouse. It understands that this problem arose from the moment that all these plaintiffs with potentially conflicting interests sought advice from this law firm and this single firm made all the decisions on how to channel their claims.

See also, In the Matter of Thornton, 421 A.2d 1 (D.C. 1980)

Joint Representation of Criminal Co-Defendants

In re Disciplinary Action Against Coleman, 793 N.W.2d 296 (Minn. 2011):

> The potential for conflict of interest in representing multiple defendants in a criminal case is so serious that a lawyer should, as a general rule, decline to represent more than one codefendant. The critical question is the likelihood that a difference in interests of the codefendants may occur, and if it does, whether it would materially interfere with the exercise of the lawyer's independent judgment in pursuing litigation strategies that should be pursued on behalf of each client. Thus, when a lawyer presents a unified defense and the risk of adverse effect is minimal, the conflict may be waived by each codefendant…..
>
> It should have been obvious to Coleman that a conflict of interest existed. At the outset, neither S.A. nor E.M. admitted to possessing a firearm in the car. Since a firearm was found in the car by police, either S.A.'s or E.M.'s denial at trial of possession of the firearm would implicitly accuse the other of possession of the firearm, creating a battle of credibility between the two clients. Thus, both clients would have an incentive to change their story, or accuse or cast doubt upon the other.

In criminal cases, the issue also assumes a Constitutional dimension, since the accused has the right to the effective assistance of counsel, which presumably includes a lawyer who is not burdened by a conflict of interest. Seem Holloway v. Arkansas, 435 U.S. 475 (1978) (defendant objected to joint representation) and Cuyler v. Sullivan, 446 U.S. 335 (1980) (error preserved even though no objection made).

Minnesota Rule of Criminal Procedure 17.03:

> Subd. 5. Dual Representation. When 2 or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and 2 or more of them are represented by the same attorney, the following procedure must be followed before plea and trial.
>
> 1. The court must:
>
> address each defendant personally on the record;
> advise each defendant of the potential danger of dual representation; and
> give each defendant an opportunity to question the court on the complexities and possible consequences of dual representation.
>
> 2. The court must elicit from each defendant in a narrative statement that the defendant:

> has been advised of the right to effective representation; understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict; has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and voluntarily waives the constitutional right to separate counsel.

Representation of Insured and Insurer

Pine Island Farmers v. Erstad & Riemer, 649 N.W.2d 444 (Minn. 2002):

> Thus, it is clear that in an insurance defense scenario, defense counsel has an attorney-client relationship with the insured. A number of jurisdictions have gone a step further, holding that the insured is defense counsel's sole client, and prohibiting defense counsel from forming an attorney-client relationship with the insurer. *See, e.g. [cases from Arkansas, Connecticut, and Montana].* The court of appeals arguably endorsed this view when it broadly held that "the insured is the sole client of the defense attorneys hired by the insurer." . . . However, we have never gone so far as to hold that defense counsel cannot have an attorney-client relationship with both the insured and the insurer, *see Kleman,* 255 N.W.2d at 235; *Friesen's, Inc. v. Larson,* 443 N.W.2d 830, 831 (Minn.1989), and we decline to do so now.

Shelby Mut. Ins. Co. v. Kleman, 255 N.W.2d 231 (Minn. 1977):

> Appellant Kleman moved that the court below enjoin the firm from representing Gary in any manner or in any proceedings regarding the automobile accident in question, because of an alleged conflict of interest It is suggested that if the insurance company prevailed in this action, Gary would be left without insurance coverage and would be responsible for a judgment rendered against him. At a hearing on the motion, however, counsel for the insurance company assured the court, as it did this court at oral argument, that the company would provide Gary insurance coverage under the policy. At the suggestion of appellant's counsel, Gary had conferred with an independent attorney about the need for separate counsel and was advised that it was unnecessary in these circumstances. The court asked Gary if he consented to his present representation in light of these developments, and, upon his affirmative answer, denied appellant's motion.

Representation of Organization and Principals Within Organization

See also Rule 1.13.

Bottoms v. Stapleton, 706 N.W.2d 411 (Iowa 2005), was an action by a minority shareholder against both the majority shareholder and the corporation. The Iowa Supreme Court held that the attorney could represent both the majority shareholder and the company: "We are convinced the defendants' attorneys are not disqualified

from representing both defendants simply because the plaintiff has asserted separate claims against these defendants."

But the court distinguished Rowen v. LeMars Mut. Ins. Co. of Iowa, 230 N.W.2d 905 (Iowa 1975): "It is also well established that a potential conflict of interest exists when the same law firm attempts to represent the nominal corporate defendant in a derivative action while at the same time representing the corporate insiders accused of wrongdoing."

Business Transactions Between Clients

In Iowa Attorney Disciplinary Board v. Wright, 840 N.W.2d 295 (Iowa 2013):

> While representing Floyd Lee Madison in a criminal case in 2011, Wright was presented with documents purporting to evidence that Madison was the beneficiary of a large bequest from his long-lost cousin in Nigeria. Madison represented to Wright that upon payment of $177,660 in taxes owed on the inheritance in Nigeria, the sum of $18,800,000 would be released to Madison. He asked Wright to represent him in securing the transfer of the funds from Nigeria. In consideration for a fee equal to ten percent of the funds recovered, Wright agreed to represent Madison in the Nigerian transaction.

The attorney then contacted other clients known to have funds available and arranged for these clients to lend the money. Much to everyone's surprise, the money from Nigeria never materialized. The Supreme Court conceded that "Wright is not the first Iowa lawyer who has become entangled in a deception with ostensible Nigerian connections."

Among other things, the Supreme Court concluded "Wright's undisclosed contingent fee interest in Madison's inheritance claim constituted a pecuniary interest that was adverse to the interests of" the other clients.

Closely Related Entities

Discotrade Ltd. v. Wyeth-Ayerst Intern., Inc., 200 F. Supp. 2d 355 (S.D.N.Y 2002):

> As elaborated above, we find that Dorsey & Whitney suffers from a conflict of interest by representing Discotrade in this action because it presently represents a close corporate affiliate of WAII, Pharmaceuticals. As Pharmaceuticals has expressly declined to waive the conflict, see Ryan Aff. Ex. G, we hereby disqualify the law firm of Dorsey & Whitney from representing Discotrade in the present matter.

Representation of Adverse Party in Unrelated Matter

Memphis & Shelby County Bar Ass'n v. Sanderson, 378 S.W.2d 173 (Tenn. App. 1963) represents a relatively easy case. In that case, the wife came into the attorney's office and paid him $50 to represent her in a divorce case. The $50 was marked as being for court costs, and she agreed to pay a fee of $250.

A few months later, the husband came into the attorney's office to talk about the divorce case. It turned out that he had a workman's compensation case, and he decided to hire the attorney to represent him in that case.

The attorney later insisted that the wife agreed that he could represent the husband in the unrelated case. It's unclear how much weight the court placed on this alleged consent. Even though the court found that the wife's testimony was not very convincing, it found a violation based upon the attorney's own testimony.

> It was the opinion of the court below [which was affirmed] that Mr. Sanderson would not have been in a position to vigorously and capably pursue Mr. Martin for divorce, alimony and child support with consequent citations for contempt and resulting punishment and at the same time devote his time properly to the interest of Mr. Martin in the workmen's compensation claim; that the interests of the two parties were decidedly antagonistic.

In Iowa Sup. Ct. Atty. Disciplinary Board v. Howe, 706 N.W.2d 360 (Iowa 2005), the attorney, a part-time city attorney, "billed both the city and [defendant] for his dual representation" in a case where he was acting both as a prosecutor on some charges, and negotiating a plea agreement as defense attorney on others. He "admitted at the hearing that his facilitation of the disposition of the three city charges through a plea agreement was wrong," and the Supreme Court agreed. A somewhat more difficult issue was his later representation of the defendant in a later administrative proceeding regarding his driver's license. Citing Rule 1.11, the Court held that this was also improper.

Representing Both Buyer and Seller

Board of Prof. Ethics & Conduct v. Wagner, 599 N.W.2d 721 (Iowa 1999), quoting Charles Wolfram, Modern Legal Ethics § 8.5, at 434 (West 1986):

> 1. lawyer's simultaneous representation of a buyer and a seller in the same transaction is a paradigm of a conflict of interest. Beginning with such basic elements as determining the price and describing the property to be sold, what one party gets the other must concede. Terms of payment, security for unpaid balances, warranties of quality and of title, date of closing and risk of loss in the interim, tax consequences, and a host of other details should be addressed by each party or the party's adviser in a well-thought-out transaction. When the transaction is a large one—such as the purchase and sale of a residence, commercial property, or a business—the transaction typically becomes further complicated because the additional interests of banks, brokers, tenants, and title insurance companies may intrude.

Estate Planning: Representing Testator and Beneficiary Who Will be Disinherited

ABA Formal Opinion 05-434 (Dec. 8, 2004) deals with the situation of an attorney who is asked to draft a will. The effect of that will is to disinherit the testator's son, who is a client in an unrelated matter. The opinion holds that this is not a conflict of interest, because the son is not "directly adverse" to the father. Without more, there is no conflict of interest in that situation:

> A potential beneficiary, even one who has been informed by the testator that he has been named in a testamentary instrument, has no legal right to that bequest but has, instead, merely an expectancy. Thus, except where the testator has a legal duty to make the bequest that is to be revoked or altered, there is no conflict of legal rights and duties as between the testator and the beneficiary and there is no direct adverseness.

Hot Potato Doctrine

Picker International, Inc., v. Varian Associates, Inc., 670 F. Supp. 1363 (N.D. Ohio 1987)("a firm may not drop a client like a hot potato, especially if it is in order to keep a far more lucrative client."

But see a case in which the conflict arose without the fault of the law firm: Gould, Inc. v. Mitsui Mining & Smelting Co., 738 F. Supp 1121 (N.D. Ohio 1990):

> The court has broad discretion in determining whether counsel should be disqualified in ongoing litigation…. However, the law requires the discretion to
> be exercised wisely, and with due regard to lawyers' ethical standards. The issue arising from the application of these standards cannot be resolved in a vacuum, and the ethical rules should not be blindly applied without consideration of relative hardships. Disqualification questions are intensely fact-specific, and it is essential to approach such problems with a keen sense of practicality as well as a precise picture of the underlying facts.

Consent in Dual Representation Cases

ABA Comment 29 to Rule 1.7:

> In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment, and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

Since clients can consent to conflicts of interest, it might be a good practice to have clients specifically acknowledge and consent to the potential conflict of interest in any case of joint representation. If doing so, the attorney should be mindful that the consent must comply with the requirements of Rule 1.7(b). For example, in Wisconsin, the consent must be signed by the client.

Attorney as Member of Labor Union

Santa Clara County Counsel Attys. Assn. v. Woodside, 869 P. 2d 1142 (Cal. 1994):

> We are asked to decide whether the right of local government employees to sue a public agency for violations of the Meyers-Milias-Brown Act (MMBA, Gov. Code, § 3500 et seq.) extends to attorneys who are employed in the office of the Santa Clara County Counsel (County Counsel), or whether the duty of loyalty imposed upon these attorneys towards their client, the County of Santa Clara (County), precludes such a suit. We conclude that the MMBA authorizes the suit, and that the suit is not prohibited for any constitutional reason. Further, we conclude that the County is statutorily forbidden from discharging attorneys for exercising their right to sue under the MMBA, although the County is still free to rearrange assignments within the County Counsel's office in order to ensure that it receives legal representation in which it has full confidence.

Conflicting Positions in Different Cases

Normally, there is no conflict when an attorney takes two conflicting positions in two unrelated cases. But there might be problem areas, such as conflicting positions regarding the disposition of a particular piece of property.

See, for example, Fiandaca v. Cunningham, 827 F.2d 825 (1st Cir. 1987)(in class action involving two groups of inmates, location of new facility to settle case pitted one class against another).

Rule 1.8: More specific rules on conflicts of interest

A lawyer may not enter into a transaction with a client in which he acquires an interest adverse to the client (such as a security interest), unless the transaction is fair and reasonable, the client is advised in writing to obtain outside advice, and the client gives written consent.

Gifts from clients (including testamentary gifts)

In Iowa and most other states, a lawyer shall not prepare an instrument giving himself or herself (or a parent, child, sibling or spouse) any substantial gift from a client. There is an exception when the "client is related to the donee."

Wisconsin has a much more specific rule. In Wisconsin, a lawyer may not "solicit any substantial gift" from a client, or prepare an instrument (such as a will) giving a gift to the lawyer unless all of these requirements are met:

1. The client is a relative and "natural object of the bounty of the client".

2. There is no reasonable ground to believe the instrument will be contested, or that the public will "lose confidence in the integrity of the bar".

3. The amount of the gift is reasonable and natural.

Until a case is concluded, a lawyer may not receive literary rights based upon the representation.

A lawyer may not provide financial assistance to a client, other than advancing certain costs and expenses.

If a lawyer's fee is paid by someone other than the client, all of the following requirements must be met:

1. The client must consent.

2. It does not interfere with the lawyer's independence.

3. Confidential information is maintained properly.

If a lawyer is representing more than one party, then any aggregate settlement must be approved by all of the clients.

A lawyer may not ask a client to prospectively waive malpractice claims (unless the client is independently represented when making that waiver) or to agree not to report the lawyer's conduct to disciplinary authorities. When settling a potential claim with an unrepresented person, the person must be informed in writing of the desirability of obtaining outside legal advice.

A lawyer may not acquire a proprietary interest in a cause of action, except for the following:

1. An attorney's lien for his or her fee, if authorized by law.
2. A reasonable contingent fee in a civil case.

In general, a lawyer related to another lawyer (familial or romantic capacity) shall not represent a client whose interests are adverse to a person represented by the related lawyer. There may be exceptions in the case of consent.

A lawyer may not have sexual relations with a client (unless the relationship predated the legal representation).
This includes the person(s) who supervise the lawyer, in the case of an institutional client.

With the exception of the last paragraph, these prohibitions also apply to all lawyers in the same firm.

Rule 1.9: Duties to former clients

A lawyer who has represented a former client may not represent another person in the same or substantially related matter without the informed written consent of the former client. Wisconsin adds that such consent must be signed
by the former client.

If the firm in which a lawyer had represented a person, then the lawyer may not represent a person materially adverse to that person about whom the lawyer had acquired certain confidential information. Note: As the ABA comments state, with respect to the former client of a former firm, "the Rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel."

A lawyer may not use information relating to the representation of a former client to the former client's disadvantage, unless as otherwise permitted by the rules (or when the information has become generally known).

A lawyer may not reveal information relating to a representation of a former client (other than would be permitted with respect to a current client).

> In Jesse v. Danforth, 485 N.W.2d 63 (Wis. 1992), the attorney had been retained by 23 physicians to form a corporation. A few years later, that attorney was retained by a plaintiff to pursue a medical malpractice claim against one of those physicians. The Wisconsin Supreme Court held that there was no conflict of interest under the facts of the case:
>
> > We thus provide the following guideline: where (1) a person retains a lawyer for the purpose of organizing an entity and (2) the lawyer's involvement with that person is directly related to that incorporation and (3) such entity is eventually incorporated, the entity rule applies

retroactively such that the lawyer's pre-incorporation involvement with the person is deemed to be representation of the entity, not the person.

Rule 1.10: Imputed Disqualification.

In general, if a lawyer in a firm is prohibited from representing a client under Rule 1.7 or 1.9, then the same prohibition extends to all lawyers in the firm.

There are two exceptions to this disqualification:

3. The other lawyers in the firm are not disqualified if the prohibition is based on a personal interest of the prohibited lawyer, and there is not a significant risk that the representation by the other lawyers would be materially limited.

4. If the lawyer is disqualified under Rule 1.9 (duties to former clients), then the other lawyers are
not disqualified if all three of the following conditions are met:

    i. The personally disqualified lawyer performed only minor and isolated services in the earlier matter, and only with the former firm.
    ii. That lawyer is screened from any participation in the new matter, and receives no fee from
    ii. Written notice is given to the former client.

In general, if a lawyer is no longer part of a firm, then the firm is not disqualified because the former member's having represented a client. However, the former firm might be disqualified in one of the following four situations:

2. The matter is the same or substantially related to the matter in which the formerly associated lawyer represented the client.

3. One of the firm's remaining lawyers has certain confidential information.

4. The conflict has been waived, in the same manner as the waiver under Rule 1.7.

5. In the case of Government lawyers, a different rule (1.11) applies.

Rule 1.11: Special rules regarding former and current government officers and employees.

Rule 1.9(c) (use of information gained from a previous representation) does apply in the case of a former government attorney. Also, in general, such a lawyer may not represent a client in connection with a matter in which that lawyer participated personally, unless the government agency gives its written informed consent.

If one lawyer in a firm is disqualified under the previous paragraph, then the firm is also disqualified, unless both of the following conditions are met:

1. The disqualified lawyer is screened, and shares no portion of the fee.

2. Written notice is given to the government agency.

If a lawyer has gained confidential government information about a person during his government employment, then he may not represent a private client whose interests are adverse to that person, if the information could be used to that person's material disadvantage. In this case, the lawyer's firm may represent such a client, if the disqualified lawyer is screened and does not share in the fee.

Current government lawyers are bound by Rules 1.7 and 1.9. Such a lawyer may not participate in matters in which he participated outside of government, unless the agency gives its written informed consent.

Current government lawyers may not negotiate for employment with any person involved in a matter in which he is participating. (There is an exception for current judicial law clerks, subject to conditions.)

Iowa generally prohibits part-time prosecutors from engaging in any criminal defense work during the time they are employed as prosecutors.

Rule 1.12: Former judges, arbitrators, mediators, and neutrals.

In general, a lawyer should not represent anyone in a matter in which he or she served as a judge, arbitrator, mediator, or neutral. A lawyer shall not negotiate for employment with such a person (with an exception for law clerks, subject to conditions). In many states, including Iowa, such a lawyer may participate in the matter, if the conflict is waived.

If a lawyer is disqualified under this rule, then the rest of the lawyer's firm is also disqualified, unless the lawyer is screened and shares no part of the fee, and notice is given.

In general, a partisan arbitrator in a multi-member arbitration panel may subsequently represent that party in the same matter.

Rule 1.13: Organization as client.

A lawyer retained by an organization represents the organization. Therefore, if he becomes aware that some person within the organization is going to act in violation of a legal obligation to the organization, or violate a law that is likely to result in substantial injury to the organization, then the lawyer must act in the best interest of the organization. In general, he must refer the matter to higher authorities within the organization.

If the highest authority within the organization fails to address this matter, and if the lawyer reasonably believes that this will cause substantial injury to the organization, then the lawyer may make limited disclosure, even if the disclosure would otherwise violate Rule 1.6. (This does not apply if the lawyer has been retained to investigate a possible violation of law or to defend a claim arising out of a violation.)

If the lawyer believes that he has been fired for being a "whistleblower", then he or she is required to bring this information to the attention of the organization's highest authority.

When dealing with officers, directors, employees, etc., the lawyer should explain that the organization is the client, if it is apparent that the organization's interests are adverse to those persons.

In general, the organization's lawyer may also represent officers, employees, etc. But see Rule 1.13(g) regarding required consent.

Rule 1.14: Client with Diminished Capacity

In general, a lawyer should, to the extent reasonably possible, maintain a normal client-lawyer relationship. Diminished capacity may be the result of minority, mental impairment, or some other reason.

If the lawyer reasonably believes that a client with diminished capacity is at the risk of "substantial physical, financial, or other harm", then the lawyer **may** take reasonably necessary protective action. This can include consulting with others who have the ability to take action. If appropriate, the lawyer may seek to have appointed a guardian ad litem, conservator, or guardian.

The client's confidential information is still protected by Rule 1.6. However, the lawyer is impliedly authorized to reveal information, if necessary to take such protective action. However, note that the lawyer is not **required** to take action under this rule. He or she is merely **authorized** to take action. Therefore, care should be taken to ensure that confidential information is not released to the client's detriment. As the ABA comment notes, "at the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client."

Rule 1.15: Safekeeping a Client's property.

The rules require lawyers to deposit funds belonging to clients or other third parties to be deposited into a trust account if they are held in connection with a representation.

The only funds belonging to the lawyer which can be held in such accounts are reasonable amounts to cover service charges, and funds belonging jointly to the lawyer and client.

Fees belonging to the attorney must be withdrawn from the trust account within a reasonable time after being earned.
A written accounting must be made for any such withdrawals.

A lawyer must promptly notify a client or third person upon receiving such funds, securities, or other properties.

Securities and property must be identified and labeled promptly, and promptly placed in a "safe deposit box or other place of safekeeping".

Complete records must be kept of all such property.

Property must be paid or delivered promptly if requested by the person entitled to receive it.

Generally, all advance fees must be deposited into the trust account and withdrawn as earned, unless subject to a written agreement under Rule 1.5.

If funds are held only for a short period of time, or are nominal in amount, then they should be deposited into a pooled IOLTA (Interest on Lawyer Trust Accout) account.

In other cases, separate accounts must be maintained for individual clients, with the client receiving any interest on those amounts.

In addition to rules governing trust accounts, the rule also governs the lawyer's office account. A lawyer engaged in the practice of law must maintain current books and records sufficient to demonstrate income and expenses. In general, these records must be maintained for six years, and the lawyer must certify compliance annually.
The specific rules governing records that need to be maintained, both for the trust account and the office account, can be found in chapter 45 of the Iowa Court Rules. More information can be found in the course materials for my 2017 CLE on Iowa Trust Accounts. In Wisconsin, most of these provisions are incorporated into Rule 1.15, which goes into more detail than the corresponding rule in other states.

Rule 1.16: Declining or terminating representation.

A lawyer **shall not** represent a client, and **shall** withdraw from representing a client in any of the following situations:

1. The representation will result in violation of the rules or of other law
2. The lawyer's physical or mental condition materially impairs the lawyer's ability
3. The lawyer is discharged.

A lawyer **may** withdraw from representing a client* in any of the following situations:

1. There will be no material adverse effect on the client's interests.

2. The client persists in a course of action involving the lawyer's services, and the lawyer reasonably believes this is criminal or fraudulent.

3. The client has used the lawyer's services to perpetrate a crime or fraud.

4. The client insists on taking some action that the lawyer finds repugnant or with which the lawyer fundamentally disagrees.

5. The client fails to substantially fulfill an obligation (e.g. pay) for the lawyer's services, and sufficient warning has been given. Continued representation would be an unreasonable financial burden for the lawyer, or the client has made it unreasonably difficult.

6. "other good cause for withdrawal exists".

*--Even though a lawyer may be permitted to withdraw under one of these circumstances, the lawyer must comply with any law requiring notice or permission by the court. (But in Nebraska, see Rule 1.2.)

When ordered by the court, the lawyer must continue representing the client, notwithstanding good cause for terminating the representation.

If a lawyer does terminate a representation, the lawyer must take reasonable steps to protect the client's interests.

A client's papers must be returned at the end of the representation, if the client is entitled to them.

Rule 1.17: Sale of law practice.

A lawyer may sell or purchase a law practice, if the following conditions are met:

1. The seller ceases to practice law in that geographic area and/or that area of the practice of law.

2. The entire practice, or area of practice, is sold to one or more lawyers or law firms.

3. The seller gives a specific written notice to each client (in Wisconsin, the notice is required only to “affected” clients.) The Iowa rule goes into detail as to the contents of the notice, and contains specific provisions regarding the transfer of the files to the new firm.

4. Client fees may not increase due to the sale.

Rule 1.18: Duties to a prospective client.

A "prospective client" is a person who discusses with a lawyer the possibility of forming an attorney-client relationship.

In general, information revealed in such discussions cannot be used or revealed. (There is an exception only if Rule 1.9 permits revealing it with respect to a former client.)

If the lawyer has learned information that "could be significantly harmful" in those discussions, then the lawyer shall not represent a client with interests that are materially adverse. This prohibition extends to other lawyers in the firm.

There are two exceptions to this rule:

1. The lawyer may represent the client if both the client and the prospective client have given written informed consent.

2. If the lawyer took reasonable measures to avoid exposure to the information, then other lawyers in his or her firm may represent the client. Notice must be given to the prospective client.

Rule 2.1: Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In giving advice, the lawyer **may** also look to considerations besides the law, such as moral, economic, social, and political factors.

Note: there is no “Rule 2.2" in Iowa,, Minnesota or Wisconsin.

IA/MN/WI Rule 2.3, Nebraska Rule 2.2: Evaluation for use by 3rd persons. (May have different rule number in other states)

A lawyer may evaluate a matter affecting a client for use by someone else, if the lawyer reasonably believes that doing so is otherwise compatible with the relationship with the client.

If the evaluation will adversely affect the client's interests, then the lawyer must first obtain the client's informed consent.

Except as authorized in connection with the evaluation, confidential information remains protected by Rule 1.6.

IA/MN/WI Rule 2.4, Nebraska Rule 2.3: Lawyer serving as 3rd-party neutral.

If a lawyer is serving as a third-party neutral (for example, arbitrator or mediator), the lawyer must inform unrepresented parties that he or she is not representing them. If the party does not understand the lawyer's role, then the lawyer must explain the difference between a third-party neutral and a lawyer representing a client.

Rule 3.1: Meritorious claims and contentions.

A lawyer shall not do any of the following in representing a client:

1. Knowingly advance a claim or defense that is unwarranted, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law.

2. Knowingly advance a factual position unless there is a non-frivolous basis.

3. File a suit, conduct a defense, or delay a trial if the lawyer knows (or it is obvious) that doing so would serve merely to harass or maliciously injure another person.

Exception: The lawyer for a defendant in a criminal case (or a case that could result in deprivation of liberty) may defend 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 lawyer shall not do any of the following:

1. Make a false statement of fact or law to a tribunal, or fail to correct a prior false statement.

2. Fail to disclose adverse legal authority if:
    a. it is from the controlling jurisdiction
    b. it is known to the lawyer
    c. it is directly adverse to the client's position
    d. it is not disclosed by opposing counsel.

3. Offer evidence known to be false. If a lawyer has offered material evidence and he or she comes to know of its falsity, the lawyer shall take reasonable remedial measures. This might include disclosure to the tribunal. (If a lawyer knows evidence to be false, then he or she may refuse to offer that evidence, except in the case of a criminal defendant's testimony.)

If a lawyer in an adjudicative proceeding knows that a person has engaged or will engage in criminal or fraudulent conduct, then the lawyer must take reasonable remedial measures. If necessary, this can include disclosure to the tribunal.

The Minnesota and Iowa rules state that these duties continue until "the conclusion of the proceeding". Wisconsin does not include this language. Therefore, presumably, the duty in Wisconsin is continuing, even after the case has been concluded. Wisconsin has specifically rejected the ABA comment that a "practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established."

The duties set forth in this rule take precedence over Rule 1.6. Therefore, under this rule, a lawyer might be **required** to disclose otherwise confidential information.

In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts necessary to make an informed decision, whether or not those facts are adverse.

Rule 3.4 Fairness to opposing party and counsel.

A lawyer shall not do any of the following:

1. Unlawfully obstruct another party's access to evidence, or unlawfully alter, destroy or conceal documents or other items having potential evidentiary value. A lawyer may not counsel or assist another person in doing so.

2. Falsify evidence, or counsel or assist a witness to testify falsely, or offer a witness an inducement that is prohibited by law.

3. Knowingly disobey obligations under court rules, except for an open refusal based upon an assertion that no such obligation exists.

4. Make frivolous discovery requests or fail to diligently comply with proper discovery requests.

5. Allude at trial to matters that the lawyer does not believe are relevant or supported by evidence, or assert personal knowledge unless actually testifying, or state personal opinions.

6. Request that someone other than a client not voluntarily give information to another party. There is an exception to this rule if both of the following conditions are met:

a. The person is a relative, employee, or agent of a client, and

b. The lawyer believes that the person's interests will not be adversely affected.

Rule 3.5: Impartiality and decorum of the tribunal

Note: The Minnesota rule, while expressing the same general principles, departs somewhat from the Model Rule adopted in other states..

With respect to contact with the jury, the rule is broken down by time: Before the trial, during the trial, and after the trial.

1. Before the trial, a lawyer shall not communicate with anyone the lawyer knows to be a member of the venire.

2. During the trial, a lawyer connected with the case may not communicate with any member of the jury. Even a lawyer who is not connected with the case is prohibited from communicating with a juror concerning the case.

3. After the jury has been discharged, a lawyer shall not ask questions or make comments to a juror that are "calculated merely to harass or embarrass the juror" or influence the juror's actions in future cases.

In addition to these rules, a lawyer is prohibited from conducting (or having other persons conduct) vexatious or harassing investigations of jurors or prospective jurors.

If a lawyer has knowledge of misconduct by a juror or prospective juror, or if a lawyer knows of improper conduct toward a juror, prospective juror, or family member, then the lawyer must promptly reveal this information to the court.

In an adversary proceeding, a lawyer may not communicate with the judge (or other official) with respect to the merits of the case, except in the following circumstances:

1. In the course of the official proceedings.

2. In writing, if the writing is promptly given to the adverse party.

3. Orally, if adequate notice is given to the other attorney.

4. As otherwise authorized by law.

In addition, "a lawyer shall not engage in conduct intended to disrupt a tribunal."

Rule 3.6 Trial publicity.

If a lawyer participates in the investigation or litigation of a matter, then he or she shall not make an extrajudicial statement if the lawyer knows or reasonably should know that it will be publicly disseminated, and there will be a substantial likelihood of prejudicing the matter.

In jury cases and criminal cases, the following kinds of statements are presumed to have such an effect:

1. Character, credibility, reputation, or criminal record of a party, suspect, or witness, or the identity of a witness, or the expected testimony.

2. In a criminal case, the possibility of a guilty plea, or the contents of any confession or statement, or the refusal to make a statement.

3. The performance or results of tests, or refusal or failure to take a test.

4. An opinion as to guilt or innocence

5. Evidence that is likely to be inadmissible.

6. The fact that the defendant has been charged, unless it is also stated that this is merely an accusation, and that the defendant is presumed innocent.

The prohibition under this rule applies to other lawyers associated in a firm or government agency.

Rule 3.7 Lawyer as witness.

If it is likely that a lawyer will be a necessary witness, then he or she shall not act as an adocate. There are the following exceptions:

1. The testimony relates to an uncontested issue.

2. The testimony relates to the nature and value of legal services rendered in the case.

3. There would be a substantial hardship to the client

It is permissible for a lawyer to be an advocate, even though an attorney in his or her firm will be a witness.
However, he or she might be precluded because of confidential information, under Rules 1.7 or 1.9.

Rule 3.8 Special responsibilities of a prosecutor

A prosecutor may not prosecute a criminal case if he or she knows that the case is not supported by probable cause.

The obligation with respect to the accused's right to counsel is broader than in some other states, and it is not limited to situations involving a communication. In Minnesota and Iowa, the prosecutor must make reasonable efforts to assure that the accused has been advised of his right to obtain counsel and the procedure for obtaining counsel.

The prosecutor shall "not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing". Note, this is in contrast to the Wisconsin rule which specifically authorizes waiver in some circumstances.

The prosecutor must timely disclose mitigating evidence.

In general, a prosecutor should not subpoena a lawyer in a grand jury proceeding regarding the lawyer's past or present client. However, there are limited exceptions.

Minnesota imposes specific duties upon a prosecutor with regard to pretrial publicity.

Rule 3.9 Advocate in nonadjudicative proceedings

A lawyer representing a client before a legislative body or administrative agency shall disclose that the appearance is on behalf of a client. Most of rules 3.3, 3.4, and 3.5 apply to such a representation.

Rule 4.1 Truthfulness in statements to others

In the course of representing a client, a lawyer may not make a false statement of material fact or law to a third party.

Under the model rule adopted in other states, a lawyer shall not fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act. The Minnesota rule does not contain this provision.

Rule 4.2 Communication with person represented by counsel

In representing a client, a lawyer shall not communicate about the subject with a person the lawyer knows to be represented by another lawyer. There is an exception if the other lawyer consents, or if authorized by law or court order.

Rule 4.3 Dealing with unrepresented person

In dealing on behalf of a client with a person who is not represented by counsel, if the person misunderstands the lawyer's role, the lawyer has an affirmative duty to correct the misunderstanding. The lawyer shall not give legal advice (other than the advice to secure counsel, if the lawyer believes the interests are likely to be in conflict.)

A lawyer shall not state or imply that he or she is disinterested.

Rule 4.4 Respect for rights of 3rd persons.

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden third parties. A lawyer must not use methods of obtaining evidence that violate a third person's rights.

If a lawyer accidentally receives a document and reasonably knows that it was inadvertently sent, then the lawyer shall promptly notify the sender.

Rule 5.1: Responsibilities of partners, managers, and supervisory lawyers

A partner in a law firm, or another lawyer with comparable managerial authority, shall make reasonable efforts to ensure that there are measures reasonably assuring that all lawyers conform to the rules.

A lawyer with direct supervisory authority has a similar duty.

A lawyer is responsible for another lawyer's violation in either of the following two circumstances:

1. The lawyer orders or ratifies the conduct.
2. The lawyer has managerial or supervisory authority and knows of the conduct in time to mitigate it, but fails to do so.

Rule 5.2 Responsibilities of a subordinate lawyer

A lawyer is bound by the rules, even though he or she acted at the direction of another person.

However, it is not a violation if the lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question.

Rule 5.3 Responsibilities regarding nonlawyer assistants

Lawyers with managerial authority, such as partners, shall make reasonable efforts to ensure that non-lawyers employed or retained are compatible with the lawyer's professional obligations.

This duty also applies to persons with direct supervisory authority.

Lawyers are responsible for violations by such persons in the following circumstances:

1. The lawyer orders or ratifies the conduct.

2. The lawyer is a partner or comparable manager, and knew of the conduct in time to mitigate it, but failed to do so.

Rule 5.4 Professional independence of a lawyer

A lawyer shall not share fees with a nonlawyer. There are, however, four exceptions to this rule:

1. Certain payments to a lawyer's estate after his or her death.

2. Purchase of the practice of a deceased, disabled, or disappeared lawyer.

3. Certain retirement or compensation plans for non-lawyer employees
4. Court-awarded legal fees may be shared with certain non-profit organizations.

A lawyer may not form a partnership with a non-lawyer if one of the activities of the partnership is the practice of law.

A lawyer may not have his services directed or regulated by a person who recommends, pays, or employs him or her.

There are restrictions upon the ownership and control of professional corporations or associations.

Rule 5.5: Unauthorized practice of law; multijurisdictional practice of law.

A lawyer shall not practice law in a jurisdiction if it violates the regulation of the legal profession in that jurisdiction. (Wisconsin adds a specific provision that a lawyer may not assist another person in practicing law in a jurisdiction that violates the rules of that jurisdiction.) However, a lawyer admitted in his or her home state does not violate this rule by conduct in another state, if the same conduct would be permitted by an out-of state lawyer by the following rules:

A lawyer admitted in another U.S. jurisdiction (who is not disbarred or suspended in any jurisdiction*) may provide any of the following types of services on a temporary basis:

1. Services in association with a lawyer who is admitted in the state, who actively participates in the matter.

2. Services that are reasonably related to a pending or potential proceeding (even if the proceeding is in this state), if the lawyer or the person the lawyer is assisting reasonably expects to be authorized by law or order to appear.

3. Reasonably related to a pending or potential arbitration, mediation, etc., (even if it is in this state),

if both of the following conditions are met:

a. The services must be reasonably related to the lawyer's practice where he is admitted.

b. The services are not ones where the forum requires pro hac vice admission.

4. Arise out of or are reasonably related to the lawyer's practice where he is admitted. However, this provision applies only to matters that are not within the preceding paragraphs (2: proceedings before a tribunal, or 3: arbitration, mediation, etc.)

A lawyer from another jurisdiction (if not disbarred or suspended anywhere*) may provide legal services in the state if authorized by federal law, or some other law.

Even if one of these exceptions applies, a lawyer not admitted in a state shall not do either of the following:

1. Unless otherwise authorized, establish an office or systematic presence in the state to practice law.

2. Hold out to the public or represent that he is admitted to practice in the state.

Iowa also allows an out-of-state lawyer to provide legal services on behalf of his or her employer or its organizational affiliates, provided that these are not services that require pro hac vice admission. Some states, such as Wisconsin and Nebraska, require registration with the state supreme court in such situations.

Rule 5.6 Restrictions on right to practice

A lawyer may not participate in any kind of business arrangement that restricts his or her right to practice law after terminating the relationship. There is an exception for agreements concerning retirement benefits.

A lawyer may not participate in an agreement that restricts his or her right to practice as part of the settlement of a client's case.

Nebraska/Iowa/Minnesota Rule 5.7: Responsibilities regarding law-related services.

A "law-related service" is a service that might reasonably be performed with and substantially related to the provision of legal services. However, it is the type of service that can be performed by a nonlawyer and not be prohibited as the unauthorized practice of law.

A lawyer providing such services is subject to the Rules of Professional Conduct in either of the following situations:

1. They are not distinct from the lawyer's provision of legal services to clients

2. If the lawyer fails to take reasonable measures to assure the person obtaining the services knows that they are not legal services, and that the protections of the lawyer-client relationship do not apply. (Note: This rule has not been adopted in Wisconsin, although Wisconsin has a Rule 5.7 covering an unrelated subject.)

This rule has not been adopted in Wisconsin. Wisconsin has an unrelated Rule 5.7 governing lawyers practicing as a limited liability organization.

Rule 6.1 Voluntary pro bono publico service

"Every lawyer has a professional responsibility to provide legal services to those unable to pay." A lawyer "should aspire" to render at least 50 hours of pro bono service per year. This obligation can be fulfilled in the following ways:

A substantial majority of those fifty hours shall be without fee or expectation of fee to the following:

1. persons of limited means
2. charitable, religious, civic, government, etc., organizations, in matters that are designed primarily to help persons of limited means.

In addition, a lawyer should provide services for no fee or substantially reduced fee, to secure or protect civil rights or civil liberties, public rights. Or, a lawyer should provide services to charitable, religious, civic, etc., organizations in furtherance of those organizations' purposes, when standard fees would significantly deplete the organization's resources or would otherwise be inappropriate.

A lawyer should deliver legal services at a substantially reduced fee to persons of limited means.

A lawyer should participate in activities for improving the law, legal system, or legal profession.

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

Rule 6.2 Accepting appointments

A lawyer shall "not seek to avoid appointment" by a tribunal, except for good cause. Examples of good cause include:

1. Representing the person is likely to result in a rule violation.
2. It would be an unreasonable financial burden.
3. The person's cause is so repugnant that it will likely impair the lawyer's ability to represent the person.

Rule 6.3 Membership in legal services organization

A lawyer may serve as a director, officer, or member of a legal services organization, even though the organization serves persons with interests adverse to one of his or her clients. However, the lawyer should not knowingly participate in any decision or action of the organization in either of the following cases:

1. Doing so would be a conflict of interest under Rule 1.7.
2. The decision could have a material adverse effect on the organization's representation of such a client.
3.

Rule 6.4 Law reform activities affecting client interests

A lawyer is permitted to serve as a director, officer, or member of an organization involved in the reform of the law or its administration. This is true even though the reform may affect the interests of one of his or her clients. But if the lawyer knows that a client's interests may be materially benefited by a decision in which the lawyer participates, the lawyer must disclose this fact. However, the lawyer need not identify the client.

Rule 6.5 Nonprofit and court-annexed limited legal services programs

The following rules apply to a lawyer who participates in a program sponsored by a nonprofit organization or court which provides short-term legal services to clients, where neither the lawyer nor the client expect that the lawyer will provide continuing representation in the matter. (Wisconsin adds language to make clear that this also applies to programs sponsored by bar associations or accredited law schools.)

The lawyer is subject to Rules 1.7 (conflicts of interest) and 1.9(a) (conflicts of interest with former clients), only if the lawyer knows that the representation involves a conflict of interest.

The lawyer is subject to Rule 1.10 (imputed conflict of interest of firm) only if he knows that another lawyer in his or her firm would be disqualified. Otherwise, Rule 1.10

Rule 7.1 Communications concerning a lawyer's services

A lawyer is prohibited from making false or misleading communication about the himself or herself, or about his or her services. This includes communications that contain a material misrepresentation of fact or law, or if it omits a fact necessary to make the statement not materially misleading.

Rule 7.2 Advertising

A lawyer may advertise. Advertising is subject to Rules 7.1 and 7.3. The following rules also apply:

A lawyer may not give anything of value to someone to recommend his services, with the following exceptions:

1. Pay the reasonable cost of permitted advertisements or communications.

2. Pay the usual charges for a legal service plan or a lawyer referral service. (The lawyer referral service must be non-profit or approved by the appropriate regulatory authority.)

3. Pay for a law practice under Rule 1.17.

4. Refer clients to another lawyer or other professional under an agreement that the other person will refer clients to the lawyer. However, such an agreement must be otherwise permitted by the rules, and the following conditions must apply:

    a. The reciprocal referral agreement is not exclusive
    b. The client is informed of the existence and nature of the agreement.

Any communications made under this rule must include the name of at least one lawyer or law firm who is responsible for its content.

Rule 7.3: Direct contact with prospective clients

A lawyer shall not solicit professional employment from prospective client in person or by live telephone contact, if a significant motive is the lawyer's pecuniary gain. There are two exceptions to this rule:

1. The person contacted is a lawyer, or

2. The person contacted is family, has a close personal relationship, or has a prior professional relationship.

In addition, a lawyer shall not solicit professional employment in any manner (written, recorded, electronic, in-person or telephone) if either of the following are true:

1. The prospective client has made known a desire not to be solicited, or

2. The solicitation involves coercion, duress, or harassment.

Any written, recorded, or electronic communication soliciting professional employment from someone known to be in need of services in a particular matter must conspicuously include the words "Advertising Material" on any outside envelope, and within the communication. (Note: the words “Advertising Material” were recently adopted. Previously, a different phrase was required.) There are the same two exceptions as in the first rule:

1. The person contacted is a lawyer, or

2. The person contacted is family, has a close personal relationship, or has a prior professional relationship.

This rule does not prohibit a lawyer from participating in a prepaid or group legal service plan (not owned or directed by the lawyer) that uses in-person or telephone contact to solicit membership, if the persons are not known to need particular legal services.

Wisconsin has a provision requiring copies of such advertisements to be filed with the state supreme court.

Rule 7.4: Communication of fields of practice

A lawyer may communicate whether or not he or she practices in a particular field of law.

A lawyer admitted to engage in patent practice before the U.S. Patent and Trademark Office may use the designation "patent attorney" or similar.

A lawyer engaged in admiralty practice may use the designation "admiralty", "proctor in admiralty", or similar.

A lawyer shall not state or imply that he or she is certified as a specialist the name of any certifying organization is clearly identified. It must be verifiable and not be misleading. A statement must be included that the Supreme Court of Iowa does not certify lawyers as specialists in the practice of law and that certification is not a requirement to practice law in the State of Iowa. In Wisconsin, the certifying entity must be approved by the appropriate state regulatory authority.

Note that other states have slightly different versions of this rule. Therefore, if you practice in multiple states, you should carefully check the relevant rule.

Rule 7.5 Firm names and letterheads

Firm names, letterheads, and other professional designations must comply with Rule 7.1 (e.g., no false or misleading information). A trade name may be used by a lawyer, but it is subject to the following requirements:

1. It may not imply a connection with a government agency or public or charitable

2. It may not imply a connection with a public or charitable legal services organization

3. It must not violate Rule 7.1

In Iowa, these rules specifically apply to a firm's website URL. URL's that are not mere minor variations of the firm name require a notice with the attorney's or firm's name. A firm with offices in more than one jurisdiction may use the same name in each jurisdiction. However, the identification of lawyers in an office shall indicate the jurisdictional limitations.

The name of a lawyer holding public office shall not be used during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

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

If the trade name or website URL is more than a minor violation of the official name, then it must display the name and address of the principally responsible Iowa lawyer(s).

Rule 7.6 Political contributions to obtain government legal engagements or appointments by judges.

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

Rule 8.1 Bar admission and disciplinary matters

The following applies to an applicant for admission to the bar, or to a lawyer in connection with a bar admission application or with a disciplinary matter. Such a person shall not:

1. knowingly make a false statement of material fact, or

2. fail to disclose a fact necessary to correct a misapprehension that the person knows has arisen.

3. Knowingly fail to respond to a lawful demand for information.

However, this rule does not require disclosure of information that is otherwise confidential because of Rule 1.6 (or Iowa Code section 622.10).

Rule 8.2 Judicial and legal officials

A lawyer shall not knowingly or recklessly make a false statement concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or candidate for judicial or legal office.

A lawyer who is a candidate for judicial office shall comply with the code of judicial conduct.

Rule 8.3: Reporting professional misconduct.

A lawyer who knows that another lawyer has violated these Rules shall inform the appropriate authority.

A lawyer who knows that a judge has violated the applicable rules of judicial conduct shall inform the appropriate authority.

This rule does not require disclosure of information that is confidential under Rule 1.6 (or Iowa Code section
622.10). It does not require disclosure of information gained while participating in a lawyers assistance program. (In Iowa, the program must be an "approved" one.)
In Wisconsin, this rule does not require disclosure of information acquired while arbitrating or mediating certain disputes between lawyers.

Rule 8.4: Misconduct

The following are professional misconduct:

1. Violate the rules of professional conduct, knowingly assist or induce a violation, or do so through another's acts.

2. Commit a criminal act that reflects adversely on honesty, trustworthiness, or fitness as a lawyer.

3. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

4. Engage in conduct that is prejudicial to the administration of justice.

5. State or imply an ability to improperly influence a government agency or official or achieve results that violate these Rules or other law.

6. Knowingly assist a judicial officer in conduct that violates the rules of judicial conduct or other law

6. Engage in sexual harassment or other unlawful discrimination in the practice of law, or knowingly permit staff to do so.
7. **NEBRASKA:** willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

Rule 8.5 Disciplinary authority; choice of law

Disciplinary Authority

A lawyer admitted to the bar in the state is subject to the disciplinary authority of the state regardless of where the conduct occurs.

A lawyer not admitted in the state is subject to the state's disciplinary authority if he or she offers to provide any legal services in the state.

A lawyer may be subject to disciplinary authority in more than one state for the same conduct.

Choice of Law

For conduct before a tribunal, the law of the jurisdiction where the tribunal sits shall apply (unless that court's rules provide otherwise.

For other conduct, if the lawyer is admitted only in one state, then the rules shall be the rules of that state.

If the lawyer is admitted in more than one state, then the rules of the jurisdiction where he or she principally practices shall apply. However, if the conduct has its predominant effect in another jurisdiction, then the rules of that jurisdiction will apply.

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