FROM LOCAL COUNSEL TO LOCAL RULES -- ETHICAL CONSIDERATIONS FOR YOUR FEDERAL PRACTICE

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Scope of This Presentation:

This ethics presentation attempts to address these questions, and of course, others that may arise:

- What are the practical considerations regarding Iowa's ethical requirements when practicing in the federal courts in Iowa?

- How do the Iowa ethical rules and the local federal rules affect out-of-state attorneys not licensed to practice in Iowa?

- How do the Iowa ethical rules affect Iowa attorneys involved in cases with these outside attorneys, such as when the Iowa attorneys are serving as local counsel or even as co-counsel or opposing counsel?

- When does the duty to report a violation arise, and when it does, what is the practical effect on the attorney's representation, as local counsel, and as a co-counsel or opposing counsel? What ethical obligations are implicated? What are the practical implications?

- When does a violation of a civil or criminal procedural rule or evidence rule rise to the level of an ethics violation?

- What do the local federal rules provide regarding ethical obligations of non-Iowa attorneys?

- What should local counsel do to be compliant with Iowa ethical obligations and the federal rules and local rules?

- What do the local federal rules provide regarding ethical obligations of non-Iowa attorneys?

- What do the local federal rules provide regarding disciplinary procedures?

- What do the proposed Iowa Rules of Professional Conduct provide with regard to the ethical considerations mentioned above and how do they affect federal practice in Iowa?

RULES AND CASES IN THIS OUTLINE

In this outline, the following materials are being provided for review and guidance in considering the questions raised.

1. **Fed. R. Civ. P. 11 and Fed. R. Civ. P. 26(g) Sanctions and Local Counsel Obligations -** Cases discussing Rule 11 sanctions, Rule 26(g) discovery sanctions, and local counsel obligations are discussed. Language of Fed. R. Civ. P. 11 on sanctions, and of Local Rule 83.2, is provided. Local Rule 83.2 covers the ethical obligations of counsel, pro hac vice, local counsel, and now subjects all counsel to the Iowa ethics rules. This means outside counsel are subject to the Iowa rules, from restrictions on soliciting, to advertising, to what can be stated on a website, among many other obligations. Also provided are Iowa Rule Admission to Bar 31.14 regarding pro hace vice, and Indiana's rule for admission to the bar. The federal court pro hac vice form is also provided.

2. **Select EC's and DR's from the Iowa Code of Professional Responsibility -** The rules selected are thought to address some of the ethical issues and practical problems that may arise in federal court, especially when dealing as local counsel and/or dealing with counsel from out-of-state.

3. **Iowa cases -** Iowa cases addressing some of the Iowa disciplinary rules provided are discussed.

4. **Proposed Iowa Rules of Professional Conduct** - Select provisions from the Proposed Iowa Rules of Professional Conduct, submitted to the Iowa Supreme Court in the Final Report to the Supreme Court of Iowa by the Iowa Rules of Professional Conduct Drafting Committee, dated May 15, 2002, are being provided for consideration.

RULES 11, 26(g) SANCTIONS AND LOCAL RULE 83.2

Fed. R. Civ. P. 11 Sanctions: Cases
Fed. R. Civ. P. 26(g) Sanctions: Cases
Local Counsel Obligations: Cases
Fed. R. Civ. P. 11
Local Rule 83.2
Iowa Rule Admission to Bar 31.14 (pro hac vice)
Indiana Rule 3 Regarding Admission to Bar
Federal Court Pro Hac Vice Form

I. RULE 11 SANCTIONS

A. *Val-Land Farms, Inc. v. Third Nat'l Bank*, 937 F.2d 1110 (6th Cir. 1991).

- Local counsel in this case signed a complaint containing allegations that a bank became a potato dealer by loaning money to potato farms, a claim that the court described as "frivolous," "ludicrous," and "a loser from the start." *Val-Land Farms, Inc.*, 937 F.2d at 1117.
- After granting the bank's motion for summary judgment, the district court awarded sanctions against both lead counsel and local counsel, and the Sixth Circuit affirmed.
- Local counsel argued that because "they relied on material submitted by the outside counsel who was actually litigating the case, local counsel should not be held liable for Rule 11 sanctions." *Id.*
- The court rejected their argument, holding: "The text of the rule does not provide a safe harbor for lawyers who rely on the representations of outside counsel." *Id.* at 1118.
- The court stated that a contrary holding would be inconsistent with *Pavelic & LeFlore v. Marvel Entertainment Group*, where "the Supreme Court held that Rule 11 sanctions are assessed against the attorney who signs a paper in violation of the rule, not against the attorney's law firm," reasoning that "'the purpose of Rule 11 as a whole is to bring home to the *individual signer* his *personal nondelegable* responsibility.'" *Id.* (quoting *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 126 (1989)) (emphasis added by Sixth Circuit).
- "The lawyers who sign material submitted to federal courts have the responsibility to determine that those materials comply with Rule 11." *Id.*
- The court concluded by stating that if local counsel signed the complaint relying on the representations of lead counsel, "so much the worse for them." *Id.*

B. *Unioil, Inc. v. E.F. Hutton & Co.*, 809 F.2d 548 (9th Cir. 1986).

- In this case, local counsel, Alioto, filed a complaint in a class action without speaking to a key named plaintiff, Zelezny. Lead counsel, Barton, had spoken to Zelezny and had apparently coaxed him into being a named plaintiff. However, Barton and Alioto never communicated regarding Zelezny's version of the facts or his suitability as a class plaintiff. In addition, Alioto had never worked with Barton before and knew virtually nothing about him, his experience, or his inquiry into Zelenzy's suitability as a class plaintiff. Zelezny's deposition testimony ended up being completely contrary to the allegations in the complaint, which resulted in plaintiffs moving to voluntarily dismiss the complaint.

- The district court imposed $294.141.10 of Rule 11 sanctions on Alioto, based on the defendant's cost of defending the action.
- The Ninth Circuit affirmed the sanctions, noting that "an attorney violates rule 11 whenever he signs a pleading, motion, or other paper without having conducted a *reasonable inquiry* into whether his paper is frivolous, legally unreasonable, or without factual foundation." *Unioil, Inc.*, 809 F.2d at 557 (citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830-31 (9th Cir. 1986)).
- "[R]eliance on forwarding co-counsel may in certain circumstances satisfy an attorney's duty of reasonable inquiry." *Id.* at 558 (citing Fed. R. Civ. P. 11 advisory committee note).
- "In relying on another lawyer, however, counsel must 'acquire knowledge of facts sufficient to enable him to certify that the paper is well-grounded in fact.'" *Id.* (quoting William W. Schwarzer, *Sanctions Under the New Federal Rule 11–A Closer Look*, 104 F.R.D. 181, 187 (1985)).
- "An attorney who signs the pleading cannot simply delegate to forwarding counsel his duty of reasonable inquiry." *Id.* (citing Schwarzer, *supra*, at 187).

C. *Long v. Quantex Resources, Inc.*, 108 F.R.D. 416 (S.D.N.Y. 1985).

- Local counsel signed and filed three motions that were prepared by foreign counsel: (1) a motion to dismiss for lack of personal jurisdiction; (2) a motion for change of venue; and (3) a motion for joinder of a party.
- The court held that notwithstanding the fact that the Rules require foreign counsel to engage local counsel, "Federal Rule 11 does not distinguish between foreign and local attorneys, and some attorney has to be accountable to the Court for the contents of papers filed on behalf of a client." *Long*, 108 F.R.D. at 417.
- "[A]t the very least, a local counsel that signs the papers of foreign counsel must read the papers, and from that have a basis for a good faith belief that the papers on their face appear to be warranted by the facts asserted and the legal arguments made, and are not interposed for any improper purpose." *Id.*
- In this case, local counsel was sanctioned $750 (even though he withdrew the motions in the courtroom before oral argument) because the motions he signed and filed "fail[ed] to set forth any form of factual support or contain any affidavit in support of their propositions." *Id.* at 418. (The 12(b)(2) motion merely contained the conclusory statement that the court lacked personal jurisdiction over defendants, ignoring their wide-ranging contacts; the motion for change of venue just contained the unsupported allegation that documentary evidence was outside the forum; and the motion for joinder did not explain why the party to be joined was a necessary party).

- *But see De la Fuente v. DCI Telecommunications, Inc.*, 269 F. Supp. 2d 229, 235 (S.D.N.Y. 2003) ("Not only does this Court not expect that local liaison counsel will independently confirm the assertions made in pleadings or research the arguments made in briefs, but I would be unlikely to award attorneys' fees for such duplication. When out-of-town lawyers file lawsuits here, they are responsible for the merits of their own cases.").

D. *Itel Containers Int'l Corp. v. Puerto Rico Marine Mgmt., Inc.*, 108 F.R.D. 96 (D.N.J. 1985).

- Here, lead counsel's strategy was to conceal from the court and the plaintiff the fact that the court had no diversity jurisdiction (because the defendant corporation was incorporated in the same state as plaintiff) long enough to run-out the statute of limitations on plaintiff's claims. For two years, it did so successfully–through the course of filing a motion to dismiss, asserting a counterclaim, resisting plaintiff's motion for summary judgment (which was granted in part), and conducting extensive discovery. It was only when the court was about to set the date for the final pretrial conference that counsel revealed the lack of subject matter jurisdiction, of which both he and local counsel had been aware from the start.
- The court found lead counsel and local counsel jointly and severally liable for $41,150.50 for plaintiff's attorneys' fees, and a $5,000 sanction, payable to the United States, for the time spent on the case by the court and its staff.
- As to the liability of local counsel, the court stated that although the requirement for *pro hac vice* counsel to associate themselves with local counsel "may be an anachronism . . . , it is still a requirement and, while it remains so, [local] counsel are not without responsibilities in complying with the rules and statutes." *Intel Containers Int'l Corp.*, 108 F.R.D. at 104.

E. *Coburn Optical Indus., Inc. v. Cilco, Inc.*, 610 F. Supp. 656 (M.D.N.C. 1985).

- Lead counsel prepared (and local counsel signed) a motion to dismiss or transfer the case, claiming that the lens at issue in the case was not manufactured or used in the district. After plaintiff deposed four of defendant's corporate officers, it was revealed that the lenses *were* manufactured in the district. Even then, defendants persisted in their argument.
- After determining that lead counsel's factual investigation fell short of a reasonable inquiry, the court held both lead counsel and local counsel liable for Rule 11 sanctions, noting that "[l]ocal counsel seemed blindly to

follow the commands of its out of state associated who in all probability prepared most, if not all, of the motion." *Coburn Optical Indus., Inc.*, 610 F. Supp. at 660.

- "What Rule 11 requires is that the lawyer who elects to sign a paper take responsibility for if that responsibility is shared. . . . The Court expects local counsel who appear with attorneys not locally admitted to ensure that Local Rules and the Federal Rules of Civil Procedure are followed even when the pleading or motion is not prepared by them." *Id.*
- The court further explained: "Rule 11 makes it advisable for attorneys acting as local counsel to consider the extent to which they can perform the role of a passive conduit consistent with the responsibilities imposed by Rule 11. "'Where control of litigation rest with other lawyers, . . . local counsel may be well advised to let one of those lawyers sign the papers to be filed.'" *Id.* at n.7 (quoting Schwarzer, *supra*, at 186).

II. NO RULE 11 SANCTIONS

A. *Lightron Corp. v. J.S.M. Holdings, Inc.*, 567 N.Y.S.2d 976 (Sup. Ct. 1990).

- After sanctions were imposed on both lead and local counsel for engaging in dilatory tactics, local counsel argued "that at no time did he initiate any procedure, draw any affidavit or other document, argue any motion, attend any conference, speak with an of the opposing attorneys or perform any function other than acting as [lead counsel's] "mail drop." *Lightron Corp.*, 567 N.Y.S. at 976.
- The court granted local counsel's motion to remove his name from the sanctions order, accepting his argument that he was merely a "mail drop."
- However, the court noted that local counsel was officially cocounsel, and warned: "[W]hile the court grants [local counsel's] motion, it does so with a word of caution that one who permits the use of his name as nominal cocounsel does so with some peril. An attorney cannot present himself as an attorney-of-record and charge a fee for his services without subjecting himself to the concomitant responsibilities." *Id.* at 977.

B. *Occulto v. Admar of N.J., Inc.*, 125 F.R.D. 611 (D.N.J. 1989).

- This case came before the court on a motion to compel discovery, not on a motion for sanctions. Nevertheless, the court admonished lead counsel for misconduct at a deposition.
- The court noted that local counsel was not present at the deposition, but reminded him of his duties as local counsel "to supervise the conduct of his specially-admitted [lead counsel], as well as to appear in court unless excused." *Occulto*, 125 F.R.D. at 617.

- The court stated that in the future, local counsel would be strictly required to take an active role in the case. *Id.*

C. *Hapaniewski v. City of Chicago Heights*, 684 F. Supp. 1011 (N.D. Ind. 1988).

- Lead counsel were sanctioned for bringing a claim that was clearly in the wrong forum and was clearly barred by res judicata. The court did not sanction local counsel, noting that he had not signed any documents.
- However, the court advised: "[W]hen a local attorney agrees to appear for counsel not admitted in this court, he should seek to assist outside counsel in the rules, procedures and practices observed in this federal court. Further local counsel should be aware of any and all matters filed in the action. [Local counsel] should also be familiar with Fed. R. Civ. Pro. 11 and the ramifications for violations of Rule 11. Any attorney serving as local counsel should not take his position lightly and should appreciate his duty to other counsel and this court before deciding to take on a matter . . . which is frivolous and not warranted by existing law." *Hapaniewski*, 684 F. Supp. at 1016.

D. *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 103 F.R.D. 124 (N.D. Cal. 1984), *rev'd*, 801 F.2d 1531 (9th Cir. 1996).

- The court imposed sanctions on lead counsel for misstating the state of the law in a brief. The court did not sanction local counsel, explaining that while "local counsel has an obligation to satisfy himself before signing a paper that it complies with applicable requirements . . . , in the absence of an indication of active participation in the preparation or decision to file a paper by local counsel . . . it does not seem appropriate to subject them to sanctions other than criticism for their apparent neglect." *Golden Eagle Distrib. Corp.*, 103 F.R.D. at 125 n.1.
- Local counsel was ordered to submit a statement certifying that a copy of the opinion imposing sanctions on lead counsel was given to every lawyer in the firm.

III. RULE 26(g) DISCOVERY SANCTIONS

A. *St. Paul Reinsurance Co. v. Commercial Fin. Corp.*, 198 F.R.D. 508 (N.D. Iowa 2000).

- Here, lead counsel prepared (and local counsel signed) answers to defendants' discovery requests, wherein he asserted several boilerplate and unsupported objections to each of several of the requests. For example, in response to a request for the documents cited or relied upon in

plaintiffs' answers to a set of interrogatories, lead counsel objected on the grounds that the request was: "oppressive, burdensome and harassing"; "vague, ambiguous and unintelligible"; "overbroad and without reasonable limitation in scope or time frame"; "protected by the attorney-client privilege, the attorney work product doctrine and/or the joint interest or joint defense privilege"; "equally available to the propounding parties from their own records"; and deficient in that it "fails to designate the documents to be produced with reasonable particularity."

- *Sua sponte*, Judge Bennett imposed sanctions on lead counsel for his "'Rambo' style obstructionist discovery tactics." He ordered counsel to write an article (to be researched and written himself) on why his objections were improper and submit it to a New York and an Iowa law journal.
- Noting that he did not draft the responses, the court did not sanction local counsel, explaining: "Although local counsel is not being sanctioned, the court notes that, as a signer of the discovery responses, he had an equal obligation to prevent the assertion of such boilerplate, obstructionist, frivolous, and overbroad objections, which are contrary to well-established federal law." *St. Paul Reinsurance Co.*, 198 F.R.D. at 517 n.5.

IV. ETHICAL CONSIDERATIONS

A. *In re Norman R. Blais*, 696 A.2d 1231 (Vt. 1997).

- Norman Blais was local counsel in Vermont, defending a Colorado client in a criminal case, whose lead counsel was Larry Pozner of Denver. Pozner transferred $9,500 of the client's funds to pay for Blais's fees. In working on the case, Blais did not keep track of his hours, and when the client requested an accounting of how the money was spent, Blais did not respond. The client filed a disciplinary compliant with state ethics board.
- Blais received a public reprimand for failure to provide an accounting to the client, as required by DR 9-102(B)(3), and failing to cooperate with the bar investigation into that violation, in violation of DR 102(A)(5) (conduct prejudicial to the administration of justice).

B. *Gould, Inc. v. Mitsui Mining & Smelting Co.*, 738 F. Supp. 1121 (N.D. Ohio 1990).

- Defendants moved to disqualify the Jones firm as counsel for Gould, alleging a conflict of interest. There were two problems: (1) Jones had previously represented Defendants in unrelated matters, and (2) Jones was currently representing IG Technologies, a wholly owned subsidiary of Defendants.

- Initially, Jones represented Gould only as local counsel, and Jones *had* received consent from Defendants to continue representing Gould (despite the conflict) before it became lead counsel. However, Jones did not get Defendants' consent to the conflict *after* it became lead counsel. In addition, Jones *never* got consent from IG Technologies to represent a plaintiff against its parent company.
- As to the first problem, the court held that the lack of consent after Jones became lead counsel was irrelevant; the initial consent covered Jones in its capacity as both local and lead counsel, as there is no distinction between the two.
- The court reasoned: "Although the term 'local counsel' at one time may have meant less responsibility on the part of attorneys so designated, it is clear to the court, and should be clear to every lawyer who litigates in this country, that in the last ten years developments in the law have invalidated this prior meaning. . . . In modern day practice, all counsel signing pleading and appearing in a case are fully accountable to the court and their clients for the presentation of the case. . . . The law makes no distinction, as to the liability of lawyers signing pleading, between those who are self-designated 'lead' or 'local' counsel." *Gould, Inc.*, 738 F. Supp. at 1125.
- However, the court held that Jones's failure to get IG Technologies's consent to the representation of Gould violated DR 5-105(C), and ordered Jones to withdraw from representing either IG Technologies or Gould. The court also reported Jones's conduct to the disciplinary counsel of the state supreme court.

V. LEGAL MALPRACTICE

A. Local Counsel Potentially Liable

1. *Ingemi v. Pelino & Lentz*, 866 F. Supp. 156 (D.N.J. 1994).

- In response to plaintiff's malpractice suit, Pelino & Lentz argued that it was not liable because it only acted as local counsel.
- The court responded that "defendants underestimate the role of local counsel. . . . [Under the District of New Jersey Local Rules], local counsel must do more than merely sign off on pleadings or file a few documents . . . Local counsel must also supervise the conduct of pro hac vice attorneys and must appear before the court in all proceedings. . . . Even if pro hac vice attorneys attempt to delegate solely routine or ministerial tasks to local counsel, local counsel remains counsel of record and wittingly or unwittingly exposes itself to liability for penalties such as sanctions." *Ingemi*, 866 F. Supp. 161-62.

B. Local Counsel Not Liable

1. *Macawber Eng'g, Inc. v. Robson & Miller*, 47 F.3d 253 (8th Cir. 1995).

- Macawber was a defendant in litigation and was represented by Robson & Miller, as lead counsel, and Abdo & Abdo, as local counsel. Abdo's participation in the case was limited to filing a motion for admission *pro hac vice* on behalf of Robson and performing a few small tasks involving pleadings and discovery (a total of less than ten billable hours). Plaintiff served Robson with a set of 130 requests for admissions; Abdo was not served. The requests went unanswered, and plaintiff moved for summary judgment based on the admissions. Abdo first learned of the requests and the motion when the court called him to ask if he was resisting plaintiff's motion. He immediately called Robson, who said he knew all about it and was taking care of it. But Robson did not take care of it, and the court deemed the requests for admission admitted and granted summary judgment to plaintiff, resulting in a judgment against Macawber of over $500,000.
- Macawber sued Robson and Abdo for legal malpractice. The district court granted Abdo's motion for summary judgment, and the Eighth Circuit affirmed, holding that "the attorney-client relationship between Macawber and Abdo was limited in scope and did not encompass a duty to monitor the discovery process and ensure responses to the requests for admissions." *Macawber Eng'g, Inc.*, 47 F.3d at 257.
- "Local counsel does not automatically incur a duty of care with regard to the entire litigation. When the client vests lead counsel with primary responsibility for the litigation, the duty of local counsel is limited." *Id.* (citing *Ortiz v. Barrett*, 278 S.E.2d 833, 838 (Va. 1981))
- The Court deferred to the district court's interpretation of the local rule requiring lead counsel to associate with local counsel. The district court held that the local rule did not require local counsel to oversee lead counsel's participation in the discovery process even though the rule required local counsel to "participate in the preparation and trial of the case or presentation of the matter involved."
- "Were the law otherwise, the costs involved in retaining local counsel would increase substantially. Confronted with a duty to monitor lead counsel's handling of the litigation, local counsel would be bound to review all manner of litigation documents and ensure compliance with all deadlines. Out-of-state litigants would be forced to pay a local attorney to review lead counsel's work. Given the skyrocketing costs of litigation, the duplication of effort

and increased fees that would result from such a rule foster problematic public policy." *Id.* at 257-58 (footnote omitted).

2. *Armor v. Lantz*, 535 S.E.2d 737 (W. Va. 2000)

- The Armors' Ohio lead counsel retained Lantz to act as local counsel in their action in the Southern District of West Virginia. The attorneys were mistaken that a savings statute would apply to the action, and the Southern District of West Virginia dismissed the Armors' suit as barred by the West Virginia statute of limitations. The Armors sued Lantz for malpractice (lead counsel settled); the district court granted summary judgment to Lantz; and the supreme court affirmed.
- The Armors raised two arguments on appeal: (1) that Lantz was vicariously liable for lead counsel's malpractice because they were engaged in a joint venture; and (2) that Lantz was directly liable for malpractice for breaching a duty to them to alert them of the statute of limitations problem in West Virginia and to advise them to file in Ohio.
- The court rejected the vicarious liability argument, holding that Lantz and lead counsel were not engaged in a joint venture because there was no agreement to share in the profits and losses in the joint representation, and because Lantz never agreed to undertake an equally active role in the case as lead counsel. (Query whether our local rules would require a different result on this issue).
- The court also rejected the Armors' second argument, holding that Lantz did not have a duty to advise the Armors to file in Ohio (because he was not expected to know that law of that state), and that Lantz did not have a duty to ensure that the West Virginia statute of limitations had not run *under the circumstances of this case* (Lantz was retained as local counsel only five days before lead counsel thought the statute of limitations was going to run, and lead counsel had already decided to file in West Virginia).
- However, as a general rule, that court stated that "local counsel are expected to perform more than a mere perfunctory role." *Armor*, 535 S.E.2d at 749.
- "[T]he duties of a lawyer acting as local counsel, while they may be limited by contractual agreement between lawyer and client, generally may not fall beneath the responsibilities expressly or impliedly imposed by the relevant rules of practice pertaining to the association of local counsel." *Id.*
- "[L]awyers acting as local counsel incur significant responsibility with respect to cases in which they undertake the supervision of visiting counsel." *Id.*

3. *Ortiz v. Barrett*, 278 S.E.2d 833 (Va. 1981).

- Edward (lead counsel) represented Ortiz, who was a passenger in car #1, against the driver of car #2. The day before the statute of limitations was to run, Edward filed a motion for judgment against the driver of car #1 on behalf of Ortiz and the other passengers of car #1. He also "took the liberty" of signing Ronald's name to the motion as local counsel, although he had never even met him. After the fact, Edward confessed to Ronald and sent him a copy of the motion, stating that he did not expect any further activity in the case and that Ronald would serve as "co-counsel without active participation in the case."
- Upon reviewing the motion, Ronald noticed a misjoinder problem and notified Edward. Edward told Ronald not to worry about it because the case would soon be settled. Nevertheless, Edward researched the issue, filed a motion to amend the defective motion for judgment and sever the actions, and argued it (unsuccessfully) before the trial court.
- Because of the misjoinder, the trial court ruled that only one of the passengers could remain as a plaintiff; Ortiz was not chosen, so he sued Edward and Ronald for malpractice. The trial court found Edward negligent as a matter of law, but granted Ronald summary judgment. The Supreme Court of Virginia affirmed.
- The court held that "the services performed by Ronald are to be judged by the same standard applicable to Edward's services, but the services themselves differed, and Ronald's duty was limited to the work assigned to him by Edward." *Ortiz*, 278 S.E.2d at 838.
- The court held that Ronald was not negligent because he performed the duties assigned to him by Edward (reviewing the motion), and even went above and beyond those duties by arguing the motion to amend.
- The court further found that there was no joint venture between Edward and Ronald because "Ronald's compensation was not contingent upon the successful outcome of the litigation; there was no agreement to share in the profits or losses, and control and management were vested in Edward." *Id.* at 840.
- Thus, Ronald was not liable because his duty to Ortiz was limited by the contract between he and Edward–that he would serve as "cocounsel without active participation in the case."

FEDERAL RULE CIVIL PROCEDURE 11

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) **Signature**. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) **Representations to Court**. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions**. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or

appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations*. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order*. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) **Inapplicability to Discovery**. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

LR 83.2 ATTORNEYS

a. Roll of Attorneys. The bar of each court consists of counsel admitted to practice before the court who have taken the oath or affirmation prescribed by the rules in force when they were admitted.

b. Qualifications for Admission and Practice.

1. Admission to the Bar. An attorney is qualified for admission to the bar of the district if the attorney meets the following requirements:

A. The attorney is currently in good standing as an attorney admitted to practice in the state courts of Iowa; and

B. The attorney has completed a minimum of six hours of legal education in the area of federal practice within the preceding two years.

An attorney who is a government attorney, a Federal Public Defender, or an Assistant Federal Public Defender, and who is permanently stationed in the state of Iowa, may be admitted to the bar of this court if the attorney is currently a member in good standing of the bar of any United States district court or the highest court of any state, territory, or insular possession of the United States.

2. Continuing Legal Education (CLE) Requirement. Once admitted to the bar of the district, an attorney, in order to maintain standing to practice in the district, must complete a minimum of six hours of legal education in the area of federal practice every two years and file a biennial CLE report. An attorney admitted to practice in both districts is required to file a biennial CLE report in only one district. An attorney who fails to comply with the requirements of this subsection may be suspended from practice before the court by the Chief Judge of the district until the requirements are met.

c. Procedure for Admission and Proof of Qualifications.

1. Applications. An applicant for admission must file a verified petition setting forth the items of information specified on the official form provided by the Clerk of Court. The petition must contain recommendations from the following sources: **(A)** one Iowa state district court judge, one judge of the Iowa Court of Appeals, or one Justice of the Supreme Court of Iowa (or if a government attorney, Federal Public Defender, or Assistant Federal Public Defender, and permanently stationed in the state of Iowa but not licensed in Iowa, then a judge of the highest court of any state, territory, or insular possession of the United States in which the applicant is licensed); and **(B)** one member of the bar of the court to which admission is sought. These recommendations must certify the applicant to be a member in good standing of the bar of the Supreme Court of

Iowa and a person of good moral character. Upon the filing of a petition showing compliance with this rule, the payment of the prescribed admission fee, the taking of the oath hereinafter prescribed, and the entry of an order of admission by the court, the Clerk of Court will issue to the petitioner a certification of admission to the bar of the district court.

2. Open Court. With leave of court, attorneys eligible for admission under this rule may be admitted to practice upon motion in open court by any member of the bar of the court to which admission is sought after a satisfactory showing of good moral character of the applicant and completion of the legal education requirements of this rule, taking the oath hereinafter prescribed, and paying to the Clerk of Court the prescribed admission fee.

3. Fees. An admission fee of $50.00 must be paid to the Clerk of Court before admission. In addition, either district may order the payment of a registration fee to be paid with the biennial report of continuing legal education or a fee for admission pro hac vice. An attorney admitted in both districts is required to pay such fees in only one of the districts. Any such fee, and any portion of the pro hac vice fee retained by the district court, will be collected by the Clerk of Court, placed to the credit of a district fund, and administered in such a manner as is consistent with the law and as the court may direct.

4. Oath of Admission. I, _____, do solemnly swear or affirm that, as an attorney and as a counsel of this court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

d. Appearance and Withdrawal.

1. Who May Appear Generally. Except where pro hac vice appearance is permitted by the court, where a Federal Public Defender or an Assistant Federal Public Defender from another district appears for a defendant or witness in a criminal case, or where a government attorney appears for the United States, only a member of the bar of the district may appear as an attorney in the courts of the district.

2. Pro Hac Vice Admission. An attorney who is not a member of the bar of the district may be admitted to practice in a particular case pro hac vice by filing a motion asking to be admitted pro hac vice. By asking to be admitted pro hac vice, the attorney agrees that in connection with the attorney's pro hac vice representation, the attorney will submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers, or any successor code adopted by the Iowa Supreme Court.

To be admitted pro hac vice, the attorney must file a written motion to appear pro hac vice on a form available from the Clerk of Court. A copy of this form is attached to these rules as appendix C. The motion must contain the

following:

A. An indication that the attorney is a member in good standing of the bar of any United States district court or the highest court of any state, territory, or insular possession of the United States;

B. A statement by the attorney seeking pro hac vice admission agreeing, in connection with the attorney's pro hac vice representation, to submit to and comply with all provisions and requirements of the rules of conduct applicable to attorneys admitted to practice before the state courts of Iowa; and

C. A statement explaining how the attorney intends to comply with the associate counsel requirements contained in subsection (d)(3) of this rule.

An attorney admitted pro hac vice in a civil case must, within 14 days after the order granting the motion to appear pro hac vice is entered, deliver to the Clerk of Court a pro hac vice admission fee of $75.00.

3. Associate Counsel Requirement. Except parties proceeding pro se or attorneys appearing in criminal cases and complying with the requirements of section (i) of this rule, any attorney who is not qualified to practice under section (b) of this rule must, in each proceeding in which the attorney appears, associate with counsel who is so qualified. The qualified associate counsel must enter a written appearance with his or her name, law firm, office address, telephone number, facsimile number, and e-mail address (if available), which will be entered of record. Thereafter, all materials required to be served upon the nonqualified attorney also must be served upon the qualified associate counsel.

An attorney not qualified to practice under section (b) of this rule must not tender any document to the Clerk of Court for filing unless, at the time of the tender, qualified associate counsel has entered a written appearance on behalf of the party represented by the nonqualified attorney and has signed the document.

4. Form of Appearance and Withdrawal. Any attorney representing a party in any action or proceeding who did not sign the first pleading filed on behalf of the party must file with the Clerk of Court a separate "notice of appearance." The notice must clearly reflect the attorney's name, law firm, office address, telephone number, facsimile number, e-mail address (if available), and the name of the party for whom appearance is made. If more than one attorney has appeared on behalf of a party, the notice must identify the lead counsel. Attorneys who have appeared are responsible for informing the court of any changes in this information with respect to all cases in which they have appeared.

An attorney who has appeared of record in a case and desires to withdraw from representation of a party is not relieved of his or her duties to the court, to

the client, or to opposing counsel until one of the following is satisfied: **(A)** another attorney has appeared of record for the client, and the withdrawing attorney has filed a notice of withdrawal with the Clerk of Court and has served the notice on opposing counsel and the client; or **(B)** the withdrawing attorney has filed a motion to withdraw with the Clerk of Court, has served the motion on opposing counsel and the client, and has received leave of court to withdraw for good cause shown.

A motion to withdraw must indicate the trial date and must contain a list of all pending motions and the dates on which they were filed.

e. CLE Coordinator.

1. Appointment. A CLE Coordinator will be appointed jointly by the Northern and Southern Districts of Iowa to oversee the administration of the continuing legal education requirements of this rule under the direction of the court.

2. Term. The CLE Coordinator will be appointed for a term of six years.

3. Duties. The CLE Coordinator will have the responsibility for monitoring and administering the CLE requirements of this rule, including the following:

A. The determination of the particular courses, legal programs, or other professional activities for which CLE credit should be given;

B. The number of hours of credit to be received;

C. The carryover provisions;

D. The method by which the members of the bar report their compliance; and

E. Any other matter relating to the CLE requirements of this rule.

f. Courtroom Decorum. Counsel in the courtroom must conduct themselves with dignity and propriety. Unless excused by the court, counsel must stand when addressing the court or the jury. Examination of witnesses must be conducted from counsel table or a lectern, except when it is necessary to approach a witness, court clerk, or exhibit table for the purpose of presenting or examining exhibits. Counsel must not approach a witness or the bench unless the court requests or counsel obtains permission from the court.

g. Rules of Conduct and Disciplinary Procedures.

1. Applicability of Iowa Rules of Conduct. The rules of conduct applicable to attorneys admitted to practice before the state courts of Iowa govern all members of the bar of this court and, to the extent provided in subsection (d)(2) of this rule, those admitted pro hac vice. A violation of the standards established in those rules of conduct is "misconduct" for purposes of this section.

2. Attorney Discipline. Any member of the bar of this court and any attorney admitted pro hac vice may, for good cause shown after an opportunity to be heard in accordance with the disciplinary procedures prescribed in this subsection, be disbarred in this court, suspended from practice before this court for a definite or indefinite time, reprimanded, or subjected to such other discipline as the court may deem proper. These procedures apply only to proceedings that have as their primary purpose the discipline of an attorney for misconduct, and do not limit the court's authority to order sanctions or other remedies as permitted by law.

3. Disciplinary Proceedings. When a member of the bar of this court or an attorney admitted pro hac vice allegedly engages in misconduct and the alleged misconduct comes to the attention of a federal judge, the federal judge may initiate informal or formal disciplinary proceedings against the attorney (the "respondent attorney") under this subsection.

A. Informal Disciplinary Proceedings. A federal judge may initiate and conduct informal disciplinary proceedings in any appropriate manner, including by the entry of orders (including show cause orders), the conducting of hearings, and the imposition of sanctions. An attorney will not be suspended or disbarred from practice before this court as a result of informal disciplinary proceedings.

B. Formal Disciplinary Proceedings. A federal judge may initiate formal disciplinary proceedings by asking the Chief Judge of the district where allegations of misconduct arise to order the appointment of a "special counsel" to investigate and report to the Chief Judge on the allegations. The Chief Judge may appoint a special counsel, or may, in his or her discretion, defer formal disciplinary proceedings pending the results of disciplinary proceedings in a state or another federal jurisdiction. In an order appointing a special counsel under this subsection, the Chief Judge may specify any special authority the special counsel is authorized to exercise in the conduct of the investigation, such as, for example, the power to issue subpoenas for depositions and documents and the power to require a respondent attorney to respond to written interrogatories.

(1) Investigation and Report. The special counsel is to

investigate the allegations and make a written report to the Chief Judge which includes the following: **(a)** a history and factual background of the allegations; **(b)** a recommendation as to whether there is or is not probable cause to support the allegations; and **(c)** the reasons for the recommendation. The special counsel also may make recommendations concerning the disposition of the allegations.

(2) Determination by Chief Judge. After reviewing the report of the special counsel, the Chief Judge will determine whether formal disciplinary proceedings should or should not be continued against the respondent attorney. If the Chief Judge determines formal disciplinary proceedings should not be continued, and the respondent attorney has been given notice of the referral of the allegations of misconduct to a special counsel, then the respondent attorney will be notified by the Clerk of Court that formal proceedings will not be continued. If the Chief Judge determines formal disciplinary proceedings should be continued, the Chief Judge will issue a show cause order notifying the respondent attorney of the misconduct alleged and the probable cause finding of the special counsel and directing the respondent attorney to show cause within 30 days why the respondent attorney should not be disciplined.

(3) Service. The Clerk of Court will have the show cause order served on the respondent attorney by personal service or by registered or certified mail sent to the respondent attorney's last known address according to the Clerk of Court's records.

(4) Default. If the respondent attorney fails to respond within the time required, the Chief Judge may order any proper discipline.

(5) Proceedings after Answer. If the respondent attorney files an answer to the show cause order, and **(a)** raises an issue of fact, or **(b)** includes in the answer a request to be heard, the Chief Judge will set the matter for prompt hearing before a panel of three federal judges appointed by the Chief Judge. The panel will not include any judge before whom the alleged misconduct occurred.

The panel will prescribe such procedures as are necessary to hear and decide the issues raised in the show cause order or answer. The panel will issue a final order. If the final order contains a finding of misconduct, the order will provide for any discipline to be imposed on the respondent attorney.

(6) Delegation by Chief Judge. The Chief Judge may delegate any function under this subsection to another district court judge.

4. Sealing of Documents. A final order entered in a formal disciplinary proceeding that contains a finding of misconduct will be filed in the public record unless the members of the panel unanimously order that it be filed under seal. Any other document filed in connection with a formal disciplinary proceeding is to be filed under seal, and will remain sealed until such time as an order unsealing the document is entered by one of the judges on the panel.

5. Felony Conviction; Suspension or Disbarment in Another Court. If a member of the bar of this court or an attorney admitted to practice pro hac vice is convicted of a felony or is suspended or disbarred from practicing in any federal or state court, the attorney must notify the Clerk of Court immediately of the conviction, suspension, or disbarment. Thereafter, the attorney will be suspended or disbarred from practice before this court unless the attorney, within 10 days after the Clerk of Court has mailed notice to the attorney's last known mailing address, shows good cause why such action should not be taken.

Any person who, before admission to the bar of this court or during disbarment or suspension from practice in any federal or state court, and without specific leave of this court, exercises any of the privileges of a member of the bar of this court in this state or in any action or proceeding pending in the Northern or Southern Districts of Iowa, or pretends to be entitled to do so, is guilty of contempt of court and is thereby subject to appropriate punishment.

The procedures provided in subsection (g)(3) of this rule do not apply to matters arising under this subsection.

h. Dereliction of Counsel. When a case has been dismissed because of inexcusable neglect or other dereliction of counsel, the court may impose such sanctions upon counsel as the court deems appropriate, including those provided in section (g) of this rule.

i. Requirements for Appearance in Criminal Cases. An attorney who is not a member of the bar of the district must, before appearing in a criminal case, file a motion to appear pro hac vice on a form available from the Clerk of Court. A copy of this form is attached to these rules as appendix C. This rule in no manner limits the right of a defendant in a pending criminal case to employ and be represented by counsel of the defendant's own selection, provided such counsel is a member in good standing of the bar of a state of the United States or of a United States court, is not suspended from practice in any federal or state court, and has not been convicted of a felony or disbarred, as provided in section (g) of this rule. An attorney appearing pro hac vice in a criminal

case is not required to comply with the associate counsel requirements contained in subsection (d)(3) of this rule, and is not required to pay the pro hac vice admission fee required by subsection (d)(2) of this rule.

j. Law Student Practice. A law student enrolled in a reputable law school as defined in Iowa Supreme Court Rule 106 may appear as counsel before the court under the following conditions:

1. Certification. The dean of the law school must certify to this court that the student has completed at least three semesters of the work required by the school to qualify for a J.D. or an equivalent degree;

2. Supervision. The student's appearance must be under the direct supervision of an attorney admitted to practice before this court who is personally present and has appeared of record in the case; and

3. Compensation. The student must not receive compensation for a court appearance, but this prohibition does not prevent a student from receiving general compensation from an employer-attorney or from a source of funds unrelated to the case or the parties. Nothing in this rule prevents the court from awarding reasonable attorney fees under an appropriate statute for a student's work as long as the student does not receive any of the fee.

Iowa Rule Admission to Bar 31.14: Admission pro hac vice before Iowa courts and administrative agencies.

31.14(1) Any attorney admitted to practice in any state and not admitted in Iowa may appear in an action in an Iowa court and may, further, in the discretion of the court in which the action is pending, be permitted to conduct such cause or other matter pending, by satisfying the following conditions: The attorney not admitted in Iowa must promptly file with the clerk of such court the written appearance of a resident attorney admitted to practice in this state upon whom service may be had in all matters connected with said cause or matter with the same effect as if personally made upon the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. If such appearance and agreement are not filed and maintained, the court before which the matter is pending shall notify the attorney not admitted to practice in Iowa and the parties the attorney represents to comply with Iowa Code section 602.10111 and this rule within 20 days of the date of the notice. In the event of failure to comply within such period, the court, on its motion or on motion of the adverse party, may dismiss the action, or strike the pleadings of the noncomplying party from the files, and enter thereafter such judgment as is appropriate.

31.14(2) Any attorney admitted to practice in any state and not admitted in Iowa may represent others in a contested case before an administrative agency of this state, at the discretion of such agency, provided that such attorney promptly files with the agency the written appearance of a resident attorney admitted to practice in Iowa upon whom service may be had in all matters connected with said case with the same effect as if personally made on the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. The terms "agency" and "contested case" as used in this rule are defined in Iowa Code section 17A.2.

Burns Ind. A.D. Rule 3 (2003): RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS

Rule 3 ADMISSION OF ATTORNEYS

Section 1. Admission of attorneys.

The Supreme Court shall have exclusive jurisdiction to admit attorneys to practice in Indiana. Admission by the Court shall entitle attorneys to practice in any of the courts of this state.

Effective April 14, 1965; amended November 30, 1989, effective January 1, 1990; amended December 4, 1998, effective January 1, 1999.

Section 2. Limited Admission on Petition.

(a) Requirements for Limited Admission on Petition.

A member of the bar of another state or territory of the United States, or the District of Columbia, may appear in the Supreme Court, the Court of Appeals, the Tax Court, or the trial courts of this state in any particular proceeding, if the court before which the attorney wishes to appear determines that there is good cause for such appearance and each of the following conditions is met:

(1) A member of the bar of this state has appeared and agreed to act as co-counsel;

(2) The attorney is not a resident of the state of Indiana, regularly employed in the state of Indiana, or regularly engaged in business or professional activities in the state of Indiana;

(3) The attorney files a verified petition stating:

(i) The attorney's residential address, office address, and the name and address of the attorney's law firm or employer, if applicable;

(ii) The states or territories in which the attorney has ever been licensed to practice law, including the dates of admission to practice and any attorney registration numbers;

(iii) That the attorney is currently a member in good standing in all jurisdictions listed in (ii);

(iv) That the attorney has never been suspended, disbarred or resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction; or, if the attorney has been suspended, disbarred or

resigned from the practice of law, the petition shall specify the jurisdiction, the charges, the address of the court and disciplinary authority which imposed the sanction, and the reasons why the court should grant limited admission not withstanding prior acts of misconduct;

(v) That no disciplinary proceeding is presently pending against the attorney in any jurisdiction; or, if any proceeding is pending, the petition shall specify the jurisdiction, the charges and the address of the disciplinary authority investigating the charges. An attorney admitted under this rule shall have the continuing obligation during the period of such admission promptly to advise the court of a disposition made of pending charges or the institution of new disciplinary proceedings;

(vi) A list of all proceedings, including caption and cause number, in which the attorney, or any member of a firm with which the attorney is currently affiliated, has appeared in any of the courts of this state during the last five years. Absent special circumstances, repeated appearances by any person or by members of a single law firm pursuant to this rule shall be cause for denial of the petition;

(vii) A demonstration that good cause exists for the appearance. Good cause shall include at least one of the following;

(a) the cause in which the attorney seeks admission involves a complex field of law in which the attorney is a specialist, or

(b) there has been an attorney-client relationship with the client for an extended period of time, or

(c) there is a lack of local counsel with adequate expertise in the field involved, or

(d) the cause presents questions of law involving the law of the foreign jurisdiction in which the applicant is licensed, or

(e) such other reason similar to those set forth in this subsection as would present good cause for the pro hac vice admission.

(viii) A statement that the attorney has read and will be bound by the Rules of Professional Conduct adopted by the Supreme Court, and that the attorney consents to the jurisdiction of the State of Indiana, the Indiana Supreme Court, and the Indiana Supreme Court Disciplinary Commission to resolve any disciplinary matter that might arise as a result of the representation.

(ix) A statement that the attorney will file a Notice of Pro Hac Vice Admission with the clerk of this court in compliance with Section (b) of this rule within thirty (30) days after the court grants permission to appear in the proceeding.

(b) Notice of Pro Hac Vice Status.

All attorneys admitted pro hac vice under the provisions of Section 2(a) shall file a Notice with the clerk of the Supreme Court within thirty (30) days after a court grants permission to appear in the proceeding. A separate Notice must be filed for each proceeding in which a court grants permission to appear. Failure to file the notice within the time specified will result in automatic exclusion from practice within this state. The notice shall include the following:

(1) A current statement of good standing issued to the attorney by the highest court in each jurisdiction in which the attorney is admitted to practice law;

(2) A copy of the verified petition requesting permission to appear in the court proceedings, along with the court order granting permission;

(3) A list of all grievances, petitions, or complaints filed against the attorney with any disciplinary authority of any jurisdiction, with the determination thereon.

(c) Registration Fee for Attorney Admitted Pro Hac Vice.

At the time of the filing of the Notice required by Section 2(b) of this Rule, the attorney shall pay to the clerk of the Supreme Court the annual registration fee required of members of the bar of this state as set out in Admission and Discipline Rule 23, Section 21. Thereafter, if the attorney continues to appear in any case pending as of the first day of a new calendar year, the attorney will continue to pay the required registration fee, which shall be due within thirty (30) days of the start of that calendar year.

(d) Responsibilities of Attorneys.

Members of the bar of this state serving as co-counsel under this rule shall sign all briefs, papers and pleadings in the cause and shall be jointly responsible therefor. The signature of co-counsel constitutes a certificate that, to the best of co-counsel's knowledge, information and belief, there is good ground to support the signed document and that it is not interposed for delay or any other improper reason.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE [NORTHERN] [SOUTHERN] DISTRICT OF IOWA
@ DIVISION

@

Plaintiff(s),

No. @

vs.

MOTION FOR ADMISSION PRO HAC VICE

@,

Defendant(s).

@, an attorney who is not a member of the bar of this district, moves to appear in this case pro hac vice on behalf of@. @ states that [he] [she] is a member in good standing of the bar of [the United States District Court for the @ District of @][the highest court of the state of @][the territory of@][@, an insular possession of the United States], and that [he] [she] agrees to submit to and comply with all provisions and requirements of the rules of conduct applicable to attorneys admitted to practice before the state courts of Iowa in connection with [his][her] pro hac vice representation in this case.

[IN CIVIL CASES] @ further states [he] [she] will comply with the associate counsel requirements of LR 83.2(d)(3) by associating with @, an attorney who has been admitted to the bar of this district under LR 83.2(b) and (c) and who [has entered an appearance in this case] [will enter an appearance in this case on behalf of @ by [date]].

[IN CRIMINAL CASES] @ further states [his][her] pro hac vice admission on behalf of the defendant in this case is authorized by LR 83.2(i).

@ states [he] [she] can be contacted at the following locations: *[law firm, mailing address, telephone number, facsimile number, and e-mail address (if available)]*.

[Signature block for Movant]

Date: _____

IOWA CODE OF PROFESSIONAL RESPONSIBILITY

SELECT EC'S AND DR'S

EC 1-4

DR 1-102 MISCONDUCT

DR 1-103 DISCLOSURE OF INFORMATION TO AUTHORITIES

DR 2-101 PUBLICITY

DR 2-103 RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

DR 2-104 SUGGESTION OF NEED OF LEGAL SERVICES

DR 2-105 DESCRIPTION AND LIMITATION OF PRACTICE

DR 2-109 ACCEPTANCE OF EMPLOYMENT

DR 2-110 WITHDRAWAL FROM EMPLOYMENT

DR 3-101 AIDING UNAUTHORIZED PRACTICE OF LAW

DR 4-101 PRESERVATION OF CONFIDENCES AND SECRETS OF A CLIENT

DR 5-102 WITHDRAWAL AS COUNSEL WHEN THE LAWYER BECOMES A WITNESS

DR 7-101 REPRESENTING A CLIENT ZEALOUSLY

DR 7-102 REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW

DR 7-106 TRIAL CONDUCT

Iowa Code of Professional Responsibility Rules: Some of the Rules That May Affect Federal Practice[1]

The following rules may be triggered regarding duty to report a violation, what constitutes a violation, and regarding other aspects of practice in federal court.

Ia. R. 32.EC 1-4

EC 1-4
The integrity of the profession can be maintained only if conduct of lawyers in violation of the disciplinary rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers believed clearly to be in violation of the disciplinary rules. A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the disciplinary rules.

Ia. R. 32.DR 1-102

DR 1-102. Misconduct
(A) A lawyer shall not:
(1) Violate a disciplinary rule.
(2) Circumvent a disciplinary rule through actions of another.
(3) Engage in illegal conduct involving moral turpitude.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to the administration of justice.
(6) Engage in any other conduct that adversely reflects on the fitness to practice law.
(7) Engage in sexual harassment or other unlawful discrimination on the basis of sex, race, national origin, or ethnicity in the practice of law or knowingly permit staff and agents subject to the lawyer's direction and control to do so.

Ia. R. 32.DR 1-103

DR 1-103. Disclosure of Information to Authorities
(A) A lawyer possessing unprivileged knowledge of a violation of DR1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.
(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.
(C) A lawyer possessing unprivileged knowledge or evidence that another lawyer or judge is suffering from such mental or emotional instability as renders that lawyer or judge unfit or unable to furnish competent legal services shall report such knowledge to a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.
(D) No lawyer who is a member or designee of Lawyers Helping Lawyers Committee (committee) or Iowa Lawyers Assistance Program (program) of the Iowa State Bar Association shall be required to disclose any information concerning another lawyer's

[1] Other disciplinary rules not included here may, of course, affect federal practice. The ones presented here were thought to provide a basis for discussion in the presentation.

confidences or secrets received as a committee or program member or designee, except information concerning commingling, mishandling or misappropriation of client's funds, nor shall failure or refusal to disclose such information constitute a violation of any Ethical Consideration or Disciplinary Rule of this Code.

Ia. R. 32. DR 1-101

DR 2-101. Publicity

(A) *Advertising in general*. A lawyer shall not communicate with the public using statements that are false, deceptive, unfair or unverifiable. Advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services. In all communications under DR 2-101 and DR 2-102, the lawyer may use restrained subjective characterizations of rates or fees such as "reasonable," "moderate," and "very reasonable," but shall avoid all unrestrained subjective characterizations of rates or fees, such as, but not limited to, "cut-rate," "lowest," "giveaway," "below-cost," "discount," and "special."

With the exception of the prohibition against statements which are false, deceptive, unfair or unverifiable, the following communications shall not be considered advertising and are accordingly not subject to DR2-101 and DR2-105: (1) communications or solicitations for business between lawyers; (2) communications between a lawyer and an existing or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated; or (3) communications by a lawyer that are in reply to a re-quest for information by a member of the public that was not prompted by unauthorized advertising by the lawyer; information available through a hyperlink on a lawyer's Web site shall constitute this type of communication.

Notwithstanding the above provisions, any brochures or pamphlets containing biographical and informational data disseminated to existing clients, former clients, lawyers, or in response to a request for information by a member of the public, shall include the disclosures required by DR 2-101(D) and (F) when applicable.

(B) *Method of dissemination*. Subject to the limitations contained in these rules:
(1) *General print media*. Lawyer advertising may be communicated to the public in newspapers, periodicals, trade journals, "shoppers," and other similar advertising media.
(2) *Lawyer telephone and city directory listings*. A lawyer licensed to practice law in Iowa may permit the inclusion of the lawyer's name, address, telephone number, and designation as a lawyer, in a telephone or city directory, subject to the following requirements.
(a) *Alphabetical listings*. The lawyer's name, address, and telephone number and designation as a lawyer, only, may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.
(b) *Classified listings*. Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a lawyer who has complied with DR 2-105(B) and (C) may be listed in classifications or headings identifying those fields or areas of practice as listed in DR 2-105(A)(2). By further exception, a lawyer qualified under DR 2-105 to practice in the field of taxation law also may be listed under the general heading "Tax Preparation" or "Tax Return Preparation," either in lieu of or in addition to, the general heading "Lawyers" or "Attorneys."
(c) *Display and box advertisements*. All other telephone or city directory advertising permitted by these rules, including display or box advertisements, shall include the disclosures required by DR 2-101(D) and (F) when applicable.
(3) *Law firm telephone and city directory listings*. Consistent with DR 2- 102(D), a law firm may permit the inclusion of the firm name, address, and telephone number in a

telephone or city directory, subject to the following requirements.
(a) *Alphabetical listings*. The firm name, a list of its members, address, and telephone number may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.
(b) *Classified listings*. Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a law firm may be listed in each of the classifications or headings identifying those fields or areas of practice as listed in DR 2-105(A)(2) in which one or more members of the firm are qualified by virtue of compliance with DR 2-105(B) and (C).
(c) *Display and box advertisements*. All other telephone or city directory advertising permitted by these rules, including display or box advertising, may contain the firm name, address, and telephone number, and the names of the individual lawyer members of the firm. All display or box advertisements shall include within the ad the disclosures required by DR 2-101(D) and (F) when applicable.
(4) *Solicitation*.
(a) *In-person solicitation*. A lawyer may not engage in the in-person or telephone solicitation of legal business under any circumstance.
(b) *Written solicitation*. A lawyer may engage in written solicitation by direct mail to persons or groups who may need specific legal services because of a condition or occurrence known to the soliciting lawyer. Prior to the solicitation, the lawyer must file such proposed solicitation(s) with the Iowa Supreme Court Board of Professional Ethics and Conduct. The soliciting lawyer shall, in addition thereto, bear the burden of proof regarding:
(i) the truthfulness of all facts contained in the proposed communication;
(ii) how the identity and specific legal need of the potential recipient were discovered; and
(iii) how the identity and specific need of the potential recipient were verified by the soliciting lawyer.
No such dissemination shall be made until the board or its designee shall, upon the facts presented, render a written finding that the solicitation is not false, deceptive, unfair or unverifiable. No information disseminated by the soliciting lawyer shall make any reference to such submission and finding. Each separate written solicitation intended for dissemination must be submitted for a finding in accordance with this rule.
(c) *Direct mail*. Information permitted by these rules may be communicated by direct mail to the general public other than persons or groups of persons who may be in need of specific or particular legal services because of a condition or occurrence which is known or could with reasonable inquiry be known to the advertising lawyer.
(d) *Disclosures*. All communications authorized by DR 2-101(B)(4)(b) and (c) shall contain the disclosures required by DR 2-101(D) and (F) when applicable. These communications, and the envelope containing the same, shall in addition to other required disclosures carry the following disclosure in red ink in 9- point or larger type: "ADVERTISEMENT ONLY." A copy of all direct mail communications shall be filed with the administrator, or the administrator's designee, of the Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35 of the Iowa Court Rules, contemporaneously with the mailing of the communications to the general public.
(5) *Electronic media*.
(a) Information permitted by these rules, articulated only by a single nondramatic voice, not that of the lawyer, and with no other background sound, may be communicated by radio or television, or other electronic or telephonic media. In the case of television, no visual display shall be allowed except that allowed in print as articulated by the announcer. All such communications shall contain the disclosures required by DR 2-101(D) and (F) when applicable.
(b) Whenever a disclosure or notice is required by these rules, a lawyer or law firm hosting a site on the World Wide Web shall display the required disclosure or notice on the site's home page.

(6) *Record retention*. Whether or not it contains fee information, a lawyer shall preserve a copy of each advertisement placed in a newspaper, in the classified section of the telephone or city directory, or in a periodical, a tape of any radio, television, or other electronic or telephonic media commercial, or recording, and a copy of all information placed on the World Wide Web, for at least three years and a record of the date or dates and name of the publication in which it appeared or the name of the medium through which it was aired.

(C) *Content (General Information)*. The following information may be communicated to the public in the manner permitted by DR 2-101(B), provided it is presented in a dignified manner:
(1) Name, including name of law firm, names of professional associates, addresses, telephone numbers, Internet addresses and URLs, and the designation "lawyer," "attorney," "J.D.," "law firm," or the like;
(2) The following descriptions of practice:
(a) "General practice";
(b) "General practice including but not limited to" followed by one or more fields of practice descriptions set forth in DR 2-105(A)(2); and
(c) Fields of practice, limitation of practice or specialization, but only to the extent permitted by DR 2-105;
(3) Date and place of birth;
(4) Date and place of admission to the bar of state and federal courts;
(5) Schools attended, with dates of graduation, degrees, and other scholastic distinctions;
(6) Public or quasi-public offices;
(7) Military service;
(8) Legal authorships;
(9) Legal teaching positions;
(10) Memberships, offices, and committee and section assignments in bar associations;
(11) Memberships and offices in legal fraternities and legal societies;
(12) Technical and professional licenses; and
(13) Memberships in scientific, technical, and professional associations and societies.
Nothing contained in these rules shall prohibit a lawyer from permitting the inclusion in reputable law lists and law directories intended primarily for the use of the legal profession of such information as traditionally has been included in these publications whether published in print or on the Internet or other electronic system.

(D) *Content (Fee Information)*. The following fee information may be communicated to the public in the manner permitted by DR 2-101(B), provided it is presented in a dignified manner:
(1) Fee for an initial consultation;
(2) Availability upon request of either a written schedule of fees, or an estimate of the fee to be charged for specific services, or both;
(3) Contingent fee rates, subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs and advises the public that in the event of an adverse verdict or decision, the contingent fee litigant could be liable for court costs, expenses of investigation, expenses of medical examinations, and costs of obtaining and presenting evidence; and
(4) Fixed fees or range of fees for specific legal services or hourly fee rates provided that, in print size at least equivalent to the largest print used in setting forth the fee information, the statement discloses:
(a) That the stated fixed fees or range of fees will be available only to clients whose matters are encompassed within the described services; and
(b) If the client's matters are not encompassed within the described services, or if an hourly fee rate is stated, the client is entitled, without obligation, to a specific written estimate of the fees likely to be charged.

Unless otherwise specified in the public communication concerning fees, the lawyer shall be bound, in the case of fee advertising in the classified section of the telephone or city directory, for a period of at least the time between printings of the directory in which the fee advertisement appears and in the case of all other fee advertising for a period of at least 90 days thereafter, to render the stated legal service for the fee stated in the communication unless the client's matters do not fall within the described services. In that event or if a range of fees is stated, the lawyer shall render the service for the estimated fee given the client in advance of rendering the service.

(E) *Content (Specific Legal Services)*. For purposes of this rule, the term "specific legal services" shall be limited to the following services:
(1) Abstract examinations and title opinions not including services in clearing title;
(2) Uncontested dissolutions of marriage involving no disagreement concerning custody of children, alimony, child support or property settlement [see DR 5- 105(A)];
(3) Wills leaving all property outright to one beneficiary and contingently to one beneficiary or one class of beneficiaries;
(4) Income tax returns for wage earners;
(5) Uncontested personal bankruptcies;
(6) Changes of name;
(7) Simple residential deeds;
(8) Residential purchase and sale agreements;
(9) Residential leases;
(10) Residential mortgages and notes;
(11) Powers of attorney; and
(12) Bills of sale.
The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35 of the Iowa Court Rules, on its own motion or upon the request of a lawyer admitted to practice in this state, shall, from time to time, consider and recommend to the court proposed amendments to these rules expanding or constricting the above list of "specific legal services." In considering such amendments the board shall apply the following criteria which have guided the supreme court in determining which services should be included in the above list:
(1) The description of the service would not be misunderstood by the average layperson or be misleading or deceptive;
(2) Substantially all of the service normally can be performed in the lawyer's office with the aid of standardized forms and office procedures;
(3) The service does not normally involve a substantial amount of legal research, drafting of unique documents, investigation, court appearances, or negotiation with other parties or their attorneys; and
(4) Competent performance of the service normally does not depend upon ascertainment and consideration of more than a few varying factual circumstances. The board shall adopt regulations, subject to the approval of the supreme court, to provide a procedure to receive and consider such requests from lawyers, and for the prompt submission to this court of any appeal from a determination adverse to such request. Said board may further issue, subject to the approval of the supreme court, regulations further defining or describing "specific legal services" within the meaning of this rule.

(F) *Content (Institution of Litigation)*. In the event that the communication seeks to advise the institution of litigation, the communication must also disclose that the filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the person so filing liable for malicious prosecution or abuse of process.

(G) *Content (Designation as Legal Clinic or Center)*. The term "clinic," "center," or any other similar term shall not be used in any communication to the public unless the practice of the lawyer or the lawyer's firm is limited to specific matters as described in DR 2-101(E) for which costs of rendering the service can be substantially reduced because of

the repetitive nature of the services performed and the use of standardized forms and office procedures.

(H) *Legal Assistance Organizations*. A lawyer recommended by, paid by, or whose legal services are furnished by, a qualified legal assistance organization may authorize, permit, or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal services or legal service benefits.

(I) *Miscellaneous Publications*. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:
(1) In political advertisements when the professional status is germane to the political campaign or to a political issue;
(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients;
(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which the lawyer serves as a director or officer;
(4) In and on legal documents prepared by the lawyer;
(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof; and
(6) In communications by a qualified legal assistance organization, along with the biographical information permitted under DR 2-101(B), directed to a member or beneficiary of such organization.

(J) *Media Relations*. A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item nor voluntarily give any information to such representatives which, if published in a news item, would be in violation of DR 2-101(A).

(K) *Size of Disclosures*. All disclosures required to be published by these rules shall be in 9-point type or larger.

Current with amendments received as of 09/01/03

Ia. R. 32.DR 2-103

DR 2-103 Recommendation of Professional Employment

(A) Lawyers shall not, except as authorized in DR 2-101, recommend employment of themselves, their partners, or associates, as a private practitioner, to a nonlawyer who has not sought advice regarding employment of a lawyer.

(B) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the employment by a client, except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of a partner or associate, or any other lawyer affiliated with the lawyer's firm, as a private practitioner, except as authorized in DR 2-101, except that:

(1) A lawyer may request referrals from a lawyer referral service operated or sponsored by the bar association and may pay its fees incident thereto.
(2) The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as a commission of the supreme court, may authorize participation and directory listing by Iowa lawyers in an organization or association of lawyers engaged in a particular area of practice, upon a showing to the satisfaction of the board of all of the following:
(a) All Iowa participants have complied with the requirements of DR 2-105.
(b) Participation is based upon meeting stated high standards of professionalism and competence in the area of practice.
(c) The organization or association regularly conducts training or professional learning and exchange concerning the area of practice involved.
(d) Neither the organization or association nor anyone other than the Iowa lawyer has any part in or share in the conduct or practice of law in the area of practice of law involved and does not participate in any way in fees charged by the Iowa participant.
The board may revoke such authorization at any time for any reasons it deems appropriate.
(3) A lawyer may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom the lawyer was recommended by it to do such work if both or the following requirements are met:
(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization.
(b) The lawyer remains free to exercise independent professional judgment on behalf of the client.

(D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partners or associates or any other lawyer affiliated with the lawyer's firm, except as permitted in DR 2-101. However, this does not prohibit a lawyer, a partner, associate, or any other lawyer affiliated with the lawyer or firm, from being recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of the lawyer's services or those of a partner, associate, or any other lawyer affiliated with the lawyer or the firm if there is no interference with the exercise of independent professional judgment on behalf of a client:
(1) A legal aid office or public defender office which is one of the following:
(a) Operated or sponsored by a duly accredited law school.
(b) Operated or sponsored by a bona fide non-profit community organization.
(c) Operated or sponsored by a governmental agency.
(d) Operated, sponsored, or approved by a bar association.
(2) A military legal assistance office.
(3) A lawyer referral service operated, sponsored or approved by a bar association.
(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or its beneficiaries provided all of the following conditions are satisfied:
(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.
(b) Neither the lawyer, nor any partner, associate, or other lawyer affiliated with the lawyer's firm, nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.
(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.
(d) The member or beneficiary to whom the legal services are furnished, and not such

organization, is recognized as the client of the lawyer in the matter.
(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, independent of the arrangement, if such member or beneficiary so desires, and at the person's own expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved.
(f) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that the representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.
(g) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.
(h) Such organization has filed with the Iowa Supreme Court Board of Professional Ethics and Conduct on or before July 1 of each year a report, on a form approved by the board, with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure. If it appears from such annual report or any other source that the organization is not operating in accordance with the rules of the Iowa Supreme Court and the Iowa Code of Professional Responsibility, such facts shall be reported by the board to the court for such action as the supreme court may deem appropriate.

(E) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person seeking legal services does so as a result of conduct prohibited under this disciplinary rule.

(F) A bona fide organization that recommends, furnishes or pays for legal services for its members or beneficiaries shall be developed, administered and operated so as to prevent all of the following:
(1) A third party from interfering with or controlling a lawyer's performance of duties.
(2) A third party's receipt of any part of the consideration paid to a lawyer for furnishing legal services.
(3) Any publicity and solicitation concerning the arrangement except by means of simple, dignified announcements. Such announcements may only set forth the purpose and activities of the organization and the nature and extent of the benefits provided under the arrangement. The announcements shall not identify the lawyers who render the legal services, and such announcements must be solely for the good faith purpose of developing, administering or operating the arrangement, and not for the purpose of soliciting business for any specific lawyer. Nothing in this rule shall prohibit a statement in response to individual inquiries regarding the identities of the lawyers rendering services for the organization. Such responses may provide the names, addresses, and telephone numbers of such lawyers.

Ia. R. 32.DR 2-104

DR 2-104. Suggestion of Need of Legal Services

(A) A lawyer who has given unsolicited advice in-person or by telephone to a layperson to obtain counsel or take legal action shall not accept employment resulting from that advice, except that:
(1) A lawyer may accept employment by a close friend, relative, existing client or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated.

(2) A lawyer may accept employment that results from personal participation in activities

designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (4), to the extent and under the conditions prescribed therein.
(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.
(4) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as such activities do not emphasize the lawyer's own professional experience or reputation and the lawyer does not undertake to give individual advice.
(5) If success in asserting rights or defenses of a client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

Ia. R. 32.DR 2-105

DR 2-105. Description and Limitation of Practice

(A) A lawyer may be identified as practicing in or limiting practice to certain fields of law as follows:
(1) *Patents*. A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney" or any combination of those terms, on the lawyer's professional card, letterhead, office sign, professional notice or announcement, all as otherwise allowed by DR 2-102(A), and in newspapers, periodicals, telephone directory listings, and legal directories, as otherwise allowed by DR 2-101(B).
(2) *Fields of practice*. Subject to the exceptions and requirements of this rule, a lawyer may identify or describe his or her practice by reference to the following fields of practice:
Administrative Law
Admiralty and Maritime Law
Adoption Law
Agricultural Law
Alternate Dispute Resolution
Antitrust and Trade Regulation
Appellate Practice
Aviation and Aerospace
Banking Law
Bankruptcy
Business Law
Civil Rights and Discrimination
Collections Law
Commercial Law
Communications Law
Constitutional Law
Construction Law
Contracts
Corporate Law
Criminal Law
Debtor and Creditor
Education Law
Elder Law
Election, Campaign and Political
Eminent Domain

Employee Benefits
Employment Law
Energy
Entertainment and Sports
Environmental Law
Family Law
Finance
Franchise Law
Government
Government Contracts
Health Care
Immigration
Indians and Native Populations
Information Technology Law
Insurance
Intellectual Property
International Law
International Trade
Investments
Labor Law
Legal Malpractice
Litigation Media Law
Medical Malpractice
Mergers and Acquisitions
Military Law
Municipal Law
Natural Resources
Occupational Safety & Health
Pension and Profit Sharing Law
Personal Injury
Product Liability
Professional Liability
Public Utility Law
Real Estate
Securities
Social Security Law
Taxation
Tax Returns
Technology and Science
Toxic Torts
Trademarks and Copyright Law
Transportation
Trial Law
Wills, Trusts, Estate Planning and Probate Law
Workers' Compensation
Zoning, Planning and Land Use
The lawyer may, in describing the field of practice, use the suffix "law," "lawyer," "matters," "cases" or "litigation."

(B) *Prerequisites*. Prior to publicly describing one's practice as set forth above, a lawyer shall comply with the following prerequisites:
(1) For all fields of practice designated, a lawyer must have devoted the greater of 100 hours or 10 percent of the lawyer's time spent in the actual practice of law to each indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 10 hours of accredited continuing legal education courses of study in each indicated field of practice during the preceding calendar year.

(2) A lawyer who wishes to use the terms "practice limited to ... " or "practicing primarily in ... " must have devoted the greater of 400 hours or 40 percent of the lawyer's time spent in the actual practice of law to each separate indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 15 hours of accredited continuing legal education courses of study in each separate indicated field of practice during the preceding calendar year.

(C) *Filing requirements*. Prior to communication of a description or indication of limitation of practice permitted by DR2-105(A) a lawyer shall report the lawyer's compliance with the eligibility requirements of DR 2-105(B) each year in the written report required to be submitted to the Commission on Continuing Legal Education. In reporting compliance with the percentage or hours of practice requirements in DR 2-105(B) a statement of compliance is sufficient. In reporting compliance with the continuing legal education requirements of DR 2-105(B), the lawyer shall identify the specific courses and hours that apply to each indicated field of practice. Contents of the portion of the report required by this rule shall be public information. If, due to hardship or extenuating circumstances, a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by DR 2-105(B) or (C) the lawyer may apply to the commission on continuing legal education for an extension of time in which to complete the hours. No extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission. Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met.

(D) *Exception*. A lawyer describing the lawyer's practice as provided in DR 2-101(C)(2)(b) shall not be required to comply with the requirements of DR 2- 105(B) and (C).

(E) *Certification*. Unless a lawyer has been certified by an agency or program formally recognized by the Iowa Supreme Court Board of Professional Ethics and Conduct, a lawyer shall not use the following terms: "specialist," "specializing in," "certified," or "certified in." In the event that a lawyer is so certified, the lawyer may identify the certifying entity and describe the field of practice in accordance with the certification.
(F) *Amending fields of practice*. The Iowa Supreme Court Board of Professional Ethics and Conduct, acting as commissioners of the supreme court as provided by chapter 35 of the Iowa Court Rules, on its own motion or upon the request of a lawyer admitted to practice in this state, shall, from time to time, consider and recommend to the court proposed amendments to these rules expanding or restricting the permitted list of fields of law practice.

Ia. R. DR 2-109

DR 2-109. Acceptance of Employment

(A) A lawyer shall not accept employment on behalf of a person if it is known or it is obvious that such person wishes to:
(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken merely for the purpose of harassing or maliciously injuring any person.
(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110. Withdrawal From Employment

(A) *In general*.
(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
(2) In any event, a lawyer shall not withdraw from employment until reasonable steps have been taken to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.
(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) *Mandatory withdrawal*.
A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:
(1) The lawyer knows or it is obvious that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken merely for the purpose of harassing or maliciously injuring any person.
(2) The lawyer knows or it is obvious that continued employment will result in violation of a disciplinary rule.
(3) The lawyer's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.
(4) The lawyer is discharged by the client.

(C) *Permissive withdrawal*.
If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:
(1) The client:
(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.
(b) Personally seeks to pursue an illegal course of conduct.
(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules.
(d) By other conduct renders it unreasonably difficult for the lawyer to carry out the employment effectively.
(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the disciplinary rules.
(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.
(2) Continued employment is likely to result in a violation of a disciplinary rule.
(3) Inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.
(4) A mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.
(5) The client knowingly and freely assents to termination of the lawyer's employment.
(6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Ia. R. 32.DR 3-101

DR 3-101. Aiding Unauthorized Practice of Law

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

Ia. R. 32.DR 4-101

DR 4-101. Preservation of Confidences and Secrets of a Client

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

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
(1) Reveal a confidence or secret of a client.
(2) Use a confidence or secret of a client to the disadvantage of the client.
(3) Use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:
(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
(2) Confidences or secrets when permitted under disciplinary rules or required by law or court order.
(3) The intention of the client to commit a crime and the information necessary to prevent the crime.
(4) Confidences or secrets necessary to establish or collect a fee or to defend oneself, employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

Ia. R. 32.DR 5-102

DR 5-102. Withdrawal as Counsel When the Lawyer Becomes a Witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the firm ought to be called as a witness on behalf of the client, the lawyer shall withdraw from the conduct of the trial and the firm, if any, shall not continue representation in the trial, except that the representation may continue and the lawyer or member of the firm may testify in the circumstances enumerated in DR 5-101(D)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or member of the firm may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is

apparent that the testimony is or may be prejudicial to the client.

Ia. R. 32. DR 5-107

DR 5-107. Avoiding Influence by Others Than the Client

(A) Except with the consent of a client after full disclosure, a lawyer shall not:
(1) Accept compensation for legal services from one other than the client.
(2) Accept from one other than the client any thing of value related to representation of or employment by the client.

(B) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
(2) A nonlawyer is a corporate director or officer thereof; or
(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

Ia. R. 32.DR 6-101

DR 6-101. Failing to Act Competently

(A) A lawyer shall not:
(1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.
(2) Handle a legal matter without preparation adequate in the circumstances.
(3) Neglect a client's legal matter.

Ia. R. 32. DR 7-101

DR 7-101. Representing a Client Zealously

(A) A lawyer shall not intentionally:
(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules, except as provided by DR 7- 101(B). A lawyer does not violate this disciplinary rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
(2) Fail to carry out a contract of employment entered into with a client for professional services, but a lawyer may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.
(3) Prejudice or damage a client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In the representation of a client, a lawyer may:
(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of a client.

(2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

Ia. R. 32.DR 7-102

DR 7-102. Representing a Client Within the Bounds of the Law

(A) In the representation of a client, a lawyer shall not:
(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of a client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.
(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.
(3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.
(4) Knowingly use perjured testimony or false evidence.
(5) Knowingly make a false statement of law or fact.
(6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.
(7) Counsel or assist a client in conduct that the lawyer knows to be illegal or fraudulent.
(8) Knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule.

(B) A lawyer who receives information clearly establishing that:
(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal in all circumstances except when barred from doing so by Iowa Code section 622.10. If barred from doing so by Iowa Code section 622.10, the lawyer shall immediately withdraw from representation of the client unless the client fully discloses the fraud to the person or tribunal.
(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Ia. R. 32.DR 7-106

DR 7-106. Trial Conduct

(A) A lawyer shall not disregard or advise a client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but a lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:
(1) Legal authority in the controlling jurisdiction known to be directly adverse to the position of a client and which is not disclosed by opposing counsel.
(2) Unless privileged or irrelevant, the identities of the clients represented and the persons by whom employed.

(C) In appearing in a professional capacity before a tribunal, a lawyer shall not:
(1) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.
(2) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert personal knowledge of the facts in issue, except when testifying as a witness.
(4) Assert personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but a lawyer may argue, during analysis of the evidence, for any position or conclusion with respect to the matters stated herein.
(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of an intent not to comply.
(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.
(7) Intentionally or habitually violate any established rule of procedure or of evidence.

Ia. R. 32.DR 7-107
DR 7-107. Trial Publicity

A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:
(1) Information contained in a public record.
(2) That the investigation is in progress.
(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.
(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:
(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.
(3) The existence or contents of any confession, admission, or statement given by the accused or the accused's refusal or failure to make a statement.
(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
(5) The identity, testimony, or credibility of a prospective witness.
(6) Any opinion as to guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:
(1) The name, age, residence, occupation, and family status of the accused.
(2) If the accused has not been apprehended, any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present.
(3) A request for assistance in obtaining evidence.
(4) The identity of the victim of the crime.
(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
(6) The identity of investigating and arresting officers or agencies and the length of the investigation.
(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.
(9) Quotations from or references to public records of the court in the case.
(10) The scheduling or result of any step in the judicial proceedings.
(11) That the accused denies the criminal charges.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that a lawyer may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:
(1) Evidence regarding the occurrence or transaction involved.
(2) The character, credibility, or criminal record of a party, witness, or prospective witness.
(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:
(1) Evidence regarding the occurrence or transaction involved.
(2) The character, credibility, or criminal record of a party, witness, or prospective witness.
(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
(4) An opinion as to the merits of the claims, defenses, or positions of an interested person.
(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent employees and associates from making an extrajudicial statement that the lawyer would be prohibited from making under DR 7-107.

Ia. R. 32.DR 7-109

DR 7-109. Contact With Witnesses

(A) A lawyer shall not suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to hide or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
(1) Expenses reasonably incurred by a witness in attending or testifying.
(2) Reasonable compensation to a witness for loss of time in attending or testifying.
(3) A reasonable fee for the professional services of an expert witness.

CASES REGARDING IOWA DISCIPLINARY RULES

Iowa Cases Regarding Select Disciplinary Rules

Below are some of the Iowa cases that involve the following disciplinary rules.

DR 1-102 relates to misconduct, which includes violation and circumvention of a disciplinary rule, illegal conduct involving moral turpitude, conduct involving dishonesty fraud, deceit or misrepresentation, conduct prejudicial to the administration of justice, and other conduct.

DR 2-105 relates to description and limitations on areas of practice.

DR 3-101 relates to aiding the unauthorized practice of law.

DR 4-101 relates to preservation of confidences and secrets of a client.

DR 5-102 relates to withdrawal when the lawyer becomes a witness.

DR 7-102 relates to representing a client zealously within the bounds of the law.

DR 7-106 relates to trial conduct, and includes intentional or habitual violation of any established rule of procedure or of evidence.

DR 1-102

Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Sullins, 648 N.W.2d 127 (Iowa 2002).

Attorney's manner of handling cases was "slipshod." He failed to file lawsuits, failed to comply with discovery requests, and failed to investigate clients' cases. His practice resulted in incomplete resolution of his clients' affairs. The evidence established in the attorney disciplinary proceeding that the attorney had engaged in conduct prejudicial to administration of justice or engaged in conduct adversely reflecting on his fitness to practice law, violating DR 1-102. His failure to inform his clients of his suspension from the practice of law violated the disciplinary rule of DR 1-102, which provides that a lawyer shall not engage in conduct involving dishonesty, conduct prejudicial to the administration of justice, and conduct that adversely reflects on fitness to practice law.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Grotewold, 642 N.W.2d 288 (Iowa 2002).

The attorney misrepresented the status of the estate he was handling. He misrepresented that uncompleted tasks in the estate were completed when they were not. The Court found, at best, that the misrepresentation was based on hope and intention to complete those tasks. This conduct was not the result of negligence, but casual, reckless disregard for the truth, violating DR 1-102(A)(4),(5) The concept of conduct involving attorney misrepresentation is repulsive to our system of justice and its very presence within the profession supports serious discipline, justified by the need to deter the offender and others, protect the public, and maintain the reputation of the profession.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Visser, 629 N.W.2d 376 (Iowa 2001).

Making partially true statement to newspaper violated attorney disciplinary rule prohibiting conduct involving misrepresentation.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Pracht, 627 N.W.2d 567 (Iowa 2001).

Evidence in attorney disciplinary proceeding supported finding that attorney engaged in conduct evidencing dishonesty and deceit by virtue of his unauthorized removal of court document filing system records from county district court clerk's office, and his continued concealment of his possession of those records until directly confronted by county attorney.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Mulford, 6225 N.W.2d 672 (Iowa 2001).

The administration of justice is prejudiced when an attorney willfully disobeys an order or command of a court or the process of a court.

Supreme Court Bd. Of Professional Ethics and Conduct v. D'Angelo, 619 N.W.2d 333 (Iowa 2000).

Accepting fees for probate work prior to obtaining court order authorizing fees, depositing client funds into operating account, displaying general neglect and lack of communication with executors leading to repeated delinquency notices and failure to file required reports, complying with court order only upon threat of contempt, habitually procrastinating in manner that resulted in losses of time and money to clients, and disregarding rules pertaining to disciplinary process, although not involving moral turpitude, was conduct warranting indefinite suspension from practice of law with no possibility of reinstatement for three years, given attorney's prior reprimand, sheer number of ethical breaches, and failure to cooperate in disciplinary process.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Lesyshen, 585 N.W.2d 281 (Iowa 1998).

Attorney representing plaintiff in personal injury action violated code of professional responsibility by ignoring two motions to compel, two court orders, and numerous letters from opposing counsel to answer interrogatories, and by conducting dilatory discovery on client's behalf; such failings could not be characterized as mere inadvertence or good faith error in attorney's judgment, and the resulting exclusion of medical evidence regarding plaintiff's damages reduced a $20,000 case to a $2,000 judgment at trial.

Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Ackerman, 611 N.W.2d 473 (Iowa 2000).

Conduct of attorney in presenting to district judge order dismissing criminal prosecution of his client that misstated facts crucial in prompting grant of dismissal, which was promptly vacated after judge learned that facts were not as recited in order, and presenting dismissal order ex parte without advising county attorney, warranted indefinite suspension of attorney's license to practice law, with no possibility of reinstatement for period of one month.

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Humphrey, 551 N.W.2d 306 (Iowa 1996).

A lawyer must fully disclose all facts tangentially relevant and material to a judge's decision. A lawyer who deliberately misleads the court or negligently fails to

disclose relevant information has committed a very serious violation of the disciplinary rules.

Iowa Supreme Court Bd. Of Professional Ethics & Conduct v. Wanek, 589 N.W.2d 265 (Iowa 1999).

Attorney's misrepresentation of material facts in his written and oral advocacy to the court and in deposition testimony in connection with obtaining and collecting $1.1 million discovery sanction violated disciplinary rules prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct prejudicial to the administration of justice, conduct reflecting adversely on fitness to practice law, and knowingly making false statement of fact in representation of client.

Committee on Professional Ethics and Conduct of the Iowa State Bar Ass'n v. Schooler,482 N.W.2d 426 (Iowa 1992).

Indefinite suspension from practice of law with no possibility of reinstatement for a period of one year is appropriate sanction for failing to divulge dual nature of representation of estate as attorney and creditor, intentional misstatements to court regarding status of estate proceedings, and tacit approval of client's decision to violate state and federal tax filing laws.

Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. McCullough, 465 N.W.2d 878 (Iowa 1991).

Counseling client to execute mortgage and confession of judgment in violation of court order in dissolution proceeding violates disciplinary rules prohibiting conduct prejudicial to administration of justice, conduct adversely reflecting on fitness to practice law, and advising client to disregard ruling of tribunal.

Committee on Professional Ethics and Conduct of the Iowa State Bar Ass'n v. Bauerle, 460 N.W.2d 452 (Iowa 1990).

It is manifestly unprofessional for a lawyer, acting as a notary public, to certify that persons who did not do so personally appeared and attested to a document.

Comm. on Prof'l Ethics and Conduct of the Iowa State Bar Assoc. v. Larsen, 407 N.W.2d 601 (Iowa 1987).

The Supreme Court found an ethical violation as the evidence established violation of the disciplinary rules in the handling of the estate and conservatorship (DR 6-101(A)(3)), and failure to cooperate in the investigation of the Committee on Professional Ethics and Conduct (DR 1-102(A)(5) and DR 1-102 (A)(6)).

Comm. on Prof'l Ethics and Conduct of the Iowa State Bar Assn. v. Gross, 326 N.W.2d 272 (Iowa 1982).

Willful failure to follow the orders of the district court was found to be a breach of the attorney's duty to maintain the respect due the courts of justice and judicial officers. DR 7-106(A). The attorney had ignored district court orders directing distributions to beneficiaries of funds received in a partition action and requiring an accounting for all funds received (DR 7-106(A)), and commingled personal funds in his trust account with trust funds received on behalf of his clients, in violation of DR 9-102(A).

Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. Hurd, 325 N.W.2d 286 (Iowa 1982).

Practice of deception on the county attorney and alteration of a venue motion, after approval by county attorney and signing by magistrate and before filing with clerk of court, warrants an indefinite suspension from the practice of law with no possibility of reinstatement for 60 days. Such conduct constitutes "conduct prejudicial to the administration of justice."

State v. Webb, 244 N.W.2d 332 (Iowa 1976).

Lawyers should avoid making statements before a jury which tend to prejudice a defendant's right to a fair trial, particularly when undertaking to accuse another of unethical conduct.

DR 2-105

Iowa Supreme Court Bod. Of Professional Ethics and Conduct v. Bjorkland, 617 N.W.2d 4 (Iowa 2000).

Advertisement which prominently displayed attorney's name and occupation as an attorney, following the question "Have you been caught drinking and driving?" and the exclamation "I can help!", and which stated that attorney was author of book concerning drunk driving defense, violated rules of professional responsibility, in that it contained statements that were self-laudatory, related to quality of legal services and were not verifiable, it did not include disclosure statement, and attorney was not eligible to advertise as limiting his practice in specific area of law

Iowa Supreme Court Bd. Of Professional Ethics & Conduct v. Wherry, 569 N.W.2d 822, (Iowa 1997), cert. denied, 118 S. Ct. 1303, 523 U.S. 1021, 140 L.Ed.2d 469 ( ). Advertising by attorney of specific fields of practice is misleading if attorney has not complied with disciplinary rule imposing eligibility requirements on attorneys who wish to engage in such advertising.

DR 3-101

Iowa Supreme Court Bd. Of Professional Ethics & Conduct v. Hill, 576 N.W.2d 91 (Iowa 1998).

Attorney's misconduct in handling of interstate adoption matter which he knew or should have known he was not competent to handle, at time he was not admitted to practice in Missouri, where child resided, aggravated by attorney's failure to respond to any of formal disciplinary proceedings and by prior disciplinary actions, warranted revocation of his license to practice

DR 4-101

State v. Hischke, 639 N.W.2d 6 (Iowa 2002).

When counsel knows a client has committed perjury or plans on doing so, counsel may reveal the perjury to the court.

State v. Whiteside, 272 N.W.2d 468 (Iowa 1978).

A lawyer who knowingly uses perjured testimony or false evidence or who aids a client to

commit a criminal act is himself subject to disciplinary action and possibility of his own prosecution for suborning perjury.

DR 5-102

World Plan Executive Council – U.S. v. Zurich Ins. Co., 810 F. Supp. 1042 (S. D. Iowa 1992).

Standards for disqualification of counsel on ground that opposing party will call counsel as witness are more stringent than standards for disqualification of counsel on ground that client will call counsel as witness.

State v. Vanover, 559 N.W.2d 618 (Iowa 1997).

Pursuant to professional responsibility rule, once defendant's attorney learned that state intended to call him as witness against codefendant, attorney was obligated to withdraw if it appeared that his testimony was or might be prejudicial to defendant.

Meyer v. Iowa Mold Tooling Co., Inc., 141 F.Supp.2d 973 (N.D. Iowa 2001).

Under Iowa law, attorneys and firm representing employer in employee's disability discrimination case could not be disqualified based on employee's intent to call as witness an attorney who was former member of firm; code of professional responsibility did not mandate disqualification based on former associate's or partner's appearance as witness, public trust and perception concerns that attorney witness might distort truth for sake of former client were vitiated by attorney-witness being subject to cross-examination, and employee would also not be prejudiced because of opportunity to cross-exam.

DR 7-102

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Lesyshen, 585 N.W.2d 281 (Iowa 1998).

Evidence established that attorney committed misconduct by forging client's signature to supplemental answers to interrogatories, falsely notarizing the signature, and standing silent when client testified at trial about the answers; attorney admitted to signing client's name and trying to make the signature look like the client's, though attorney characterized such conduct as merely an error, and client denied attorney's contention that client authorized attorney's signature.

Iowa Supreme Court Bd. of Professional Ethics and Coduct v. Hohnbaum, 554 N.W.2d 550 (Iowa 1996).

Three-month suspension was warranted for misleading district court and opposing counsel as to facts of automobile accident case and for pursuit of frivolous defense in such case.

Wemark v. State, 602 N.W.2d 810 (Iowa 1999).

Attorney may not rely upon the privilege to actively participate in hiding a fruit or instrumentality of crime, or take possession of it in such a way that its discovery becomes less likely; such an act has no reasonable relationship to the attorney-client privilege and constitutes an abuse of a lawyer's professional responsibilities.

DR 7-106

Iowa Supreme Court Bd. Of Professional Ethics and Conduct v. Pracht, 656 N.W.2d 123 (Iowa 2003).

The violation of a court order by a lawyer constitutes misconduct. Attorney misconduct for violation of a court order can occur even if the conduct would be

prohibited by one interpretation of the order but permitted by another interpretation of the order; when faced with an ambiguity in a court order, an attorney should seek clarification from the court.

Iowa Supreme Court Bd. Of Professional Ethics & Conduct v. Hughes, 557 N.W.2d 890 (Iowa 1996).

Lawyer has duty to obey court order and duty not to advise client to ignore it. Trial court had subject matter jurisdiction to order defendant to undergo presentence substance abuse evaluation, such that attorney was not entitled to counsel defendant to disregard order on basis that order was void; whether court had authority to order defendant to pay for evaluation, and whether order was erroneous on basis that evidence was not sufficient to support determination that defendant regularly abused alcohol, were irrelevant as to whether court had jurisdiction to order evaluation at all.

Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. McCullough, 465 N.W.2d 878 (Iowa 1991).

Counseling client to execute mortgage and confession of judgment in violation of court order in dissolution proceeding violates disciplinary rules prohibiting conduct prejudicial to administration of justice, conduct adversely reflecting on fitness to practice law, and advising client to disregard ruling of tribunal.

State v. Williams, 334 N.W.2d 742 (Iowa 1983).

The defendant claimed the prosecutor's personalized remarks in closing argument violated DR 7-106(C). The Supreme Court found that the prosecutor's remarks were based on his view of the evidence and did not insinuate that his opinion was based on facts not in the record. The Court did not find a violation, as the principle precludes only personalized remarks that do not appear to be based on the evidence.

Practical Considerations in Serving as Local Counsel

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Introduction

Serving as local counsel presents challenges with regard to how best to serve the client, work with lead counsel, and ensure compliance with the federal rules, local rules, and ethical rules. Failure to balance these interests can lead to risk of violation of Rule 11, potential ethical violations, and exposure to malpractice claims from clients (with whom contact may be minimal, given the nature of the local counsel relationship). The purpose of this outline is to address some of the challenges presented to Iowa lawyers appearing in federal court as local counsel.

Scope of Duty of Local Counsel

The scope of the responsibilities local counsel undertakes defines to a great extent the duty owed the client. In Macawber Engineering v. Robson & Miller, P.C., 47 F.3d 253 (8th Cir. 1994), a malpractice case arising from the untimely serving of responses to requests for admissions, the Eighth Circuit Court of Appeals addressed the scope of duty owed by legal counsel. Local counsel's involvement was limited to ten hours, which included the filing of a petition for admission *pro hac vice* on behalf of lead counsel and "small tasks involving the pleadings and discovery." 47 F3d at 255. Lead counsel testified that local counsel had done everything asked of him, and the client's CEO

testified in deposition that he looked to lead counsel to handle the litigation and to direct the activities of local counsel. In the malpractice suit, the client relied on a general duty as testified to by an expert and the Minnesota district court's local rule concerning *pro hac vice* admission, which provided that local counsel must "participate in the preparation and trial of the case or presentation of the matter involved . . . " The Court of Appeals, in affirming the district court's grant of summary judgment, rejected the plaintiff's argument that the local rule served as a basis for a general duty to monitor lead counsel. 47 F. 3d at 257. The Court stated:

> Were the law otherwise, the costs involved in retaining local counsel would increase substantially. Confronted with a duty to monitor lead counsel's handling of the litigation, local counsel would be bound to review all manner of litigation documents and ensure compliance with all deadlines [footnote omitted]. Out-of-state litigants would be bound to review all manner of litigation documents and ensure compliance with all deadlines. [Footnote omitted]. Given the skyrocketing costs of litigation, the duplication of effort and increased fees that would result from such a rule foster problematic public policy. Though some litigants may choose to enter a representation agreement which includes extensive duties for local counsel, Minnesota law does not (and should not) require them to do so. (emphasis added).

There appears to be nothing in Iowa's local rule that would dictate a different result. [1] Therefore, it is critical that a clear understanding is reached as to what the scope of duties of local counsel.

Ethical and professional responsibilities

Iowa lawyers are bound by the Iowa Code of Professional Responsibility. In addition, the conduct of Iowa lawyers is governed by the Standards for Professional Conduct promulgated by the Iowa Supreme Court which, while they do not serve as the basis of sanctions or penalties, do serve as a guide to professionalism and collegiality for Iowa lawyers.

Attorneys who are admitted *pro hac vice* must agree to "submit to and comply with all provisions and requirements of the rules of conduct applicable to attorneys admitted to practice before the state courts of Iowa." L.R. 83.2. (Query whether this includes Iowa's advertising rules and if so, what local counsel's duty is with regard to informing himself or herself of such compliance -- and the court, as there is a duty under DR-102 to report unethical conduct.

Rule 11 challenges

Rule 11 provides that by "presenting to the court" (whether by signing, filing, submitting or later advocating) a pleading, written motion or other paper," an attorney certifies that "to the best of the person's knowledge, information, and

[1] The "associate counsel requirement" contained in Iowa's Local Rule 83.2(d)(3) provides that "any attorney who is not qualified to practice under section (b) of this rule must, in each proceeding in which the attorney appears, associate with counsel who is so qualified." The rule requires local counsel to enter an appearance and is silent as to any specific duties or requirements of "associate counsel."

belief, formed after an inquiry reasonable under the circumstances," that such paper is not being presented for any improper purpose; that the legal contentions are warranted by existing law or by a nonfrivolous argument for the extension of the law; and that the factual allegations have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Local Rule 11.1 requires a designation of who is "lead counsel" on any paper.

Local Rule 5.3 governing electronic civil case filings specifically provides in subsection (g) that a filer's login name and password are the "signature of the filer for the purposes of LR 11.1 and FRCP 11.

Practical considerations:

1. Define the scope of the relationship

- For the most part, contact generally comes not from the client, but from out of state, lead counsel seeking to form a local counsel relationship.
- Define how you will bill and be paid -- i.e., do you bill the law firm or do you bill the client? This may influence your determination as to whether to receive a retainer against which to bill.
- Determine what contact you will have with the client, if any; and whom your contact will be within the lead counsel firm.

- In deciding whether to accept the relationship, determine whether it is worth potentially creating future conflicts in cases where you or your firm may have more extensive responsibilities and involvement. In other words, even if you are just entering an appearance, and your contact with the client will be minimal, the client will be a "client" for conflict analysis purposes.
- Consider a formal retention letter spelling out your relationship with counsel and with the client and the scope of your representation.

2. Define the role you will play

- Will you be doing more than entering an appearance?
- Will you be expected to sign pleadings and/or file, "submit" or "advocate" pleadings? (The terms of Rule 11 extend beyond mere signature to the "filing, submitting, or . . . advocating" a pleading)
- If the expectation is that you will be doing so, it is important that you establish conditions where you have an opportunity to review whatever the pleading is.
- Will you be signing discovery responses? This is particularly challenging (if not problematic), especially if your contact with the client is minimal. You are then taking the word of lead counsel that the answers are complete without having had the opportunity to

satisfy yourself in speaking with the client representative that he or she understood and responded fully to the scope of the request.

- Will you be responsible for monitoring and ensuring that deadlines are met? It is critical that you clarify this because if this is not made clear, you may be held responsible for missed deadlines Or you may have to deal with obtaining last-minute orders for additional time.
- Will you be involved in drafting pleadings? In doing research? In reviewing pleadings? Again ensure that lead counsel affords you ample time to accomplish these tasks.
- If lead counsel will be doing the drafting pleadings, make sure that he or she understands they are undertaking the responsibility of complying with the local rules -- or ensure that the pleading be sent to you early enough that you can review for compliance with the rules.
- Will you be involved in taking or defending depositions? How much review of the file will you need to do to feel that you are adequately representing the client in doing so? (E.g., how will you know a client representative you are defending is being truthful?).
- Will you be involved in the pretrial and trial of the matter? Again, make sure responsibilities are defined and that lead counsel

understands that he or she must comply with the applicable pretrial order.

- While it is unusual to encounter unethical practices in lead counsel, the "culture" the lead counsel practices in may be very different than what we are used to in Iowa. Do you owe a duty to the Court and the client to act as a brake on any "scorched earth" tactics of lead counsel?

3. Common pitfalls to be aware of

- You may be expected to take direction from or rely on or review the work or the judgment of attorneys in the lead counsel firm who may be far less experienced than you are (it is often associates who handle the day to day progress of a case in complex litigation where a large firm is involved).
- You may get caught between personalities of lawyers in the lead firm -- or have to deal with conflicting strategies.
- It is sometimes difficult to gauge or evaluate the best interests of the client when your primary (or sole) contact is with lead counsel.
- You may be confronted with last-minute requests for signing and filing pleadings (which might get less severe with the advent of e-filing -- there is nothing to preclude lead counsel from getting their own filing #).

- Once you have undertaken to sign or file or advocate pleadings, it is difficult to determine how much involvement you need to satisfy any Rule 11 duties -- do you need to independently verify factual recitations in pleadings; do you need to review analysis of case law in a brief that lead counsel has prepared?

4. Advantages to accepting local counsel representation

- With the advent of "regional" counsel for certain entities in litigation where cases are being filed and litigated in a number of jurisdictions, serving under (or with) lead counsel presents an opportunity to be involved in complex litigation that might not otherwise arise.
- With the right personalities, you can serve a valuable function to the client as well as *pro hac* counsel in steering them through the complexities of local practice and local rules.