

PROFESSIONAL RESPONSIBILITY
2 February 1998

I: INTRODUCTION

- **Massachusetts Rules of Professional Conduct**
 - In Effect since 1/1/97
 - Based on the Model Rules of Professional Conduct
 - Even if the Essay Question does not Explicitly call for a Professional Conduct Answer, try to weave it in
- **Purpose of Professional Responsibility**
 - Protect the Public
- **Supreme Judicial Court's Role in Massachusetts**
 - Regulate Attorney Conduct and Set Requirements for Admission to the Bar in Massachusetts
- **Admission to the Bar**
 - **Requirements**
 - Graduate High School
 - Graduate College
 - ABA Accredited Law School Graduation
 - MPRE passed
 - Pass Bar Exam
 - If Already Admitted Elsewhere, and have Practiced for 5 years, may petition to be admitted without taking the exam
 - There is NO Citizen or Residency Requirement
- **Board of Bar Examiners**
 - Certify the Character of the Bar Applicant
 - Certify that the Requirements for Admission to the Bar are Met
- **Massachusetts Supreme Court**
 - After Receiving BOARD CERTIFICATION, the MA Supreme Court determines whether to Admit the Applicant
- **Misstatement on Application** (false statement or omission)
 - By Applicant: Subject to Discipline for Misstatement
 - By Attorney: Subject to Discipline for misstatement UNLESS privileged communication involved

II: MISCONDUCT

- **Misconduct Defined:** A Lawyer commits misconduct if (s)he:
 - ⇒ Violates or Attempts to **Violate** the Rules of Professional Conduct, **knowingly assists or induces** another to do so, or **does so through** the acts of another
 - ⇒ Commits a **Criminal** Act that Reflects on the Lawyer's *Honesty, Trustworthiness, or Fitness as a lawyer* (So even if crime outside the practice of law, still subject to discipline; occurs in DUI for example)
 - ⇒ Engages in **Conduct** involving *Dishonesty, Fraud, Deceit or Misrepresentation*
 - ⇒ Engages in **Conduct** that is *Prejudicial to the Administration of Justice*
 - ⇒ **States or Implies** an *Ability* to influence improperly a *Governmental Agency* or Official
 - ⇒ **Knowingly Assists** a *Judge or Judicial officer* in Conduct that is a **violation** of Applicable Rules of Judicial Conduct or Other Law
 - ⇒ **Fails**, without Good Cause, **to co-operate** with the Bar Counsel or Board of Bar Overseers
 - ⇒ **Engages** in ANY other conduct that *Adversely Reflects on His/Her Fitness to Practice Law*

- **Misstatements About Judges**
 - Attorneys MAY NOT **knowingly** make a false statement, or a statement showing a **reckless disregard** for the truth, about a Judge

- **Disclosure of Misconduct by OTHER Lawyers**
 - There is an Obligation to Squel on Fellow Lawyers unless PRIVILEGED
 - There is a **duty** to Report ONLY the **violations** which *Raise a substantial question* as to the Attorney's *Honesty, Trustworthiness, and Fitness for Practice*
 - Includes Reporting Judicial Misconduct

III: DISCIPLINE

- **Board of Bar Overseers**
 - Appointed by the Supreme Judicial Court
 - Investigate & Dispose of Misconduct by MA attorneys
 - Board Appoints a *Chief Bar Counsel* who makes Preliminary Investigations
- **Office of the Bar Counsel**
 - Investigates Attorney Misconduct & Makes Recommendations to the Board as to how to proceed (either discipline or hearings)
- **Disciplinary Proceedings**
 - Initiated by A Complaint: The Bar Counsel Investigates & Makes a Recommendation (1 of the Following)
 1. ***Dismiss any Complaints that are FRIVOLOUS or Outside the Board's JURISDICTION*** (Fee Disputes are outside Jurisdiction, the 1st Attorney Malpractice Action is out of the Board's Jurisdiction as well)
 2. ***Admonish the Attorney if the Complaints are of a MINOR character***
 3. ***Recommend a Formal Hearing***
 4. ***Impose Formal Discipline by AGREEMENT***The Board may Accept, Modify, or Reject the Recommendations of the Office of Bar Counsel
- **Hearings**
 - Due Process requires a Hearing before a License to Practice Law may be taken away
- **Procedural Protections**
 - Right to Counsel
 - Right to Cross-examine any Witness
 - Right to Present Evidence
 - Right Against Self-Incrimination
- **Forms of Disciplinary Sanctions**
 - **Disbarment**
 - **Suspension**
 - **Public Reprimand (by Board)**
 - **Admonition by Bar Counsel (often private & not public)**
- **Jurisdiction of Discipline**
 - MA can Discipline any Massachusetts licensed attorney for Any Conduct he commits any where.

IV: UNAUTHORIZED PRACTICE OF LAW

- **Unauthorized Practice of Law Defined**
 - A Lawyer may NOT practice law in such a way as to violate the regulations of the legal profession in the pertinent jurisdiction (except for *Pro Se* Representation: one always has the right to defend oneself pro se)
 - 2 Factors Determine whether Somebody is Practicing Law
 1. *Payment for the Dispensation of Legal Services; or*
 2. *Dispensation of Legal ADVICE, regardless of payment, or assistance of another who is practicing law illegally*
- **Specific Activities where the Unauthorized Practice of Law may be a Problem**
 - Real Estate Brokers: May fill in the Blanks on a Real Estate Contract, but CANNOT draw up a Real Estate Contract, nor may they Explain the terms contained within a Real Estate Contract (at least the legal significance of those terms)
 - Title Insurance Companies: May only fill in Standard Forms
 - Lay Tax Advisers: May fill out the return, but May Not advise on the legal implications of certain transactions
 - Estate Planners: May Not give Specific Legal Advise, nor may they Draw up a Will
- **Practicing Across Jurisdictional Boundaries**
 - Must be SEPARATELY Admitted to Each Jurisdiction in which one wants to practice
- **Pro Hoc Vice**
 - May be admitted to another jurisdiction temporarily, for the purpose of 1 case, without being separately admitted to practice in that jurisdiction
- **Federal District Court**
 - Need to be separately admitted to federal court, regardless if already admitted in the jurisdiction
- **Judges & Law Students**
 - Only under a Student License, with severe restrictions, may a student practice any type of law. Judges cannot practice law. Of course, each can defend selves Pro Se

V: FORMS OF PRACTICE OF LAW

- **Sole Practitioners**
 - Gutsy, but if work hard. Will do OK. Just go out and Hang a Shingle
- **Partnerships**
 - All Partners share Liability.
- **Governmental Lawyers**
 - DA's, etc.
- **Corporate Lawyers**
 - In-house Counsel
- **A Professional Corporation**
 - Formed for the Purpose of Law Practice
 - Only Attorneys may be Shareholders, Officers, or Directors
 - Limit the Liability for Malpractice on the rest of the non-feasant ones
- **Legal Service Organization**
- **Restrictions on the Forms of Practice of Law (5.4)**
 - An Attorney may NOT practice Law with a non-attorney
 - If 1 aspect of the Association is the Practice of LAW, then everybody within the Association or Partnership must be attorneys
 - Non-lawyers may not have an interest in a law firm
 - There is a Jurisdictional Limitation on Lawyer's in a Multi-state law firm
 - Any non-compete restriction in an attorney employment contract is limited; unless the agreement is conferring benefits upon retirement
- **Associations with Non-Lawyers**
 - Attorneys may engage in Business with non-lawyers outside the practice
 - May not Split Fees with Non-Lawyers

VI: PUBLIC INFORMATION (Advertising & Solicitation)

- **Advertising**
 - Includes things such as Mass Media, Direct Mail, Business Cards, Announcements, Letterheads & Office Signs
 - Advertising is Permissible So Long as it is NOT Misleading
 - In MA, every Ad must have the NAME of 1 Attorney Responsible for the Ad, and the Ad must be Kept on File for at least **2 years**
- **First Amendment**
 - Attorneys have a Constitutional Right to Advertise, but cannot make False or Misleading Statements in the course of Advertising
 - Government Restrictions on Attorney Advertising are Permissible if they are RATIONALLY Related to an Important State Interest
 - Attorneys may not Advertise Results, since that is misleading in that it creates expectations in the viewing public
- **Direct Mail**
 - May use Direct Mailing to POTENTIAL CLIENTS KNOWN to have LEGAL PROBLEMS
 - Hybrid of Advertising and Solicitation (Advertising is non-personal, Solicitation is personal)
 - Solicitation is generally not permitted
 - MA does not have a 30 day rule
- **Current Clients**
 - Permissible to advertise Who your Current Clients are with their permission
- **Credentials**
 - Advertising that one is a Specialist is OK, but the Ad MUST state that MA does not Recognize the body certifying the specialty
 - Permissible to state the general areas of practice
- **Mass. Rules for False Advertising (7.1)**
 - False Advertising is a Statement that:
 1. *Contains a MATERIAL Misstatement of Fact or Law*
 2. *Omits a MATERIAL Fact that makes a Statement Misleading*
 3. *Creates an Unjustified EXPECTATION*
 4. *Implies that a Lawyer can Achieve Results by means that VIOLATE the MA rules or other law*
 5. *Compares the Lawyer's Services to another lawyer's services UNLESS the comparison can be substantiated*
- **Paid Publicity**
 - Not the Same as Advertising. But it is PROHIBITED. Cannot pay a Columnist or reporter to write good things about you.
- **TV or Radio Ads**
 - Permissible, but must contain the name of at least 1 attorney who is responsible for it and it must be kept on record for at least 2 years
- **Ads, Letters, Video**
 - Must mark "ADVERTISEMENT" on it & Keep the record of when used and who saw it.

- **Solicitation**
 - Seeking Fee Paying Employment ‘face-to-face’ or through live telephone or electronic communication is PROHIBITED
 - Cannot hire another person to solicit for you
 - Exception: may have a soliciting representative, but he may not receive a Fee (for Political Interest Groups, etc.)
 - A Lawyer may not DIRECTLY solicit employment through personal contact or through written communication by making a STATEMENT, directed to particular, prospective clients, that is:
 - False Fraudulent, Misleading or Deceptive
 - Intended to Harass or Intimidate
 - Appeals to Fear, Greed, Revenge, or Emotion
 - Creates a Risk of UNDUE Influence or Overreaching (mass tort)

- **Fee Splitting**
 - Blind Referral Fees are NOT Permitted.
 - However, Certain Fee Splitting is Permitted. To be a **Permissible** fee splitting arrangement:
 1. *The Client Must CONSENT to the Joint Representation, and*
 2. *The TOTAL FEE is REASONABLE*
 - Cannot Fee Split with NON-lawyers

- **Responsibility to Make Counsel Available**
 - In General: An Attorney should NOT refuse a Case simply because the Client’s Actions are unpopular or would result in an adverse professional reputation harm.
 - BUT: A lawyer may have an OBLIGATION to REJECT a court Appointment or Reject a Case where:
 - Representing the Client is likely to result in **violation** of the Rules of Professional Conduct
 - Representing the Client will result in an **unreasonable financial burden** on the lawyer
 - The client or cause is **repugnant** to the lawyer (enough to affect his work on the case)
 - A lawyer may not accept representation from a client who is **already represented** in a matter UNTIL the client has discharged the prior attorney or the prior attorney consents
 - **Imputed disqualification**; if 1 attorney in a firm is disqualified, the rest of the firm may be disqualified

VII: DUTY OF CONFIDENTIALITY

- **Duty of Confidentiality**
 - An Attorney has the duty NOT to reveal ANY information relating to the representation of a client
- **Attorney-Client Privilege**
 - More Narrow: applies only when meet the elements
 - *Confidential Communication*
 - *Between a Client and Attorney (include necessary 3rd Parties)*
 - *For the Purpose of Obtaining Legal Advice (Crime Fraud Exception)*
- **Corporate Client**
 - For A corporate Client employee to be covered by the Privilege:
 1. *The EMPLOYEE Communicates with the Lawyer AT THE DIRECTION of the Employee's Superior*
 2. *The EMPLOYEE KNOWS that the Communication is for the purpose of the corporation obtaining legal Advice*
 3. *The Communication Concerns Something WITHIN the Scope of the EMPLOYEE'S Duties for the Corporation*
- **Circumstances in which Confidentiality is Broader than Privilege**
 - The Duty of Confidentiality Applies to EVERYTHING, more than Evid.
 - The Duty of Confidentiality Applies to NON-privileged Communications (including from outside sources)
 - Confidentiality CANNOT be WAIVED (unlike the privilege)
- **Infinite Time Duration for Confidentiality**
 - The Duty to Maintain Confidence lasts **forever**
 - *Must Protect the Information even if the attorney is Not retained*
 - *Duty of Confidentiality (non-disclosure) CONTINUES, even after the relationship terminates*
- **EXCEPTIONS to the Duty of Confidentiality** A lawyer may reveal Confidence in 5 limited circumstances:
 - **Consent by Client**
 - Often, this occurs in Settlement negotiations. INFORMED CONSENT.
 - The Attorney will ask for permission to disclose some things so as to get a settlement, and if client consents, that is OK so long as it is informed consent
 - **Law or Court Order**
 - Court can order the revelation of Confidential information, BUT may NOT reveal Privileged information
 - **Crime Exception**
 - A lawyer **may** Reveal Information protected by the duty of confidentiality to PREVENT either:
 - *The CLIENT from Committing a CRIME that will result in Death, Substantial Bodily Harm, or Substantial Injury to the PROPERTY of Another (Note, this includes money), OR:*
 - *The Wrongful EXECUTION or INCARCERATION of another*
 - **Defense of Lawyer or to Collect a Fee**
 - Only Reveal that which is Necessary
 - **To Rectify Client Fraud**

VIII: CONFLICTS OF INTEREST

▪ Generally: Conflicts of Interest

- **Analysis:**
 1. Is there a Conflict?
 2. Why is it a Conflict?
 3. Can the Attorney Represent the Client Despite the Conflict?
- **Purpose:** An Attorney may not enter a Relation where there is a Potential Conflict of Interest that is likely to affect the Attorney's Ability to Exercise Professional Judgment
- A Conflict of Interest *exists* where there is a **substantial risk** that the lawyer's representation of ONE client COULD be **materially & adversely affected by**
 1. *The Lawyer's Duty to ANOTHER CURRENT CLIENT: Simultaneous Representation*
 2. *The Lawyer's Duty to a FORMER CLIENT: Successive Representation*
 3. *The Lawyer's SELF-INTEREST: Prohibited Transactions*
 4. *The Lawyer's Duties to a 3rd PERSON (did not retain the lawyer, but disclosed information to the lawyer)*

▪ Simultaneous Representation

- The Interests of a Current Client are Adverse to Interests of Another Current Client in a Proceeding over the Same Issue **unless**
 1. *The Lawyer reasonably believes that the representation will not adversely affect the relationship with the other client; AND*
 2. *Each Client Consents (informed & in writing) after Consultation*
- Not every Simultaneous Conflict can be Cured by Written Informed consent

▪ Conflict with Responsibilities of Lawyer

- A lawyer must NOT Represent a Client if the Representation of that Client MAY be Directly limited by the Lawyer's Responsibility to Another Client, a 3rd person, or the Attorney's Own Interest **unless**
 1. *the lawyer reasonably believes the representation will not be adversely affected; AND*
 2. *the client Consents after consultation*

For Example: Smith & Brown see Lawyer by Appointment. Smith owns an office building and wants to lease an office to Brown for 10 years. Smith and Brown want Lawyer to assist them in negotiations as to the terms of the lease, such as amount of rental, renewal options, repairs, maintenance, taxes, insurance, sub-leasing, janitorial services, etc. and they agree that they will Share the legal fees equally

Question What Responsibilities & Prerogatives does Lawyer have under the Massachusetts Rules:

Answer: This is Simultaneous Representation. There is Definitely a Conflict of Interest, since their interests are Directly adverse to each other in the same transaction. In general the lawyer should not represent 1 client with interests directly adverse to the interests of another client. However, this simultaneous representation may be permitted if Lawyer Reasonably Believes that the conflict will not adversely affect his representation AND there is written & informed consent by both parties.

- **Representing Multiple Clients**
 - Permissible, but the Attorney MUST DISCLOSE right away the problems of the JOINT Representation to each party (i.e., if problems arise, maybe the client will get upset)
- **Successive Representation**: Applies to FORMER CLIENTS
 - **General Rule**: An Attorney may NOT represent another client if the new representation is SUBSTANTIALLY RELATED to the former representation **unless** the attorney obtains CONSENT from the former client
 - *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, without Client Consent;*
 1. Use **confidential information** relating to the Representation to the **disadvantage** of the **former client**, to the **lawyer's advantage**, or to the **advantage of a 3rd person**; OR
 2. **Reveal Confidential Information** Relating to the Representation EXCEPT as permitted or Required elsewhere
 - **Lawyer Moving to a New Firm**
 - He may get an Imputed Disqualification; The Lawyer Shall NOT accept Representation ADVERSE to a CLIENT of the Former Firm WITHOUT the Client's Informed, Written CONSENT **if**
 1. The NEW client's interest are DIRECTLY Adverse to the Interests of the Client of the Former Firm; AND
 2. The Lawyer PERSONALLY had ACQUIRED Confidences or Secrets that are MATERIAL to the new matter
 - **Old Firm From Which Lawyer has Left**
 - When an Attorney Leaves a Firm, the Firm is NOT prohibited from Representing a Person with interests Adverse to those of a Client Which the Departing Attorney took with him **unless**:
 1. The matter is the SAME or Substantially related to that in which the formerly associated lawyer represented the client; AND
 2. A lawyer REMAINING in the Firm POSSESSES confidential information that is MATERIAL to the Matter
 - This MAY be Cured by Consent

- **Prohibited Transactions**
 - General Rule: An Attorney May Not Commence Representation if there is a Substantial Risk that any Financial Interest OR Significant Personal Relationship will Adversely Affect the Representation of the Client
 - Business Transactions with a Client: Generally Prohibited **unless**
 1. *The Transaction & Terms are **fair & reasonable** AND are **fully disclosed** and transmitted to the client in **writing**;*
 2. *The Client is **advised** and given the opportunity to seek **independent professional advice** of counsel of client's choice; and*
 3. *The client **consents in writing***

Exception: on a Form or Standard Lease, which is Technically NOT a prohibited Transaction, OR an Ordinary Loan from the Bank to the Client
 - Acquiring an Interest in the Cause of Action: Prohibited **except** for Contingency Fees or Liens
 - Publication Rights: Prohibited. An Attorney may NOT Acquire Publication Rights PRIOR to the Conclusion of the representation of a client. (Negotiations are prohibited as well)
 - Wills & Gifts; An Attorney may NOT prepare an Instrument for a Client that Gives a Bequest to an Attorney or member of his family except for an Attorney Related to the Donor
 - Familial Relations: Impermissible without Client Consent. If Adverse Party's are represented by intra-family relatives (Class Action Case)
 - Financial Assistance to Client: Prohibited Except for Court Costs + Litigation Expenses (which the Client will Re-pay) or a Mere Gift of Court Costs + Litigation Expenses for an Indigent Client
 - Compensation from 3rd Party: Like an Auto Insurance Case: the 3rd Party Pays the Attorney Bill; Special Rules: Requires **consent** (usually on the insurance policy) and **confidence must be maintained** (policy may exclude things, but the duty of confidentiality trumps anything in the policy)
 - Settling Similar Claims: Must Inform ALL clients about the Settlement (in case of Simultaneous Representation). In **criminal** cases, with Multiple Clients, there is almost always a conflict, yet if not, and 1 client pleads out, must inform the other clients about the pleas
 - Malpractice Claims:
 1. *Limitation of Liability*: Waivers of Liability in Attorney Retainer Agreements Cannot Limit the Liability UNLESS the agreement is permitted by law & the Client is Separately Represented when he signed it
 2. *Settling a Malpractice Claim*: Permitted ONLY if the Client has an opportunity to Seek outside counsel in Writing (if they Fail to get counsel before they sign the settlement, OK, if give them a consent form notifying them that they ought to get separate counsel)
 - Lawyer as Witness: An Attorney May not Represent a Client at Trial if the Attorney is a **necessary** witness in that case **except** if the testimony relates to an uncontested matter, or the testimony relates Solely to legal services, OR it would impose Substantial hardship to find new counsel at this stage in the proceedings

- **Conflicts in Corporate Representation**
 - If a member of a Corporation decides to Act contrary to the interests of the corporation, the Attorney must take the Following Steps
 1. Ask the Agent to **Re-consider the Matter**
 2. Advise that a **separate legal opinion** should be sought on the matter for presentation to the appropriate authority in the organization
 3. **Refer the Matter to a higher authority** in the organization
 4. Where the Organization's highest authority insists upon a course of action that is in violation of law or is likely to result in a substantial injury to the organization, the lawyer may **resign**
- **Disclosing the Identity of Client**
 - When an Attorney Talks to an Agent of the Corporation, the Attorney Must Disclose that he Represents the Corporation, and not the Agent
- **Representation of Multiple Parties**
 - Conflict between Corporation & Agent of the Corporation. Must Disclose the Joint Representation to Both Parties
- **Imputed Disqualification**
 - If **1** attorney in a firm is Disqualified, the Entire Firm is Disqualified
 - **Rule**; When an attorney becomes *Associated* with a Firm, the Firm may NOT represent a Client in a matter that is *Substantially Related* to a matter in which the newly associated attorney, OR firm in which that newly associated attorney was previously associated, *Represented* a party whose interests are *Adverse* to the Client **unless** the Newly associated attorney has NO Confidential information OR the newly associated attorney had NO Substantial Involvement in the case and Did not ever possess and substantial information relating to the matter AND the Newly Associated attorney is **SCREENED OFF** from the Rest of the Firm AND the newly associated attorney gets not compensation from the matter.
 - **Exceptions**
 - **Public to Private Practice: Same Matter** – An attorney cannot personally work on a matter, but the FIRM will not be Imputedly Disqualified if the Attorney is Screened, the Attorney gets No Fee from the Case, and Notice is Given to the Government
 - **Public to Private Practice: Same Confidences** – An Attorney cannot personally work on the matter, but the firm will not be Imputedly Disqualified if the Attorney is Screened, the attorney gets no fee from the matter, and notice is given to the Targeted Client
 - **Private to Public Practice**:- Attorney cannot personally work on the matter, but the government will not be imputedly disqualified
 - **Prior Judicial Activity** – Judge may NOT represent private clients on matters that he sat over from the bench. However, the firm will not be imputedly disqualified if he is screened, he receives no fee, and notice is given to the court
 - **Lawyer as Witness** – Attorney is Disqualified, but not the firm
 - **Familial Relations** – Class Action: Cannot represent a party if Adverse party is represented by family Yet won't be imputed to the firm

IX: COMPENSATION FOR LEGAL SERVICES

- **Fee Agreement**
 - The Fee Agreement should be in writing & clearly outline the details of the fee
- **Attorneys May Not Charge Excessive Fees**: Factors in Determining Excessiveness
 - *Amount of Time & Labor Attorney is Devoting to the particular case*
 - *Novelty & Difficulty of Questions of Law Involved*
 - *Requisite Skill required to Perform the Legal Service*
 - *Likelihood that Acceptance of the employment would preclude other employment of the lawyer, if apparent to the client*
 - *Customary Fee charged in the Locality for Similar Work*
 - *Amount Involved and Results Obtained*
 - *Time Limitations Imposed by the Client or by the Circumstances*
 - *Nature & Length of the professional relationship with the Client*
 - *Experience, Reputation, & Ability of the Lawyer*
 - *Whether the Fee is Fixed or Contingent*
- **Minimum Fee Schedules**
 - PROHIBITED; If the bar association sets a fixed fee (floor), that is Anti-trust price fixing
 - However, may set Maximum Permissible Fees
- **Contingency Fees**
 - Permissible: Remember **5** Things
 - 1. Writing**: The Contingency Agreement Needs to be in writing & needs to contain the following information:
 - *Name & Address of Each Client*
 - *Name & Address of Attorney*
 - *Nature of Claim for Which Services to be Performed*
 - *Contingency Upon Which Compensation is to be paid AND the Expenses for which the Client Must Pay*
 - *Method by Which the Fee is to Be Determined (33%)*
 - *Method by which Expenses are to be deducted*
 - 2. 7 Years**: Agreement must be KEPT for 7 Years; When the Matter is Concluded, must write to the client about it
 - 3. Alternatives**: Donald Trump Example: May be based on Hourly or Contingent Fee. Therefore, should tell clients about the Alternative Fee Arrangement
 - 4. Prohibited**: Contingency Arrangements are Forbidden in **Criminal** and **Domestic** Cases
 - 5. Discharge**: If the Contingent Fee Attorney is Discharged, he will be paid an hourly fee based upon the time he has spent on the case. If, however, he is discharged *for cause*, he will be allowed NO Recovery
- **Referral Fees**: These are Prohibited
- **Financial Assistance to Clients**
 - An Attorney MAY NOT loan money to clients for unrelated matters, but may advance litigation expenses & court costs (or gift them to indigents)

- **Dividing Fees with Non-Lawyers**: Prohibited (includes giving gifts for referrals).
Exception: Retiring Lawyers: Firm may give money to retiring or decedent attorney's estate.
Champerty; Prohibited (per se). B gives \$ to Firm to represent A, then B gets a cut of any recovery A gets. (sort of like buying a stock). Generally not permitted. But some MA Exceptions if Reasonable.

X: ATTORNEY'S BASIC OBLIGATIONS TO CLIENT

- **Duty to Employ REASONABLE Care & Skill in providing services**
- **PUNCTUAL in Performance of Services for Client**
- **Keep Client Informed** (Return Calls, Notify of Significant Developments)
- **Duty to Prepare Properly**

XI: DUTY TO PROTECT CLIENT PROPERTY

- **Separation of Funds**
 - Must Keep the Attorney's Funds SEPARATE from the Client's Funds.
 - Exceptions:
 1. *Withdrawal of Funds DUE and OWING*
 2. *Lawyer's Funds Reasonably Sufficient to Pay Institutional Services*
(attorney can use own funds for maintenance of account)
- **Interest Bearing Trust Account**
 - When Deposit Client's Money, it MUST be in an interest bearing account
- **Lawyer's Duty to Keep Client Informed**
 - Must Notify the Client as soon as receive property in which the client may have an interest
- **Records**
 - Records must be kept of all the property and accounts
- **Prompt Delivery**
 - Must give prompt notice & delivery of property to client
- **Dispute**
 - If there is a dispute, the attorney must relinquish the undisputed property and keep the disputed property in escrow until the dispute is resolved

XII: DUTIES & BOUNDS OF ATTORNEY REPRESENTATION

- **Lawyer as Adviser**: May also dispense moral or other advise, in addition to legal
- **Scope of Representation**: May limit the scope by agreement
- **Criminal or Fraudulent Conduct**: Attorney may NOT assist in criminal or fraudulent conduct (but may discuss the consequences of proposed conduct that may be criminal)
- **Withdrawal**: When attorney realizes he is part of a fraud, he may have a duty to withdraw

XIII: COMMUNICATIONS WITH ADVERSE PARTIES

- **Parties Represented by Counsel**
 - Attorneys May NOT Directly contact a Party who is represented by Counsel.
 - Exceptions:
 1. *Lawyer Does NOT KNOW of the Representation*
 2. *Communication is AUTHORIZED by Law*
 3. *Discuss matters OUTSIDE the representation*
- **Parties NOT Represented by Counsel**
 - Attorney cannot give legal advise except to advise the un-represented party to seek representation
 - Attorney must also make the party aware that he represents an Adverse Interest on behalf of another client
- **Organizations**
 - Attorney must get Consent of the Organization to Speak to an Agent of the Corporation who has MANAGERIAL Responsibility OR Whose Conduct may be IMPUTED to the organization or WHOSE statements may Constitute an ADMISSION that would bind the organization

XIV: FRAUD PERPETRATED BY CLIENT

- An Attorney May not OFFER False Evidence either DIRECTLY or INDIRECTLY through Client testimony
- Civil Clients do NOT have the same protections as Criminal Defendants
- Civil Clients and Witnesses have NO Right to testify; need not put on the stand
- Criminal Defendants have right to Testify. However, if the Attorney KNOWS the defendant will like, the Attorney must try to persuade the defendant to testify truthfully. If that fails, the Attorney should withdraw from the case (can't make motion to withdraw in front of judge hearing case) If don't get withdrawal order, must adhere to the order of the court. If the client lies on the stand, ask him privately to rectify, if fail, move on, but can't refer to that in tribunal

XV: CONDUCT OF LITIGATION

- A Lawyer Must Respect the Rules of Court and Not assert frivolous claims/defenses
- A lawyer must reveal client's identity (unless it is privileged)
- A lawyer must make reasonable efforts to expedite the litigation
- A lawyer must reveal any legal authority in the Controlling jurisdiction that is DIRECTLY ADVERSE to the client's position and that has not been disclosed by opposing counsel
- A lawyer's relationship with a trial Witness SHALL NOT
 - Suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce
 - Request a person other than the client to refrain from giving voluntary testimony except if the attorney is related to the witness and thinks it is in the best interest not to testify
 - Directly or indirectly pay, offer to pay, or agree in the payment of compensation to a witness Contingent upon the Content of the testimony of the witness or the Outcome of the case (Can, however, pay reasonable expenses to a Witness
- A lawyer cannot threaten to present criminal or disciplinary charges solely to gain an advantage in a civil matter

- **Prohibited Acts During Trial**
 - Referring to Inadmissible Matter
 - A Lawyer may not state a personal opinion during trial or Argument
 - Intentionally Asking Improper Questions
 - Improper Citation of Authority
 - Undignified Conduct
- **Avoiding Improper Contact with Jurors & the Court**
 - A Lawyer May NOT:
 1. *Seek to Influence a Judge or Juror by Unlawful Means*
 2. *Communicate EX PARTE with a Judge or Juror except as Permitted by Law (Such as an Ex Parte TRO)*
 3. *Engage in Conduct Intended to Disrupt a Tribunal*
 4. *Initiate Communication with a Juror After Discharge of Jury, Except by Leave of Court*
- **Trial Publicity (MR 3.6(b))**
 - An Attorney may State publicly:
 - *The Claim, Offense, or Defense involved in the case*
 - *Information in the Public Record*
 - *That an Investigation is in Progress*
 - *The Scheduling of the Litigation*
 - *Request Assistance to Obtain Evidence*
 - The Plaintiff or Prosecution may NOT make a statement that would MATERIALLY Prejudice the Proceeding

XVI: WITHDRAWAL FROM REPRESENTATION

- **Duties Prior to Withdrawal From Representation**
 - Obtain Permission from the Tribunal
 - Protect the Client: Give him Advance NOTICE and Safeguard/transfer any client property; allow them sufficient time to obtain other counsel
 - Refund any Monies Owed
- **Mandatory Withdrawal**; REQUIRED in the Following Situations
 1. *Attorney Knows that Continued Employment will **violate** the MA Rules of Professional Conduct*
 2. *Attorney has a **Mental/physical condition** which impairs his ability to represent the client*
 3. *Attorney is **Discharged***
- **Permissible Withdrawal**: A lawyer is permitted to withdraw IF the withdrawal will not ADVERSELY affect the interests of the client in the following situations:
 1. *The Client Desires to seek **an illegal** course of conduct*
 2. *The Client has used the lawyer's Services to Perpetrate a **crime or fraud***
 3. *The Client Persists in Pursuing an Objective that the Lawyer considers **Repugnant or Imprudent***
 4. *The Client **substantially fails** to honor an obligation to the lawyer as to expenses or fees, provided that advance notice is given*
 5. ***Unreasonable financial burden** on the Lawyer*
 6. ***Good Cause Catch-all***

XVII: SPECIAL ROLE OF PUBLIC PROSECUTOR

1. *Prosecutor MUST AVOID Brining Charges which are NOT Supported by PROBABLE CAUSE*
2. *Prosecutor Must Ensure ACCUSED has been INFORMED of his Rights to COUNSE and Given an Opportunity to Obtain Counsel*
3. *If the Prosecutor possess Exculpatory material, he must hand it over to Defense Counsel*
4. *Prosecutor Must NOT seek to have the Defendant WAIVE important criminal rights*
5. *Prosecutor Must NOT subpoena an Attorney to Obtain Confidential Information*