Ethics Flowchart

Whose conduct is at issue?
- Lawyer → use RPC and case law
- Judges → can also use Code of Judicial Conduct

Are you in Louisiana?
- LA applies the rules directly, w/ no further analysis

Did atty perform duty of zealous advocacy?
- Did atty fight for what client wants; not what lawyer thinks is best for client?

Did atty commit professional misconduct under 8.4 (catchall)?
- A)
  - Did atty violate or attempt to violate the RPC?
  - Did atty knowingly assist or induce another to do so, or do so through the acts of another?
- B) Did atty commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects?
- C) Did atty engage in conduct involving dishonesty, fraud, deceit or misrepresentation?
- D) Did atty engage in conduct that is prejudicial to the administration of justice?
  - Ex: did lawyer knowingly manifest prejudice or bias based on race, sex, religion, etc?
  - Ex: Did atty discriminate (moral turpitude)?
- E) Did atty state or imply an ability to influence improperly a govt agency or official or to achieve results by means that violate the RPC or other law?
- F) Did atty knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law?

Does atty meet character and fitness requirements?
- Did atty commit misconduct in the bar application process? 8.1
  - Did an applicant for bar admission, or a lawyer in connection w/ a bar admission application, or in connection w/ a disciplinary matter,
    - A) knowingly make a false statement of material fact? Or
    - B)
      - fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter? Or
      - knowingly fail to respond to a lawful demand for info from an admissions or disciplinary authority?
        - Note: Do not have to disclose info protected by 1.6
    - DeBartolo (IL): Did applicant fill out application w/ candor and completeness?


• NO: lied about HS, left out several residences, had 200 unpaid parking tix, twice falsely represented himself as a cop. (Note: can reapply).

- Did applicant fail the “good moral character” part of the bar exam?
  o GWL (FL): Did applicant engage in conduct which would cause a reasonable man to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and the laws?
    ▪ Yes: filing bankruptcy before law school debts were due, to defeat creditors, w/o trying very hard to get a job.
    ▪ Is the misconduct rationally related to applicant’s fitness to practice law?

Did atty commit the unauthorized practice of law? 5.5
  o A) Did atty practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction? Or
    ▪ Ranta (ND): Did atty appear in ct and do prep work on docs for ct, in a state where he is not licensed and does not have ct permission or an annual license from the state?
    ▪ Atty is licensed in IL, gets a job at a MO firm, but only on cases pending in IL. Unauthorized practice of law.
    ▪ Is practice allowed in federal or state courts but not the other?
  o B) Did atty assist a person who is not an atty in the performance of an activity that constitutes the unauthorized practice of law?
- Yes → No fees owed.
- Tandon (IN): Did insurance adjuster resolve a damages claim? No fees owed b/c not a lawyer.

ATTY-CLIENT RELATIONSHIP: Formation

Does atty have a duty to undertake a particular representation?
- No.
- Does an atty have to accept a ct appointment to represent someone?
  o There is a limited duty to accept a fair share of representation of the defenseless and oppressed.
  o Is the appointment from a federal court?
    ▪ Statute says “ct may request an atty to represent” an indigent litigant; atty may refuse. Mallard.
  o Is the appointment from a state court?
    ▪ If state does not have the statute, inherent power of the ct can order an atty to represent, unless atty can show lacks competence. Chambers v NASCO.

Is atty-client relationship formed?
- Money exchange not definite indicator
- Federal courts test
(1) Did client submit confidential info to atty? And
(2) Did client do so w/ the reasonable belief that the lawyer was acting as the party’s atty?

Motorola test
(1) Did client manifest to atty that he intended to provide legal services for him?
   • Ex: Client shows up at atty’s office w/ subpoena and has a discussion
(2) Did atty
   (a) manifest to client to do so? Or
   • Ex: at depo, client asserted that atty was his atty; atty’s silence established an atty-client relationship.
   (b) know or reasonably should have known that client reasonably relied on atty to provide the services?

Is atty forbidden from assuming the representation?
- See mandatory withdrawal, 1.16a
- See conflict of interest, 1.7 and 1.11, etc

Does client have diminished capacity (1.14)?
- (a) When a client’s capacity to make adequately considered decisions in connection w/ 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 w/ 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 w/ individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
  - Note: types of protective action: consulting family, support groups, adult-protective agencies, ec.
- (c) Info relating to the representation of a client w/ diminished capacity is protected by 1.6. When taking protective action under (b), the lawyer is impliedly authorized under 1.6(a) to reveal info about the client, but only to the extent reasonably necessary to protect the client’s interests.

Is atty a 3rd-party neutral (2.4)?
- (a) A lawyer serves as a 3rd-party neutral when the lawyer assists 2+ persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen b/tw them. Service as a 3rd-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the atty to assist the parties to resolve the matter.
- (b) A lawyer serving as a 3rd-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 b/tw the lawyer’s role as a 3rd-party neutral and a lawyer’s role as one who represents a client.

ATTY-CLIENT RELATIONSHIP: TERMINATION

Was atty appointed to the client?
- Must get tribunal permission to withdraw

Is atty required to withdraw (1.16(a))?
- 1) Will the representation result in violation of RPC or other law?
- 2) Does the atty’s physical or mental condition materially impair the atty’s ability to represent the client?
- 3) Is the lawyer discharged?

→ Then atty shall not represent a client, or, if representation has commenced, shall withdraw from the representation, unless ct orders atty to continue representation.

May atty withdraw (1.16(b))?
- 1) Can withdrawal be accomplished w/o material adverse effect on the interests of the client?
- 2) Does the client persist in a course of action involving the atty’s services that the atty reasonably believes is criminal or fraudulent?
  o Note: client suggesting this conduct is not enough; client must demand this conduct.
- 3) Has the client used the atty’s services to perpetrate a crime or fraud?
- 4) Does the client insist upon taking action that the atty considers repugnant or w/ which the atty has a fundamental disagreement?
- 5) Does the client fail substantially to fulfill an obligation to the atty regarding the atty’s services? If yes,
  o Has client been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled?
- 6)
  o Will the representation result in an unreasonable financial burden on the atty?
  o Has the representation been rendered unreasonably difficult by the client?
- 7) Is there other good cause for withdrawal?

→ Atty may withdraw unless ct orders atty to continue representation.

May ct order atty to continue representation (1.16(c))?
- Atty must comply w/ applicable law requiring notice to or permission of a tribunal when terminating a representation.
- When ordered to do so by a tribunal, an atty shall continue representation notwithstanding good cause for terminating the representation.
Was atty discharged w/o cause, after performing substantial legal services under a valid K?
- Att'y entitled to compensation.
  - Ct 1: Contract rule: recover full Kp
  - Ct 2: Quantum Meruit rule: only recover reasonable value of services rendered before discharge
  - Ct 3, FL, Quantum Meruit limited by Kp (Rosenberg v Levin): recovery cannot exceed the maximum fee set in the K.
    ▪ Policy: don’t want to punish client for discharge; att'y has a right to compensation but not overcompensation

What duties continue after termination?
- 1.16(d)
  - Did atty take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to client, allowing time for employment of other counsel, surrendering papers and property to which client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred?
    ▪ Att'y may keep papers relating to the client to the extent permitted by other law
    ▪ Note: att'y must take these steps even if att'y was unfairly discharged.
- Conflict of interest avoidance (1.7, 1.11, 1.18, etc)
- Confidentiality
- Publicity

Did atty die?
- att'y-client relationship terminates
- duty of loyalty continues
- duty of confidentiality continues
- can still be sued for malpractice.

ATTY’S DUTIES TO CURRENT CLIENT

Did atty provide competent representation to a client (1.1)?
- Does att'y have the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation?
  - Factors:
    ▪ Relative complexity and specialized nature of the matter
    ▪ Lawyer’s general experience
    ▪ Lawyer’s training and experience in the field in question
    ▪ Preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to or consult w/ a lawyer of established competence in the field
  - Did att'y make an honest mistake? Not incompetent. Nadler.
Did atty act w/ neglect and indifference? Incompetent. Nadler.
  - Attempting to negotiate a settlement w/o appropriate medical information; attempting to negotiate a settlement that was not authorized by clients, and allowing SOL to run w/o filing suit.

Did atty act w/ diligence (1.3)?
  - Did atty act w/ reasonable diligence and promptness in representing a client?
    - Did lawyer procrastinate, and was untimely and tardy? Not diligent. Nadler.

Did atty exceed his authority or the scope of the relationship (1.2)?
  - A)
    - Subject to (c) and (d), did atty abide by client’s decisions about the objectives of the representation?
    - Did atty consult w/ client as to the means by which they are to be pursued, as required by 1.4?
      - A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation
    - Did atty abide by client’s decision whether to settle a matter?
    - Is it a criminal case?
      - Did atty abide by the client’s decision, after consultation w/ the lawyer, as to a plea to be entered, whether to waive jury trial and whether client will testify?
  - B) Did atty’s representation of a client, including representation by appointment, NOT constitute an endorsement of the client’s political, economic, social or moral views or activities?
  - C) A lawyer may limit the scope of the representation if the limitation is reasonable under the circs and the client gives informed consent.
  - D) Did atty counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent?
    - A lawyer may discuss the legal consequences of any proposed course of conduct w/ 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.
    - Did atty and client set the scope by K? Then 1.2 might not apply.
    - Clients set the goals/ends; lawyers determine the best means

Did atty communicate properly w/ client (1.4)?
  - A) Did atty
    - 1) promptly inform the client of any decision or circ WRT which the client’s informed consent is required by the RPC?
    - 2) reasonably consult w/ client about the means by which the client’s objectives are to be accomplished?
      - Not required during trial, etc, when immediate decision is required. But lawyer must still act reasonably to inform the client of actions he took on client’s behalf.
    - 3) keep the client reasonably informed about the status of the matter?
Nadler: Did atty get back to client, return phone calls, and move cases forward?
- 4) promptly comply w/ reasonable requests for info, and
- 5) consult w/ the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the RPC or other law?

Did atty explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation?
- Will a new party be joining the case? Client must decide.
- In deciding what claims to file, Client must decide (after discussion w/ atty)

Did atty give advice to client in the proper form (2.1)?
- Did atty exercise independent professional judgment and render candid advice?
  - Att'y may refer to law, and also to considerations such as moral, economic, social and political factors that may be relevant to client’s situation.
  - Note: Did atty give advice even if it doesn’t look good?

Did atty communicate properly w/ opposing party? Spaulding v Zimmerman, MN 1962
- Are negotiations going on?
  - No duty to disclose to opposing party
- Are negotiations over?
  - Duty to disclose in order to avoid unconscionable advantage.
    - Δ-lawyers, who knew about Ji’s life-threatening aneurysm, had an unconscionable advantage in settlement, and should have told Ji about aneurysm. Δ-lawyers decide; not Δ-client.

ATTY’S DUTIES TO PROSPECTIVE CLIENT

Did atty violate duties to prospective client (1.18)?
- Is someone a prospective client?
  - A) Did person discuss w/ a lawyer the possibility of forming an atty-client relationship WRT a matter?
    - Did person communicate info unilaterally to atty w/o any reasonable expectation that atty is willing to discuss the possibility of forming an atty-client relationship? NOT a prospective client.
  - Did no atty-client relationship develop?
    - B) Did atty have discussions w/ the prospective client?
      - Yes → Did atty respect duty of confidentiality: Did atty use or reveal info learned in the consultation except as 1.9 would permit WRT info of a former client?
        - Go to C)
  - Is there a conflict of interest b/tw a current and prospective client?
    - C) Does a current or potential client have interests materially adverse to those of a prospective client in the same or a substantially related matter?
- Has the lawyer received disqualifying info as defined in (c)?
  - D) Representation is permissible if:
    - 1) Both the affected client and the prospective client have given informed consent, confirmed in writing, or
    - 2) the atty who received the info took reasonable measures to avoid exposure to more disqualifying info 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

**FEES**

Are fees or expenses unreasonable (1.5(a))?  
- A) Did atty make an agreement for, charge, or collect an unreasonable fee for an unreasonable amount of expenses? Reasonableness factors include:
  - 1) time and labor required, novelty and difficulty of questions involved, and skill requisite to perform the legal service properly
  - 2) likelihood, if apparent to client, that the acceptance of the particular employment will preclude other employment by the lawyer
  - 3) fee customarily charged in the locality for similar legal services
  - 4) amount involved and results obtained
  - 5) time limitations imposed by the client or by the circs
  - 6) nature and length of the professional relationship w/ the client
  - 7) experience, reputation, and ability of the atty or attys performing the services
  - 8) whether the fee is fixed or contingent
  - [list not exhaustive and not all factors relevant in every case]

- Committee notes
  - Expenses: atty may charge
    - 1) a reasonable amount to which client has agreed in advance, or
    - 2) an amount that reasonably reflects the cost incurred by the atty
  - Did atty receive an advanced payment?
    - This is fine, as long as atty returns unearned portion if he withdraws/is discharged

- Are fees excessive of unconscionable?
Kutner: fee agreement subject to scrutiny by disciplinary committee, even though there was a K. ($5000 to defend a simple battery in 1979 when charges were quickly dropped was unconscionable).

Was scope of representation and basis of fee/expenses, or changes in rates or expenses, communicated to client (1.5(b))?
- Did atty communicate the scope of representation and the basis or rate of the fee and expenses for which client will be responsible, to the client, preferably in writing, before or w/in a reasonable time after commencing the representation?
  - Exception: when atty will charge a regularly represented client on the same basis or rate.
  - Did atty communicate any changes in the basis or rate of the fee or expenses to client?
  - Note: writing not required for fee arrangements, but highly recommended

Are contingent fees inappropriate (1.5(d))?
- (1) Is the matter 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 lie thereof?, or
  - Does not apply to recovery of post-judgment balances due under support, alimony or other financial orders.
- (2) Is the matter a representation of a ∆ in a criminal case?
  - NO contingency fee agreement allowed.

How should a contingency agreement be formed (1.5(c))?
- Contingent fee agreement shall be in a writing signed by client, and
  - shall state the method by which the fee is to be determined, including
    - the % that shall accrue to the atty in the event of settlement, trial or appeal;
    - litigation and other expenses to be deducted from recovery; and
      - whether such expenses are to be deducted before or after the contingent fee is calculated
  - Agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client wins.
  - Upon conclusion of a contingent fee matter, the atty shall provide the client w/ a written statement of the outcome of the matter and, if there is recovery, showing the remittance to the client and the method of its determination.
  - Note: contingent fees must also be reasonable under 1.5(a)

How much can you bill for travel time?
- Downey: the amount of time that passes.
  - You spend 15 hrs making memo for client A. Later client B asks the same issue and you spend 1.5 hours updating it. You can only bill client B 1.5 hrs.

How much can you bill for phone calls?
- **ABA**: round to the smallest billing increment, assuming that doing so is reasonable.
  - BUT: If you make 7 6-min phone calls in one hour, cannot bill 1.75 hours b/c you only spent 1 hr on the phone. You can bill some clients .25 hours and some clients not at all.

**Is fee splitting appropriate b/tw 2 attys (1.5(e))?**
- Is the split b/tw 2 lawyers, NOT in the same firm? Yes →
  - 1) Is the division in proportion to the services performed by each lawyer, or
eDoes each lawyer assume joint responsibility for the representation?
  - 2) Does the client agree to the arrangement, including the share each lawyer will receive, and
eIs the agreement confirmed in writing?
  - 3) Is the total fee reasonable?
  - → Then fee splitting is allowed.

**Is fee splitting appropriate w/ a non-atty (5.4(a))?**
- NO, unless:
  - 1) Is there an agreement by an atty w/ the atty’s firm, partner or assoc that provides for the payment of money, over a reasonable period of time after the atty’s death, to the atty’s estate or to 1+ specified persons?
  - 2) Did an atty purchase the practice of a deceased, disabled, or disappeared atty?
    - Pursuant to 1.17, may pay to the estate or other representative of that atty the agreed-upon purchase price
  - 3) Did an atty or law firm include nonlawyer employees in a compensation or retirement plan?
    - Plan can be based in whole or in part on a profit-sharing arrangement
  - 4) Did atty share ct-awarded legal fees w/ a nonprofit org that employed, retained or recommended employment of the atty in the matter?

**Are referral fee agreements appropriate?**
- Moran: yes, they can impair client interests, but they can also encourage a less qualified atty to seek more qualified representation for the client
- But watch out for Brewer & Pritchard violation of fiduciary duty to firm or partner

**Can fees be paid by a 3rd party (1.8(f))?**
- Not unless:
  - 1) client gives informed consent
  - 2) there is no interference w/ the atty’s independence of professional judgment or w/ the atty-client relationship, and
  - 3) info relating to representation of a client is protected as required by 1.6
PROPERTY

**Did atty keep client property separate from his own property (1.15)?**

- **A)** Did atty hold property of clients or 3rd persons that is in an atty’s possession in connection w/ a representation separate from atty’s own property?
  - Keep funds in a separate account maintained in the state of the atty’s office, or elsewhere if client or 3rd person consents
  - Other property must be identified and appropriately safeguarded.
  - Must keep complete records of such account funds and property; atty shall keep records and they shall be preserved for 5 yrs after termination of representation
  - Notes:
    - Keep securities in a safe deposit box
    - Keep money in a trust account; not a general office account
    - Don’t throw away client’s folders, files, etc
    - Atty must keep books and records acc to good accounting practice
    - No commingling, EVEN if client consents
  - **Rosellini:** Putting client’s money in atty’s own trust account, paying client A out of client B’s trust account, and using client money to pay for office expenses and football tickets, violates 1.15. Disbarred.
  - **Warhaftig:**
    - Misappropriation of funds is punishable if it is done knowingly: when atty takes a client’s money entrusted to him, knowing that it is the client’s money and knowing that client has not authorized the taking.
    - Irrelevant: atty’s subjective intent, lack of client injury, atty replaced the funds, and atty cooperated w/ audit.

- **B)** Atty may deposit atty’s own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
  - Note: commingling OK when necessary to pay bank service charges on the account

- **C)** Did atty deposit into client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the atty only as fees are earned or expenses incurred?

- **D)** Did atty receive funds or other property in which a client or 3rd party has an interest?
  - Atty shall promptly notify client or 3rd person.
  - Except as otherwise permitted by law or by agreement w/ client, atty shall promptly deliver to client or 3rd person any funds or property that client or 3rd person is entitled to received and, upon request by client or 3rd person, shall promptly render a full accounting regarding such property.

- **E)** Is atty in possession of property in which 2+ persons (one of whom may be the atty) claim interests?
Property shall be kept separate by the atty until the dispute is resolved. Atty shall promptly distribute all portions of the property as to which the interests are not in dispute.
- Note: this is a fiduciary duty. Do not need an atty-client relationship for this rule to apply.
- If you take client money, you will get disbarred.

**DUTY OF CONFIDENTIALITY**

**Prospective client (1.18(b))**
- Even when no atty-client relationship ensues, an atty who has had discussions w/ a prospective client shall not use or reveal info learned in the consultation, except as 1.9 would permit WRT info of a former client.

**Former client (1.9(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 WRT a client, or when the info has become generally known; or
  - (2) reveal info relating to the representation except as these Rules would permit or require WRT a client.

**Current client (1.6)**
- A)  
  - Did client give informed consent?  
  - Is disclosure impliedly authorized in order to carry out the representation?  
  - Is disclosure permitted by (b)?  
  - If none apply, atty can’t reveal info relating to the representation of a client.  
  - Note:  
    - Client can consent to disclosure  
    - “relating to the representation” covers more than just communications from client to atty; atty observations are protected as well, as are communications from 3rd parties about the representation.
- B) Does atty reasonably believe it is necessary to reveal info relating to the representation of a client:  
  - 1) to prevent reasonably certain death or substantial bodily harm  
  - 2) to secure legal advice about the atty’s compliance with RPC  
  - 3)  
    - to establish a claim or defense on behalf of the atty in a controversy b/tw the atty and the client,
    - to establish a defense to a criminal charge or civil claim against the atty based upon conduct in which the client was involved, or
- to respond to allegations in any proceeding concerning the atty’s representation of the client, or
- Meyerhofer: can reveal confidences or secrets.
  o 4) to comply w/ other law or a ct order.

**Illinois 1.6: Confidentiality**

- (a) Except when required under Rule 1.6(b) or permitted under Rule 1.6(c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.
- (b) A lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.
- (c) A lawyer may use or reveal:
  o (1) confidences or secrets when permitted under these Rules or required by law or court order;
  o (2) the intention of a client to commit a crime in circumstances other than those enumerated in Rule 1.6(b); or
  o (3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.
- (d) The relationship of trained intervenor and a lawyer, judge, or a law student who seeks or receives assistance through the Lawyers' Assistance Program, Inc., shall be the same as that of lawyer and client for purposes of the application of Rule 8.1, Rule 8.3 and Rule 1.6.
- (e) Any information received by a lawyer in a formal proceeding before a trained intervenor, or panel of intervenors, of the Lawyers' Assistance Program, Inc., shall be deemed to have been received from a client for purposes of the application of Rules 1.6, 8.1 and 8.3.

**Texas Discip. RPC 1.05: Confidentiality**

- (a) Confidential information includes both privileged information and unprivileged client information. Privileged information refers to the information of a client protected by the lawyer-client privilege of Rule 5.03 of the Texas Rules of Evidence or of Rule 5.03 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 5.01 of the Federal Rules of Evidence for United States Courts and Magistrates. Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.
- (b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly:
  o (1) Reveal confidential information of a client or a former client to:
    ▪ (i) a person that the client has instructed is not to receive the information; or
(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

- (2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultations.
- (3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.
- (4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

- (c) A lawyer may reveal confidential information:
  - (1) When the lawyer has been expressly authorized to do so in order to carry out the representation.
  - (2) When the client consents after consultation.
  - (3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.
  - (4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law.
  - (5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.
  - (6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.
  - (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.
  - (8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.

- (d) A lawyer also may reveal unprivileged client information.
  - (1) When impliedly authorized to do so in order to carry out the representation.
  - (2) When the lawyer has reason to believe it is necessary to do so in order to:
    - (i) carry out the representation effectively;
    - (ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;
    - (iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or
    - (iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.
- (e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

- (f) A lawyer shall reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b).

Model Code of Professional Responsibility Canon 4
EC 4-1 to 4-6: look online at www.abanet.org/cpr/ethics/mcpr.pdf
DR 4-101: Confidentiality:

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

- (b) Except where permitted under DR 4-101(c), a lawyer shall now knowingly:
  o (1) Reveal a confidence or secret of his client
  o (2) Use a confidence or secret of his client to the disadvantage of the client
  o (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

- (c) A lawyer may reveal:
  o (1) Confidences or secrets w/ the consent of the client or clients affected, but only after a full disclosure to them.
  o (2) Confidences or secrets where permitted under DR or required by law or ct order
  o (3) The intention of his client to commit a crime and the info necessary to prevent the crime.
  o (4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

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

Can atty make an evaluation for use by 3rd persons (2.3)?

- (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 w/ other aspects of the lawyer’s relationship w/ 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 w/ a report of an evaluation, info relating to the evaluation is otherwise protected by 1.6.
Is client an organization (1.13(a))?  
- Duty of confidentiality applies to people that work for the organization.  
- A) An atty employed or retained by an organization represents the organization acting through its duly authorized constituents.
  - Note:
    - When a constituent of an org client communicates w/ org’s atty in that person’s organizational capacity, the communication is protected by 1.6
      - But, these people are not atty’s client; atty may not disclose to them info relating to the representation unless authorized by the org or as allowed by 1.6.

- (b) If a lawyer for an org knows that an officer, employee or other person associated w/ the org 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 org, or a violation of law which reasonably might be imputed to the org, and is likely to result in substantial injury to the org, the lawyer shall proceed as is reasonably necessary in the best interest of the org. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, the responsibility in the org and the apparent motivation of the person involved, the policies of the org concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the org and the risk of revealing info relating to the representation to persons outside the org. Such measures may include among others:
  - (1) asking for reconsideration of the matter;
  - (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the org; and
  - (3) referring the matter to higher authority in the org, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the org as determined by applicable law.

- (c) If, despite the lawyer’s efforts in accordance w/ b, the highest authority that can act on behalf of the org insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the org, the lawyer may resign in accordance w/ 1.16.

- (d) In dealing w/ an org’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 org’s interests are adverse to those of the constituents w/ whom the lawyer is dealing.

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

ATTY-CLIENT PRIVILEGE
WHAT is the source of this rule?
- Info must come from a client or client’s agent
  - Did atty learn info from 3rd parties? Not privileged.
- Was info disclosed in the presence of 3rd, uninterested parties (such as client’s mother and fiancé)? Not protected by the atty-client privilege. Himmel.
- Was info voluntarily disclosed by client to a 3rd party?
  - Atty-client privilege is waived, work product privilege is waived. Eagle Compressors, IL 2002
- Notes made by an atty during an initial interview w/ a current client shortly before client’s death are protected from criminal investigation by the atty-client privilege and the work product privilege. Swidler.
- Is client a corporation?
  - Upjohn: atty-client privilege applies to low- and mid-level employees; not only those in control. Determine if there is protection on a case-by-case basis: Is the protected info necessary to defend against potential litigation? Yes → protected.
- Is client a govt entity?
  - Kenneth Starr case: atty-client privilege does not apply to govt attys trying to keep docs from a federal grand jury. Govt’s need for confidentiality is outweighed by needs of the crim justice process, b/c govt is not subject to crim liability.
  - * Does this apply only to grand jury or also to litigation?

If atty-client privilege does not apply, is info protected by the common-interest doctrine?
- Ct 1, Kenneth Starr case, 8th Cir 1997:
  - Did 2+ clients w/ a common interest in a matter who are represented by different attys agree to exchange info concerning the matter?
  - Yes: info is privileged against 3rd parties.
  - No common interest b/tw Client A’s personal interest in avoiding prosecution, and Client B’s interest.
- Ct 2, Boyd, TN 2002:
  - Common interest privilege applies to crim and civil, co-Δs and potential co-Δs, and others who have an interest
  - TEST: Were communications given in confidence and intended and reasonably believed to be part of an ongoing and joint effort to set up a common legal strategy? Must prove:
    - 1) the otherwise privileged info was disclosed de to actual or anticipated litigation
    - (2) the disclosure was made for the purpose of furthering a common interest in the actual or anticipated litigation
    - (3) the disclosure was made in a manner not inconsistent w/ maintaining its confidentiality against adverse parties, and
    - (4) the person disclosing the info has not otherwise waived its atty-client privilege for the disclosed info.
CONFLICTS OF INTEREST

- A conflicts question arises when an att’s independent professional judgment (loyalty) is threatened by an interest other than the client’s.

Conflicts analysis:
  o 1) What is the source of the conflict? (3rd party interference? Multiple client conflict? Lawyer interests?)
    ▪ 1.7, 1.8, 1.9, 1.18, 6.3
  o 2) Does the conflict meet its particular rule’s threshold requirements?
  o 3) Is the conflict one that imputes to the entire law organization?
    ▪ 1.10
  o 4) If so, can the affected lawyer be effectively screened or isolated from the organization?
  o 5) Is the conflict a type that allows client waiver?
  o 6) If so, what has to occur for the waiver to be effective?

Is there a conflict of interest w/ a current client (1.7)?
  - If there is a conflict, see 1.10
  - A) Is there a concurrent conflict of interest?
    o 1) Will the representation of one client be directly adverse to another client? Or
      ▪ Greene, NY: JI’s law firm should be disqualified if 2 of its members used to be partners at Δ’s law firm.
    o 2) Is there a significant risk that the representation of 1+ clients will be materially limited by the atty’s responsibilities to another client, a former client, or a 3rd person or by a personal interest of the atty?
      Then, except as provided in (b), atty shall not represent the client.
    o Notes:
      ▪ Client can assume that atty-client relationship still exists if parties did not expressly terminate, behavior was consistent w/ a continuing relationship, and there was no lengthy lapse in the relationship. Salomon Bros.
      ▪ An insurer in a garnishment action can’t deny coverage when its defense is based on confidential info obtained by the insurer’s atty from the insured as a result of representing insured in the original tort action. Parsons, AZ 1976.
      ▪ Parent-subsidiary conflict: Representation of both parent and subsidiary companies is a conflict of interests when companies have identical headquarters, board, and general counsel, and share a lot of common interests. JPMorgan, NY 2002
      ▪ Ex: Atty represents JI in a lawsuit against Δ, and Δ wants Atty to defend Δ in an identical claim brought by X. In doing research for Δ, Atty could find info that is harmful to Δ (and vice versa).
- **Joint representation** (what if one wants trial and one wants settle). This is OK if get informed consent from both parties. But if one client files a complaint against the other, you cannot represent both b/c is a 1.7b3 conflict.
  - Attys non-financial personal interests (family connections, etc)
  - If there is a financial interest, there is probably a concurrent conflict of interest.
  - Positional conflicts: A represents wives in divorces; A wants to represent a husband in a divorce. There is a significant risk that wives will be materially limited by A’s representation of H.

- B) Even if there is a concurrent conflict of interest under (a), an atty can represent a client if:
  - 1) the atty reasonably believes that the atty 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 1.0: Terminology:** “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.

- Notes:
  - Ignorance is no excuse
  - Did conflict exist before representation was undertaken?
    - Attty must decline representation unless client gives informed consent.
  - Did conflict arise after representation was undertaken?
    - Attty should withdraw unless client previously gave informed consent.
  - If there is a 1.7 violation, should attty be disqualified?
    - Not necessarily. **Salomon Bros:** Attty not disqualified when did research for A, and represents B in a lawsuit brought by A against B, b/c law firm is big so exchange of info is unlikely, and there is not enough evidence of a substantial relationship b/tw attty and B; and B’s expectation sof loyalty were not so cavalierly trampled that disqualification is necessary.

**Can attty do law reform activities affecting client interests (6.4)?**

- 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 benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Is there a conflict of interest w/ a former client (1.9)?
- Note: NO lawyer screening under 1.9; atty is automatically disqualified
- If there is a conflict, see 1.10
- A)
  - Did atty who has formerly represented a client in a matter thereafter represent another person in the same or a _substantially related_ matter?
  - Are that person’s interests materially adverse to the interests of the former client?
  - Did former client give informed consent, confirmed in writing?
    - Yes: allowed
    - No: not allowed
  - **Substantial relationship tests:**
    - **Ct 1: Haagen Daaz:** “Substantial relationship” test: are the factual contents of the 2 representations similar or related?
      - Is there a reasonable probability that confidences were disclosed which could be used against the client in a later, adverse representation?
        - Yes → substantial relationship is presumed.
          - Attty can rebut by showing had no personal involvement w/ the case
          - It does not matter if confidences were actually disclosed to the lawyer.
        - If substantial relationship, screening is not an option: entire law firm must be disqualified (1.10)
    - **Ct 2: Walker, LA:** “Substantially related” test: matters must be so interrelated both in fact and substance that a reasonable person would not be able to disassociate the two.
      - Disqualifying interest has burden to show conflict of interest
      - Here, same “type” of case does not meet the test: Attty A worked for govt (DOT), then switched to private practice. Then A filed p.i. suit against DOT for J1. A also joined sit by J12 against DOT that was filed when A was still working for DOT.
      - Louisiana defines “substantially related” too narrowly. Louisiana applies the rules directly, w/ no further analysis.
- B)
  - Did an atty knowingly represent a person in the same or a _substantially related_ matter in which a firm w/ which the attty formerly was associated had previously represented a client
    - 1) whose interests are materially adverse to that person, and
- 2) about whom the atty had acquired info protected by 1.6 and 1.9c that is material to the matter?

- Did former client give informed consent, confirmed in writing?
  - Yes: allowed
  - No: not allowed

- C) Did atty who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter thereafter
  - 1) use info relating to the representation to the disadvantage of the former client except as RPC would permit or require WRT a client, or when the info has become generally known? (Not allowed) Or
    - State Farm, FL 1991: If an atty-client relationship exists, there is an irrefutable presumption that confidences were disclosed during that relationship. Do not have to show actual prejudice; it is enough if the current matter was the same or substantially related to the former matter.
  - 2) reveal info relating to the representation except as RPC would permit or require WRT a client? (Not allowed).

**Is there a conflict of interest w/ a prospective client (1.18)?**

- **Is there a conflict of interest b/tw a current and prospective client?**
  - C) Does a current or potential client have interests materially adverse to those of a prospective client in the same or a substantially related matter?
    - Yes → Did atty receive info from the prospective client that could be significantly harmful to that person in the matter, except as allowed in (d)?
      - Yes → atty shall not represent client.
        - No atty in a firm w/ which that atty is associated may knowingly undertake or continue representation in such a matter, except under (d).

- **Has the lawyer received disqualifying info as defined in (c)?**
  - D) Representation is permissible if:
    - 1) Both the affected client and the prospective client have given informed consent, confirmed in writing, or
    - 2) the atty who received the info took reasonable measures to avoid exposure to more disqualifying info 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

**Is a 1.7 or 1.9 conflict of interest imputed to the law firm (1.10)?**
A) Did an atty, who is associated w/ a firm, knowingly represent a client when any other atty would be prohibited from doing so by 1.7 or 1.9?
   o Is the prohibition based on a personal interest of the prohibited atty and does not present a significant risk of materially limiting the representation of the client by the remaining attys in the firm?
     ▪ Yes: representation allowed
     ▪ No: representation not allowed

B) Has an atty terminated an association w/ the firm?
   o Does a potential client have interests materially adverse to those of a client represented by the formerly associated atty and not currently represented by the firm?
     ▪ Firm can represent, unless:
       • 1) the matter is the same or substantially related to that in which the formerly associated atty represented the client; and
       • 2) any atty remaining in the firm has info protected by 1.6 and 1.9c that is material to the matter.

C) Did client waive disqualification under the conditions of 1.7? Atty not disqualified

D) Are attys associated in a firm w/ former or current govt lawyers?
   o Follow 1.11 for disqualification guidelines.

**Did a former govt atty undertake representation that relates to work they have done at a former job (1.11)?**

(a) Except as lay may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
   o (1) is subject to 1.9c; and
   o (2) shall not otherwise represent a client in connection w/ a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate govt agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under (a), no lawyer in a firm w/ which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
   o (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
   o (2) written notice is promptly given to the appropriate govt agency to enable it to ascertain compliance w/ the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having info that the lawyer knows is confidential govt info 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 govt info” means info that has been obtained under govt authority and which, at the time this Rule is applied, the govt 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 w/ 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:
  o (1) is subject to 1.7 and 1.9; and
  o (2) shall not:
    ▪ (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovt employment, unless the appropriate govt agency gives its informed consent, confirmed in writing; or
    ▪ (ii) negotiate for private employment w/ 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 1.12(b) and subject to the conditions stated in 1.12(b).

- (e) As used in the Rule, the term “matter” includes:
  o (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
  o (2) any other matter covered by the conflict of interest rules of the appropriate govt agency.

Notes:
  o 1.10 (imputation) does not apply to the conflicts in this rule; use (b) and (d) of this rule
  o Note: govt lawyers can be screened. Downey says:
    ▪ Make sure atty does not have access to files
    ▪ Make sure atty does not have access to communications (make sure other attys don’t talk to him about it)
    ▪ Make sure atty is separate from financial issues (no profits or role in funding)
  o A lawyer cannot pursue a claim on behalf of the govt and then pursue the same claim on behalf of a later private client after the lawyer has left govt service, except when authorized by (a). A lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the govt, except when authorized by (d).
  o Exception: rule drafting and other agency actions that have more general application.

Does atty have a conflict of interest w/ his role w/ a legal services organization (6.3)?
- Does atty serve as a director, officer, or member of a legal services org, apart from the law firm in which atty practices, even though the org serves persons having interests adverse to a client of the atty? Allowed.
- Did atty knowingly participate in a decision or action of the org
  o A) when participating in the decision or action would be incompatible w/ the atty’s obligations to a client under 1.7? Not allowed. Or:
  o B) where the decision or action could have a material adverse effect on the representation of a client of the org whose interests are adverse to a client of the atty? Not allowed.

Did a former judge undertake representation that relates to work they have done at a former job (1.12)?
- A) Did an atty represent anyone in connection w/ a matter in which the atty 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 3rd-party neutral?
  o Does (d) allow it? Yes: allowed. No, then ask:
    o Did all parties to the proceeding give informed consent, confirmed in writing?
      ▪ Yes: allowed
      ▪ No: not allowed: go to (c)
  o Note:
    ▪ Judge is not excluded from representing a client in a matter pending in the court where he was on the bench, if the judge did not participate in that case while a judge.
- B) Did an atty negotiate for employment w/ any person who is involved as a party or as atty for a party in a matter in which the atty is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other 3rd-party neutral? Not allowed.
  o Is atty serving as a law clerk to a judge or other adjudicative officer may negotiate for employment w/ a party or atty involved in a matter in which the clerk is participating personally and substantially?
    ▪ Did atty notify the judge or other adjudicative officer?
      • Yes: allowed
      • No: not allowed
- C) Is atty disqualified by (a)?
  o No atty in a firm w/ which that atty 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 w/ the provisions of this rule.
- D) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Is atty called as a witness (3.7)?
- A) Is atty likely to be a necessary witness in a trial at which he is acting as advocate? Not allowed unless:
  o 1) the testimony relates to an uncontested issue;
  o 2) the testimony relates to the nature and value of legal services rendered in the case, or
  o 3) disqualification of the atty would work substantial hardship on the client.
  o Note:
    ▪ Balances client’s interests w/ interests of the tribunal and opposing party
    ▪ Exception: an atty may represent himself

- B) Is another atty in atty’s firm likely to be called as a witness?
  o Allowed unless there is a conflict of interest under 1.7 or 1.9

- Notes
  o Policy: combining the roles of advocate and witness can prejudice the tribunal and the opposing party, and can also involve a conflict of interest b/tw the lawyer and the client.
    ▪ Tribunal has objection when the trier of fact may be confused or misled by a lawyer serving both roles
    ▪ Opposing party has objection when combination of roles may prejudice that party’s rights in the litigation
  o A witness only gets to testify once. If an atty testifies, they would get to testify 3 times: opening statement, closing argument, and their testimony on the stand. Opening and closing = testifying without being subjected to cross-examination.
  o Zurich, KY, 2001: KY Rule 3.7: must weigh party’s right of choice of counsel against the unfair prejudice created when that atty testifies. Here, Δ-insurer wanted to disqualify Ji-atty b/c Ji-atty made himself a necessary witness by filing a personal affidavit. Ct said Ji-atty not disqualified b/c Δ-insurer failed to show: atty’s testimony is not important to Δ-insurer’s proof at trial, there is any probability that atty’s testimony will conflict w/ that of other witnesses, and the information contained in atty’s affidavit is unattainable from other sources.

Did a law firm take on, as a client, a former atty for the opposing party who, while working for the opposing party, worked on this case?
- Hull, 2d Cir, 1974: not allowed. Must avoid even the appearance of impropriety. Att’y could inadvertently disclose information.

Did atty enter an inappropriate biz transaction or other economic interest w/ client (1.8a)?
- Did atty enter into a biz transaction w/ a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client?
  o Yes: NOT allowed, unless:
1) Are the transaction and terms on which the atty acquires the interest fair and reasonable to the client and fully disclosed and transmitted in writing in a manner that can reasonably be understood by the client?
2) Is the client advised in writing of the desirability of seeking, and is client given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction? And
3) Did client give informed consent, in a writing signed by client, to the essential terms of the transaction and the atty’s role in the transaction, including whether the atty is representing the client in the transaction?

- Did atty bargain w/ his client in a biz transaction in a manner which is advantageous to himself (loan to client in exchange for property as collateral)? It is suspect. Atty must show: Goldman, MA 1975
  - Transaction was fairly and equitably conducted
  - Atty fully and faithfully discharged all his duties to his client:
    - Refrained from misreps or concealment of material facts
    - Took active diligence to ensure client is fully informed of nature and effect of transaction on his own rights and interests
    - Making sure client either had independent advice or gets advice from the atty as would be expected b/tw client and stranger.

Did atty use info relating to the representation to the disadvantage of the client (1.8b)?
- Not allowed unless client gave informed consent, or it is permitted or required by the RPC.

Did atty solicit a gift from client (1.8c)?
- Was the gift substantial (includes testamentary gifts)?
- Did atty prepare on behalf of a client an instrument giving the atty or a person related to the atty any substantial gift?
- → Not allowed, unless atty or other recipient of the gift is also related to client.

Did atty procure literary/media rights before representation was over (1.8d)?
- Before conclusion of representation of client,
  - did atty make or negotiate an agreement giving the atty literary or media rights to a portrayal or account based in substantial part on info relating to the representation?
  - → NOT allowed, even if client consents

Did atty provide inappropriate financial assistance to client (1.8e)?
- Was assistance in connection w/ pending or contemplated litigation?
  - Not allowed, unless:
    - 1) atty can advance ct costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, and
    - 2) an atty representing an indigent client may pay ct costs and litigation expenses on behalf of the client.
• Note: dr visits are a litigation expenses; cab fare to the dr office is not.
  o Policy: **Bitter**, IA, 1979: atty cannot give $ to clients during pending litigation for purposes other than litigation costs b/c cannot procure an interest in a legal matter by giving money.

**Did atty inappropriately accept compensation from a 3\textsuperscript{rd} party (1.8f)?**
- Did someone other than client pay for client’s representation? Not allowed unless
  o 1) client gives informed consent
  o 2) there is no interference w/ the atty’s independence of professional judgment or w/ the atty-client relationship, and
  o 3) info relating to the representation of a client is protected as required by 1.6.

**Did atty make an aggregate settlement or plea (guilty or nolo contendere) of 2+ clients claims w/o consent (1.8g)?**
- Not allowed, unless each client gives informed consent, in a writing signed by client.
  o Disclosure must include the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.
- Notes:
  o Cannot discuss the settlement openly in a meeting w/ all client b/c would breach duty of confidentiality
  o **Tex 5-106:** Client C hired atty A to represent him. Attty A gave the case to Attty B, who got $ in an individual claim for C. Meanwhile, attty A negotiate settlement for less $ for C than B’s claim. Settlement is void and unenforceable b/c A should have informed C of the nature and settlement amounts of all claims involved. A not found personally liable. **Quintero.**
  o **MA 5-106:** Aggregate settlement is enforceable and MA 5-106 is not violated when attty told client that other client’s package was bigger, and client said “go ahead” and settle for ∆’s proposed amount for client, even though attty did not tell client it was an aggregate settlement. **Mal de Mer Fisheries.**

**Did atty limit his malpractice liability (1.8h)?**
- 1) Did atty make an agreement prospectively limiting the atty’s liability to a client for malpractice?
  o Is client independently represented in making the agreement?
    ▪ No: not allowed
    ▪ Yes: allowed
- 2) Did atty settle a claim or potential claim for such liability w/ an underrepresented client or former client?
  o Is the client or former client 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?
    ▪ No: not allowed
• Yes: allowed

Did atty acquire a proprietary interest in the litigation (1.8i)?
- Not allowed, unless:
  o 1) Did atty acquire a lien authorized by law to secure the atty’s fees or expenses? (Allowed) or
  o 2) Did atty contract w/ a client for a reasonable contingent fee in a civil case? (Allowed)

Did atty have sex w/ client (1.8j)?
- Did a consensual sexual relationship exist b/tw them when the atty-client relationship commenced?
  o Yes: allowed
  o No: not allowed
  o Hawkins: suspended for 90 days

Can atty move to disqualify opposing counsel for COI?
- Yes. When deciding to disqualify, ct considers:
  o The resulting delay in ct proceedings while new counsel is found
  o Conduct of the moving party
    ▪ Was motion made promptly?
    ▪ Did movant create COI for opposing counsel
      • Ct probably won’t grant motion.

REPORTING MISCONDUCT

Did atty fail to report professional misconduct (8.3)?
- (a) Does a lawyer know that another lawyer has committed a violation of the RPC,
  o that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects?
  o → the lawyer must inform the appropriate professional authority.
- (b) Does a lawyer know that a judge has committed a violation of the applicable rules of judicial conduct that
  o raises a substantial question as to the judge’s fitness for office?
  o → lawyer shall inform the appropriate authority
- (c) Is info otherwise protected by 1.6, or is info gained by a lawyer or judge while participating in an approved lawyers assistance program?
  o Disclosure not required.
- But a lawyer should encourage his client to consent to disclosure where prosecution would not substantially prejudice the client’s interests.
- Himmel. Client settled p.i. case w/ atty A. A misappropriated the funds. Client hired atty B to collect her settlement $. B discovered A’s misappropriation. B agreed not to report A’s misconduct if A paid client more money. Only client reported A. B is suspended for 1 year b/c he had a duty to report A’s misconduct,
duty is not removed if client reports, duty is not removed if client does not want atty to report, and this info is not protected by atty-client privilege b/c was disclosed in the presence of 3rd, uninterested parties (client’s mom and fiancé).

Is in-house counsel fired for reporting a violation of the RPC?
Yes → Is in-house counsel allowed the remedy for an action of retaliatory discharge?
- Majority view, Balla, IL 1991: No: atty can’t report something and then benefit from doing something he was supposed to do under the ethical rules (report the violation).
- Minority view, Crews, TN 2002: Yes: if counsel was fired for reporting a provision of the RPC that represents a clear and definitive statement of public policy (includes reporting the unauthorized practice of law).
  o A lawyer may ethically disclose the employer’s confidences or secrets when the lawyer reasonable believes this info is necessary to establish the claim against the employer.
    ▪ But the lawyer must make every effort to avoid unnecessary disclosure of the employer’s confidences and secrets, to limit disclosure to those having the need to know the info, and to obtain protective orders or make other arrangements minimizing the risk of unnecessary disclosure.

Was atty fired for insisting the firm comply w/ ethical rules?
- Wrongful discharge and breach of contract. A firm can’t insist that an atty act unethically, and can’t fire an atty for enforcing the ethical rules. Wieder, NY 1992

Was atty merely negligent?
- Neale: simple negligence not enough for discipline b/c does not amount to a Canon 6 violation.
  o Neale represented Mitchell for injuries from a dog bite. Neale did not find out that dog was a biter, and punitive damages were available, until after SOL ran out.

What forms of discipline are available?
- disbarment, suspension, reprimand (public or private), professional responsibility education programs

Did atty charged with disbarment have due process?
- Ruffalo: Must have DP when charged with disbarment. Was their notice of the charge, and opportunity to be heard?
  o No notice until after JL testified on other charges = violation of DP
  o Atty accused of conspiring with agent Michael Orlando and paying him for preparing lawsuits against Orlando’s employer, knowing this was deceptive, and morally and legally wrong.
THIRD PARTIES

Was atty truthful in statements to 3rd parties (4.1)?
- In the course of representing a client a lawyer shall not knowingly:
  - (a) make a false statement of material fact or law to a 3rd person; or
    o Probably not statements of fact:
      ▪ Estimates of price or value
      ▪ Party’s intentions as to an acceptable settlement
    o Note: statement must be both false and material
  - (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 1.6.
    o lawyer cannot help client’s crime or fraud when the crime or fraud is in the form of a lie or misrepresentation. Atty should try to withdraw.
      ▪ Atty suspended for assisting in senior atty’s entrapment plan to catch a libelee in a divorce action in a compromising situation w/ a hired woman. Knight, VT 1971.
    o Remaining silent can be fraud
    o atty has no affirmative duty to inform an opposing party of relevant facts.
    o misreps can occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.
    o Does dishonest conduct fail to amount to a false statement or misrepresentation?
      ▪ Try 8.4
    o Although atty has a duty of zealous advocacy for his client, atty also has a duty of frankness to the Ct (3.3a) and opposing counsel (4.1). Atty may not negotiate w/ ∆’s counsel w/o disclosing that ∆-client is dead, and atty may not enter settlement agreement order w/o disclosing to ∆’s atty that ∆-client is dead.
      ▪ Downey thinks this case is wrongly decided b/c 4.1 is subject to 1.6 and the duty of confidentiality continues after death. Also, atty never said his client was alive in the first place.

Did atty communicate w/ someone represented by counsel in the matter (4.2)?
  o In representing a client, a lawyer shall not communicate about the subject of the representation w/ a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.
  o Does 4.2 also ban communications with former employees?
    ▪ YES: Aegis, NJ 1990: “person represented by counsel” includes current AND former employees b/c deposition is best way to get info and protect all parties.
    So, atty can’t communicate w/:
      • persons who currently have managerial responsibility for the org
      • any other person, current or former employee,
        o whose act or omission in connection w/ that matter may be imputed to the org for liability purposes, or
No: Smith, MO 2001: 4.2 does not apply to former employees. 4.2 applies to current employees that fall in one of these categories:

- (1) persons who currently have managerial responsibility for the org
  - must have supervisory responsibility
  - low-level manager not enough unless (2) or (3) applies
- (2) persons whose act or omission in connection w/ the matter may be imputed to the org for liability purposes
- (3) persons whose statements may constitute an admission on the part of the org

4.2 is not violated unless the lawyer knows the person is represented in the matter to be discussed.

4.2 applies even if the represented person initiates or consents to the communication. A lawyer must immediately terminate communication w/ a person if the lawyer learns it is inappropriate under 4.2.

It is OK to talk to represented persons about matters outside the representation.

Communications authorized by law include:

- Those by a lawyer on behalf of a client who is exercising constitutional or other legal right to communicate w/ govt
- Investigative activities of lawyers representing govt entities

If lawyer is not sure if a communication w/ a represented person is allowed by 4.2, lawyer should seek a court order.

If communication w/ a represented person is necessary to avoid reasonably certain injury, lawyer should seek a court order.

If the represented party is an organization, 4.2 bars communications w/

- a constituent of the organization who supervises, directs or regularly consults w/ the org’s lawyer concerning the matter
- whose act or omission in connection w/ the matter may be imputed to the org for liability purposes.

Kleiner, 11th Cir, 1985: 4.2 violated when Δ and his atty secretly solicited exclusion requests from potential members of a Λ class, after being told by the ct not to contact prospective class members (defying ct order is clearly not acting in good faith).

Did atty communicate w/ an unrepresented person in this matter (4.3)?

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

- Is unrepresented party an organization? Use 1.13(d)
Monsanto, DE 1990: 4.3 requires more than a simple disclosure by investigator of his identity; investigator must
  o Say who he is working for, describe lawsuit and relation to who he is working for, ask if person is represented by counsel?
    ▪ No  →  end questions
    ▪ Yes  →  ask if can interview.

Did atty fail to respect the rights of 3rd persons (4.4)?
- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a 3rd person, or use methods of obtaining evidence that violate the legal rights of such a person.
  o Lawyer can’t harass a 3rd person to achieve client’s goals IF the harassing behavior has no substantial purpose.
    ▪ So, embarrassing cross-examination and depositions are OK
  o Lawyers can’t engage in conduct that will cause jurors to question the justice system’s use of their verdict. Lawyers can contact jurors to ask about their trial performance, if the lawyer does not commit harassing conduct.
  o Attorneys are suspended for assisting in senior attorney’s entrapment plan to catch a libellee in a divorce action in a compromising situation with a hired woman. Knight, VT 1971
  o Attorneys are disciplined for sending letter criticizing jury’s verdict to jury to harass or embarrass them and to influence future action they might take as jurors. Hansen, MN 1982.
- (b) A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Does atty owe a duty of care to a 3rd party beneficiary? Blair, HI, 2001
- Is there a contractual relationship (privity) b/w the 2 parties?
  o Yes  →  duty owed
  o No  →  Lucas balancing factors determine if Δ is liable to a 3rd person not in privity:
    ▪ 1. Extent to which the transaction was intended to affect JI
    ▪ 2. Foreseeability of harm to JI
    ▪ 3. Degree of certainty that JI suffered injury
    ▪ 4. Closeness of the connection b/w Δ’s conduct and the injury
    ▪ 5. Policy of preventing future harm
    ▪ 6. Whether imposing liability placed an undue burden on the legal profession.
    Here: atty owed a duty of care to intended beneficiaries of client’s trust.
DUTIES TO THE LEGAL SYSTEM AND SOCIETY

Did atty bring a frivolous claim (3.1)?
- 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.
- Lawyer has a duty not to abuse legal procedure.
  o Balance this w/ duty of zealous advocacy
- Filing of a claim is not frivolous just b/c the facts have not first been fully substantiated or b/c the lawyer expects to develop vital evidence only by discovery.
- Lawyers must inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith args in support of their clients’ positions.
- Lawyer’s belief that client will lose does not make the claim frivolous.
  o Claim is frivolous if lawyer is unable to make a good faith arg on the merits, or to support the action by a good faith arg for an extension, modification, or reversal of existing law.
- Neely, WV 1998: WV 3.1 NOT violated when atty makes factual allegations in support of their theories of liability, and asserts defenses in response, some of which ultimately prove to be unsubstantiated.
  o Test for frivolousness:
    ▪ (1) Must make an objective determination of whether the claim or defense was unwarranted under the law
      • Attys conducted a reasonable investigation of the case
      • Atty is allowed to rely on his client and expect discovery to follow through, as long as attys do not KNOW factual allegations are false.
    ▪ (2) must make a more subjective determination of whether the atty asserted the claim or defense w/ knowledge that it was unwarranted
- Are money sanctions available for frivolous claims (FRCP 11)?
  o Yes (may be imposed on atty and his firm), but safe harbor applies:
    ▪ Before one can file FRCP 11 motion, notice must be given to the accused atty (21 days). During 21 days, atty may take actions to eliminate the violation (withdrawing, or amending the paper or allegation).

Did atty fail to expedite litigation (3.2)?
- A lawyer shall make reasonable efforts to expedite litigation consistent w/ the interests of the client.
- Lawyer cannot fail to expedite litigation for his own convenience, or to frustrate the other party’s attempts to litigate
- Test: would a competent lawyer acting in good faith regard the course of action as having some substantial purpose other than delay? (Committee notes)

**Did lawyer act w/ candor toward the tribunal (3.3)?**
- Applies to depositions too
- **(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 criminal Δ, that the lawyer reasonably believes is false.
    - Atty must know that the evidence is false. Lawyer’s knowledge that the evidence is false can be inferred from the circs.
    - If criminal Δ wants to testify lies, atty must try to talk him out of it by telling him he can be convicted of perjury. If Δ still wants to lie, put Δ on the stand and have him do a narrative testimony.
  - Although atty has a duty of zealous advocacy for his client, atty also has a duty of frankness to the Ct (3.3a) and opposing counsel (4.1). Attty may not negotiate w/ Δ’s counsel w/o disclosing that Jl-client is dead, and atty may not enter settlement agreement order w/o disclosing to Δ’s attty that Jl-client is dead.
    - Downey thinks this case is wrongly decided b/c 4.1 is subject to 1.6 and the duty of confidentiality continues after death. Also, atty never said his client was alive in the first place.
- **(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.
  - Reasonable remedial measures: talk with the client confidentially, advise the client of the lawyer’s duty of candor to the tribunal, and seek client’s cooperation WRT the withdrawal or correction of false statements or evidence. If this doesn’t work:
    - Atty can withdraw from representation. If this is not permitted or will not undo the effect of the false evidence,
    - Atty must make disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the atty to reveal info that is protected by Rule 1.6. Then the tribunal
decides what should be done: make a statement about the matter to
the jury, ordering a mistrial, or nothing.
  - If you know your client is lying about not having a voicemail, etc, try and
    persuade your client to produce it. If client won’t; you must withdraw.
  - If you don’t know your client is lying, must investigate further. If client is
    lying, follow 3.3b.
- (c) the duties stated in (a) and (b) continue to the conclusion of the proceeding,
  and apply even if compliance requires disclosure of info otherwise protected by
  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.
  - Att'y must disclose favorable and unfavorable material facts
- Att'y must balance obligation to present the client’s case with persuasive force,
  with duty of candor to the tribunal.
- Att'y usually not required to withdraw.
  - But, att'y may be required by 1.16a to seek permission to withdraw if att'y’s
    compliance with duty of candor results in such an extreme deterioration of
    the att'y-client relationship that the att'y can no longer competently
    represent the client.
- Jorgenson, 11th Cir 1988: att'ys sanctioned for failing to cite adverse, controlling
  precedent in memo.
- Kleiner, 11th Cir, 1985: 3.3 violated when Δ and his att'y secretly solicited
  exclusion requests from potential members of a Λ class, after being told by the ct
  not to contact prospective class members (defying ct order is clearly not acting in
  good faith).

Judicial and Legal Officials: 8.2
(a) A lawyer shall not make a statement that the lawyer knows to be false or w/
    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 w/ the applicable
    provisions of the Code of Judicial Conduct.

Was att'y unfair to opposing party and counsel (3.4)?
- A lawyer shall not:
  - (a) unlawfully obstruct an other 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;
      ▪ Note: applies to computerized information too
  - (b) falsify evidence, counsel or assist a witness to testify falsely, or offer
      an inducement to a witness that is prohibited by law;
      ▪ Note: Att'y can pay a witness’s expenses or compensate an expert
      witness on terms permitted by state law. Most states follow the
common law rule that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

- Attys can only pay lay witnesses the statutory fee (if any) and reasonable expenses
- Attys can pay expert witnesses the professional fee that someone in the expert’s field charges for his or her time, and reasonable expenses.
- Attys can politely encourage someone not to testify but can’t do anything that would actually make them refrain from doing so.

  - (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 w/ 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
    - Note: Attys can’t say: “I find it hard to believe that a young punk was only driving 25 mph.” Attys CAN say: “Mr Jones says he was listening to loud music and was only driving 25 mph. Do you believe Mr Jones?”
  - (f) request a person other than the 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 reasonable believes that the person’s interests will not be adversely affected by refraining from giving such information.

Policy: encourage fair competition

Did attys disrupt the impartiality and decorum of the tribunal (3.5)?

- 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 w/ such a person during the proceeding unless authorized to do so by law or court order;
    - Peterson, FL 1982: Mistrial granted when one atty went to a deli w/ an expert witness and allowed himself to be seated at a table where 2 people atty knew to be jurors were eating.
• If a juror tries to talk to atty, atty should say I’m sorry but I can’t talk to you about this, and then report it to the judge and opposing counsel.

  ○ (c) communicate w/ a juror or prospective juror after discharge of the jury if:
    ▪ (1) the communication is prohibited by law or ct 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
    ▪ Vincenti, NJ 1983: conduct is an ethical violation when far exceeds limits of zealous advocacy, is intended to intimidate all parties, and there is no evidence that his insults toward the ct had any factual basis. Bullying and insults not allowed, attys required to display a courteous and respectful attitude towards ct, other parties, witnesses, etc. Note: client was harmed b/c Vincenti’s shenanigans were part of his zealous advocacy
    ▪ Snyder, US 1985: a lawyer’s criticism of the administration of the Criminal Justice Act or criticism of inequities in assignments under the CJA are NOT case for discipline or suspension. (atty was appointed to defend a criminal and then objected to the low compensation provided under the CJA). Note: no one was harmed b/c trial was over.

- lawyer shall not behave abusively toward a judge, even if judge is abusing the lawyer. Lawyer should avoid belligerence and theatrics.
- Applies to any tribunal proceedings, including depositions.

Did atty violate trial publicity rules (3.6)?
- (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 (a), a lawyer may state:
  ○ (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
  ○ (2) information contained in a public record;
  ○ (3) that an investigation of a matter is in progress;
  ○ (4) the scheduling or result of any step in litigation;
  ○ (5) a request for assistance in obtaining evidence and information necessary thereto;
  ○ (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
  ○ (7) in a criminal case, in addition to (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.

(c) Notwithstanding (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 ¶ shall be limited to such info as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or govt agency w/ a lawyer subject to (a) shall make a statement prohibited by (a).

Note: 3.6 was amended after Gentile, so 3.6 controls

Balance right to a free trial w/ right of free expression
  o Social interests served by free dissemination of info: safety treats, measures assuring security, conduct of judicial proceedings, questions of public policy

Only applies to lawyers who are or have been involved in the investigation or litigation of a case

(b) not exhaustive, but extras are subject to (a)

These subjects are more likely than not to have a material prejudicial effect on a proceeding:
  o Character or criminal record of a party, suspect or witness in a criminal case
  o Identity or expected testimony of a witness
  o Crim case resulting in incarceration: possibility of guilty plea, or existence of confession, admission, or refusal to make one
  o Results of an exam or test or refusal to take one
  o Identity or nature of physical evidence expected to be presented
  o Opinion on the guilt or innocence of a Δ or suspect in a crim case or proceeding that could result in incarceration
  o Info lawyer knows or reasonably should know is likely to be inadmissible at trial and has a risk of prejudicing an impartial trial
  o The fact that a Δ has been charged w/ a crime, unless a statement is included explaining that the charge is only an accusation, and client is innocent until proven guilty.

Criminal trials are more sensitive to publicity. So are jury trials.

Extrajudicial statements may be OK if made in response to public statements made by another party or their lawyer or 3rd person, when a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer’s client.

Is the atty representing a client before a legislative body or administrative agency in a nonadjudicative proceeding (3.9)?
- Lawyer shall disclose that the appearance is in a representative capacity and shall conform to 3.3a,b,c, 3.4a,b,c, and 3.5.

**Must the atty do pro bono work? What counts as pro bono work? (6.1)**
- Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:
  o (a) provide a substantial majority of the 50 hours of legal services w/o fee or expectation of fee to:
    - does not count if expected fee is unsuccessfully collected
    - (1) persons of limited means or
    - (2) charitable, religious, civic, community, govt and educational orgs in matters that are designed primarily to address the needs of persons of limited means, and
    - (a)(1)&(2) include:
      - legislative lobbying
      - administrative rule making
      - providing free training/mentoring to those who represent persons of limited means
  o (b) provide any additional services through
    - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or orgs seeking to procure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, govt and educational orgs in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the org’s economic resources or would be otherwise inappropriate
    - (2) delivery of legal services at a substantially reduced fee to persons of limited means
    - (3) participation in activities for improving the law, the legal system or the legal profession.
      - Includes bar assoc committees, boards of pro bono or legal services programs, Law Day activities, CLE instructor, mediating or arbitrating/legislative lobbying to improve the law, the legal system or the profession

- In addition, a lawyer should voluntarily contribute financial support to orgs that provide legal services to persons of limited means.
  o If it is not feasible for a lawyer to engage in pro bono services, the lawyer may discharge the pro bono requirement by providing financial support to orgs providing free legal services to persons of limited means.
    - Such financial support should be reasonably equivalent to the value of the hours or service that would have otherwise been provided

- This Rule is not enforced through the disciplinary process.

**Nonprofit and court-annexed limited legal service programs (6.5)**
(a) A lawyer who, under the auspices of a program sponsored by a nonprofit org or ct, provides short-term limited legal services to a client w/o expectation by either lawyer or client that lawyer will provide continuing representation in the matter:
   o (1) is subject to 1.7 and 1.9a only if the atty knows that the representation of the client involves a COI; and
   o (2) is subject to 1.10 only if the atty knows that another lawyer associated w/ the lawyer in a law firm is disqualified by 1.7 or 1.9a WRT the matter.
(b) Except as provided in a2, 1.10 is inapplicable to a representation governed by this rule.

Must an atty accept an appointment? 6.2:
- A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:
  o (a) representing the client is likely to result in violation of the RPC or other law;
    ▪ Is there a conflict of interest?
  o (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
  o (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.

INTEROFFICE RESPONSIBILITY

Is a partner, manger, or supervising lawyer responsible for the conduct of another lawyer? Is supervisor responsible for failing to adequately supervise? 5.1
- a) A partner in a law firm, and a lawyer who individually or together w/ 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 RPC.
  o Yacavino: new atty working for firm should have been supervised (atty failed to advance cases and covered it up by lying about it)
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the RPC.
- (c) A lawyer shall be responsible for another lawyer’s violation of the RPC if:
  o (1) the lawyer orders or, w/ knowledge of the specific conduct, ratifies the conduct involved; or
  o (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.

Is a subordinate lawyer responsible for his own actions? 5.2
(a) A lawyer is bound by the RPC notwithstanding that the lawyer acted at the direction of another person
   - Subordinate lawyer is responsible for breaking the law by participating in the planning and execution of supervising atty’s plan to entrap a libellee in a divorce action in a compromising situation with a hired woman.
   - Subordinate lawyer should have disassociated himself from the entrapment plan before it was executed. Knight, VT 1971

(b) A subordinate lawyer does not violate the RPC if that lawyer acts in accordance w/ a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.

Is a lawyer responsible for the conduct for a nonlawyer in the firm? 5.3

- 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 w/ 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 RPC if engaged in by a lawyer if:
    - (1) the lawyer orders or, w/ the knowledge of the specific conduct, ratifies the conduct involved, or
    - (2) the lawyer is a partner or has comparable managerial authority over the person, and knows of the conduct at a time when the consequences can be avoided or mitigated but fails to take reasonable remedial action.

Is there an imputed partnership?
- Holmes v Luderman: Look at these factors:
  - Do they share profits?
  - Do they substitute/cover when one is sick?
  - Do the divide up clients equitably?
  - Do they avoid cases w/ COI w/ each other?
  - Do they have the power to bind?
  - Can everyone access files? (this is often determinative b/c of 1.6)
  - Do they share furniture and office space?
  - Do they have a joint bank account (1.5)?
  - Does letterhead/phone book have firm name (present to the public)?
  - Is there an agreement to share expenses?
  - Do biz cards have all attys name on them?
  - Do they pay taxes as a partnership?
Professional independence: 5.4
- **(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 w/ or in the form of a professional corporation or association authorized to practice law for a profit, if:
  - **(1)** a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - **(2)** a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
  - **(3)** a nonlawyer has the right to direct or control the professional judgment of the lawyer.

Was atty’s right to practice restricted? 5.6
- **A lawyer shall not participate in offering or making:**
  - **(a)** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
  - **(b)** an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

Did atty provide law-related services? 5.7
- **(a)** A lawyer shall be subject to the RPC WRT the provision of law-related services, as defined in (b), if the law-related services are provided:
  - **(1)** by the lawyer in circs that are not distinct from the lawyer’s provision of legal services to clients; or
  - **(2)** in other circs by an entity controlled by the lawyer individually or w/ others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
- **(b)** The term “law-related services” denotes services that might reasonably be performed in conjunction w/ and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Can law practice be sold or purchased (1.17)?
- **A lawyer or law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:**
  - **(a)** The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction]
(a jurisdiction may elect either version) in which the practice has been conducted;

- (b) The entire practice, or the entire area of practice, is sold to 1+ lawyers or law firms

- (c) The seller gives written notice to each of the seller’s clients regarding:
  - (1) the proposed sale
  - (2) the client’s right to retain other counsel or to take possession of the file; and
  - (3) the fact that the client’s consent to the transfer of the client’s files will be presumed if the client does not take any action or does not otherwise object w/in 90 days of receipt of the notice.

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

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

Fiduciary duties to lawyers in atty’s firm. Brewer & Pritchard, Tex 2002

- Associate

  - Associate owes a fiduciary duty to his or her employer not to personally profit or realize any financial or other gain or advantage from referring a matter to another law firm or lawyer. No general duty that an associate must always share business opportunities with his firm. At-will employment rules:
    - Associate can:
      - Plan to go into competition w/ his employer and take active steps to do so while employed
        - Does not have to disclose his plans to employer; associate may secretly join other employees in the endeavor.
    - Associate can NOT:
      - Appropriate his employer’s trade secrets
      - Solicit his employer’s customers while still working for his employer
      - Carry away certain info, such as lists of customers
      - Act for his future interests at the expense of his employer by using the employer’s funds or employees for personal gain or by a course of conduct designed to hurt the employer.

        - Here, Chang liable for profiting by arranging to receive part of another atty’s referral fee (Chang told firm the firm lost the case to another atty, but really Chang arranged for another atty to take the case so he could personally get the referral fee).

- Partner
- Has a fiduciary duty to other partners.

ADVERTISING

Did atty make a false/misleading statement about his services (7.1)?
- A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
  - Also prohibits truthful statements that are misleading (omits a fact necessary to make the statement considered as a whole not materially misleading). Truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation.
  - Advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters w/o reference to specific factual and legal circs of each client’s case.

May atty advertise (7.2a)?
- (a) Subject to the requirements of 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.
- What lawyer may tell the public:
  - Lawyer’s name or firm name
  - Address and phone #
  - Kinds of services
  - Basis of fees, including prices for specific services and payment and credit arrangements
  - Foreign language ability
  - References
  - w/ consent: names of clients regularly represented
  - other info that might invite the attention of those seeking legal assistance

What may atty pay for (7.2b)?
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may
  - 1) pay the reasonable costs of advertisements or communications permitted by this Rule
  - 2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. Qualified lawyer referral service is a
lawyer referral service that has been approved by an appropriate regulatory authority

- 3) pay for a law practice in accordance w/ 1.17

- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Can atty advertise via direct contact w/ client (7.3)?

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:
  - (1) is a lawyer; or
  - (2) has a family, close personal, or prior professional relationship w/ a lawyer

- (b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by (a), if:
  - (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer, or
  - (2) the solicitation involves coercion, duress or harassment

- (c) every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in ¶s a1 or a2.

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

May atty advertise a specialty (7.4)?

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

- (b) A lawyer admitted to engage in patent practice before the US Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation

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

- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
  - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the ABA, and
How can firm names and letterheads be used (7.5)?
- a) A lawyer shall not use a firm name, letterhead or other professional designation that violates 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection w/ a govt agency or w/ a public or charitable legal services org and is not otherwise in violation of 7.1
- b) a law firm w/ offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- C) the name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing w/ the firm
- D) lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Political Contributions (7.6)
- A lawyer or law firm shall not accept a govt legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

MISCELLANEOUS

Special responsibilities of a prosecutor (3.8)

DEALING WITH DEATH
- READ online articles!!!

ALTERNATIVE RULES
- Atty violated DR 7-106c1, which prohibits an atty’s reference to matters that will not be supported by admissible evidence when appearing “before a tribunal” (includes at a deposition), when she used subterfuge to intimidate a witness by creating the false impression that she had compromising personal information that she could offer as evidence. Statzer.

If none of the RPC apply, Ct can still punish an atty using the INHERENT POWER OF THE COURT (Chambers v Nasco)
- Taylor v Hayes: Contempt of court does not require jury trial if penalty is not more than 6 months; JI entitled to a hearing, and notice under DP.
DP violated: sentence was imposed after trial, judge continued to describe the acts and sentence them after trial; judge told JI he couldn’t respond, said he would gag JI.

**Purposes of punishment:**
(1) Protect the public from future misconduct by this atty
(2) Preserve public confidence in the legal system
(3) Dissent: punish atty for his conduct

Rosellini.

**JUDGES**

**Model Code of Judicial Conduct, Canon 3: a judge shall perform the duties of judicial office impartially and diligently**

- **3a:** The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law. In the performance of these duties, the following standards apply.
- **3b.1:** A judge shall hear and decide matters assigned to the judge except those in which disqualification is required
- **3b.2:** A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
- **3b.7** A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
  - (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided
    - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
  - (b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
  - (c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges.
  - (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
(e) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

3b.9: A judge shall not, while a proceeding is pending or impending in any ct, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere w/ a fair trial or hearing. The judge shall require similar abstention on the part of ct personnel subject to the judge’s direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the ct. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

3E: Disqualification

1. A judge must disqualify himself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:
   - disqualification can be waived if judge discloses the impartiality and parties consent
   - (a) judge has personal bias/knowledge about a party or their lawyer, or personal knowledge of disputed evidentiary facts.
   - (b) the judge served as a lawyer in the matter, or a lawyer w/ whom judge practiced law served as a lawyer in the matter, or the judge was a material witness in the matter
   - (c) judge knows that he or a family member has an economic interest in the subject matter or in a party or has more than de minimis interest that could be substantially affected by the proceeding
   - (d) judge or his spouse or family member
     - (i) is a party, officer, director, or trustee of a party
     - (ii) is a lawyer in the matter
     - (iii) is known by judge to have more than a de minimis interest that could be substantially affected by the proceeding
     - (iv) is known by judge to be a material witness

2. A judge shall keep informed about his personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of his spouse and minor children.

3D: disciplinary responsibilities:

1. A judge who receives info indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s fitness for office shall inform the appropriate authority.

2. A judge who receives info indicating a substantial likelihood that a lawyer has committed a violation of the RPC should take appropriate action. A judge having knowledge that a lawyer has committed a violation
of the RPC that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

- (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by 3d1 and 3d2 are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

- **3F: remittal of disqualification:** A judge disqualified by 3D may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, w/o participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

- If Judge’s spouse is the Δ, Judge should recuse. 3e1
  - Canon E says this can be waived if parties consent
  - 28 USC 455 (For federal cases) says no waiver if party is spouse of judge

- J may write a book on a case he decided
- J does pro bono environmental work. J does not have to recuse himself from a Sierra Club case
- You can give the judge a gift
  - Limitations?

- TEST: Is motion to disqualify judge sufficient? In Re: S.G., CO 2004
  - Does motion state facts from which it may reasonably be inferred that judge harbors bias or prejudice that will prevent him from dealing fairly w/ the party?
    - Alleging opinions/conclusions unsubstantiated by facts not enough
    - Unfavorable rulings and a ct’s alleged personal opinion are not enough to establish bias. The mere fact that the judge presided over the earlier criminal case is not grounds for judge’s disqualification.

**Hypo issues**
- Joint representation
  - If Atty represents 2 parties who are jointly liable (joint representation), and one party files a claim against the other party, there is a 1.7b3 problem and Atty can’t continue to represent them both
  - If atty represents 2 parties in joint representation, and the interests of the 2 parties come into conflict, and atty loses one party, atty can only continue to represent the remaining party of BOTH parties consent (b/c of confidential information issues)
  - Atty must tell both clients that he is allowed to share whatever one client tells him with the other client. If atty forgets to do this, and then client 1 tells him something he doesn’t want client 2 to know, atty must withdraw in order to avoid breaching duty of confidentiality and duty of loyalty

- Prospective clients
- A potential client calls, ask client to tell you the situation w/o disclosing confidential information. This way, if you can’t represent this client, you might be able to represent the opposing side. This way you avoid prospective client 1.18 issues
  
  - Witness conflict
    
    - If A is defending client B, and A’s client C is called as a witness against B, A cannot ask C questions about criminal past, drug use, anything that would materially alter A’s ability to represent C; A should get another lawyer from the firm to question the witness, or should skip these questions.

- What do you do when opposing counsel files a motion for summary judgment that is complete crap?
  
  - Rule 11
  - Move to strike
  - Contempt
  - Probably do not have to report opposing counsel to the ethical disciplinary authority. Call the lawyer who filed the motion and ask him why he filed it. If he honestly believes that everything his client told him was true, and that is the basis of the motion, then don’t report him.

- NEED the other parts of 1.13 (after (a))

What is diff b/tw duty of confidentiality and atty-client privilege???