Proposed Iowa Rules of Professional Conduct

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On March 8, 2000, the Iowa Supreme Court entered an order concluding that "a new ethics framework should be adopted in Iowa, and the Model Rules of Professional Conduct should be the primary source of that framework." The Court further directed that

1. where the Model Rules are silent on a subject that traditionally has been regulated in Iowa, the Code provisions should be retained;
2. where the existing Code provisions are clearly superior, the Code provisions should be retained;
3. any rules adopted should carefully preserve the high level of professionalism now existing among the Bar this state, by including aspirational guidance such as that found in the preamble and the ethical considerations in the Code; and
4. Code provisions on confidentiality and lawyer advertising should be retained.

The Supreme Court appointed a 17-member committee, of which I am a member, to draft a new Iowa Rules of Professional Conduct for consideration by the Iowa Supreme Court.

The Drafting Committee began meeting in August 2000 and has tentatively approved a draft of the proposed rules. The rules are separated into eight divisions: Client-Lawyer Relationship, Counselor, Advocate, Transactions with Persons Other than Clients, Law Firms and Associations, Public Service, Information about Legal Services, and Maintaining the Integrity of the Profession.

A "Comments and Ethical Considerations" section and a "Drafting Committee Notes" section follow each rule contained in one of these eight divisions. The Comments and Ethical Considerations section is intended to explain the rules and provide examples as to potential application of the rules. This section is intended to be published as a part of the rules when approved by the Iowa Supreme Court. The Drafting Committee Notes section is provided merely to explain some of the considerations inherent in the committee's action and not intended to be published with the rules when adopted.

This tentative draft is located on the Internet at the following address:

http://cartwright.drake.edu/gregory.sisk/ModelRulesPublicWeb/TentativelyApprovedRules.html

The committee currently in the public comment period and written comments on any of the proposed rules is welcome. If responding by e-mail, please direct your comments to plans one more meeting on April 19 to finalize its report to the Iowa Supreme Court..

This outline contains some of the tentative rules that appear to have more direct application to the criminal defense bar. You should note that none of the "Drafting Committee Notes" are included and many of the "Comments and Ethical Considerations" portion has been drastically edited. See the Internet site for the full text of the Rules, Comments and Ethical Considerations, and Drafting Committee Notes.

Preamble

[1] The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

[2] Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

[3] In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are an always present guide. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

[4] The Iowa Rules of Professional Conduct point the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the profession and of the society which the profession serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permits of no compromise.

Scope

[5] The Iowa Rules of Professional Conduct are rules of reason.

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

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

[8] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so.

[9] Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in

circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

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

[11] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. . . . . Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[12] The Preamble and this note on Scope provide general orientation and unifying themes for understanding the Rules. The Comments and Ethical Considerations accompanying each Rule explain and illustrate the meaning and purpose of the Rule. The Comments and Ethical Considerations are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0: Terminology

(b) "Confirmed in writing," when used in reference to the consent of a person, denotes consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral consent. Such confirmation in writing of "consent after disclosure" must confirm both that the disclosure was made by the lawyer and that consent was given by the person. See also paragraph (c) for the definition of "consent after disclosure."

(c) "Consent after disclosure" denotes the agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the significance of, the material risks of, and reasonably available alternatives to the proposed course of conduct.

(d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association, or in a legal services organization; or lawyers employed in the legal department of a corporation or other organization. See also Comments and Ethical Considerations [1] to [3] to Rule 1.10.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm as prescribed in Rule 1.10(d).

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

<u>**Comments and Ethical Considerations**</u>

Consent After Disclosure

[1] Many of the Iowa Rules of Professional Conduct require the lawyer to obtain the consent after disclosure of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.7(b), 1.9(a), 1.11(a), 1.12(a), 1.18(d). … Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel.

[2] Obtaining consent after disclosure will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter.

Screened

[4] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12, or 1.18. The prescribed means of screening are set forth in Rule 1.10(d), and are further explained in Comment and Ethical Consideration [10] to Rule 1.10.

Rule 1.2 Scope Of Representation and Allocation of Authority Between Lawyer and Client

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) through (f), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(f) A lawyer does not violate this rule by agreeing 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.

Comments and Ethical Considerations

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. But the lawyer and the client are not equally supreme in their respective spheres. The lawyer must abide by the client's decisions with respect to objectives, because realization of those objectives is the very reason the lawyer was retained in the first place. Thus, the client has ultimate authority to determine the purposes

to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.

[7] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[8] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except when permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed.

Rule 1.5 Fees

(a) A fee charged by a lawyer shall be reasonable and conform to any restrictions imposed by law. The factors to be considered in determining the reasonableness of a fee include the following:

> **(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;**
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> **(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**
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> **(3) the fee customarily charged in the locality for similar legal services;**
>
> **(4) the amount involved and the results obtained;**
>
> **(5) the time limitations imposed by the client or by the circumstances;**
>
> **(6) the nature and length of the professional relationship with the client;**
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> **(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and**
>
> **(8) whether the fee is fixed or contingent.**

(b) When the lawyer has not regularly represented the client, the scope of the representation, the basis or rate of the fee, and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. Any changes in these terms of representation shall also be communicated, preferably in writing.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall be paid to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement summarizing any financial recovery, the method of determining any fee based upon the recovery, and all litigation or other expenses that affect the client's share of the recovery.

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing:

> **(1) a party in a domestic relations matter (but after a final order or decree is entered, a lawyer may enter into a contingent fee contract for collection of payments which are delinquent pursuant to such decree or order); or**
>
> **(2) a defendant in a criminal case.**

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

> **(1) either:**
>
> > **(i) the division is in proportion to the services performed and responsibility assumed by each lawyer, or**
> >
> > **(ii) by written agreement with the client, each lawyer assumes joint responsibility for the representation;**
>
> **and**
>
> **(2) the client is aware that the fee will be divided and consents in writing to the participation of all the lawyers involved; and**
>
> **(3) the total fee is reasonable.**

<u>Comments and Ethical Considerations</u>

[6] A division of fee is a billing to a client covering the fee of two or more lawyers who are not in the same firm. Although "fee-splitting" traditionally has been prohibited, the modern trend is to permit such a division, as long as the total fee is reasonable and the client consents. The practice of fee division among lawyers can often serve both the public interest and the interests of clients. . . . Fee-splitting thus provides an incentive for the first lawyer to bring the second lawyer into the case. Moreover, when the first lawyer continues to be involved in the case, he or she receives "apprenticeship" training and the overall quality of the bar is improved. . . . Lawyers sharing a fee on a case need no longer perform proportionate shares of the work, as long as each assumes joint responsibility for the work as a whole and the client consents in writing to the fee division. . . . . It does not require disclosure to the client of the share that each lawyer is to receive. If division of the fee instead will be proportional to work performed, the client need not consent to the division of the fee but must be informed of and agree in writing to the participation of all the lawyers involved.

Rule 1.7 Concurrent Conflict Of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if

> **(1) the representation of one client will be directly adverse to another client; or**
>
> **(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's duties to another client or to a former client or by the lawyer's own interests or duties to a third person.**

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), a lawyer may represent a client if

> **(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation

(4) each affected client gives consent after disclosure, confirmed in writing.

(c) In no event shall a lawyer represent both parties in dissolution of marriage proceedings whether or not contested or involving custody of children, alimony, child support, or property settlement.

<u>**Comments and Ethical Considerations**</u>

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's own interests or from the lawyer's responsibilities to another client, a former client, or a third person. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8.

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, obtain the clients' consent after disclosure in writing.

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the written consent of each client after disclosure under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer must adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule.

[11] Subparagraphs (b)(3) and paragraph (c) prohibit representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is not uncommon. A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant.

[18] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are non-consentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[19] Consentability is typically determined by considering whether the interests of the client will be adequately protected if the clients are permitted to give their consent to representation burdened by a conflict of interest. Thus, consent from the client may be relied upon only if it is objectively clear that the threat to the lawyer's independent judgment is minimal. Disclosure of the conflict to the client and the client's consent serve the important purpose of informing the client of the risk, but the lawyer must also be personally assured that the lawyer can still uphold the responsibility to be a zealous advocate on behalf of the client.

[22] Consent after disclosure requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of the client. . . . The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty and

confidentiality, and the advantages and risks involved. Under some circumstances, it may be impossible to make the disclosure necessary to obtain consent.

[3] Paragraph (b) requires the lawyer to confirm the disclosure to and consent of the client in writing. Such a writing may consist of a document executed by the client or oral consent that the lawyer promptly records and transmits to the client. If it is not feasible to obtain or transmit the writing at the time the client gives consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

[26] Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Rule 1.8 Concurrent Conflict Of Interest: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, including but not limited to taking stock or ownership in the business in lieu of fees, unless:

> **(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;**
>
> **(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel regarding the transaction; and**
>
> **(3) the client consents after disclosure, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after disclosure, except as permitted or required by Rule 1.6, Rule 3.3, or Rule 4.1.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, spouse, or co-habitating partner any substantial gift, except where the client is related to the donee by consanguinity or affinity within the third degree.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation or anything of value for representing a client from one other than the client unless:

(1) the client consents after disclosure;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after disclosure, in a writing signed by the client, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted under Iowa Code section 602.10116 to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer related to another lawyer as parent, child, sibling, spouse, or co-habitating partner shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the related lawyer except upon consent by the client after disclosure regarding the relationship.

(k) A lawyer shall not engage in sexual relations with a client, or a representative of a client, unless the person is the spouse of the lawyer or the sexual relationship predates the initiation of the lawyer-client relationship. Even in these provisionally exempt relationships, the lawyer should strictly scrutinize his or her behavior for any conflicts of interest to determine if any harm may result to the client or to the representation. If there is any reasonable possibility that the legal representation of the client may be impaired, or the client harmed by the continuation of the sexual relationship, the lawyer should immediately withdraw from the legal representation.

(l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any of them applies to all of them.

Comments and Ethical Considerations

[8] Paragraph (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. . . . When the lawyer is publicly-compensated, such as in the case of a public defender in a criminal case or a guardian appointed in a civil case or when civil legal services are provided by a legal aid organization, the fee arrangement ordinarily does not pose the same risk of interference with the lawyer's independent professional judgment that exists in other contexts. Under paragraph (f), such a lawyer must disclose the fact that the lawyer is being compensated through public funding or that legal services are being provided as part of a legal aid organization; however, formal consent by the client to the fee arrangement is not required under such circumstances given the limited ability of an indigent client as a practical matter to refuse the services of lawyer being compensated through public funding or through legal aid.

[11] Paragraph (i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1 .9, and 1.10. When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood, marriage, or cohabitation, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. . . . The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10(a).

Rule 1.9 Successive Conflict Of Interest: Duties To Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after disclosure, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

> **(1) whose interests are materially adverse to that person; and**
>
> **(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;**

unless the former client consents after disclosure, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

> **(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client, or when the information has become generally known; or**
>
> **(2) reveal information relating to the representation except as Rule 1.6 would permit with respect to a client.**

Comments and Ethical Considerations

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule.

[2] Paragraphs (a) and (b) specify the circumstances in which a lawyer will be disqualified from representing a client with interests materially adverse to those of a former client who was represented by the lawyer (or a law firm with which the lawyer was associated). If the lawyer actually represented the client, either individually or on behalf of a law firm with which the lawyer was associated, the lawyer will be disqualified by paragraph (a) if the current matter is the same or substantially related to the matter in which the lawyer represented the former client. If the lawyer did not personally participate in the representation of the former client, but was associated with a law firm that was representing the client, the lawyer will be similarly disqualified by paragraph (b), but only if the lawyer had acquired confidential information about the former matter that would be useful in the current matter.

[6] A lawyer who has participated in any way in the former representation will be disqualified if the current and former matters are substantially related in either the "loyalty" or "confidentiality" sense of the phrase. A lawyer who has actively participated in the representation of a client--no matter how limited the participation--will not be allowed to change sides and work to undo what previously was accomplished on behalf of client. Alternatively, if the matters are substantially related in the confidentiality sense of the phrase, all lawyers who actually participated in the representation of the former client will be prophylactically disqualified to protect the former client against the risk that his or her former lawyers had actually acquired confidential information that could be used by them to the current disadvantage of the former client and that the lawyers would succumb to temptation and knowingly violate Rule 1.9(c). This disqualification is personal to the lawyer who participated in the representation of the former client and is unaffected by the fact that the lawyer may be associated with a law firm, changes in the composition of the lawyer's firm, or the fact that the lawyer may leave one law firm and join another.

[9] Whether a lawyer possesses confidential information relating to the representation of a client by other lawyers in his or her law firm is a question of fact. Such knowledge, however, may be inferred from the circumstances, including the working relationships among the lawyers associated in the firm. For example, a lawyer in a firm may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

[11] Apart from the question of disqualification addressed by paragraphs (a) and (b), a lawyer has a continuing duty to preserve confidentiality of information about a client formerly represented by the lawyer or a law firm with which the lawyer was associated. Without the consent of the former client, the lawyer must not disclose such information even if it has become generally known and the disclosure would not disadvantage the client.

[12] Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

Rule 1.10 Imputed Disqualification: General Rule

(a) Except as permitted by paragraphs (b), (c), and (d), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not represent a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer becomes associated with a firm, the firm may not represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in

which the newly associated lawyer, or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless:

(1) the newly associated lawyer did not personally participate in the former representation and has no information protected by Rules 1.6 and 1.9(c) that is material to the matter (and thus the newly associated lawyer is not personally disqualified from the representation under Rule 1.9(b)); or

(2) the matter does not involve a proceeding before a tribunal in which the newly associated lawyer had a substantial role and the newly associated lawyer is screened from any participation in the matter as provided in paragraph (d) and is apportioned no part of the fee therefrom.

(c) When a lawyer has terminated an association with a firm, the firm may thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer if:

(1) the matter is not the same or substantially related to that in which the formerly associated lawyer represented the client; or

(2) no lawyer remaining in the firm has information protected by Rule 1.6 and Rule 1.9(c) that is material to the matter.

(d) For purposes of Rules 1.10, 1.11, 1.12, and 1.18, a lawyer in a firm will be deemed to have been screened from any participation in a matter if:

(1) the lawyer has been isolated from confidential information protected by Rule 1.6 concerning the matter; and

(2) the lawyer has been isolated from all contact with the client or any agent, officer, or employee of the client and any witness for or against the client; and

(3) the lawyer and the other lawyers in the firm have been precluded from discussing the matter with each other; and

(4) the former client has been advised in writing of the circumstances that warranted the implementation of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule; and

(5) the firm has taken affirmative steps to accomplish the foregoing.

(e) A disqualification prescribed by this Rule may be waived by the affected former client under the conditions stated in Rule 1.7(b).

<u>Comments and Ethical Considerations</u>

Definition of "Firm"

[1] For purposes of the Iowa Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association, or in a legal services organization; lawyers in the legal department of a corporation or other organization who render legal services to that organization or to others to advance the interests or objectives of that organization; or lawyers who share office facilities without adequate measures to protect confidential information so that it will not be available to other lawyers in the shared facilities. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm

unless they fail to take adequate measures to protect confidential information of the clients of each. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.

[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular Rule that is involved, and on the specific facts of the situation.

[6] Imputation of disqualification creates burdens both for clients and lawyers. Some clients who wish to be represented by a trusted or highly recommended lawyer or law firm must forgo the engagement. Imputed disqualification inhibits mobility of lawyers from one firm to another. The burden of imputed disqualification should end when material risks to confidentiality and loyalty resulting from shared income and access to information have been avoided by appropriate measures. Therefore, in appropriate situations, with carefully monitored "screening" policies and procedures, the client's right to choose counsel on the basis of judgment and reason can be reinforced, without endangering the right of former clients to protection of confidential information.

[7] When lawyers who have been associated within a firm end their association, the question of whether a lawyer should undertake representation adverse to clients of the firm is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised and that confidential information related to the representation will not be used to the client's disadvantage. Second, the rule should not be cast so broadly as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association.

[8] Paragraphs (b) and (c) specify the limited circumstances in which the personal disqualification of a lawyer will not be imputed to other lawyers in a firm which the lawyer is currently or was formerly associated. Paragraph (b) addresses the situation in which a lawyer leaves one law firm and joins another firm which is representing a client. If the newly associated lawyer did not personally participate in the representation of the client at the former law firm and did not obtain confidential information material to the matter, then that lawyer is not personally disqualified under Rule 1.9(b); there is no disqualification to impute to the new law firm. However, the new lawyer may be personally disqualified from participating in the representation of some of the new firm's clients because of the lawyer's prior representation of or acquisition of confidential information about clients of the former law firm. This personal disqualification generally will not be imputed to other lawyers in the personally-disqualified lawyer's new firm if they comply with the screening requirements of paragraph (d). But screening is not effective to avoid imputed disqualification of other lawyers in the firm if the newly associated lawyer participated substantially in representing the former client in the same matter before a tribunal in which the lawyer's new firm represents an adversary of the former client. Determining whether a lawyer's role in representing the former client was substantial involves consideration of such factors as the lawyer's level of responsibility in the matter, the duration of the lawyer's participation, the extent to which the lawyer advised or had personal contact with the former client and the former client's personnel, and the extent to which the lawyer was exposed to confidential information of the former client likely to be material in the matter.

[9] Paragraph (c) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which

would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c). The lawyers remaining in the law firm may rebut the presumption that confidential information was shared during the period of affiliation with the departed lawyer. These lawyers have the burden of persuasion concerning three facts: (1) that no material confidential information relevant to the matter was revealed to any lawyer remaining in the firm; (2) that the firm does not now possess or have access to the sources of client confidential information, particularly client documents or files; and (3) that the personally-disqualified lawyer who left the firm will not share fees in the matter so as to have an interest in the representation.

[10] Paragraph (d) sets forth the safeguards which must be provided for the benefit of the former client of the newly associated lawyer who is personally disqualified and which allows the new law firm to avoid vicarious disqualification in the circumstances addressed by paragraph (b). Whether a firm's screening procedures are effective to prevent the flow of information about the matter between the personally-disqualified lawyer and the other lawyers in the firm is a question of fact. . . . . The question to be asked in each case is whether the screening mechanism effectively reduces to a minimal level the potential for misuse of information related to the representation of the personally-disqualified lawyer's former client.

Rule 1.11 Special Conflicts Of Interest For Former/Current Government Officers/Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

> **(1) is subject to Rules 1.9(a) and (b), except that "matter" is defined as in paragraph (f) of this Rule;**
>
> **(2) is subject to Rule 1.9(c); and**
>
> **(3) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after disclosure, confirmed in writing, to the representation.**

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

> **(1) the disqualified lawyer is timely screened from any participation in the matter as provided in Rule 1.10(d) and is apportioned no part of the fee therefrom; and**
>
> **(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.**

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter as provided in Rule 1.10(d) and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency consents after disclosure, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) Prosecutors for the state or county shall not engage in the defense of an accused in any criminal matter during the time they are engaged in such public responsibilities. However, this rule shall not prohibit a lawyer, not regularly employed as a prosecutor for the state or county but acting as a special prosecutor for a specific criminal case when the regular prosecutor is disqualified due to a conflict of interest, from engaging in defense of an accused in other criminal matters if no conflict of interest is created or the attorney complies with the requirements of Rule 1.7(b).

(f) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comments and Ethical Considerations

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Iowa Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

Rule 1.14 Client With Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6 to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

> **(1) the representation will result in violation of the rules of professional conduct or other law;**
>
> **(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or**
>
> **(3) the lawyer is discharged.**

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

> **(1) withdrawal can be accomplished without material adverse effect on the interests of the client;**
>
> **(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
>
> **(3) the client has used the lawyer's services to perpetrate a crime or fraud;**
>
> **(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;**
>
> **(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;**
>
> **(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or**
>
> **(7) other good cause for withdrawal exists.**

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client when asserting an attorney's lien under Iowa Code section 602.10116 or to the extent permitted by other law.

__Comments and Ethical Considerations__

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law under Iowa Code section 602.10116. Upon termination of representation and at the client's request, and subject to any such attorney's lien, the lawyer shall provide (1) any original documents

needed by the client in order to pursue his or her case, such as original contracts, leases, promissory notes, etc., and (2) copies of all other documents, which must be paid for according to the lawyer-client fee agreement and copy charge arrangements, but the lawyer is not required to provide working papers that contain the lawyer's mental impressions, strategies, or analysis.

Rule 1.18 Duties To A Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client or as provided in paragraph (e).

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be harmful to that person in the matter, except as provided in paragraphs (d) or (e). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which the lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) Representation is permissible if:

> **(1) both the affected client and the prospective client consent after disclosure, confirmed in writing, to the representation, or**
>
> **(2) where disqualification otherwise would be imputed to all lawyers in the firm, but the disqualified lawyer is timely screened from any participation in the matter as provided in Rule 1.10(d) and is apportioned no part of the fee therefrom.**

(e) If a lawyer receives unsolicited information from a prospective client before having an opportunity in the exercise of due diligence to inquire of the prospective client about other persons involved in the matter so as to determine whether a conflict of interest exists under Rules 1.7 through 1.13, the lawyer shall not thereby be disqualified from representing another person or organization with whom the lawyer has a continuing lawyer-client relationship nor shall the lawyer be restricted in use or revelation of that unsolicited information on behalf of that continuing client in the same, a substantially related, or a different matter, notwithstanding paragraphs (b) and (c).

Comments and Ethical Considerations

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] It is often necessary for a prospective client to reveal information during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be, unless the information received from the prospective client is unsolicited and received despite the attorney's diligent efforts to limit the initial consultation to the identification of the other persons involved in the matter, as provided in paragraph (e).

[3] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[8] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

RULE 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or continue with the prosecution or defense of a proceeding, or assert or controvert an issue therein, or continue to assert or controvert an issue, unless the lawyer reasonably believes after inquiry that there is a basis in law and fact for doing so that is not frivolous, which may include a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comments and Ethical Considerations

[5] This Rule does not preclude a lawyer for a defendant in a criminal matter from defending the proceeding so as to require that every element of the case be established.

[6] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting an claim that otherwise would be prohibited by this Rule.

[7] Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when a client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist a client in developing evidence relevant to the state of mind of the client at a particular time. A lawyer may properly assist a client in the development and preservation of evidence of existing motive, intent, or desire; obviously, the lawyer may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the client's state of mind, and in those situations the lawyer should resolve reasonable doubts in favor of the client.

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

> **(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**
>
> **(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, except when barred from doing so by Rule 1.6 or Iowa Code section 622.10 and subject to paragraph (b);**
>
> **(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or**

(4) offer evidence that the lawyer knows to be false.

(b) If prior to the conclusion of the final stage of a proceeding, a lawyer receives information clearly establishing that a client or another person in connection with the proceeding has given perjured testimony, perpetrated a fraud upon the tribunal or persons participating in the proceeding, or otherwise committed an offense against the administration of justice, the lawyer shall:

(1) promptly advise the client to rectify the client's perjured testimony, fraud, or offense or to consent to the disclosure of another person's perjury, fraud, or offense, and also consult with the client about the consequences of the client's failure to do so; and

(2) if the client refuses or is unable to rectify the client's perjury, fraud, or offense, the lawyer shall reveal the information to the tribunal unless the information is confidential under Rule 1.6 or Iowa Code section 622.10; and

(3) if the client refuses to consent to the disclosure of another person's perjury, fraud, or offense, the lawyer shall reveal the information to the tribunal unless the information was obtained from a privileged client communication; and

(4) if under subparagraphs (2) or (3) the client so refuses and the lawyer is unable to reveal confidential information, the lawyer shall request permission of the tribunal to withdraw from representation of the client and inform the tribunal, without further disclosure of confidential information, that the lawyer's request to withdraw is required by the Iowa Rules of Professional Conduct; and

(5) if the lawyer is not permitted by the tribunal to withdraw from representation after making a request as provided in subparagraph (4), the lawyer shall not make any reference to or otherwise affirm the validity of evidence or statements the lawyer knows to be false.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comments and Ethical Considerations

[13] Generally speaking, a lawyer has authority to refuse to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel and the right of a defendant in a criminal matter to testify.

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer--that is, facts which are within the lawyer's personal knowledge--and that the lawyer reasonably believes are necessary to an informed decision. In addition to disclosing the material facts about the merits of the matter, the lawyer must disclose material facts about the proceedings, including whether the absent party is represented by counsel and whether that counsel was given reasonable advance notice about the ex parte disclosure. While the lawyer is bound to disclose material non-privileged confidential information, the lawyer is not required to disclose privileged evidence, which the lawyer reasonably believes would not be subject to discovery or subpoena by reason of an

evidentiary privilege such as that afforded to attorney-client communications. Although the lawyer must make a full disclosure of material facts, the lawyer remains an advocate for the client and is free to argue the matter with full vigor. Armed with full knowledge of the underlying facts, the tribunal then can come to an informed decision on the merits.

Rule 3.4 Fairness To Opposing Party And Counsel

(a) A lawyer shall not obstruct another party's access to evidence or alter, destroy, or conceal evidence, or counsel or assist another person to do so, if the lawyer knows or reasonably should know that the evidence is or may be the subject of discovery or subpoena in any pending or imminent proceeding.

(b) A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

(c) A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

(d) A lawyer shall not in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

(e) A lawyer shall not in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused.

(f) A lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

> **(1) the person is a relative or an employee or other agent of a client; and**
>
> **(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.**

(g) With respect to evidence that the lawyer knows or reasonably should know is relevant to a pending or imminent criminal proceeding or investigation, a lawyer:

> **(1) may, when reasonably necessary for purposes of the representation, take possession of the evidence and retain it for the time reasonably necessary to examine it and subject it to tests that do not alter or destroy material characteristics of the evidence; but**
>
> **(2) following possession under subparagraph (1), the lawyer must:**
>
> > **(i) return the evidence to the site from which it was taken, when that can be done without destroying or altering material characteristics of the evidence and when replacing the evidence in that location does not pose a danger to others; or**
> >
> > **(ii) return the evidence to the person who delivered it to the lawyer when the evidence belongs to that person, unless possession is forbidden by law, the lawyer reasonably fears that return will result in destruction of the evidence, or the lawyer reasonably fears that return will result in physical harm to another; or**
> >
> > **(iii) return the evidence to the rightful owner of the evidence, unless possession is forbidden by law, the lawyer reasonably fears that return will**

result in destruction of the evidence, or the lawyer reasonably fears that return will result in physical harm to another; or

(iv) notify prosecuting authorities of the lawyer's possession of the evidence, or deliver the evidence to prosecuting authorities.

<u>Comments and Ethical Considerations</u>

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[5] Under paragraph (g), a lawyer for an actual or potential criminal defendant has the same privilege as prosecutors to possess and examine evidence relating to a crime for the lawful purposes of assisting in the trial of a criminal case. . . . Examination by the lawyer of such evidence may include scientific tests, so long as they do not alter or destroy the value of the evidence for possible use by the prosecution. A lawyer who is not reasonably familiar with, and prepared to adhere to, modern forensic techniques and standards should not disturb evidence or attempt to test it. So long as the lawyer's possession is for the purposes stated in paragraph (g), and only for the period necessary to achieve that purpose, criminal laws that generally prohibit possession of contraband or other evidence of crimes is inapplicable to the lawyer (although such laws affect how the lawyer may dispose of the evidence after examination, as discussed below). Nonetheless, possession of such evidence otherwise than in strict compliance with the requirements in paragraph (g) may expose the lawyer to risk of prosecution as an accessory after the fact for accepting evidence that otherwise might be found. A lawyer's office may also thereby be subject to search. Receipt of evidence by the lawyer is subject to the limitations imposed in paragraph (a) with respect to obstruction of access, alteration, destruction, or concealment, and subject also to the requirements of paragraph (g) with respect to return of the property to the site from which it was taken and to the obligation to comply with subpoenas and discovery requests. The term "evidence" includes any document or physical object that the lawyer reasonably should know may be the subject of discovery or subpoena in any pending or imminent litigation. Witness statements, photographs of the scene of a crime, trial exhibits, and the like prepared by a lawyer or a lawyer's assistants constitute work product and thus are not subject to paragraph (g), even if such material could constitute evidence of a client crime for some purposes, such as if the work product protection were waived.

[6] Once a lawyer's reasonable need for examination of the evidence of a client crime has been satisfied, a lawyer's responsibilities with respect to further possession of the evidence are determined under the criminal law and the rules protecting client confidentiality.

[7] Because of the duty of confidentiality under Rule 1.6, the lawyer is generally forbidden to volunteer information about evidence received from a client without the client's consent after disclosure. Confidentiality may be protected by returning the evidence to the site from which it was taken or to the person from whom it was received, provided such return is permitted under subparagraph (g)(2). However, if the evidence received from the person or client is subpoenaed or otherwise requested through the discovery process while held by the lawyer, the lawyer remains obliged under paragraph (a) to deliver the evidence directly to the appropriate persons, unless there is a non-frivolous basis for objecting to the discovery request or moving to quash the subpoena. . . . Because of the prejudice to the client, and the principle of confidentiality, introduction and authentication at trial should be done without improperly revealing the source of the evidence to the finder of fact. The parties may also agree that the tribunal may instruct the jury, without revealing the lawyer's involvement, that an appropriate chain of possession links the evidence to the place where it was located before coming into the lawyer's possession. In the absence of agreement to such an instruction by the defense, the prosecutor may offer evidence of the lawyer's possession if necessary to establish the chain of possession.

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

> **(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;**
>
> **(2) information contained in a public record;**
>
> **(3) that an investigation of a matter is in progress;**
>
> **(4) the scheduling or result of any step in litigation;**
>
> **(5) a request for assistance in obtaining evidence and information necessary thereto;**
>
> **(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and**
>
> **(7) in a criminal case, in addition to subparagraphs (1) through (6):**
>
>> **(i) the identity, residence, occupation, and family status of the accused;**
>>
>> **(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;**
>>
>> **(iii) the fact, time, and place of arrest; and**
>>
>> **(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.**

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

<u>Comments and Ethical Considerations</u>

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client.

[8] When prejudicial public statements are made by public officials, such as prosecutors, the harm to the public interest in justice is particularly grave. Thus, prosecutors must observe the heightened limitations on extrajudicial statements stated in Rule 3.8(g). As provided in Rule 3.8(e), prosecutors are also obliged to prevent investigators, law enforcement personnel, employees, and other persons assisting or associated with the prosecutor from making extrajudicial statements that a prosecutor would be prohibited from making.

Rule 3.8 Special Responsibilities Of A Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows or reasonably should know is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing, unless the accused is representing him or herself with the approval of the tribunal;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

> **(1) the information sought is not protected from disclosure by any applicable privilege;**
>
> **(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution;**
>
> **(3) there is no other feasible alternative to obtain the information; and**

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule.

Comments and Ethical Considerations

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions.

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (g) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case.

Rule 4.2: Communications With Persons Represented By Counsel

(a) ***General Rule.*** **A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law, a court order, or paragraphs (b) or (e).**

(b) ***Rules Relating to Government Lawyers Engaged in Civil or Criminal Law Enforcement.*** **A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction, may communicate with a person known by the government lawyer to be represented by a lawyer in the matter if the communication occurs prior to the person's having been arrested, charged in a criminal case, or named as a defendant in a civil law enforcement proceeding brought by the governmental agency that seeks to engage in the communication, and the communication relates to the investigation of criminal activity or other unlawful conduct.**

(c) ***Organizations as Represented Persons.***

> **(1) When the represented "person" is an organization, an individual is "represented" by counsel for the organization if the individual is not separately represented with respect to the subject matter of the communication, and is known by the lawyer to be**
>
> > **(i) a current member of the control group of the represented organization; or**
> >
> > **(ii) a representative of the organization whose acts or omissions in the matter may be imputed to the organization under applicable law; or**
> >
> > **(iii) a representative of the organization whose statements under applicable rules of evidence would have the effect of binding the organization with respect to proof of the matter.**
>
> **(2) The term "control group" means the following persons: (i) the chief executive officer, chief operating officer, chief financial officer, and chief legal officer of the organization; and (ii) to the extent not encompassed by the foregoing, the chair of the organization's governing body, president, treasurer, and secretary, and a vice president or vice-chair who is in charge of a principal business unit, division, or function (such as sales, administration, or finance) or performs a major policy making function for the organization; and (iii) any other current employee or official who is known to be participating as a principal decision maker in the determination of the organization's legal position in the matter.**

(d) ***Limitations on Communications.*** **When communicating with a represented person pursuant to this Rule, no lawyer may**

> **(1) inquire about information regarding litigation strategy or legal arguments of counsel, or seek to induce the person to forego representation or disregard the advice of the person's counsel; or**
>
> **(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement, or other disposition of actual or potential criminal charges or civil enforcement claims, or sentences or penalties with respect to the matter in which the person is represented by counsel unless such negotiations are authorized by law or court order as provided in paragraph (a).**

(e) ***Communications with Public Officials.*** **In representing a client who has a dispute with a governmental body, a lawyer may communicate about the subject of the representation with the elected or appointed officials who have authority over such governmental body (other than members**

of an agency tribunal adjudicating a "contested case" as defined by the Iowa Administrative Procedure Act, section 17A), even if the lawyer knows that the governmental body is represented by another lawyer in the matter, but such communications may only occur under the following circumstances:

(1) in writing, if a copy of the writing is promptly delivered to opposing counsel;

(2) orally, upon adequate notice to opposing counsel; or

(3) in the course of official meetings or proceedings.

Comments and Ethical Considerations

[6] Paragraph (b) makes clear that this Rule does not prohibit all communications with represented persons by state or federal government lawyers (including law enforcement agents and cooperating witnesses acting at their direction) when the communications occur during the investigation of civil violations or criminal activity. The exemptions for government lawyers contained in paragraph (b) of this Rule recognize the unique responsibilities of government lawyers to enforce public law. Nevertheless, when the lawyer is representing the government in any other role or litigation (such as a contract or tort claim) the same rules apply to government lawyers as are applicable to lawyers for private parties.

[7] Under paragraph (b), a government lawyer may generally contact a represented person concerning the subject matter of the representation, so long as the communication occurs prior to that person's being arrested, charged in a criminal case, or named as a defendant in a civil law enforcement proceeding concerning the subject matter of the representation. If the represented person has been arrested, charged in a criminal case, or named as a defendant in a civil law enforcement proceeding, paragraph (b) does not allow further communication on that matter. . . Nothing in this Rule excuses a government lawyer from disciplinary action who questions an individual outside the presence of his or her lawyer in a manner that subverts clearly established constitutional limitations under the Fifth and Sixth Amendments to the United States Constitution and comparable state constitutional provisions regarding the interrogation of persons who are in custody or who have been charged with an offense.

[9] After indictment, arrest, or the filing of a civil complaint, the ability of a government lawyer to communicate with a represented person is significantly more restricted and, absent judicial precedent to the contrary, may proceed only after obtaining a court order authorizing the communication under paragraph (a) of this Rule.

Rule 4.4: Respect For Rights Of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) In communicating with third persons, a lawyer shall not seek to obtain information that the lawyer knows or reasonably should know is subject to an evidentiary or other privilege of another.

(c) A lawyer who receives a document and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comments and Ethical Considerations

[3] Paragraph (c) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer has reason to know that a document was sent

inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures.

Rule 5.1: Responsibilities Of Partners, Managers And Supervisory Lawyers

(a) A partner in a law firm or a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the Iowa Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Iowa Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Iowa Rules of Professional Conduct if:

> **(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**
>
> **(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

<u>**Comments and Ethical Considerations**</u>

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Comments and Ethical Considerations [1] to [3] to Rule 1.10 (defining "firm").

[6] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[7] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Iowa Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.2: Responsibilities Of A Subordinate Lawyer

(a) A lawyer is bound by the Iowa Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Iowa Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

<u>**Comments and Ethical Considerations**</u>

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly..

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of the nonlawyer that would be a violation of the Iowa Rules of Professional Conduct if engaged in by a lawyer if:

> **(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or**
>
> **(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

Comments and Ethical Considerations

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product.

Rule 6.2: Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Iowa Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rule 8.3: Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Iowa Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of confidential information otherwise protected by Rule 1.6 or Iowa Code section 622.10.

(d) If a lawyer acting as a member or designee of the Lawyers Helping Lawyers Committee (committee) or the Iowa Lawyers Assistance Program (program) of the Iowa State Bar Association receives information concerning another lawyer or a judge that would be confidential under Rule 1.6 or Iowa Code section 622.10 if it related to the representation of a client,

> **(1) the lawyer who is a committee or program member or designee is not required to disclose such information about the other lawyer or judge nor shall failure or refusal to disclose such information constitute a violation of this Rule;**
>
> **(2) except that if information concerning commingling, mishandling, or misappropriation of client's funds is received, the lawyer who is a committee or program member or designee shall advise the other lawyer to report his or her own misconduct to the appropriate professional authority, but if the other lawyer refuses or is unable to do so, the lawyer who is a committee or program member or designee shall inform the appropriate professional authority of misconduct concerning client's funds.**

Comments and Ethical Considerations

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement previously existed in many jurisdictions but proved to be unenforceable. . . A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct under paragraph (b).

[4] Under paragraph (c), the duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship, including protection of confidential information under Rule 1.6 and Iowa Code section 622.10.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such a program. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff and agents subject to the lawyer's direction and control to do so.

Comments and Ethical Considerations

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice.

[3] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[4] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

Rule 8.5: Disciplinary Authority

A lawyer admitted to practice in Iowa is subject to the disciplinary authority of Iowa, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Iowa is also subject to the disciplinary authority of Iowa if the lawyer renders or offers to render any legal services in Iowa, including appearing before a tribunal in Iowa on behalf of a client. A lawyer may be subject to the disciplinary authority of both Iowa and another jurisdiction for the same conduct.