

PROFESSIONAL RESPONSIBILITY

I. ORGANIZING THE ESSAY

- a. The lawyer has a duty of _____ to _____.
- b. The bulk of duties are those owed to your clients. These are:
 - i. Confidentiality
 - ii. Loyalty
 - iii. Financial responsibilities
 - iv. Competence
 - v. And other reasonable things
- c. Duties owed to entities other than your clients:
 - i. Candor/truthfulness to court
 - ii. Fairness to adversaries (parties and their counsel)
 - iii. Dignity/decorum to profession
 - iv. And other reasonable things to third parties and public

II. THE DUTY OF CONFIDENTIALITY

- a. **GR:** you can't reveal anything related to the representation of a client without her consent.

b. Scope

- i. The duty applies regardless whether the client requested it be kept confidential or whether its revelation might harm or embarrass the client.

c. Distinguish attorney-client privilege

- i. This is a narrower evidentiary rule.
- ii. It allows a client and his lawyer to refuse to testify about confidential communications between them or their agents.

Unlike the earlier Model Code, the current Model Rule of confidentiality applies whether or not the information is privileged; it is broader.

- iii. Covers only communications pertaining to legal services
- iv. The privilege shields only info obtained from the client or his agents, unlike confidentiality, where the source does NOT matter

d. Exceptions

i. Consent

If the client consents after consultation, a lawyer may reveal otherwise confidential information.

ii. Crimes

1. Death or substantial bodily harm

You may reveal what's necessary to prevent a given act if you reasonably believe disclosure is necessary to prevent a crime likely to result in reasonably certain death or substantial bodily harm. The ABA does not require a criminal act.

- i. In CA, you must first, if reasonable under the circumstances,
 - 1. Make a good faith effort to persuade the client not to commit the act; and
 - 2. Inform the client of your decision to reveal his confidences.

2. Fraud or financial crimes
 - a. In CA, there is no financial exception to confidentiality
 - b. ABA, yes, if client used or is using your services to commit the crime, and the disclosure would prevent or mitigate substantial financial loss.
3. Defending yourself
 - a. If sued for malpractice, if client brings disciplinary actions against you, or refuses to pay you, forcing you to sue him for fees, you may reveal confidential info in all of these proceedings to establish your claim or defense.
4. If compelled by law, final ct order, or other controlling ethical duties

III. THE DUTY OF LOYALTY TO YOUR CLIENT: CONFLICTS OF INTEREST

a. The black letter law

- i. You have a duty of loyalty to your client. If an interest of you, another client or a third party materially limits or is adverse to loyal representation, you have a conflict of interest.
 1. If conflicts emerge only after representation begins, disclose them and get further consent. Flag and discuss potential conflicts.
- ii. **Rule**
 1. You must not take on the representation unless:
 - a. *You can represent everyone effectively despite a potential or actual conflict;*
 - i. The ABA requires you reasonably believe you can represent everyone effectively. This is an objective standard – some conflicts can never be corrected, while clients may easily waive others such as imputed disqualification.
 - ii. *You inform each affected client. If your duty of confidentiality prevents you from fully disclosing information the client needs to understand the conflict, then consent may not be possible; and*
 - c. *The client consents confirmed in writing.*

iii. **Imputed disqualification**

1. Means that you and all the members of your firm share conflicts. This includes any group of lawyers that work together closely or share responsibilities.
 - a. CA follows the same rules for disqualification, but does not subject a lawyer to discipline for imputed conflicts under its ethical rules.
 - b. Exceptions:
 - i. When a conflict arises from previous government service; and
 - ii. When the conflict of the lawyer arises from a purely personal relationship that would not affect the ability of other firm members to represent the client.
 1. In these cases, an ethical wall may make representation reasonable by blocking off any contact on the matter between the lawyer with the conflict and other lawyers in the firm.

iv. **Remedies**

1. Depends on the posture of the case, but consider:
 - a. Refuse to take the case
 - b. Advise multiple clients to get separate counsel
 - c. And/or withdraw

b. Conflicts between lawyer and client

i. Business transactions or adverse interests

1. You may enter into business with a client or obtain an interest adverse to hers only if:
 - a. The terms are fair to the client
 - b. Fully disclosed in understandable writing
 - c. The client has an opportunity to consult an outside lawyer, and
 - d. Your client provides written consent.
2. Transactions
 - a. Accepting payment in the form of shares of stock equal to the value of the services provided by the law firm → you may do so if it is fair and reasonable under the circumstances known to the lawyer when the interest is acquired.
3. Board service
 - a. There is no automatic bar to serving on the board of directors of a corporate client, although it is strongly discouraged, as it is likely to compromise duties of loyalty and confidentiality.
 - b. *Public service exception*
 - i. You may serve as a director, officer, or member of a legal services organization that is not your employer as long as you do not knowingly participate in a decision or action of the organization adverse to your clients.

ii. Limiting liability

1. You cannot prospectively limit your client's right to report you for ethical or other professional violations.
2. Similarly, you cannot limit your malpractice liability when you enter into a relationship with your client.
 - a. The ABA allows limits if the client is independently represented in making the agreement.
 - b. If a client later does make a malpractice claim against you, you can only settle after written advice to the client to consult an outside lawyer first.

iii. Publication rights contracts

1. Can lawyer accept client's offer to sell to lawyer rights to client's story?
 - a. CA → maybe CA case law discourages Ks before the end of proceeding but tolerates them if the judge is satisfied that the client clearly understands and consents.
 - b. ABA → NOT before representation has ended.

iv. Loans and advances to your client

1. CA prohibits the promise of paying a *prospective* client's debts, but allows loans in ALL matters (including non-litigation matters) for any purpose after the lawyer is hired if there is a written IOU.
2. ABA → NO financial assistance, except for costs and litigation expenses when representing an indigent and the advance of litigation expenses in contingent fee cases.

v. Use of information

1. Use or communication of info relating to the representation of a client to her disadvantage and without consent violates the duties of both loyalty and confidentiality.

vi. Gifts to the lawyer or lawyer's family

1. You must not solicit a substantial gift from a client, or draft a legal instrument for a client who is not your close relative if it provides a substantial gift to you or your relative.
- vii. Close relationships with the lawyer for the other side**
 1. You can't oppose a party represented by a relative without informed client consent.
 2. Close relations include immediate family – parent, child, sibling, and spouse, and other intimates.
 - a. CA explicitly recognizes intimates, e.g., shack mates.
 - b. This conflict is NOT imputed to other firm members.
- viii. Trial counsel as necessary witness**
 1. CA prohibits attorneys from testifying in jury trials unless the client consents in writing.
 2. The ABA is more restrictive: you cannot serve as counsel and witness in the same trial unless your appearance as a witness won't prejudice the client and:
 - a. Your testimony is uncontested or regarding the nature and value of services rendered; or
 - b. If your distinctive value to the case means withdrawal would impose substantial hardship on the client.

c. Conflicts between clients

i. In general

1. You may represent clients with potential conflicts with the proper consent of all, but it is almost never proper if their interests are in actual conflict.

ii. Opposite sides of the same matter

1. Your law firm represents Texaco in labor matters, although you have done no work for it. Lundwall, a former Texaco employee, asks you to help him sue Texaco for cutting off his benefits. Can you do so?
 - a. No, imputed disqualification means you represent Texaco. Lundwall and Texaco are in direct conflict → unreasonable to represent both.

iii. Opposing present client interests

1. Assume your firm's only contact with Texaco is representing it in a securities action arising from a recent corporate merger. May you now take the labor claim of Lundwall v. Texaco?
 - a. No. CA rules prohibit you from taking a case adverse to a client you are currently representing, regardless of the relationship of the cases.
 - b. The ABA doesn't prohibit, but it is rarely reasonable.
 - c. By statute, CA does not extend this prohibition to representing a policyholder and his insurance company as joint clients, where the insurer's interest in each matter is only as an indemnity provider.

iv. Two clients with inconsistent positions

1. You find yourself arguing both for and against the constitutionality of mandatory sentencing laws in two different appeals. Is that OK?
 - a. Yes, with the consent of both clients, but if either would be disadvantaged you must withdraw.

v. Multiple clients in the same matter

1. Examples of representation of multiple clients or matters in which you might act as an intermediary are representing:
 - a. Insured and insurance company
 - b. A corporation and any of its directors, officers, employees, or shareholders

- c. Both spouses in a divorce or will.
2. In criminal matters, dual representation may not only compromise your loyalty, but also impede the 6th Am's guarantee of effective assistance of counsel.

vi. New clients in matters related to former clients'

1. If confidential info from another client might be relevant to work on a new client's matter, you may be violating your continuing duty of confidentiality as well as your duty of loyalty to your former client.
2. You cannot take on a new client with interests materially adverse to a former client without the former's consent.
3. Ask: do the representations overlap in function, scope or information?
 - a. If yes, there is a problem.
4. In defending Britney in the past against copyright infringement charges by Mariah, you were privy to all of her private recording notes. Can you use that knowledge today to represent Christina in a similar action against Britney?
 - a. No. use of nonpublic confidential information against a former client is unreasonable.
5. If you left your firm, can it now represent Christina in her action against Britney?
 - a. Maybe. Imputed disqualification applies to your former firm if:
 - i. The matters are substantially related or the same; and
 - ii. Any remaining lawyer has confidential material information.

vii. Former gov't lawyer now in private practice

1. CA explicitly bars prosecutors from later working on the defense of the same case. Case law allows screening of gov't lawyers.
2. The ABA says if the gov't lawyer worked *personally and substantially* on a matter (i.e., a specific dispute between specific people over specific issues, then it would be a conflict to work on the same matter later in private practice.
 - a. You've left the federal equal employment opportunity commission where you worked on regs prohibiting religious discrimination. At your new firm, can you become involved in litigation disputing the meaning of those regs? Yes, regs are not a matter.
 - b. But if you worked at EEOC to bring suit against Haliburton, you cannot now defend Haliburton without written consent of your gov't employer.
3. Imputed disqualification
 - a. Any other members of your firm? Yes, if the 3 ABA conditions for an exception to imputed disqualification of colleagues of former government lawyers are met:
 - i. You are screened off; and
 - ii. You do not share any part of the fee in the matter (pre-arranged salaries or partnership shares are OK); and
 - iii. Your gov't employer is informed.
4. Judicial officers besides attorneys
 - a. The same rules apply to judges, clerks, arbitrators, mediators.

d. Conflicts due to third party interference

i. GR

1. Your sole responsibility is to your client, not to any 3rd party.

- ii. **Compensation** for your services from a 3rd party is permitted only with informed client consent.

iii. Organizational clients

1. A lawyer must act in the best interest of the entity, even if an officer, employee, or other associated person acts to the contrary.
2. Recent federal laws and regs impose stringent rules on securities lawyers:
 - a. You are in house counsel at Reron. You discover that the COO has materially violated securities laws. You must report the matter to the CEO or chief legal counsel of the company. If they do not respond, you must go to the Board or the highest authority in the company.
 - b. Finally, if you reasonably believe it necessary to prevent fraud or substantial injury to the organization or investors, or if your services were used, you may disclose confidential information to the Securities Exchange Commission without client consent.
3. New ABA rules similarly mandate reporting up, and permit limited reporting out.
4. CA merely permits reporting to a higher internal authority and prohibits outside reporting. However, federal preemptions means a CA lawyer cannot be disciplined for complying with the federal law.

IV. YOUR FINANCIAL DUTIES TO YOUR CLIENT

a. Attorney fees

- i. **In non-contingent fee cases**, CA and the ABA require agreements include how the fee is calculated, what services are covered, and the lawyer and client's duties.
 1. CA requires more than the ABA: agreements must be in writing unless:
 - a. The fee is under \$1,000;
 - b. It is with a corporate client;
 - c. It is for routine services for a regular client; or
 - d. It is an emergency or impractical.
- ii. **In contingent fee cases:**
 1. Written fee agreements must be signed by the client and contain:
 - a. Your percentage, and
 - b. What expenses are to be deducted from and
 - c. Whether your percentage is taken before or after expenses.
 2. CA also requires that agreements state:
 - a. How work not covered by the contingency fee will be paid, and
 - b. That lawyers' fees are negotiable, not some standard percent of recovery.
 3. CA allows charging liens to guarantee collection from an award to be written into contingency agreements, but not in hourly fee contracts.
 4. Types of actions allowing contingent fees
 - a. Under ABA rules, contingent fees may NOT be used in domestic relations or criminal cases.
 - b. CA OKs contingent fee divorces provided the fee arrangement won't encourage the breakup of an otherwise salvable marriage.
 5. Termination before judgment is awarded
 - a. Lawyer has put in a year of work and gets fired by client before case went to trial or settled. If lawyer had a contingent fee agreement with client, can he recovery any fees?
 - i. If and when client wins, then lawyer can recover in proportion to the work he did (quantum meruit).

iii. **When are fees to high?**

1. CA → fees must not be *unconscionably high*.

2. ABA → fees must be *reasonable*, taking into account labor, novelty, difficulty, skill and timing required, result obtained, the experience of and other demands of the attorney, fee arrangement, etc.
3. Bud hires Vinny to represent him in a malpractice action. Vinny drafts a new K that provides that Vinny will receive 1/3 of the recovery as a contingent fee, and that if Bud fires Vinny or refuses a settlement offer that Vinny believes is fair and reasonable, then Bud will immediately pay Vinny \$500 per hour for all work done to date. OK?
 - a. Contingent fee OK.
 - b. Refusal of settlement offer as grounds to withdraw OK.
 - c. \$500/hr payment is iffy → if it's a good faith valuation of Vinny's worth, then it's OK.
 - d. If it's functionally a penalty or forfeiture, then it is not enforceable.
4. CA requires a lawyer to agree to submit to arbitration to settle fee disputes, if the client wishes. The ABA encourages arbitration.

iv. Fee splitting

1. It is generally OK to split fees with other lawyers your law firm.
2. You may split fees with lawyers outside of your firm only if the total fee is ethical and there is written disclosure and consent. The ABA further requires that the division be proportional to the work done by each attorney, unless each is jointly responsible for the action.
 - a. Jacob gets a great personal injury case which he refers to Meyer, who does all the work and wins a million bucks. Can Meyer send Jacob a thank you as thanks for the referral?
 - i. CA → OK if the fees aren't unconscionable and the client consents
 - ii. ABA → no, Jacob did no work so it's not proportional.
3. Fee splitting with non-lawyers is generally not allowed.
 - a. Exceptions are for death benefits paid for a reasonable time to a deceased lawyer's firm owners for his work, and lawyer fees shared in pension and salaries for non-lawyer employees.
4. A lawyer may also share court-awarded legal fees with a nonprofit organization that employed or recommended the lawyer.
5. A lawyer may pay the usual charges of a qualified lawyer referral service.

v. Partnership with non-lawyers in providing legal services

1. This is prohibited for any practicing lawyer.
2. Non-lawyers cannot be partners, shareholders, officers, or control or direct a lawyer's professional judgment.
 - a. You can enter a reciprocal referral arrangement with a non-lawyer professional or another lawyer provided it is not exclusive and you explain the arrangement to the client at the time of the referral.
 - b. If, along with provision of legal services, a lawyer provides law related services to a client herself, she is subject to the ethical rules. If the services are provided by a separate entity controlled by the lawyer, she must take reasonable measures to assure the client knows the protections of a client-lawyer relationship do not apply.

b. Client trust accounts

- i. You have a duty to safeguard your client's property by labeling it and storing it in a safe place such as an office safe or bank safe deposit box.

- ii. Money held for the client must be placed in a client trust account. These include moneys received on his behalf, advances for costs, expenses and fees. No borrowing or commingling of funds with your personal money allowed.
 - 1. Normally, use an individual, interest bearing trust account to hold client funds; the interest belongs to the client.
 - 2. Smaller funds held for a short period of time for several clients at once can be deposited into a pooled client trust account. This must be a checking account. the interest will first pay the bank's service charges and the remainder to the state bar to fund legal services for the poor.
 - 3. If you have a disputed claim for fees or if a third party has a lawful claim over your client's funds or property in your custody, you must withhold the disputed portion in the client trust account until resolution of the claim.
- iii. You have a duty to keep good records for your client, to render accountings, notify him of moneys received on his behalf, and pay promptly money due to him.
 - 1. CA requires you to keep records of client property for 5 years after final distribution and to make records available to the state bar for audits.

V. **COMPETENCE AND OTHER COMMON SENSE DUTIES TO YOUR CLIENT**

a. **Duty of competence**

- i. You have a duty to render competent services to your client. If you don't, you are subject to:
 - 1. Discipline by the Bar
 - 2. Disqualification as counsel in a litigated matter
 - 3. Civil malpractice liability
- ii. Competence means *using the legal skill, knowledge, thoroughness and preparation reasonably necessary for the representation.*
- iii. If you don't know the relevant law, you can't take on a matter unless you can put in the time to learn it without undue expense or delay to your client, or you associate with a lawyer competent in the area.

b. **Duty of diligence**

- i. You have a duty to diligently, promptly and zealously pursue your case to completion.

c. **Duty to communicate**

- i. You have a duty to keep your client informed about the case, including settlement offers and returning phone calls and emails.
- ii. If a settlement offer is made to joint clients, you must convey the offer to all and make sure they agree on the division of the settlement before accepting.

d. **Accepting representation**

- i. The GR is that you are free to accept or reject any case.
- ii. You should accept as part of your duty to the public and profession:
 - 1. The case of the defenseless or oppressed if your only reason to refuse is selfish; and
 - 2. A fair share of work without charge. ABA rules urge 50 hrs of pro bono work a year for truly indigent clients.
 - 3. You must reject a case if you would violate a law or ethical rule to take it. Typical problems are if you are not in the physical or mental shape to take the case, or if the case would require making a frivolous legal argument.

e. **Scope of representation**

- i. The client makes decisions about her substantive rights. The lawyer makes decisions on procedure and legal strategy. If you disagree, you can limit the scope of representation, with client consent.

f. Duties on withdrawal from representation

- i. There are 3 ways to leave a case before the matter is resolved:
 1. The client fires you
 2. You must withdraw from a pending case if continuing would violate a law or ethical rule
 3. You may withdraw from a case if you convince the ct there is good cause and your withdrawal will not cause undue delay or disruption.
 - a. Recognized causes include a client's failure to pay contracted fees or expenses or otherwise fulfilling an obligation to you, his acting illegally, or his insistence on pursuing an object you find repugnant or imprudent.
 - b. The ABA also recognizes your financial burden generally and when the client has used your services to commit a past crime or fraud.
 4. Procedures for withdrawal. In order to quit, you must:
 - a. Provide timely notice to the client, and
 - b. You must also promptly return:
 - i. Any unspent fees and expense advances, and
 - ii. All material papers and property of the client.

**VI. DUTIES OF CANDOR TO THE PUBLIC AND DIGNITY OF THE PROFESSION:
ADVERTISING AND SOLICITATION**

a. The basic idea

- i. A state can regulate attorney advertising and solicitation subject to the lawyer's constitutional right to free speech. This is protected under the limited commercial speech doctrine.
- ii. A state bar rule prohibits lawyers from using direct mail to solicit personal injury or wrongful death clients within 30 days of an accident. The restriction is constitutional if:
 1. The gov't asserts a substantial interest
 2. The regulation directly advances that interest; and
 3. It is narrowly tailored.

b. Advertising

- i. **Advertising must not be false or misleading.**
 1. Don't mislead or omit material information.
 2. Don't raise unjustified expectations or make unverifiable comparisons.
 - a. CA presumes improper any ad that contains guarantees, warranties, or predictions of a result.
- ii. **Claims of legal specialties**
 1. You can explain your fields of practice, such as practice limited to federal cts.
 2. You may not advertise claims of specialization unless you are a certified specialist.
- iii. **Advertising must not harass or solicit someone who has indicated that she wants to be left alone.**
 1. Targeted direct mail is OK, but must meet exact guidelines for labeling as Advertising Material.
- iv. **Every ad must be labeled as advertising and, if applicable, a dramatization or impersonation.**
 1. It must identify at least one lawyer responsible for its contents. You must keep records of the content and placement of any ad for 2 years.

c. Solicitation

i. The rule, with built-in exceptions:

1. Do not seek professional employment for pecuniary gain by initiating a live or telephone contact with a prospective client with whom you have no professional, personal, or family relationship.
 - a. CA reads live or telephone narrowly → does not cover chat rooms.
 - b. ABA → solicitation extends to real time electronic contact.
2. CA does presume that communications made at the scene or en route to a medical facility are improper, as are communications to potential clients that you should know are not in the physical or mental state to exercise reasonable judgment.

ii. Runners and cappers (agents) can't do anything that a lawyer can't do.

VII. DUTY OF CANDOR TO THE COURT AND FAIRNESS TO YOUR ADVERSARY

a. Basic idea

- i. A lawyer is prohibited from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

b. Duty to present facts and evidence truthfully

- i. You must refuse to make a false statement of material fact or offer evidence you know is false to a tribunal or fail to correct a false statement of material fact or law that you previously made or presented to the tribunal.

ii. Client perjury

1. You must not knowingly facilitate client perjury.
2. If the matter is a civil case, you must refuse to call the client as a witness if you know he intends to perjure himself.
3. However, criminal Ds have a 5th Am right to testify on their own behalf and a 6th Am right to the effective assistance of counsel. Counsel also has an ethical obligation to protect her client's confidences.
4. If client tells you that he intends to testify falsely, take reasonable remedial measures:
 - a. Counsel client to testify truthfully or not to take the stand. Then, if that fails:
 - b. You may try to withdraw from the case. Then, if that fails:
 - c. CA case law: you allowed to testify in narrative fashion, but do not further the deception.
 - d. ABA: tell the judge.
5. What if, only after the proceeding ends, the client tells you that he lied?
 - a. Take reasonable remedial measures along the lines above, but your duties end with the proceedings (after the time for appeal has run).

- ii. You must not counsel or assist a witness to testify falsely or become unavailable. Unless local law prohibits it, you may pay basic expenses of a witness and reasonable fees for expert witnesses, so long as the payment is not contingent on the content of the testimony.

c. Duty to produce evidence

i. Basic idea

1. You must not suppress any evidence that you or your client has a legal obligation to reveal and produce, regardless of your duty of loyalty. You must not obstruct access to or tamper with fruits or instrumentalities of a crime.
2. Draw a line between physical evidence and confidential information

- a. If client brings you the gun he used to kill his father with, you must turn over the gun, but you may not disclose what client told you about the gun.

ii. Interference with evidence

- 1. What if your client tells you that he threw the emptied gun into the bushes behind his house? Your investigator finds it but leaves it untouched. Must you tell the authorities about it?
 - a. No; you can look but don't touch.
 - b. If your investigator retrieves the gun and examines it, may she then be compelled to produce it for the authorities?
 - i. Yes. She may also be compelled to testify where she found it because an attorney or his agent may be compelled to testify as to the original location or condition of evidence that he moved or altered.
 - ii. You may not reveal the source of the information about the gun's location because it's confidential.
 - c. A lawyer may retain evidence for a reasonable time to prepare his client's case, e.g., to conduct tests, so long as they will not alter or destroy the evidence.

iii. Prosecutors have a special duty to timely disclose evidence favorable to the defense

iv. Volunteering information

- 1. Ex parte proceedings are unusual communications with the judge without your adversary present.
- 2. Your ethical duties of candor to the court and fairness to your adversary require you to reveal relevant information, overriding the normal presumption that you not reveal facts harmful to your client's case.

d. Duty to state the law truthfully

- i. Knowingly making a false statement of law to the court is subject to discipline. You have an obligation to be candid about the law, and a duty to cite to adverse authority if it's from a controlling jurisdiction and directly on point.
- ii. Presenting frivolous claims or defenses is unethical.

e. Duty to uphold the law

- i. Preventing your client from committing a crime reasonably likely to result in death or serious bodily injury**
 - 1. Under both ABA and CJA rules, such disclosure is permissive (although some jurisdictions mandate disclosure). The ABA does not require a criminal act.
- ii. Preventing or rectifying crimes causing substantial financial loss**
 - 1. CJA forbids you from revealing confidences to prevent or rectify these crimes
 - 2. ABA permits this if your services were employed in the crime.
- iii. Your assistance in a crime**
 - 1. If continued representation would require you to commit or assist in committing a crime, you *must* withdraw.
 - 2. If your client persists in actions that you reasonably believe are criminal or fraudulent, but you are not assisting in a crime, you *may* withdraw.

VIII. ADDITIONAL DUTIES OF FAIRNESS

a. The general rule

- i. The lawyer has a duty to behave honestly in all dealings, whether or not engaged in the practice of law.

- ii. When there are no explicit rules, you must act to promote public confidence in the integrity and efficiency of the legal system and profession.
 - b. **Dealing fairly with others**
 - i. **Communication with adversaries and third parties**
 - 1. You must not lie to people or mislead them as to your interests. You must not violate the legal rights of a person in order to obtain evidence, or use means with no purpose but to delay, burden or embarrass them.
 - ii. **Communication with a party represented by counsel on the subject of your inquiry**
 - 1. Unless authorized by law, you must not communicate with a party you know is represented by counsel on the matter without consent of the counsel.
 - a. This rule does not apply if the party is seeking a second legal opinion.
 - b. The ABA extends this to all persons represented by counsel.
 - 2. In CA, consent is required for interviews of an officer, director or managing agent.
 - a. The prohibition extends to any current employee whose communication might bind or be imputed to the organization or constitute an admission on its part.
 - 3. No consent required before interviewing a former employee, but care should be taken to respect your opponent's attorney-client privileges.
 - c. **Dealing with the press**
 - i. The D's right to a fair trial is balanced against the press and public's right to know.
 - ii. You and your agents must avoid out of court statements that you reasonably should know have a substantial likelihood of materially prejudicing the case.
 - 1. Exceptions are for matters in the public record or routine booking information, warning the public, informing them of an ongoing investigation or asking for help, and statements required to protect your client from substantial undue prejudice from recent publicity not self-initiated.
 - iii. Prosecutors and their associates must not make comments that have a substantial likelihood of heightening public condemnation of the accused.
 - d. **Special duties of prosecutors**
 - i. The basic duty of a prosecutor is to seek justice, not just to win cases.
 - ii. Prosecutors have higher ethical obligations than criminal defense or civil attorneys. Among other duties, such as providing exculpatory evidence, they must have probable cause.
- VI. PRESERVING THE DIGNITY OF THE COURT AND ADDITIONAL DUTIES
- a. **Duty to preserve the impartiality and decorum of the tribunal**
 - i. **Don't try to influence anybody improperly.**
 - 1. Before and during trial you must not talk to any prospective or empanelled juror. But after trial is over, if local law permits, you may interview jurors so long as you do not harass them or influence their future jury service.
 - ii. **No chicanery**
 - 1. E.g., referring to inadmissible material, alluding to matters unsupported by evidence, asserting personal knowledge of facts at issue.
 - iii. **Duty to preserve the decorum of the tribunal**
 - 1. Refrain from abusive or obstreperous conduct, belligerence, or theatrics.
 - b. **Duty to expedite cases**
 - i. In CA, you must not delay cases to harass an adversary, or for your own personal gain or convenience.
 - ii. Under ABA rules, you have an affirmative duty to expedite cases.

- iii. You have a duty to follow valid procedural rules or court orders, unless you are making a good faith challenge to their validity. You must not abuse or obstruct discovery.

c. Additional duties to the profession and public

- i. A lawyer must not engage in unauthorized – or unlicensed – practice of law to safeguard the public from incompetence. Practice in a state while suspended or in which you are not admitted is a violation unless allowed by law, a pro hac vice order by the local court, or under limited exceptions.
 - 1. In 2004, CA adopted rules of court governing out-of-state lawyers in the categories of:
 - a. Registered legal service attorneys,
 - b. Registered in-house counsel for an institution (but no individual representation or court appearances),
 - c. Litigating and
 - d. Non-litigating attorneys practicing temporarily in the state.
 - 2. The rules generally require the lawyer to register with the CA Bar, pay dues, satisfy continuing legal education requirements, and be subject to CA ethics rules.
 - 3. Less restrictive ABA rules governing multi-jurisdictional practice allow temporary practice by an out-of-state lawyer in good standing if
 - a. The lawyer associates with a locally admitted lawyer who actively participates in the matter; or
 - b. The services relate to ADR; or
 - c. The matter arises out of matters reasonably related to the lawyer's practice in a state where she is admitted and are not services where the forum requires a pro hac vice appearance.

ii. Reporting misconduct

- 1. ABA rules require a lawyer to report any other lawyer's violation of the rules in any legal or non-legal context if it raises a substantial question as to that person's honesty, trustworthiness, or fitness as a lawyer or judge.
- 2. CA does not require this, but instead requires self-reporting of the lawyer's being charged with a felony or certain crimes, found civilly liable for fraud or breach of fiduciary duty, disciplined in another jurisdiction, or under certain conditions, sued for malpractice or sanctioned.

X. DUTIES OF SUBORDINATE LAWYERS

a. Subordinates

- i. If you are under the control or supervision of another attorney who ratifies or orders you to take action violating the ethical rules, is that OK?
 - It depends.
 - a. Your ethical responsibility if it is a clear violation: you are subject to discipline.
 - b. Your ethical responsibility if it is a debatable problem: partner is solely responsible.
 - c. Your supervising partner's ethical responsibility: if he ratified the action or knew of the conduct and failed to take action, it is a violation.

b. Managing partners

- i. Must make reasonable efforts to ensure that everyone's conduct in a firm, including non-lawyer assistants, comports with the professional obligations of a lawyer.

c. Inaction

- i. In CA, you can be disciplined for merely knowing about a fellow firm member's disciplinary violation and doing nothing to prevent it.

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