

# **MY LAWYER AND ME: LEGAL ETHICS AND BANKS**

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## **A. Overview**

## **B. Bar Association Ethics Rules --** See attachment “Portions of Georgia, Ohio and Virginia Bar Codes of Professional Conduct and Opinions Under Those Rules” on the topics below.

1. Diligence
2. Privilege/Confidentiality
3. Conflicts
4. Successive Government and Private Employment
5. Representing an Organization
6. Acting as an Advisor
7. Truthfulness in statements to others
8. Unauthorized practice of law – Multi-state practice is wrought with peril. Though a lawyer admitted in one jurisdiction may conduct incidental transactions in another jurisdiction, at some point that activity becomes the

practice of law in the other state. This is a matter of state law, which varies from state to state and is not easily ascertained.

### **C. Government Agency Rules**

#### 1. OTS

- a. Part 513 of the OTS Regulations governs practice before the agency and contains procedures for suspending or barring attorneys from practicing before the OTS.
- b. Practice includes:
  - i. the preparation of any statement, opinion or other document or report by any attorney, which is filed with or submitted to the OTS with the attorney's consent or knowledge;
  - ii. a presentation to the OTS regarding an institution's rights, privileges or liabilities under the laws and regulations administered by the OTS;
  - iii. any business correspondence or communication with the OTS; and
  - iv. any other formal business with the OTS in the capacity as an attorney.
- c. The OTS may bring a censure, suspension or debarment action against an attorney for lacking character or professional integrity; engaging in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the OTS; or willfully violated, or aided and abetted the violation, of any law or regulation administered by the OTS.

#### 2. SEC

- a. A former SEC Director of Enforcement stated that the SEC views attorneys as "gatekeepers" or enforcers of the rules of the capital markets, who are important actors in keeping the market fair and honest. The SEC looks to attorneys who play roles in the market to be responsible for insisting that companies comply with the law. They should not (in the former official's words) "twist themselves into pretzels to accommodate the wishes of company management." Because the Sarbanes-Oxley Act's up-the-ladder reporting rules are part of the SEC's enforcement of this role for attorneys, public companies' in-house lawyers and outside attorneys must be aware of

their responsibilities under the new rules and must remain ever vigilant of the actions of company management.

- b. Section 307 of the Sarbanes-Oxley Act and Part 205 of the SEC Regulations. In accordance with the Act, the SEC requires attorney reporting of reasonably likely material violations ‘up-the-ladder’ within the issuer. The SEC goes further requiring counsel to make a “noisy withdrawal,” including notifying the SEC, if the issuer does not take appropriate action to rectify the violation. The attorney is authorized to release confidential information regarding material violations or illegal acts to the SEC without the client’s consent, if the reported actions will cause significant financial injury to the issuer or investors; to prevent the client from violating law, to prevent the client from engaging in an illegal act or to rectify material violations or illegal acts in which the attorney’s services were used. The SEC claims the ability to preempt State bar codes and provided a safe harbor to attorneys who follow this rule in good faith. Part 205 includes enforcement and disciplinary actions for violations.
  - c. Rule 102(e) of the SEC’s Rules of Practice contains procedures for suspending or barring attorneys from practicing before the SEC.
    - i. Practice before the SEC shall include transacting any business with the SEC and preparing any statement, opinion or other paper filed with the SEC in any registration statement, notification, application, report or other document with the consent of the attorney.
    - ii. The SEC may bring a censure, suspension or debarment action against an attorney for lacking character or professional integrity; engaging in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the SEC; or willfully violated, or aided and abetted the violation, of any law or regulation administered by the SEC.
3. Agency rules on former employees
4. Agency expectations of reporting “up the ladder.”

**D. Professionalism – Growing trend among State Bars.**

1. Growing trend among State Bars.
2. Why are these professionalism codes and training considered necessary?
3. See attachment “Portions of Professionalism Creeds and Standards of Selected State Bars.”

**E. What are Ethics?**

1. Avoiding Malpractice?
2. Just the Rules?
3. Does Expediency count?
4. Traditional Ethics – Duty, Responsibility and Values
  - a. Greeks -- Socrates and Plato.  
“The unexamined life is not worth living.” The search for truth and right conduct in life.
  - b. Romans -- Marcus Aurelius (Meditations)  
Cicero – (On Moral Duties) – Natural law; wisdom, courage, justice and moderation
  - c. Christianity -- Scripture (Beatitudes)  
Augustine’s Confessions -- know thyself  
Thomas Aquinas – natural law  
Dante’s Divine Comedy  
Goethe’s Faust
  - d. Buddhism -- Precepts and Eightfold Noble Path of right conduct
  - e. Confucius
  - f. Hinduism – Bhagavad Gita  
Mahatma Gandhi’s search for truth
  - g. Judaism – Commandments and Proverbs
  - h. Islam – Koran
  - i. Founding Fathers

5. What are Yours? - See attachment “Portions of book On-the-Job Spirituality: Finding God in Work by Marianne E. Roche.”

## **F. Ethics are Difficult**

1. Personal Issues
  - a. Higher levels of alcoholism, drug abuse, depression, suicide, obsessive compulsive disorders and anxiety disorders in the legal profession than in the general population.
  - b. Personal habits, demons and beliefs that may distort our perception of reality or of what is ethical. See “Portions of book On-the-Job Spirituality: Finding God in Work by Marianne E. Roche.”
2. Multiple Hats of In-House Bank Counsel
  - a. When in-house counsel serves on the employer’s board of directors, the lawyer must warn the directors that the lawyer’s conversations in board meetings might not be protected by privilege, because they constituted business advice. Special arrangements must be made to retain the privilege when providing legal advice to the other board members, including asking non-essential employees dismissed to leave and noting the change in the record of the meeting.
  - b. Lawyer, compliance officer, advisor and employee.
3. Conflicting Constituencies
  - a. Board of Directors
  - b. President
  - c. Other officers and employees
  - d. Auditors
  - e. Regulators
  - f. Shareholders
4. Finding your own ground.

## **G. Are there any Answers?**

1. Are there core values applicable in all situations?
2. How are these values applied in varied circumstances?
3. Keep a sense of humor
  - a. I was driving down the highway and in the distance I saw a balloon hovering over a field right next to the road. Another car had stopped, and a man was standing by the fence next to the road. As I approached I heard the pilot of the balloon holler down asking "Where Am I" to which the man replied "You are about 50 feet over this field." The pilot replied you must be an engineer, and the man responded "Well yes I am. How did you know? The pilot replied with "Because you have given me a lot of information that is completely useless." The man's response was "Then you must be a Bank Compliance Officer" and the pilot said Yes, How did you know that?" The man responded "Because you are being blown in all directions and are totally lost."
  - b. Lawyer jokes make up a species of professional humor. Most of the jokes are based on the humorous conceit that lawyers, like many other professionals, arrange the system more for their own benefit than for the common good which they are supposed to serve. From Wikipedia entry on "Lawyer Jokes."
  - c. A student asked the wise philosopher, "what is the secret to happiness?" The wise man says "good judgment." The student asks, "how does one gain good judgment?" The wise man responds, "experience." The student asks, "how does one gain experience?" The wise man answers, "bad judgment."

## **H. Hypotheticals for Discussion**

## Portions of

# On-the-Job Spirituality: Finding God in Work

By: Marianne E. Roche

### **Chapter Twelve Fear and Anxiety**

Ann's boss is about to initiate a new sales practice at the store. Ann is sure this program is problematic, but she is afraid to suggest that her boss is wrong. With the practice in place, sales drop for the very reasons Ann had been concerned about, and many personnel are laid off, including Ann.

Jeffrey misses his children's soccer practice every Saturday morning because he goes to his office. He has completed his work for the week and has no urgent matters requiring his attention. He goes to the office on Saturday only because he is afraid his boss or coworkers will think less of him if he is not there.

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Some people dwell in their fears regularly. They seek out reasons to be afraid and choose inaction if there is anything to fear in acting. This can become an obsessive concern about death or contamination from germs. They seek absolute security in their lives and act on their fears to give them a false sense of security. Life is uncertain and attempts to control it by living by our fears only give an illusory sense of security.

Another way of addressing fears is to pretend they do not exist. Just as those who live by their fears need to become aware of the impact of those fears on how they live, those who claim to have no fears need to become aware of suppressed fears that impact their conduct and speech in ways of which they are not conscious.

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Anxiety and worry feed fears. Some people generate significant energy worrying that something bad may happen. This anxiety may have bad physical effects, expressing itself in abdominal ailments or high blood pressure. Anxiety also can lead to depression or other psychological problems. Jesus recognized this tendency toward worry and anxiety in his disciples and suggested they be like birds or lilies.

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Anxiety and worry over the unknown can wear some people down as they agonize over their actions and speech. People can become frozen, unable to take risks or initiate change, because they fear upsetting the applecart. Rather than confronting untenable or unjust situations at work, they stagnate in worry. In this stagnation, they can become ashamed of their inaction, their work or their life situation, which they believe they cannot escape. Bound and oppressed by fear, anxiety and worry, they feel inferior...

To face our fears, anxiety and worry, we need to cultivate courage. Cultivating courage requires recognition of our fears and their impact on us. Having patience with ourselves, we must strive to develop an attitude of facing what life does to us, without concern about potential risks or unknown events. If we face our fear of rejection or failure, we can act from our beliefs and values, rather than acting to please others.

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**ABA Regulatory Compliance Conference**

Hyatt Regency Atlanta

June 6, 2007

10:00-11:15 am

## **Reflection Questions and Implementing Practices**

*Consider a time when your conduct at work was motivated by fear of losing your job, or your conduct at home was motivated by fear of losing your spouse's or child's respect. Write down the details of the event and reflect on how you felt at the time. Were you aware that your fears were motivating you? How did you feel about yourself at the time? Looking back at the event, how do you feel about yourself now? Reflect on a time at work when your actions involved taking a risk and were motivated by your values and convictions.*

*Make a list of things or events that frighten or worry you. How do your mind and body react when you experience this fear or concern? Looking at each fear and worry, imagine how your life would be different if that fear or worry did not restrict your action.*

*Discuss with a close relative or friend one of your persistent fears or worries. Admit how you allow this fear or worry to restrict your actions. Discuss how you might act differently if you could lessen the power of this fear or worry. Think of some immediate actions you could take to reduce the restrictions this fear or worry imposes on you.*

## **Chapter Fourteen Stress and Time**

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One of my nieces has a cute hamster that sleeps all day and arises early in the evening for a night of running on her wheel. Sometimes we can feel like hamsters running on a wheel, particularly when we are under significant stress. Stress from our jobs can impair work performance, age us, create conflict and destroy families. The problem, however, is not the existence of stress, but our reaction to it. Stress is a fundamental element of our lives. I often tease people who complain about stress by reminding them that the first time they have no stress will be when they are dead. Just as with fear and anger, the key to addressing stress in our lives is learning how to accept and react to it.

For many, including me, not having enough time can be a primary source of stress. Though I have improved on this score, in the past I found myself greatly influenced by what I called the "crisis of the time limits." As I descended the stairs in my home to leave for work, I would have feelings of frustration and stress. I realized it was because I had overextended myself and had twenty-eight hours of things to do in twenty-four hours. In fact, if we did allot all the time to prayer, exercise, sleeping, relaxing, food preparation, household organization, quality family time and work recommended in self-improvement books and magazines, we would need thirty-six hours a day to get to it all.

If we go to the local bookstore for help in dealing with the multiple demands on our time, we will find books that I believe only exacerbate the problem. We would find a plethora of books on "managing" time or "attacking" our time requirements. These books contain dozens of new time-consuming requirements to help us "save" time, which just burn up more energy and increase stress.

Despite all the timesaving devices we have in this country, Americans seem to be more pressed for time than other people. Rather than something to be managed or controlled, time is something to live. The events of our lives evolve in the present and attention to the present can serve us best in dealing with time.

Before we can engage time as something to live, we must come to grips with a stark reality. There are only twenty-four hours in a day, and most of those hours are scheduled before the day begins. We all need sleep and cannot continually chip away at our hours of sleep to have more time to complete our list of things to do. There have been a number of reports in the press that adults in this country do not get enough sleep



because they are so busy. Failure to obtain adequate sleep is a major contributor to our stress level. Whether on the to-do list for home, for work or for leisure, we need to reconsider whether these supposedly important items really require our attention. We may need to eliminate some items that are not necessary in order to make our time requirements more reasonable.

After allocating an appropriate amount of time each day for sleep, we need to become realistic about what we believe we need to do. I am one of those people who is great at making lists of things to do and then revising the lists, rather than accomplishing what is written there. I can schedule two days of items to do for one afternoon. Most of us cannot tend to everything because our plates are too full. Sometimes our plate is full because of failing to attend to what needs to be done. Procrastination can be a primary cause of stress. Rather than burning energy trying to get motivated, we need simply to do what needs to be done. If we accept and meet deadlines, tending to what needs to be done and moving on, the stress of time limits is diminished.

We need to pare down our lists and assign priorities to the remaining items. This involves merely asking what needs to be done next and proceeding with that matter without expending energy in concern about what remains on the list. Then we concentrate on the present need and proceed with that. Careful attention to how we use our time will reduce stress in our work.

Of course, stress is not caused solely by time limits. Stress is the result of our refusing to accept the reality of life. We fight change and seek to control others. We set unrealistic expectations and feel cheated when they are not met. We expect to have our desires met and to experience pleasure at all times. Our desire for the world contrived by our mind causes us to reject the world as it is. This propensity to create stress in our lives can have a depleting impact on our bodies. Just two years ago, when I was the legal and financial officer for a self-funded health plan, the plan administrator told me that the three most-used prescription drugs in the plan were for high blood pressure, depression and abdominal problems. I suggested if all these people began a meditation practice, the cost for these types of prescriptions likely would plummet.

A recent poll indicated that 25 percent of workers claimed the pressure and stress at their jobs was so high that they were often on the verge of losing their temper. On the other hand, almost half of the respondents believed they did not experience much stress at their jobs. What seemed to make the difference was whether or not the employees experienced a lack of control, minimal recognition and a stifling of their talents on the job. The level of work was not the problem. The level of stress on the job was lower if the individual was allowed to contribute meaningfully to the enterprise and was recognized for it.

A typical day is filled with transitions. We move from place to place and task to task. Each new situation involves a new environment and new demands. These differing demands create stress as we need to adjust to these changes. This stress is increased if we leap quickly to and from each of these places or tasks, not allowing moments of internal transition. A few years ago, I was in the habit of walking about a half mile between my office and home each evening. That quiet walk served as a perfect transition between job and home. As I crossed the park near my apartment building, the hassles of the office had faded.

Not all stress is bad. Some stress can enhance productivity and focus. Just before making a public presentation, I experience stress that serves to focus and energize my presentation. If you are driving and an accident occurs in front of you, stress will alert you to avoid becoming part of that accident. The problem is that our mind translates situations that our ego does not approve of in the same fashion as a public speech or a car accident. Some stress is lifesaving, some is motivating and some is wasteful. We need to learn to release wasteful stress.

We need to learn the three L's of stress: Listen to it. Lighten it. Live through it. Be aware of your stress and its source. Step back from your reaction and see if the reason for it justifies the reaction. Let go of unnecessary stress to lighten the wear and tear on your body and psyche. Then proceed with the remaining

stress without letting it control you.

### **Reflection Questions and Implementing Practices**

*Sit down on Sunday afternoon and think through your plans and schedule for the week. Lay out your plans for each day, assigning time for each task, for work, for rest and for adequate sleep. Are there enough hours in the day for you to accomplish everything? If not, begin to scale back, starting with the items that can be deleted, but do not reduce sleep or rest time to less than you need.*

*What kind of transition rituals do you have to lessen the stress of a hectic day? Do you set aside some quiet time at the beginning of your day or after you arrive home from work? When you arrive at the office, do you take a few minutes to settle in before attacking the E-mail or in-box? Take a few deep breaths between chores and tasks to acknowledge the transition.*

*Begin to monitor yourself under stress, particularly your physical, mental or emotional reactions. Does your breathing change as you feel more stressed? What is causing the stress? Is it something that really matters? Is your stress the result of things not going your way? If it is caused by some outside matter, ask yourself whether your level of reaction is warranted. Keep a record of what causes your stress and your reactions to that stress. Notice if your stress reactions change with this heightened awareness.*

## **Chapter Sixteen Boredom, Discouragement and Failure**

Our work is not always pleasant, exciting or successful. We often experience our work as dull, debilitating drudgery. The selfishness, stress and confusion we encounter in others, or feel in ourselves, as we conduct our jobs and chores can be discouraging to our ability to work. Sometimes this negative experience is based on reality and calls us to make a choice. Other times, it is illusory, hiding another problem. Finally, it can also be misguided, for it is based on false assumptions.

I am currently a shelver in a large bookstore. Under a newly implemented inventory system, all book shelvers spend a portion of their day doing maintenance, which includes making sure books are in the right department and are properly displayed on the shelf in accordance with specified guidelines. One day, two coworkers responsible for this function complained of how boring this maintenance process is compared to shelving newly delivered books. In reality, the two functions are similar, and the alleged boredom is really dissatisfaction with their job, their employer or the new maintenance system.

People often believe that the more complicated or sophisticated the work, the less bored the worker. I currently experience less boredom at work shelving books than I did some years ago drafting yet another annual securities disclosure report for a financial institution. The constant cooking and cleaning required in our homes can seem monotonous. The inability to obtain a promotion or a large raise can sap us of energy to do our work well, causing even more failure. Goals set in business by the worker or the company cannot always be met. In any economic environment, some business venture will fail. How can we be spiritual about something that is boring, discouraging or a failure?

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Our experience of boredom, discouragement or failure can be the result of our attitude toward our work and an inner call to change. No matter how good a position may look to others, if it is not right for us, we need to make a change. If we do not, we will experience negative feelings about our work and even cause our work to be less successful. If regularly we cannot bring ourselves totally to our work at the appropriate time and do it well with careful attention, maybe it is time to seek a new job. Job-hunting is tiring and opens us up for

rejection. We often stay in employment situations we find distasteful out of fear or avoidance of job-hunting. That stance toward our work quickly saps us of enthusiasm and energy. This translates into feeling bored or discouraged with our work. Without enthusiasm and energy, our performance is sure to suffer, almost ensuring some experience of failure. We need to explore our boredom and discouragement to determine if they are some inner call to seek out a different job situation.

### **Reflection Questions and Implementing Practices**

*What about your job or chores do you find boring? How are these aspects of your work boring? Is there something else that is bothering you? Is it that things are not the way you want them to be? Is it another problem? Monitor your boredom to explore its roots.*

*Reflect on a past failure in your work. How did you feel? Were you honest about your contribution to it or did you seek to blame others? Did anything positive come from it? If not, was it because you refused to be open to the positive lesson in the future?*

## **Chapter Nineteen**

### **Ego, Pride and Mistakes**

When I was sworn in to the New York Bar, along with a number of other law school graduates, the presiding judge read a short statement about entering the legal profession. This may surprise you, but one of her points was that we should recognize that we all make mistakes and must own up to and correct them when discovered. Does that seem a strange thing to say to new lawyers? I think not and only hope those new lawyers heard the message. The legal community prides itself on supposed perfection and fears malpractice suits for mistakes. Untold energy is spent to ensure no mistakes are made, but when one is made, the tendency is to hide it first and correct it second. In law firms, there is a tendency to keep mistakes secret from clients, if they can be fixed without detection. That mentality adds unnecessary stress to legal work. The words “I am sorry, I made a mistake” are rarely heard in law firms. Lawyers with their gift for words can rationalize any action, pinning blame anywhere but on themselves. Such striving and expectation for perfection is unhealthy and demoralizing.

The need to be perfect comes from our ego. We carry in our minds a keen, but illusory, sense of who we are, a “name, rank and serial number” of age, gender, family background, education, career, family status and accomplishments. This package supposedly comprises who each of us is. We claim to know we are more than all that, that we are images or children of God. However, our course of conduct and attention lie more in our ego selves. The fragile ego self requires constant building up; its protective fortress must be forever made stronger and larger.

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As we identify ourselves with and act from this fragile fortress, we put ourselves in an “over against” position with others. We must remain special and on top. We adopt a stance of self-importance. No one may criticize us or question our actions. We work incessantly to maintain this façade and to live from it. Lawyers or doctors who think they are something special because of their professions are sad associates. The sandy foundation of this fortress of importance continually fails them and compels them to promote their supposed importance all the more.

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We open to our true humanity if we adopt a cloak of humility, no longer seeking self-assurance from others. In humility, we embrace ourselves, including our mistakes and limits. We can accept unjust, and even

unfair, criticism, for nothing can impinge on our true dignity... Our true self does not rely on perfection, omnipotence and power.

### **Reflection Questions and Implementing Practices**

*Begin an entry in your journal entitled "Who Am I?" by sketching an answer to that question. Day by day reflect on each day's experience and enter in the journal what it has taught you about who you are. Consider whether your initial description of who you are needs reworking. Record those changes in the journal.*

*As days pass, try to catch the number of times each day you are acting from a damaged or threatened ego. What were you feeling at the time? What triggered your ego defense system? Each evening reconsider these events. How would you have reacted or acted differently if your injured ego had not been in the driver's seat?*

*In conversation, try to be aware of how much your attention is focused on your opinion of the topic at hand. Notice how you are more attentive to formulating your next comment than hearing what is being said. Attempt to enhance your listening skills and give your opinion less. Consider whether the exchange was really diminished, because your opinion was withheld.*

## **Chapter Twenty Control and Change**

Our desire to have control and to fight change is connected to the insecurities and illusions that foster our ego self. One of the great teachings of Buddhism is the impermanence of all things. Every moment is brief and then passes, never to return. The flow of ocean tides and the pattern of our breath teach us life consists of coming and going. What we eat or drink is used and then passes out of us. We enter this world in birth and exit in death. We all nod our heads in agreement with these statements, but then proceed to live our lives seeking to effect control and to stop change.

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All spiritual disciplines... teach the constancy of change and the fallacy of control. Though we can seek to head our lives in a particular direction, our lives' events unfold without our effort or orchestration, despite the differing configuration by our ego mind. Accepting this state of constant change and no control requires adopting the "letting go" stance of nonattachment. It is human nature to create attachments to people, objects and routines. These attachments can cement our attitudes and actions, so that we miss new opportunities and experiences. A fundamental challenge of the spiritual path is to let go of these attachments and, instead, to accept life as it presents itself. I prefer to see this as a process of nonattachment rather than detachment, because the latter concept connotes a separation or aversion. I see nonattachment as an open and free experience of what is, without personal judgment, and a letting go of that experience to be open to the next.

In our work, freedom opens us up to new surprises and graces. Just being about our work as it arises can become the fruit of the work we are doing. Our roles and plans no longer dictate the work, and we can freely encounter our work environment and experiences. This newfound freedom may not be well received by others. Our release of the need to control and our acceptance of change can highlight others' continuing addiction to control and permanence. We may find our way of engaging in work has so changed that our friends and loved ones do not recognize us. As we accept change as constant, we are constantly changed, to the consternation of those who think they have us figured out.

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### **Reflection Questions and Implementing Practices**

*Consider situations in your work, at home or away from home, in which you have minimal control. How do you react to your limited choices in that situation? Are you critical or envious of the person who does have control? Would you be willing to take the responsibility that comes with having that control? When you begin to feel negative about your lack of control in that situation, try to set those feelings aside and accept the situation as it is.*

*Pick one day a week in which you will make a conscious effort to be more open to events as they occur. Whether at home or at your place of employment, pay attention to what comes up and catch yourself before you judge or fight these events. Take some notes on what motivated you to judge or fight these events and how successful you were in not acting from that negative stance. Compare how you feel on the day you choose to turn off your critique meter to how you feel the rest of the days of the week.*

*Choose a recurring task or job you tend to regularly. It can be a simple domestic chore or a repeating action at work, such as filing or answering E-mail. When you engage in this task, try to slow your thinking and focus only on the task at hand. If your mind wanders, bring it back to where you are in the task. After following this practice for some time, reflect on how you feel about the task and what you are experiencing as you conduct it.*

## **Chapter Twenty-one**

### **Morality**

Each of us has a personal moral system influenced by our parents, society and religious affiliation. Our personal moral code underlies our behavior, action and words.... Our outward conduct is a reflection of our inner character.

We manifest our personal morality in the world, particularly in our relationships with others. Our ability to act from a good moral base can be distorted if we are not truly free and aware. For example, if we still operate from the dos, don'ts and shoulds imposed on us in childhood by our parents and other authority figures, we have not developed a mature adult morality. A mature adult morality withstands attack and responds appropriately in new situations.

Therefore, the path to a mature adult morality calls us to become more free and aware, leaving behind childish support systems and ego illusions. Again, careful attention will serve us in our journey to moral living. As our freedom and awareness are enhanced, we can develop a mature moral conscience that can see what ought to be done, not to serve the ego or respond to guilt, but to serve love and respond to true need. To form a mature moral conscience and see what ought to be done, we transcend the morality of our childhood. This personal mature morality comes from an enhanced knowledge and understanding of goodness.

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The underlying values of our personal morality are reflected in our work. Often, we employ one moral standard in our homes and personal life and a different moral standard at our jobs. Would you ever, while visiting a friend, take a bar of soap from the bathroom because you need one at your home? At your child's sporting event, would you pick up another parent's cell phone and make a long distance call without asking permission? I believe just about all of us would answer no to both questions. If the questions are changed to whether or not you would grab a few pens at work for your children to use for homework or make long distance personal phone calls on the company phone, I believe many more of us would answer yes. Taking the bar of soap or using a cell phone without permission we would call stealing. However, the prevalent sense is that we are owed something by our employers, so the same kind of conduct with the company pens and the company phone may be deemed acceptable.

Of course, our morality at work goes to broader issues than taking paper clips home or using the company Xerox machine to copy your tax return. It incorporates how we treat others we interact with in our work, whether we give our employer a fair day's work and whether we treat those we encounter at work fairly.

A moral evaluation of our actions and attitudes at work directs our attention to the deeper meaning of our work... As we explore our personal morality, we need to come to terms with the values and mores of the society and culture we live in.

### **Reflection Questions and Implementing Practices**

...What are the core elements of your moral code? Do you consider that code daily as you make decisions or choices in your work?

How moral is your treatment of your employer? What changes in your behavior seem necessary after this review? How can you put these changes into effect? How moral is your employer's treatment of you? Can you bear immoral treatment by your employer without retaliating with immoral conduct?

## **Chapter Twenty-eight Ethics**

...The combined morality and values of the members of a group, society or culture are reflected in the ethics of that group, society or culture. This system of ethics is derived from religious traditions, parental lessons, cultural or societal mores and lived experience. Ethics are the principles of conduct governing the conduct of the group. They define what is good and bad and what each individual's moral obligation is according to the group's values. As a group becomes larger and more diverse, its ethics are often reduced to the least common denominator of what all can accept. In seeking to embrace all in the group, the ethics system cuts corners so as not to offend anyone. Ethics are based less in religious tradition as the religious traditions within the group become numerous and varied.

...

In some respects, the different generations living in the United States today are living from different ethical principles. From today's senior citizens, to baby boomers, to Generations X and Y, the fast-paced changes in our culture have produced differences in ethics among various age groups. This is evident in the differences in work ethic among these different groups. At the time this country was created, the society adopted the Protestant work ethic, which mandates strong loyalty and hard work. As the waves of immigrants arrived, they, too, adopted this ethic of hard work. Recent studies show the significant differences between the work ethic of today's immigrants and the more affluent American teens and young adults. Many young adults today have a "me first" attitude toward work. At the same time, companies are less loyal to their employees, treating them more like disposable equipment. As the relationship between companies and their employees becomes more divisive and disconnected, the morale and dignity of workers are diminished.

A work ethic establishes guiding principles for conduct in the workplace and attitudes toward jobs and chores. The general work ethic of our culture and the specific work ethic within any individual organization can either uplift or diminish human dignity. They set the tone for loyalty, diligence, dedication, honesty and fairness in the conduct of our work. The group and individual work ethic directly influence the relationship between coworkers. If disregard for company property and inattention to the task at hand is fundamental to the work ethic of employees in a company, the coworkers will have less regard and concern for each other. If a company promotes unfair practices against competitors, that unfair competition will grow rapidly within the company as well.

...

Ethical reflection on our own conduct requires brutal honesty and humility. Coming face to face with our own hypocrisy can be a painful experience. It is only in such a tough review that we can really understand the various ethical tenets that guide our conduct.

...

### **Reflection Questions and Implementing Practices**

*What contributed to the formation of your personal morality? How does your personal morality compare with the ethics of your family, community, church or culture? If confronted with a situation that draws a different response from your personal morality than from one of these group's ethics, which path do you take?*

*What is your personal work ethic? Does it take into account the interests of your employer and coworkers? Consider whether you need to amend that work ethic to implement your reflections on this book. Articulate your work ethic in a few simple statements. Review it each day to see if you have acted in accordance with that ethic in your work that day.*

## PORTIONS OF GEORGIA, OHIO AND VIRGINIA BAR CODES OF PROFESSIONAL CONDUCT AND OPINIONS UNDER THOSE RULES

### A. GEORGIA

#### RULES

**RULE 1.3 DILIGENCE -- A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.**  
Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2: Scope of Representation. A lawyer's work load should be controlled so that each matter can be handled adequately.

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

**RULE 1.6 CONFIDENTIALITY OF INFORMATION -- (a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the Court.**

Comment

[1] The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[5] The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. Rule 1.6: Confidentiality of Information applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope. The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the client's policy goals.

[15] Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b): Organization as Client.

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ABA Regulatory Compliance Conference

Hyatt Regency Atlanta

June 6, 2007

10:00-11:15 am



**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE -- (a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).**

**(b) If client consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents, preferably in writing, to the representation after: (1) consultation with the lawyer, (2) having received in writing reasonable and adequate information about the material risks of the representation, and (3) having been given the opportunity to consult with independent counsel.**

**(c) Client consent is not permissible if the representation: (1) is prohibited by law or these rules; (2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or (3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.**

Comment

*Loyalty to a Client*

[1] Loyalty is an essential element in the lawyer's relationship to a client. If an impermissible conflict of interest exists before representation is undertaken the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16: Declining or Terminating Representation. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9: Conflict of Interest: Former Client. See also Rule 2.2(b): Intermediary.

As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3: Diligence; and *Scope*

[4] Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

*Non-litigation Conflicts*

[11] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and extent of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise.

[14] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

**RULE 1.11 SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT -- (a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government entity consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless: (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is duly given to the client and to the appropriate government entity to enable it to ascertain compliance with the provisions of this rule.**

Comment

[1] This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart

of Rule 1.10(b): Imputed Disqualification, which applies to lawyers moving from one firm to another.

[3] Where the successive clients are a public entity and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government entity should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

**RULE 1.13 ORGANIZATION AS CLIENT -- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.**

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

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

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

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

**(f) "Organization" as used herein includes governmental entities.**

Comment

*The Entity as the Client*

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment also includes the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6: Confidentiality of Information. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6: Confidentiality of Information. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6: Confidentiality of Information.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the

lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

[4] In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere, for example, in the independent directors of a corporation.

#### *Relation to Other Rules*

[5] The authority and responsibility provided in paragraph (b) are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rule 1.6: Confidentiality of Information, 1.8, 1.16, 3.3 or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.2(d): Scope of Representation can be applicable.

#### *Government Entity*

[6] The duty defined in this Rule applies to governmental entities. However, when the client is a governmental entity, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See note on Scope.

#### *Clarifying the Lawyer's Role*

[7] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization (1) of the conflict or potential conflict of interest, (2) that the lawyer cannot represent such constituent, and (3) that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[8] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

#### *Dual Representation*

[9] Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

#### *Derivative Actions*

[10] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[11] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the

lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7: Conflict of Interest governs who should represent the directors and the organization.

**RULE 2.1 ADVISOR -- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. A lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.**

Comment

*Scope of Advice*

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

*Offering Advice*

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4: Communication may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

**RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS -- In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.**

Comment

*Misrepresentation*

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.

*Statements of Fact*

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Comments which fall under the general category of "puffing" do not violate this rule. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

*Fraud by Client*

[3] Paragraph (b) recognizes that substantive law may require a lawyer to disclose certain information to avoid being

deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this paragraph is, however, subject to the obligations created by Rule 1.6: Confidentiality of Information.

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

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

**(b) A Domestic Lawyer shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.**

**(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or (2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.**

Comment

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3; Responsibilities Regarding Nonlawyer Assistants.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d) or (e) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.

## Opinions:

*Formal Advisory Opinions Nos. 86-5, 99-2 and 00-3.* Closing a real estate transaction is considered the practice of law under Georgia law. Certain tasks on a real estate transaction can be delegated to nonlawyers subject to the level of supervision and control required by Advisory Opinion No. 21. The lawyer must participate in the actual closings. The lawyer's calling in is not adequate participation. In-house counsel may not provide legal advice to the bank's customers. This does not prohibit preparing loan documents and attending loan closings. The bank can charge a borrower for document preparation but not legal services.

*Formal Advisory Opinion No. 00-2.* Lawyer is aiding a nonlawyer's unauthorized practice of law, if the lawyer allows his or her nonlawyer staff to prepare and sign correspondence threatening legal action or providing legal advice. *Formal Advisory Opinion 05-02.* An in-house counsel and his or her employer may utilize a "hold harmless" agreement in lieu of obtaining malpractice insurance, if the employer receives advice from other counsel (which can be the individuals serving as in-house counsel). The employer must make an informed business judgment in choosing not to have malpractice insurance.

*Formal Advisory Opinion 05-9.* Sets forth guidelines for use of temporary attorneys by a corporate law department.

## **B. OHIO**

### RULES

#### **RULE 1.3 DILIGENCE**

Comment

[2] A lawyer must control the lawyer's work load so that each matter can be handled competently.

[3] Delay and neglect are inconsistent with a lawyer's duty of diligence, undermine public confidence, and may prejudice a client's cause. Reasonable diligence and promptness are expected of a lawyer in handling all client matters and will be evaluated in light of all relevant circumstances. The lawyer disciplinary process is particularly concerned with lawyers who consistently fail to carry out obligations to clients or consciously disregard a duty owed to a client.

#### **RULE 1.6 CONFIDENTIALITY OF INFORMATION**

**(a) A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives *informed consent*, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (c) of this rule.**

Comment

*Authorized Disclosure*

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

#### **RULE 1.7 CONFLICTS OF INTEREST: CURRENT CLIENTS**

Comment

[13] *In transactional and counseling practice.* The representation of one client can be directly adverse to another in a transactional matter. For example, a buyer and a seller or a borrower and a lender are directly adverse with respect to the negotiation of the terms of the sale or loan. [*Stark County Bar Assn v. Ergazos* (1982), 2 Ohio St. 3d 59; *Columbus Bar v. Ewing* (1992), 63 Ohio St. 3d 377]. If a lawyer is asked to represent the seller of a business in negotiations with a buyer whom the lawyer represents in another, unrelated matter, the lawyer cannot undertake the new representation without the informed, written consent of each client. [analogous to Model Rule Comment 7]

## **RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES**

### **RULE 1.13 ORGANIZATION AS CLIENT**

(a) A lawyer employed or retained by an organization represents the organization acting through its constituents. A lawyer employed or retained by an organization owes allegiance to the organization and not to any constituent or other person connected with the organization. The constituents of an organization include its owners and its duly authorized officers, directors, trustees, and employees.

(b) If a lawyer for an organization *knows* or *reasonably should know* that its constituent's action, intended action, or refusal to act (1) violates a legal obligation to the organization, or (2) is a violation of law that *reasonably* might be imputed to the organization and that is likely to result in *substantial* injury to the organization, then the lawyer shall proceed as is necessary in the best interest of the organization. When it is necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer shall refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law.

(c) The discretion or duty of a lawyer for an organization to reveal information relating to the representation outside the organization is governed by **Rule 1.6**(b) and (c).

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

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

Comment

[3] Division (b) explains when a lawyer may have an obligation to report “up the ladder” within an organization as part of discharging the lawyer's duty to communicate with the organizational client. When constituents of the organization make decisions for it, their decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Division (b) makes clear, however, that when the lawyer knows or reasonably should know that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is a violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(g), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining whether “up-the-ladder” reporting is required under division (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. In some circumstances, referral to a higher authority may be unnecessary; for example, if the circumstances involve a constituent's innocent misunderstanding of the law and subsequent acceptance of the lawyer's advice. In contrast, if a constituent persists in conduct contrary to the lawyer's advice, or if the matter is of sufficient seriousness and importance or urgency to the organization, whether or not the lawyer has not communicated with the constituent, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interests of the organization.

[5] Division (b) also makes clear that, if warranted by the circumstances, a lawyer must refer a matter to the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

*Clarifying the Lawyer's Role*

[10] There are times when the organization's interest may be or become adverse to those of one or more of its

constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to ensure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

## **RULE 2.1 ADVISOR**

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

Comment

### *Scope of Advice*

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

### *Offering Advice*

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

## **RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**

## **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

### *Opinions:*

*CPR Opinion 90-14 (under old Code):* In-house counsel may not enter into an employment agreement that restricts the lawyer's right to represent a competitor post-employment (except as a condition of receiving retirement benefits).



*CPR Opinion 89-37 (under old Code):* An attorney licensed to practice in another state and waiting to be admitted in Ohio is not permitted to give legal advice directly to Ohio clients.

## **C. Virginia**

### **RULES**

#### **RULE 1.3 DILIGENCE**

Comment

[2] Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategy in pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.

#### **RULE 1.6 CONFIDENTIALITY OF INFORMATION**

Did not adopt Georgia comment [15].

#### **RULE 1.7 CONFLICT OF INTEREST:GENERAL RULE**

[26] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is a potential conflict include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

[27] For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

#### **RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES**

#### **RULE 1.13 ORGANIZATION AS CLIENT**

Virginia State Bar Corporate Counsel Limited Admission and Registration -- Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants.

##### **Introduction**

Notwithstanding any rule of this Court to the contrary, after July 1, 2004, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services ("Employer"), for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

##### **Part I -- Virginia Corporate Counsel**

(a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia State Bar for a certificate as a Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.

(c) During the period in which an application for a Corporate Counsel Certificate is pending with the Virginia State

Bar until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice pursuant to Part I of this rule, the applicant may be employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I (b)(3) of this rule. (d) Upon a finding by the Virginia State Bar that the applicant has complied with the requirements of Part I(b) of this rule, the Virginia State Bar shall notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant shall be issued a Corporate Counsel Certificate, which shall permit the applicant to practice law in Virginia solely as provided in Part I(f) of this rule. (e) A lawyer issued a Corporate Counsel Certificate shall immediately become an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(f) of this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar. (f) The practice of a lawyer certified pursuant to Part I of this rule shall be limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(3) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically authorized under Part I (g) below, no lawyer certified pursuant to Part I of this rule shall (i) undertake to represent any person other than his or her Employer before a Virginia court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to any other person through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer. (h) The provision of legal services to his or her Employer by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law in Virginia and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia. (i) A lawyer certified pursuant to Part I of this rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements.

#### **RULE 2.1 ADVISOR**

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

[2a] It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

#### **RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**

#### **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW**

##### *Opinions:*

*Legal Ethics Opinion No. 1615.* In-house general counsel may not enter into a non-competition agreement with the company, except as a condition of receiving retirement benefits. The lawyer cannot restrict his or her practice of law post-employment in an agreement with a current employer. The lawyer must maintain confidences of first employer in any event.

*Legal Ethics Opinion No. 555.* In-house lawyer must maintain as confidential information from conversations with officers, directors and shareholders (except it can be revealed to corporate management).

*Legal Ethics Opinion No. 1436.* In-house counsel for a lender who sends documents to a borrower should advise the borrower that the lawyer is representing the lender.

*Proposed Legal Ethics Opinion 1838.* (Open for comment.) This proposed opinion addresses whether a lawyer employed by Corporation A can provide legal services to Corporation B, when Corporation A and Corporation B are owned by the same parent corporation. The second issue involves whether that lawyer's time/fees can be recouped for legal services rendered to Corporation B. The principal issues involve conflicts of interest, client confidences and secrets, division of fees with non-lawyers and lay entities billing for the provision of legal services. In this opinion, the Committee concluded that while the lawyer may provide legal services to both Corporation A and B, the lawyer must be mindful of his obligation to protect each client's confidences and secrets and properly address any conflicts between Corporation A and Corporation B. Also, any funds collected from Corporation B for the lawyer's services must be for the actual costs Corporation A incurs in employing that in-house counsel.

## **PORTIONS OF PROFESSIONALISM CREEDS AND STANDARDS OF SELECTED STATE BARS**

### **A. Georgia**

#### **A Lawyer's Creed**

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

#### **Aspirational Statements**

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

## **General Aspirational Ideals**

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.

## **B. Virginia**

**PREAMBLE:** The practice of law is and must remain a profession. As members of an honored profession, lawyers are expected to exhibit the highest standards of honesty and integrity. In addition, lawyers must strive to achieve a sense of personal honor which should be manifested, in part, by a vigorous devotion to civility in the courts, to clients and to other lawyers. Courtesy is neither a relic of the past nor a sign of less than fully committed advocacy. Courtesy is simply the mechanism by which lawyers can deal with daily conflict without damaging their relationships with their fellow lawyers and their own well-being. Toward that end, lawyers should aspire to the following Principles of Professionalism:

### **AS TO CLIENTS AND THE PUBLIC**

As a professional, I should always:

1. Remember that my responsibilities as a lawyer include a devotion to the public good, respect for the civil rights and sensibilities of others and a willingness to provide pro bono or reduced fee services where appropriate.
2. Counsel clients about alternative forms of dispute resolution where appropriate and available.
3. Counsel clients about the value of cooperation and compromise in the resolution of disputes.
4. Advise clients against pursuing litigation or other actions that are without merit or intended merely to harass, delay or exhaust the financial resources of the opposing party.
5. Reach clear agreements, preferably in writing, with clients concerning the nature of the representation and the fees to be charged.
6. Keep clients advised as to the progress of their case or other matters being handled and communicate promptly and clearly with clients.
7. Strive to achieve my client's goals expeditiously and at a reasonable fee.
8. Consider the effect of my conduct and deportment on the image of lawyers and the system of justice.
9. Recognize that uncivil conduct does not advance and may compromise the rights of my clients.

## C. Maryland

### Lawyers' Duties

1. We will treat all participants in the legal process, in a civil, professional, and courteous manner and with respect at all times and in all communications, whether oral or written. These principles are intended to apply to all attorneys who practice law in the State of Maryland regardless of the nature of their practice. We will refrain from acting upon or manifesting racial, gender, or other bias or prejudice toward any participant in the legal process. We will treat all participants in the legal process with respect.
2. We will abstain from disparaging personal remarks or acrimony toward any participants in the legal process and treat everyone with fair consideration. We will advise our clients and witnesses to act civilly and respectfully to all participants in the legal process. We will, in all communications, speak and write civilly and respectfully to the Court, staff, and other court or agency personnel with an awareness that they, too, are an integral part of the judicial system.
3. We will not encourage any person under our control to engage in conduct that would be inappropriate under these standards if we were to engage in such conduct.
4. We will not bring the profession into disrepute by making unfounded accusations of impropriety or attacking counsel, and absent good cause, we will not attribute bad motives or improper conduct to other counsel.
5. We will strive for orderly, efficient, ethical and fair disposition of litigation, as well as disputed matters that are not yet the subject of litigation, and for the efficient, ethical, and fair negotiation and consummation of business transactions.
6. We will not engage in conduct that offends the dignity and decorum of judicial and administrative proceedings, bring disorder to the tribunal or undermines the image of the legal profession, nor will we allow clients or witnesses to engage in such conduct. We will educate clients and witnesses about proper courtroom decorum and to the best of our ability, prevent them from creating disorder or disruption in the courtroom.
7. We will not knowingly misrepresent, mischaracterize, or misquote fact or authorities cited.
8. We will be punctual and prepared for all scheduled appearances so that all matters may begin on time and proceed efficiently. Furthermore, we will also educate everyone involved concerning the need to be punctual and prepared, and if delayed, we will notify everyone involved, if at all possible.
9. We will attempt to verify the availability of necessary participants and witnesses so we can promptly reschedule appearances if necessary.
10. We will avoid *ex parte* communications with the court, including the judge's staff, on pending matters in person (whether in social, professional, or other contexts), by telephone, and in letters and other forms of written communication, unless authorized.

## D. Ohio

The Court created the Supreme Court Commission on Professionalism in order to address its concerns that trends were developing among lawyers in Ohio and elsewhere which emphasize commercialism in the practice of law and de-emphasize our historical heritage that the practice is a learned profession to be conducted with dignity, integrity and honor as a high calling dedicated to the service of clients and the public good. These trends have been evidenced by an emphasis on financial rewards, a diminishing of courtesy and civility among lawyers in their dealings with each other, a reduction in respect for the judiciary and our system of justice and a lessening of regard for others and commitment to the public good.

As professionals, we need to strive to meet lofty goals and ideals in order to achieve the highest standards of a learned profession. To this end, the Court issues A Lawyer's Creed and A Lawyer's Aspirational Ideals which have been adopted and recommended for the Court's issuance by the Supreme Court Commission on Professionalism. In so doing, it is not the Court's intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio's lawyers, judges and legal educators. It is the Court's hope that these individuals, their professional associations, law firms, and educational institutions will utilize the Creed and the Aspirational Ideals as guidelines for this purpose.

### A Lawyer's Creed

**To my clients,** I offer loyalty, confidentiality, competence, diligence, and my best judgment. I shall represent you as I should want to be represented and be worthy of your trust. I shall counsel you with respect to alternative methods to resolve disputes. I shall endeavor to achieve your lawful objectives as expeditiously and economically as possible.

**To the opposing parties and their counsel,** I offer fairness, integrity, and civility. I shall not knowingly make misleading

or untrue statements of fact or law. I shall endeavor to consult with and cooperate with you in scheduling meetings, depositions, and hearings. I shall avoid excessive and abusive discovery. I shall attempt to resolve differences and, if we fail, I shall strive to make our dispute a dignified one.

**To the courts and other tribunals, and to those who assist them,** I offer respect, candor, and courtesy. Where consistent with my client's interests, I shall communicate with opposing counsel in an effort to avoid or resolve litigation. I shall attempt to agree with other counsel on a voluntary exchange of information and on a plan for discovery. I shall do honor to the search for justice.

**To my colleagues in the practice of law,** I offer concern for your reputation and well-being. I shall extend to you the same courtesy, respect, candor, and dignity that I expect to be extended to me.

**To the profession,** I offer assistance in keeping it a calling in the spirit of public service, and in promoting its understanding and an appreciation for it by the public. I recognize that my actions and demeanor reflect upon our system of justice and our profession, and I shall conduct myself accordingly.

**To the public and our system of justice,** I offer service. I shall devote some of my time and skills to community, governmental and other activities that promote the common good. I shall strive to improve the law and our legal system and to make the law and our legal system available to all.

### **A Lawyer's Aspirational Ideals**

**As to clients,** I shall aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. I should: (1) Counsel clients about all forms of dispute resolution; (2) Counsel clients about the value of cooperation as a means toward the productive resolution of disputes; (3) Maintain the sympathetic detachment that permits objective and independent advice to clients; (4) Communicate promptly and clearly with clients; and (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. I should: (1) Discuss alternative methods of charging fees with all clients; (2) Offer fee arrangements that reflect the true value of the services rendered; (3) Reach agreements respecting fees with clients as early in the relationship as possible; (4) Determine the amount of fees by consideration of many factors and not just time spent; and (5) Provide written agreements as to all fee arrangements.
- (d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve fidelity to clients.

**As to my colleagues in the practice of law,** I shall aspire:

- (a) To recognize and develop a professional interdependence for the benefit of our clients and the legal system;
- (b) To defend you against unjust criticism; and
- (c) To offer you assistance with your personal and professional needs.

**As to our profession,** I shall aspire:

- (a) To improve the practice of law. I should: (1) Assist in continuing legal education efforts; (2) Assist in organized bar activities; (3) Assist law schools in the education of our future lawyers; and (4) Assist the judiciary in achieving objectives of A Lawyer's Creed and these Aspirational Ideals.
- (b) To promote the understanding of and an appreciation for our profession by the public. I should: (1) Use appropriate opportunities, publicly and privately, to comment upon the roles of lawyers in society and government, as well as in our system of justice; and (2) Conduct myself always with an awareness that my actions and demeanor reflect upon our profession.
- (c) To devote some of my time and skills to community, governmental and other activities that promote the common good.

## **F. Texas**

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

### **I. Our Legal System**

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

### **II. Lawyer To Client**

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.
17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.



## **G. Kentucky**

Attorneys are required to strive to make the system of justice work fairly and efficiently. In carrying out that responsibility, attorneys are expected to comply with the letter and spirit of the applicable Code of Professional Responsibility adopted by the Supreme Court of Kentucky.

The following Code of Professional Courtesy is intended as a guideline for lawyers in their dealings with their clients, opposing parties and their counsel, the courts and the general public. This Code is not intended as a disciplinary code nor is it to be construed as a legal standard of care in providing professional services. Rather, it has an aspirational purpose and is intended to serve as the Kentucky Bar Association's statement of principles and goals for professionalism among lawyers.

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without timely notice to opposing counsel unless ex parte proceedings are allowed.
2. A lawyer should promptly return telephone calls and correspondence from other lawyers.
3. A lawyer should respect opposing counsel's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.
4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.
5. A lawyer should not engage in intentionally discourteous behavior.
6. A lawyer should not intentionally embarrass another attorney and should avoid personal criticism of other counsel.
7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining tactical advantage.
8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communications.
9. A lawyer should not intentionally mislead or deceive an adversary and should honor promises or commitments made.
10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and should endeavor to maintain a friendly and professional relationship with other attorneys in the matter. In other words, "leave the matter in the courtroom.
11. A lawyer should express professional courtesy to the court and has the right to expect professional courtesy from the court.

## **H. Florida**

As The Florida Bar grows, it becomes more important to articulate our ideals of professionalism and to emulate such ideals by deed. To The Florida Bar, Lawyer Professionalism includes:

- (1) a commitment to serve others;
- (2) being dedicated to the proper use of one's knowledge to promote a fair and just result;
- (3) endeavoring always to enhance one's knowledge and skills;
- (4) ensuring that concern for the desired result does not subvert fairness, honesty, respect and courtesy for others with whom one comes into contact, be they fellow professionals, clients, opponents, public officials, including members of the judiciary, or the public;
- (5) contributing one's skill, knowledge and influence as a lawyer to further the profession's commitment to serving others and to promoting the public good, including efforts to provide all persons, regardless of their means or popularity of their causes, with access to the law and the judicial system;
- (6) educating the public about the capabilities and limits of the profession, specifically what it can achieve and the appropriate methods of obtaining those results; and
- (7) accepting responsibility for one's own professional conduct as well as others in the profession, including inculcating a desire to uphold professional standards and fostering peer regulation to ensure each member is competent and public-spirited.

To reinforce and communicate the ideals of lawyer professionalism among our members, and particularly, to take the "abrasions" out of our conduct with others, particularly our colleagues at the Bar, The Florida Bar adopts the following statement of ideals and aspirational goals:

**1. Commitment to Equal Justice Under Law and the Public Good**

**Ideal:** A Florida lawyer should, in both professional and personal conduct, recognize that a license to practice law is a privilege which gives the lawyer a special position of trust, power and influence in our society. This privilege brings corresponding duties, for which the lawyer is accountable to the public, namely, to use that position and power in an honest and fair manner which respects the dignity of others, promotes the public good, and protects our system of equal justice under the law.

**2. Adherence to a Fundamental Sense of Honor, Integrity, and Fair Play**

**Ideal:** A lawyer should at all times be guided by a fundamental sense of honor, integrity, and fair play, and should counsel his or her client to do likewise.

**3. Honesty and Candor**

**Ideal:** A lawyer's word should be his or her bond. The lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit the lawyer's silence or inaction to mislead anyone.

**4. Fair and Efficient Administration of Justice**

**Ideal:** A lawyer should always conduct himself or herself to assure the just, speedy, and inexpensive determination of every action and resolution of every controversy.

**5. Courtesy**

**Ideal:** A lawyer should treat all persons with courtesy and respect and at all times abstain from rude, disruptive and disrespectful behavior. The lawyer should encourage the lawyer's clients and support personnel to do likewise even when confronted with rude, disruptive and disrespectful behavior.

**6. Respect for the Time and Commitments of Others**

**Ideal:** A lawyer should respect the time and commitments of others.

**7. Independence of Judgment**

**Ideal:** A lawyer should exercise independent judgment and should not be governed by a client's ill will or deceit.

**Creed of Professionalism**

I revere the law, the judicial system, and the legal profession and will at all times in my professional and private lives uphold the dignity and esteem of each.

I will further my profession's devotion to public service and to the public good.

I will strictly adhere to the spirit as well as the letter of my profession's code of ethics, to the extent that the law permits and will at all times be guided by a fundamental sense of honor, integrity, and fair play.

I will not knowingly misstate, distort, or improperly exaggerate any fact or opinion and will not improperly permit my silence or inaction to mislead anyone.

I will conduct myself to assure the just, speedy and inexpensive determination of every action and resolution of every controversy.

I will abstain from all rude, disruptive, disrespectful, and abusive behavior and will at all times act with dignity, decency, and courtesy.

I will respect the time and commitments of others.

I will be diligent and punctual in communicating with others and in fulfilling commitments.

I will exercise independent judgment and will not be governed by a client's ill will or deceit.

My word is my bond.

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**Marianne E. Roche** has advised financial institutions and their holding companies on general corporate, regulatory and securities matters for over 25 years at four different law firms. She was formerly the Deputy Director of Enforcement and Special Counsel to the Federal Home Loan Banks at the Federal Home Loan Bank Board (the predecessor agency to the OTS) during the mid to late 1980's. In Enforcement, she negotiated enforcement orders and other supervisory documents against savings associations and their insiders. She also served as the Vice President and Counsel of the Ohio League of Financial Institutions (now the Ohio Bankers League). At the League, she advised Ohio institutions on a wide range of legal and regulatory matters, was responsible for financial matters of the League and was legal advisor to the League's self-funded health plan. Since 1980, she has worked on a number of acquisitions, mergers and securities issuances by financial institutions and their holding companies and prepared related offering documents and SEC filings.

Ms. Roche is a member of the District of Columbia Bar, the New York Bar and the Ohio Bar. She received a J.D., *cum laude*, from Georgetown University Law Center. She studied business management and finance at Adelphi University in New York and received a B.B.A. with honors. She also has a M.A.R. from the Athenaeum of Ohio and is the author of On-the-Job Spirituality: Finding God in Work, which was published in 2002. She was a candidate in the Dominican Order in Columbus, Ohio, from 1996 to 1997. She has been a student and practitioner of Christian contemplative practice and Zen Buddhism for 15 years.