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THE LAW GOVERNING LAWYERS

Model Rules, Standards, Statutes, and
State Lawyer Rules of Professional Conduct

2016–2017 Edition

Susan R. Martyn
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Wolters Kluwer

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Wolters Kluwer Legal & Regulatory US delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

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To the Reader

This volume introduces you to national standards (the American Bar Association's Model Rules of Professional Conduct, the American Law Institute's Restatement of the Law Governing Lawyers, and selected federal statutes and rules) to illustrate the growing body of law that governs lawyer conduct. We focus on these national standards because they provide the template for most state law.

Most of these documents appear in full, but others have been edited for clarity or for length. We offer here a guide to our editorial style.

1. We include the full text of the 2016 **ABA Model Rules of Professional Conduct** at pp. 6-105, along with the ABA Correlation Tables at pp. 106-112.
2. We prepared the **charts** that compare state lawyer code provisions at pp. 113-127. The rules cited in these charts are current through Feb. 1, 2016. If you notice a discrepancy between any of the rules cited in these charts and the rules in a particular jurisdiction, please inform the publisher or send an e-mail to susan.martyn@utoledo.edu.
3. We offer the full text of the black letter sections of the American Law Institute's **Restatement of the Law (Third), The Law Governing Lawyers** as well as a large number of selected comments and illustrations at pp. 128-259. We include comments and illustrations that either expand on coverage in the lawyer codes or address issues not covered by the lawyer codes at all, such as the evidentiary privileges. Comments and illustrations retain their original numbers or letters. We use ellipses to indicate edits within a comment or illustration but do not include them to designate completely omitted comments or illustrations.
4. We reproduce a few relevant **federal statutes, regulations, and rules** at pp. 261-295 and use ellipses to indicate edits within a statute or rule provision.
5. We include the entire 2011 **ABA Model Code of Judicial Conduct** at pp. 296-322. We have deleted only a few footnotes, and the rest retain their original numbers.
6. We provide links on the Wolters Kluwer website, available at http://www.aspenlawschool.com/books/martyn_lgl, to each state's lawyer disciplinary rules. In previous editions of this supplement we provided the full text of these rules on a CD-ROM, but starting with the 2014-2015 edition we elected instead to link directly to the resources. There are several reasons for this change. First, many state courts amend their rules only episodically and often only in minor respects, so it was difficult to ensure that we had the most recent versions of the rules. Going directly to the online versions of the rules will ensure that you are reading the current version. Second, state courts or bar associations often maintain additional resources along with the online versions of the rules. These include ethics opinions, rules governing the disciplinary process, rules on unauthorized practice of law, etc., and may be useful to students considering the law of a particular state. Finally, when we began this project in the early 2000s it was sometimes a real chore to find state rules, so the CD-ROM added real value to this supplement. Now that virtually every state has its rules available in an easily accessible online version, there was less justification for bundling the CD-ROM with the supplement.

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We hope you find these sources of the law governing lawyers the basis for an interesting and enlightening law study.

Susan Martyn, Larry Fox, Brad Wendel
March 2016

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INTRODUCTION: UNDERSTANDING AND FINDING THE LAW GOVERNING LAWYERS

Understanding the Sources and Structure of the Law Governing Lawyers

The title of this volume mirrors the title of the Restatement, and, like the Restatement, refers to two intricate bodies of law: rules of professional conduct that are tied to professional licensure and general law that has been applied to lawyer conduct, such as agency, tort, contract, and trust law. Each body of law is linked to distinct legal consequences (professional discipline for violation of lawyer rules of professional conduct and judicial remedies for other breaches of professional duty such as malpractice, disqualification, or fee forfeiture). These two bodies of law have developed in parallel and have cross-fertilized each other over the past century.

For example, the professional obligations of communication and competence were first articulated in malpractice cases, but are now restated in several rules of professional conduct. Confidentiality, which first appeared in the attorney-client privilege in evidence law, now exists as an independent fiduciary obligation in the rules of professional conduct. Similarly, lawyer loyalty obligations that require lawyers to avoid and resolve conflicts of interest originated in agency law, which provided distinctive remedies, such as constructive trust, breach of fiduciary duty, and disqualification. Today, discipline also can occur for violation of similar rules of professional conduct violations.

Modern courts look to these common law origins of the rules of professional conduct as a source to understand the application of these provisions in lawyer disciplinary cases. They also refer to and rely on rule of professional conduct provisions to understand lawyer obligations that arise in contexts beyond professional discipline, such as malpractice or ineffective assistance of counsel, because lawyer disciplinary rules provide a modern articulation of a common law rule applied to lawyer conduct. To further understand this interrelationship, we untangle and explain these basic sources of the law governing lawyers and then provide you with a step-by-step guide to finding jurisdiction-specific law.

Rules of Professional Conduct

Rules of professional conduct govern the conduct of all lawyers admitted to practice law. Violation of any provision of an applicable set of rules subjects a lawyer to professional discipline, with sanctions ranging from disbarment, suspension from practice, and fines, to public and private reprimands. A lawyer charged with a disciplinary violation has access to a hearing (most often before an administrative body designated by the highest state court), and a right to appeal, which usually results in a written court opinion.

Over the past thirty years, most jurisdictions have patterned their state rules of professional conduct on the American Bar Association's original 1983 Model Rules of Professional Conduct. In the past ten years, nearly all have adopted their own versions of the ABA's 2002 and 2003 extensive amendments, enacted in response to the ABA Ethics 2000 Commission's recommendations. Very few jurisdictions have considered or adopted the ABA's more targeted amendments enacted since 2009, although all are included in this text.

Before the 1983 Model Rules, nearly all jurisdictions adopted a version of the previous ABA Model Code of Professional Responsibility, first recommended in 1969. The Tables at pages 106-112 of this volume correlate related sections of the Model Rules and Model Code. Before 1969, each jurisdiction followed the ABA Canons of Professional Ethics, first promulgated in 1908. For judges, the ABA has recommended a Model Code of Judicial Conduct,

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which most jurisdictions have used to develop their own Judicial Codes. The 2011 version replaces the 1990 Code of Judicial Conduct.

The Restatement

Published in 2000 after thirteen years of development, the Restatement of the Law (Third), The Law Governing Lawyers includes nearly all the law governing lawyer conduct, including rules of professional conduct, common law, and statutes. It is organized by topic and covers most issues addressed by lawyer professional rules, with the exception of advertising and solicitation. It also includes in-depth coverage of some issues not specifically governed by rules of professional conduct, such as civil liability, the attorney-client privilege and work-product doctrine. Extensive comments and illustrations as well as Reporter's Notes, which include citations to relevant primary and secondary authority, follow each Restatement section.

While the Restatement was being developed between 1988-1999, many court opinions, articles, and books cited to section numbers of tentative drafts. The final text renumbered the section numbers consecutively, changing some of the earlier cited section numbers. The chart at page 260 of this volume enables you to move between section numbers in the Restatement drafts and the final Restatement. You can search the full text of the Restatement on Westlaw or Lexis. Be careful to select the final version, not the archive database, which contains the numerous tentative drafts.

Treatises

Treatises can help you understand the history, development, and current status of the law governing lawyers. We list some of these resources below in alphabetical order. Be careful to note the date of any volume you consult, because recent changes in rule of professional conduct provisions or common law may create a different result or issue. Jurisdiction- and practice-specific treatises also may assist you. Increasing numbers of law review articles and ALR annotations also address a wide variety of issues about lawyer conduct. You may find one or several directly on point.

- A. ABA, *Annotated Model Rules of Professional Conduct* (7th ed. 2011).

Organized by Model Rule number, this series of case annotations provides representative examples of court and ethics opinions as well as selected citations to secondary authorities. A new edition is published every few years. Two tables at the end of the volume provide parallel tables between the ABA Model Rules and the ABA Model Code.

- B. ABA/BNA *Lawyer's Manual on Professional Responsibility* (2001).

3 loose-leaf volumes, monthly updates.

This resource is divided into three volumes. The first, called the "Manual," is organized by topics that generally follow the order of the Model Rules. Each topic begins with a short "practice guide," followed by "background" and "application" sections. Bibliographies follow each topic. The Manual includes a topical and case index and is available on Westlaw. The second volume includes the full text of ABA ethics opinions and some state ethics opinions. Other state opinions are described in annotations. The third volume contains "Current Reports" and an index to these reports; both are published every two weeks. The current reports are the most complete updates to case law, rules changes, and ethics opinions.

- C. Lawrence J. Fox & Susan R. Martyn,
Red Flags: A Lawyer's Handbook on Legal Ethics (ALI-ABA 2d ed. 2010).

Shorter than other resources, this book offers easy access to basic information. Topics are presented in the order a practicing lawyer might encounter them, from identifying client-lawyer relationships and fees, to fiduciary obligations, the limits of the law, and remedies. Brief questions and answers introduce each topic, followed by short footnoted essays about relevant law. The last chapter, “When You Need to Seek Additional Advice and Perspective,” warns about the “ultimate red flags” that can ensnare unsuspecting lawyers.

- D. Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* (Aspen 3d ed. 2001). 2 loose-leaf volumes, yearly updates.

This resource is organized topically, following the order of the Model Rules of Professional Conduct. The treatise covers recent developments in the law of lawyering, including citations to the Restatement, ethics opinions, and case law. The authors discuss multiple remedies, including malpractice, disqualification, discipline, and fee forfeiture. Each section includes illustrations that apply the law governing lawyers to concrete situations.

- E. Thomas D. Morgan, *Lawyer Law* (ABA 2005). 825 pages.

Morgan compares the ABA Model Rules with the ALI Restatement (Third) of the Law Governing Lawyers in six subject matter chapters, broken into over 200 topics. Each topic includes the text of relevant sections of the Model Rules and Restatement (including comments and illustrations) as well as citations to representative cases.

- F. Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyer’s Deskbook on Professional Responsibility* (West 2013-2014 ed.).

This treatise, which is updated yearly, follows the organization and logic of the Model Rules. It includes footnotes with citations to cases, Restatement sections, the predecessor Model Code of Professional Responsibility, and ABA Ethics Opinions. Appendices include 12 ABA Model Rules or Standards, such as Trust Account Overdraft Notification, Fee Arbitration, Lawyer Disciplinary Enforcement, and Aspirational Goals for Lawyer Advertising.

- G. Charles W. Wolfram, *Modern Legal Ethics* (West 1987).

A comprehensive hornbook organized by topic. Though dated, it is especially helpful for understanding the historical development of the law governing lawyers, as well as comparisons between the Model Code and Model Rules provisions. Appendices include parallel tables between the ABA Canons, ABA Model Code, and ABA Model Rules.

Finding the Law Governing Lawyers

Once you understand the various sources of the law governing lawyers, you can find and apply relevant law. Researching a legal ethics issue is comparable to any legal research, but requires that you understand the importance of finding both jurisdiction-specific rules of professional conduct and general law applied to lawyers. We list below the specific steps you can follow to find and understand this law, and emphasize some additional specialized resources and helpful research techniques.

Step One: Spotting All of the Issues

When a problem involving the conduct of lawyers arises, you must first identify all of the relevant issues. Your legal ethics or professional responsibility course should help you do this by familiarizing you with sections of the lawyer rules of professional conduct that speak to lawyers’

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obligations, such as competence, confidentiality, and conflicts of interest. Your course also will introduce you to various legal consequences, such as professional discipline, malpractice, and disqualification. Consulting a treatise or the Restatement also can help you spot issues. When you identify an issue, stay open to the possibility that additional professional rules or other legal remedies also may be relevant to your inquiry.

Step Two: Finding Rules of Professional Conduct

Once you spot legal ethics issues, you should recall that both rules of professional conduct and general law might apply. Even if you are not directly concerned with professional discipline, a rule of professional conduct provision may speak to the underlying issue, and courts often cite these rules in decisions involving other judicial remedies, such as disqualification, malpractice, or ineffective assistance of counsel. For this reason, you should always begin your search by finding any applicable rule of professional conduct provisions.

The website that accompanies this volume includes links to the full text of each jurisdiction's rules of professional conduct (http://www.aspenlawschool.com/books/martyn_lgl). Because the judicial branch of government regulates lawyers, these rules are usually found in state court rule files or volumes. On LEXIS or Westlaw, go to your state's court rules file ("XXRule" on LEXIS, "XXRules" on Westlaw, with "XX" being your jurisdiction's two-letter postal code). Most federal courts have adopted some version of the state court rules of the jurisdictions in which they sit. To find these lawyer rules of professional conduct, check each federal district court's local trial rules.

You may be surprised to find that your jurisdiction's rules of professional conduct include distinctive language or provisions not found in the ABA Model Rules. This occurs frequently, so never rely on the Model Rule provisions alone. Further, because nearly every jurisdiction has just completed or is in the process of reviewing its rules, be careful to identify the version of your jurisdiction's rules that applies to the conduct in question. To find the most recent version of a particular jurisdiction's lawyer rules, go to the links on our website.

Step Three: Identifying Judicial Remedies

When you have found relevant rules of professional conduct, you should turn your attention to the other part of the law governing lawyers: general common law and statutes that provide for additional obligations and remedies beyond professional discipline. Judicial remedies available to both clients and non-clients are catalogued in Sections 6, 51, and 56-57 of the Restatement. These consequences beyond professional discipline may crop up in your initial research, but often will require a specific search by topic, such as "disqualification," "fee forfeiture," "constructive trust," "malpractice," "fraud," or "attorney-client privilege."

Reference to cases or treatises may assist you in understanding your jurisdiction's view of these and other remedies. For some topics, a hornbook in a related area of law may come in handy. For example, a text on criminal procedure would help in understanding ineffective assistance of counsel, just as a treatise on evidence can assist you in understanding the finer points of the attorney-client privilege or work product doctrine.

Step Four: Uncovering Case Law

After you have identified the relevant rules of professional conduct and common law rules and remedies, you can begin to search for cases that apply and construe this law. Most instances of professional discipline result in written court opinions. You can easily start an online search by using the number or text of a relevant lawyer rule of professional conduct provision. Once you have found some cases construing that rule or rules, be sure to search for cases construing parallel provisions from earlier or later lawyer provisions. You also can check

Shepard's Professional and Judicial Conduct Citations, which collects citations to the ABA Model Code and Model Rules, Code of Judicial Conduct, and ethics opinions.

You also might begin your search with cases you have discovered in a secondary source. Professional responsibility treatises and the Restatement also can help you find cases, and are especially helpful in finding remedies and obligations in general law applied to lawyers. They also help when no prior authority exists in a given jurisdiction, or in identifying majority and minority rules. Before you decide to cite a treatise, the Restatement, or a case from another jurisdiction, be sure that the authority construes a rule similar to the one in your jurisdiction. If it addresses a judicial remedy, such as breach of fiduciary duty or disqualification, check what your jurisdiction has to say about the substantive and procedural requirements for that remedy.

Step Five: Discovering Additional Guidance in Ethics Opinions

If you find no authority in your jurisdiction, or want to inquire about how the authority you have found may be construed or applied in the situation you face, ethics opinions can help. These opinions respond to lawyers' inquiries about the application of state rules of professional conduct to a proposed course of conduct. The American Bar Association has a rich tradition of addressing the application of its Model Rules to current issues in its ethics opinions. Most state and local bars have ethics committees that answer individual questions as well, often before they ever reach a court. Bar associations and disciplinary counsel in many states also offer ethics hotlines to answer questions or to get lawyers started on finding an answer. Although these opinions are not binding, courts are very reluctant to discipline a lawyer who complies with an ethics committee's advice. If you find an ethics opinion on point, be sure to search your jurisdiction's cases to see whether it has been addressed, approved, or disapproved by a court.

Ethics opinions are most easily accessed online. Most state supreme courts or state bar associations have websites for their members, which often include the full text of recent ethics opinions. Many states also publish these opinions in state or local bar journals. Both LEXIS and Westlaw include ethics opinions, but neither service covers all jurisdictions. ABA ethics opinions can be found in both places, however. Because ethics opinions construe and apply a given jurisdiction's rules, search by using the text or number of a relevant rule. Remember that ethics committees usually do not address the rest of the law governing lawyers, so you will have to research other remedies, such as disqualification or malpractice, and other issues, such as the attorney-client privilege, on your own.

Step Six: Putting Your Research in Perspective

To put your findings in perspective, you may need to compare the result in your jurisdiction with results in other jurisdictions. If your jurisdiction lacks authority, other states may have addressed the issue in their own rule of professional conduct provisions, cases, or ethics opinions. If the result in your jurisdiction strikes you as odd or even wrong, other jurisdictions may agree and offer you the opportunity to clarify or change local law. Many courts find the Restatement especially helpful in addressing a new issue or application of the law.

Overall, courts increasingly view the law governing lawyers the way they view contract and tort law: as a generally agreed-upon set of legal rules, with distinctive nuances in each jurisdiction. Judges also understand the interrelationship between the lawyer rules of professional conduct and the general law applied to lawyers, so they often will refer to one body of law in addressing a remedy available in another. We hope the materials in this volume help you discover both.

2016 AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT

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PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer

should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an

important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the

supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

RULE 1.0: TERMINOLOGY

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.