



PROGRAM MATERIALS

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The Ethics of Law Firm Management: Now More Than Ever

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ETHICS OF LAW FIRM MANAGEMENT-- NOW MORE THAN EVER

PRESENTED BY
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PRELIMINARY THOUGHTS

1. MY BACKGROUND
2. DIFFERENCE FIRMS AND MODELS
3. OLD ADAGE—IF IT WAS EASY EVERYONE WOULD DO IT
4. CULTURE AND FIT
5. MORE THAN A BUSINESS
6. HOW DOES COVID AFFECT THE OPERATION OF A LAW FIRM



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PROFESSIONALISM AND RULES FOR PROFESSIONAL CONDUCT

RPCs govern the conduct and actions of all lawyers.

MODEL RULES OF PROFESSIONAL CONDUCT



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AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT

- Adopted by most states in some capacity
- Not limited to collection law matters and concerns—good overview
 - Common sense



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Preamble: A Lawyer's Responsibilities

(2) . . . As negotiator, a lawyer seeks a result advantageous to the client but **consistent with requirements of honest dealings with others** (emphasis added). . .

Even if a lawyer is not practicing or is acting as a non-lawyer, the preamble at section (3) provides the following example: “For example, a lawyer who commits fraud in the conduct of business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.”

(4) “In all professional functions a lawyer should be competent, prompt and diligent. . . .”

(5) “A lawyer’s conduct should confirm to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. . . .”

(7) . . . ‘a lawyer is also guided by personal conscience and the approbation of professional peers, A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.”



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Preamble: A Lawyer's Responsibilities

My Take

- Even if not acting as a lawyer, you are required to act with the foremost ethics, honesty and fairness to all involved.
- The goal is for each lawyer to act in accordance with the highest ideals of the law and the profession,
- Being a lawyer is not a job, it is a full time responsibility and an ideal to strive for. Unfortunately, way too many of the practitioners forget and violate these ideals.



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AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.1: Competence

- “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, **thoroughness and preparation reasonably necessary for the representation.**”

Rule 1.3: Diligence

- “A lawyer shall act with reasonable diligence and promptness in representing a client.”



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Rule 1.1: Competence

My Take

- Know what you are doing. If you do not know what you are doing you are not allowed to take the representation or at the least get someone to work with you that does know what they are doing.

Rule 1.3: Diligence

My Take

- Don't needlessly delay.
- Keep client apprised of all actions as they are happening or as soon thereafter as reasonably practicable.



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Rule 1.5: Fees

- (a) A lawyer shall not make an agreement for, or charge, or collect an unreasonable fee or an unreasonable amount for expenses. . . .
- (c) A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue 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. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. . . .



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Rule 1.5: Fees

My Take

- A lawyer is always in conflict with his client on the issue of fees. If billable, it behooves the lawyer to bill more time to increase the fees, but doing so may run afoul of ethics rules
- (a) A lawyer shall not make an agreement for, or charge, or collect an unreasonable fee or an unreasonable amount for expenses. . . .
- (c) A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue 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. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. . . .



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Rule 3.1: Meritorious Claims and Contentions

- “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. . . .”

Rule 3.2: Expediting Litigation

- “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”



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MY TAKE

- Practicing law is hard enough, even when you have the facts and/or the law on your side. Bringing a frivolous action for no apparent purpose, other than to bill the client is unethical. As a lawyer it can be a reputation killer. For a firm, it puts the other attorneys in a bind to support their partner, but also comply with the ethics rules. Unless there is a basis in law or fact to bring the action or take the position do not. You should have little wiggle room in the firm for such actions taken.
- On the flip side, threatening a frivolous action sanction without any basis to do so other than the position of your client is opposite to that of the other side, is likewise frivolous.
- Don't waste time needlessly. Sometimes you need extra time, or coordinating documents and witnesses, but do not waste time needlessly.



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



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Rule 3.3: Candor Toward the Tribunal

MY TAKE

- DUH!
- Most obvious-do not mislead the court or provide false information or case law.
- Will certainly hurt your reputation and that of your partners
- Will hurt your client's case
- Judges normally willing to give breaks or be lenient with attorneys who are honest, trying to right thing by their client, but that will end if you mislead the court.



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Rule 3.4: Fairness to Opposing Party and Counsel

- A lawyer shall not:
 - (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
 - (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

- (d) 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:



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Rule 3.4: Fairness to Opposing Party and Counsel—MY TAKE

- Just as you cannot ethically mislead the court, do not do so with your adversary and fellow member of the bar.
- Will hurt your and your firm reputation.
- Lose all credibility and respect.
- If I acted in a frivolous or misleading manner to other lawyers, I would lose out on a tremendous source of referral business. If you are open and honest with your adversary, they respect that, is how you would like to be treated, and they may cut you a break during a case or on an extension request.



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Conflicts of Interest

Rules 1.7 to 1.13 of the Model Rules provide guidance as to conflicts of interest in various situations. Some of the key ones are as follows:

- Rule 1.7: Conflict of Interest: Current Clients—it is generally prohibited to represent a client if doing so would involve a concurrent conflict of interest. A concurrent conflict of interest is defined as representation that would be directly adverse to another client or where “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third-person or by a personal interest of the lawyer.” This can nonetheless be overcome.
- Rule 1.9: Duties to Former Clients—“(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 gives informed consent, confirmed in writing.”



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Conflicts of Interest—MY TAKE

- Need to continually ask yourself whether something could conflict with the interest of current or former clients.
- Need to do conflict checks.
- If you allow a partner to just take clients on without a conflict, could be putting firm at jeopardy.
- If you know a client was a problem previously discuss with your partners to see if willing to take on or not or to take on with certain terms and conditions.
- Set parameters for the firm if you will not accept certain matters because it could impair the reputation of your clients in another practice areas. This is not a conflict, but might be a firm-wide decision.



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Conflicts of Interest

- Rule 1.13: Organization as Client
 - “(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- ***
- (f) In dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization’s consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.”



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Conflicts of Interest

- Rule 1.13: Organization as Client—MY TAKE
 - Be careful and specifically layout the terms of the representation of the business entity and whether you are representing the principals/officers and on what terms.
 - Could affect you and your firm's ability to represent the entity going forward.



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LAW FIRMS AND ASSOCIATIONS

RULE 5.1

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the 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 Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the 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.



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RULE 5.1—MY TAKE

- Have to make sure all of the attorneys are complying with the RPCs.
- If know of a violation or potential violation, need to remedy or mitigate as soon as possible.



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RULE 5.2

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.



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RULE 5.2—MY TAKE

- All attorneys need to comply with RPCs, regardless if they are supervising or subordinate.
- Subordinate attorney can rely on supervisor's reasonable resolution of an arguable question of professional duty.
- Every attorney has duty to speak up and question whether their actions comply with the RPCs.



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RULE 5.3

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

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the 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 person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.



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RULE 5.4

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.



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RULE 5.4--Continued

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

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.



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RULE 5.4—MY TAKE

- Lawyer cannot split fees with a non-lawyer except in very limited circumstances.
- Non-lawyer cannot own an interest in a law firm.



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RULE 5.5

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;



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RULE 5.5 Continued

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.



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- **RULE 5.5 Continued**

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.



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- **RULE 5.5 Continued**

(e) For purposes of paragraph (d):

- (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,
- (2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].



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RULE 5.5—MY TAKE

- Attorneys need to be licensed in the jurisdiction they are practicing in and cannot mislead about authority or ability to practice in that jurisdiction



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RULE 5.6

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement;

or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.



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RULE 5.6—MY TAKE

- Generally you as an attorney cannot restrict a lawyer to practice if the business relationship ends.



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RULE 5.7

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

- (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
- (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.



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RULE 5.7—MY TAKE

- A lawyer is still subject to the RPCs when not providing legal services *per se* if the law related services are not distinct from the lawyer's legal services or if the lawyer does not take reasonable measures to let client know that legal services are not being provided and attorney-client privilege does not apply.
- Be careful when doing non-legal work with clients.



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LAW FIRM MANAGEMENT

- What type of practice do you want? Do you have an ability to make a choice?
 - Sole practitioner
 - Of counsel relationship with other law firms
 - Loose affiliation
 - Small partnership
 - Mid-size firm
 - Corporate Firm



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LAW FIRM MANAGEMENT

- What type of practice do you want? Do you have an ability to make a choice?
 - Specialized practice
 - General practice
 - Virtual practice
 - Local vs regional vs. national vs. international



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LAW FIRM MANAGEMENT

- HOW IS THE LAW FIRM RUN
 - Partner meetings?
 - How are decisions made?
 - How are partners paid?
 - Capital raise or take on firm debt? Who decides?
 - Recruitment?



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LAW FIRM MANAGEMENT

- HOW IS THE LAW FIRM RUN
 - Ideally you want all people—not just attorneys—to like and respect each other, want to help for the benefit of the firm and all buy into the culture and ideals the firm strives for
 - Is someone not able to do this—either attorney or staff
 - How do you grow the firm
 - How do you keep attorneys and staff happy and productive



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LAW FIRM MANAGEMENT

- HOW DOES COVID AFFECT MANAGEMENT GOING FORWARD
 - More virtual
 - Systems in place to make that feasible and beneficial
 - Are attorneys and staff required to be present in the office?
 - Meetings with clients/prospects/colleagues?
 - Business generation
 - Marketing
 - Safety and liability



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WHAT HAPPENS IN 2022 AND BEYOND?

???



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KEY TAKEAWAYS

- MANAGEMENT OF A LAW FIRM FOLLOWS ETHICAL RULES
- BE OPEN AND HONEST WITH ALL YOU DEAL WITH—THE COURT, CLIENTS, COLLEAGUES AND MOST IMPORTANTLY PARTNERS AND STAFF
 - The goal of law firm management should be to help the firm as a whole achieve as much success while adhering to ethical requirements, not purely a money-making effort for the managing partner
 - Don't seek things you are not entitled to or not agree to
- Common sense
- With global pandemic and economic issues—rational and practical decisions should govern—do not be afraid to be creative with possible solutions



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COMMENTS? QUESTIONS? WANT FURTHER INFORMATION?

Please contact me

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