Louisiana Legal Ethics

STANDARDS AND COMMENTARY

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Table of Contents

Table of Contents i
About the Book vii
Introductory Materials 1
Historical Background of Louisiana Rules of Professional Conduct 1
ABA Canons of Ethics 2
ABA Model Code of Professional Responsibility 4
ABA Model Rules of Professional Conduct 4
Ethics 2000 Committee 6
Recent Amendments 11
ABA Model Rules Preface, Preamble and Scope 12
Preface 12
Preamble: A Lawyer's Responsibilities 13
Scope 15
Louisiana Rules of Professional Conduct 19
Article 1. Client-Lawyer Relationship 19
Rule 1.0. Terminology 19
Rule 1.1. Competence 26
Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer 36
Rule 1.3. Diligence 45
Rule 1.4. Communication 49
Rule 1.5. Fees 54
Rule 1.6. Confidentiality of Information 68
Rule 1.7. Conflict of Interest—Current Clients 78
Rule 1.8. Conflict of Interest: Current Clients–Specific Rules 92
Rule 1.9. Duties to Former Clients 110
Rule 1.10. Imputation of Conflicts of Interest: General Rule 118
Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees 124
Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral 131
Rule 1.13. Organization as Client 134

Rule 1.14. Client with Diminished Capacity 141
Rule 1.15. Safekeeping Property 146
Rule 1.16. Declining or Terminating Representation 160
Rule 1.17. Sale of Law Practice [Reserved] 165
Rule 1.18. Duties to Prospective Client 169
Article 2. Counselor 173
Rule 2.1. Advisor 173
Rule 2.2. Intermediary [Deleted] 177
Rule 2.3. Evaluation for Use by Third Persons 178
Rule 2.4. Lawyer Serving as Third-Party Neutral 182
Article 3. Advocate 184
Rule 3.1. Meritorious Claims and Contentions 184
Rule 3.2. Expediting Litigation 189
Rule 3.3. Candor Toward the Tribunal 191
Rule 3.4. Fairness to Opposing Party and Counsel 200
Rule 3.5. Impartiality and Decorum of the Tribunal 206
Rule 3.6. Trial Publicity 210
Rule 3.7. Lawyer as Witness 214
Rule 3.8. Special Responsibilities of a Prosecutor 218
Rule 3.9. Advocate in Nonadjudicative Proceedings 224
Article 4.Transactions with Persons Other than Clients 226
Rule 4.1. Truthfulness in Statements to Others 226
Rule 4.2. Communication with Person Represented by Counsel 231
Rule 4.3. Dealing with Unrepresented Person 237
Rule 4.4. Respect for Rights of Third Persons 240
Article 5. Law Firms and Associations 243
Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers 243
Rule 5.2. Responsibilities of a Subordinate Lawyer 247
Rule 5.3. Responsibilities Regarding Nonlawyer Assistants 249
Rule 5.4. Professional Independence of a Lawyer 254
Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law 260
Rule 5.6. Restrictions on Right to Practice 276
Rule 5.7. Responsibilities Regarding Law-Related Services [Reserved] 278

Article 6. Public Service 281
Rule 6.1. Voluntary Pro Bono Publico Service 281
Rule 6.2. Accepting Appointments 285
Rule 6.3. Membership in Legal Services Organization 288
Rule 6.4. Law Reform Activities Affecting Client Interests 290
Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs 292
Article 7. Information About Legal Services 295
Rule 7.1. General 295
Rule 7.2. Communications Concerning a Lawyer's Services 297
Rule 7.3. [Reserved] 310
Rule 7.4. Direct Contact With Prospective Clients 311
Rule 7.5 Advertisements In The Electronic Media Other Than Computer-Accessed Communications 319
Rule 7.6. Computer-Accessed Communication 321
Rule 7.7 Evaluation Of Advertisements 323
Rule 7.8 Exemptions From The Filing and Review Requirement 328
Rule 7.9 Information about a Lawyer's Services Provided Upon Request 330
Rule 7.10 Firm Names and Letterhead 332
Article 8. Maintaining the Integrity of the Profession 336
Rule 8.1. Bar Admission and Disciplinary Matters 336
Rule 8.2. Judicial and Legal Officials 340
Rule 8.3. Reporting Professional Misconduct 343
Rule 8.4. Misconduct 347
Rule 8.5. Disciplinary Authority; Choice of Law 356
Louisiana Supreme Court Rule XIX. Rules for Lawyer Disciplinary Enforcement 359
Section 1. Authority of the Court 359
Section 2. The Attorney Disciplinary Board 359
Section 3. Hearing Committees 362
Section 4. Disciplinary Counsel 364
Section 5. Expenses 366
Section 6. Jurisdiction 366
Section 7. Roster of Lawyers 367
Section 8. Periodic Assessment of Lawyers 368

Section 9. Grounds for Discipline 370
Section 10. Sanctions 370
Section 10.1 Reimbursement of Costs and Expenses 373
Section 11. Procedure for Disciplinary Proceedings 374
Section 12. Immunity 379
Section 13. Service 380
Section 14. Subpoena Power 380
Section 15. Discovery 381
Section 16. Access to Disciplinary Information 382
Section 17. Dissemination of Disciplinary Information 384
Section 18. Additional Sections of Procedure 384
Section 19. Lawyers Convicted of a Crime 386
Section 19.1. Declarations of Ineligibility for Failing to Pay Child Support 388
Section 19.2. Interim Suspension for Threat of Harm 389
Section 19.3. Interim Suspension by Consent 390
Section 20. Discipline by Consent 390
Section 20.1. Permanent Resignation from the Practice of Law in Lieu of Discipline 391
Section 21. Reciprocal Discipline and Reciprocal Disability Inactive Status 393
Section 22. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated 395
Section 23. Reinstatement Following a Suspension of One Year or Less 398
Section 24. Reinstatement and Readmission 398
Section 25. Abatement or Modification of Conditions of Discipline, Reinstatement, or Readmission 403
Section 25.1. Revocation of Conditional Admission to the Practice of Law 403
Section 26. Notice to Clients, Adverse Parties, and Other Counsel 404
Section 27. Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies 405
Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification 406
Section 29. Verification of Financial Accounts 407
Section 30. Appeal by Complainant 407
Section 31. Liberative Prescription 408
Section 32. Alternatives to Discipline Programs 408

Section 33. Effective Date; Applicability 408
Lawyer Disciplinary Sanctions 409
ABA Standards for Imposing Lawyer Sanctions 409
I. Preface 409
II. Theoretical Framework 415
III. Standards for Imposing Lawyer Sanctions: Black Letter Rules 419
Louisiana Supreme Court Guidelines for Permanent Disbarment: Rule XIX, Appx. E 432
Annotations: Lawyer Disciplinary Sanctions in Louisiana 433
Generally 433
Mitigating Factors 433
Professionalism Materials 439
Professionalism: In General 439
Professionalism Resources 441
Louisiana State Bar Association Code of Professionalism (1992) 442
Louisiana Supreme Court Rules Relating to Litigation Conduct in Louisiana Courts (1997) 443
Preamble 443
Judges' Duties To The Courts 443
Lawyers' Duties To The Courts 444
American Bar Association Lawyer's Creed of Professionalism (1988) 446
Introduction 446
Preamble 446
Creed 446
American Bar Association Young Lawyers Division Lawyer's Pledge of Professionalism (1988) 450
American Bar Association Guidelines for Litigation Conduct (1998) 451
Practice Resources 457
Frequently Asked Questions (FAQs) 457
What Should I Think About Before Using Social Media? 457
May I Undertake a Limited Scope Representation? 464
May I Share Office Space with Nonlawyers? 465
May I Add an Arbitration Clause to My Engagement Agreement? 467
Must I Report My Own Misconduct? 468
How Long Must I Keep This File? 468

May I "Friend" an Unrepresented Person on Social Media to Gather Information to Help My Client? 469
May I Advise My Client to Take Down Harmful Social-Media Content? 469
Can I Be Disciplined for My Investigator's Questionable Conduct? 471
What Do I Do With a Missing Client's Funds and File? 471
May I Store Client Files in "The Cloud"? 472
May I Designate My "Specialties" on LinkedIn? 474
May I Charge a "Nonrefundable" Fee? 475
How Do I Avoid Disciplinary Complaints? 476
What Should I Think About When Setting Up a Website for My Firm? 479
Model Fee Agreements 481
Model Lawyer-Client Hourly Fee Agreement 481
Model Lawyer-Client Contingent Fee Agreement 487
Model Joint Representation and Fee-Division Agreement 492
Index 495

About the Book

Louisiana Legal Ethics: Standards and Commentary (2015) contains (1) the full text of the Louisiana Rules of Professional Conduct, (2) "background" information about the adoption of each rule by the Louisiana Supreme Court, (3) related ABA resources, including comments to the corresponding ABA model rule, and (4) annotations discussing Louisiana case law, administrative decisions and other authorities relevant to each rule. It also contains selected "professionalism" materials, ABA materials and practice materials.

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This book is available for purchase at www.lalegalethics.org and at Amazon.com.

RULE 1.1. COMPETENCE

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.

(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

BACKGROUND

The Louisiana Supreme Court amended this rule on March 29, 2006. It became effective, as amended, on April 15, 2006.

MODEL RULE COMPARISON

This rule is substantially similar to ABA Model Rule of Professional Conduct 1.1 (2002). Paragraph (a) is identical to the Model Rule. Paragraph (b) is not included in the ABA Model Rule, but is included in the Louisiana rule so that members of the Louisiana bar who fail to comply with mandatory continuing legal education requirements can be subjected to professional discipline under this rule and Rule 8.4(a). Paragraph (c) is not included in the ABA Model Rule, but was added to the Louisiana rule effective April 15, 2006 to subject a lawyer to discipline who fails to comply with annual registration requirements.

COMMENTS TO ABA MODEL RULE 1.1

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal

problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See* also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. *See* also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. *See* Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology,

engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

ANNOTATIONS

Generally

The most fundamental obligation that a lawyer owes to a client is the duty to handle the client's matter competently. *See generally* Restatement (Third) of the Law Governing Lawyers § 16(2) (2000). Incompetent lawyering can lead not only to discipline[60] for violating Rule 1.1, *see, e.g.*, *In re Lee*, 85 So. 3d 74, 79 (La. 2012) (suspending a lawyer for two years for failure to understand basic succession law and for lacking thoroughness and preparation); *In re Young*, 849 So. 2d 25, 30 (La. 2003) (disciplining a lawyer for failure to prepare for criminal trial), but also to delictual liability for professional malpractice. In 2007, the Louisiana Supreme Court disciplined a lawyer under Rule 1.1(a) for incompetently investing a client's funds. *In re Pharr*, 950 So. 2d 636, 640-641 (2007) (holding that although the lawyer did not intentionally harm the client's financial interests, the lawyer's fiscal mismanagement was "the product of incompetence"). An improper disbursement of client funds can violate Rule 1.1(a). *See In re Thomas*, 74 So. 3d 695, 699-701 (La. 2011) (noting that the lawyer's inability to adequately disburse funds for a client's debt demonstrated incompetence).

Delictual Liability for Malpractice

ELEMENTS

A plaintiff establishes legal malpractice under Louisiana law through proof (1) that there was a lawyer-client relationship, (2) that the lawyer was negligent, and (3) that the plaintiff suffered a loss caused by that negligence. *See, e.g., Costello v. Hardy*, 864 So. 2d 129 (La. 2004); *Waste Mgmt. of Louisiana, LLC v. Penn-Am. Ins. Co.*, 110 So. 3d 200, 203 (La. Ct. App. 3 Cir. 2013),*Whittington v. Kelly*, 917 So. 2d 688, 692 (La. Ct. App. 2nd Cir. 2005), *Broadscape.com, Inc. v. Jones, Walker, Waechter, Poitevant, Carrere & Denegre, L.L.P.*, 866 So. 2d 1085, 1088 (La. Ct. App. 4th Cir. 2004); *Kosak v. Trestman*, 864 So. 2d 214, 218 (La. Ct. App. 4th Cir. 2003); *Spicer v. Gambel*, 789 So. 2d 741, 744 (La. Ct. App. 4th Cir. 2001); *Spellman v. Bizal*, 755 So. 2d 1013, 1017 (La. Ct. App. 4th Cir. 2000); *Johnson v. Tschirn*, 746 So. 2d 629, 631-32 (La. Ct. App. 4th Cir. 1999); *Francois v. Reed*, 714 So. 2d 228, 229-30 (La. Ct. App. 1st Cir. 1998); *Butler v. Chuzi*, 687 So. 2d 605, 606-07 (La. Ct. App. 4th Cir. 1997); *Finkelstein v. Collier*, 636 So. 2d 1053, 1058 (La. Ct. App. 5th Cir. 1994); *Dier v. Hamilton*, 501 So. 2d 1059, 1061 (La. Ct. App. 2d Cir. 1987). *See generally* Warren L. Mengis, *Professional Responsibility*, 46 La. L. Rev. 637, 642 (1986).

To prove the existence of a lawyer-client relationship (prong one), the plaintiff must establish that he or she sought and received advice and assistance from the defendant-lawyer in matters

[60] In most cases, discipline imposed for violations of Rule 1.1 stems from the lawyer's failure to thoroughly prepare and prosecute a matter rather than from the lawyer's lack of "knowledge" or "skill." For this reason, disciplinary actions brought under this rule are often accompanied with alleged violations of Rule 1.3 (diligence). *See, e.g*, *In re Mendy*, 81 So. 3d 650 (La. 2012); *In re Andrus*, 814 So. 2d 1283 (La. 2002); *In re Landry*, 728 So. 2d 833 (La. 1999); *In re Grady*, 731 So. 2d 878 (La. 1999).

pertinent to the lawyer's profession. *See State v. Green*, 493 So. 2d 1178, 1180-81 (La. 1986). "What is critical . . . is [that] a person must seek legal advice from [a lawyer] acting in his capacity as such." *Id.*; *see also LaNasa v. Fortier*, 553 So. 2d 1022, 1024 (La. Ct. App. 4th Cir. 1989). The Louisiana Supreme Court has stated that the Restatement (Third) of the Law Governing Lawyers § 14 provides some guidance in determining when a lawyer-client relationship arises. *In re Austin*, 943 So. 2d 341, 347 (La. 2006). The Restatement provides:

> A relationship of client and lawyer arises when:
>
> (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
>
> (a) the lawyer manifests to the person consent to do so; or
>
> (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
>
> (2) a tribunal with power to do so appoints the lawyer to provide the services.

Restatement (Third) of the Law Governing Lawyers § 14 (2000). Importantly, privity of contract is not necessary in establishing the existence of a lawyer-client relationship. *Smith v. Patout*, 956 So. 2d 689, 691 (La. Ct. App. 3rd Cir. 2007) (holding that a lawyer who signed several documents for a client had "clearly" agreed to represent the client's interests and thus, owed a fiduciary duty to him).

To prove negligence (prong two), the plaintiff must establish both the applicable duty of care and a breach of that duty. *See, e.g., Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990); *Ault v. Bradley*, 564 So. 2d 374, 379 (La. Ct. App. 1st Cir. 1990), writ denied, 569 So. 2d 967 (La. 1990). A Louisiana lawyer owes a client the duty "to exercise at least that degree of care, skill, and diligence which is exercised by prudent practicing attorneys in his locality." *Ramp v. St. Paul Fire & Marine Ins. Co.*, 269 So. 2d 239, 244 (La. 1972); *see also Jenkins v. St. Paul Fire & Marine Ins. Co.*, 422 So. 2d 1109 (La. 1982); *Leonard v. Reeves*, 82 So. 3d 1250, 1257 (La. Ct. App. 1 Cir. 2012) (noting that the "legal standard of care may vary depending upon the particular circumstances of the [attorney-client] relationship"); *Sherwin-Williams Co. v. First La. Constr., Inc*, 915 So. 2d 841, 845 (La. Ct. App. 1st Cir. 2005); *Burris v. Vinet*, 664 So. 2d 1225, 1229 (La. Ct. App. 1st Cir. 1995); *Leonard v. Stephens*, 588 So. 2d 1300, 1304 (La. Ct. App. 2d Cir. 1991); *Nelson v. Waldrup*, 565 So. 2d 1078, 1079 (La. Ct. App. 4th Cir. 1990); *Reed v. Verwoerdt*, 490 So. 2d 421, 427 (La. Ct. App. 5th Cir. 1986). However, a lawyer is "not required to exercise perfect judgment in every instance." *See Reeves*, 82 So. 3d 1250, 1257; *Spellman v. Bizal*, 755 So. 2d 1013, 1017 (La. Ct. App. 4th Cir. 2000). A plaintiff typically establishes the applicable standard of care through expert testimony from a lawyer familiar with law practice in the relevant locale. *See Geiserman*, 893 F.2d at 791 (quoting 2 R. Mallen & J. Smith, *Legal Malpractice* § 27.15, at 667, 668-69 (4th ed. 1995)); *Dixon v. Perlman*, 528 So. 2d 637, 642 (La. Ct. App. 2d Cir. 1988) (noting that expert testimony will usually, but not

always be required); *see also Reed*, 490 So. 2d at 427 (requiring expert testimony); *Stephens*, 588 So. 2d at 1304; *Morgan v. Campbell, Campbell & Johnson*, 561 So. 2d 926, 929 (La. Ct. App. 2d Cir. 1990); *Houillon v. Powers & Nass*, 530 So. 2d 680, 681-82 (La. Ct. App. 4th Cir. 1988). Similarly, whether the defendant-lawyer breached the applicable standard is "a fact specific question and must ordinarily be established through expert . . . testimony.[61] *Dickey v. Baptist Mem. Hosp. N. Miss.*, 146 F.3d 262, 265 (5th Cir. 1998) (medical malpractice case). However, in cases of "obvious negligence, the court may, without expert testimony, take judicial notice of a legal duty which was breached by an attorney." *Nelson*, 565 So. 2d at 1079 (citing *Ramp*, 269 So. 2d at 239); *see also MB Indus., LLC v. CNA Ins. Co.*, 74 So. 3d 1173, 1185 (La. 2011) (recognizing no need for expert testimony when it was clear the "defendant attorney committed 'gross error'"); *Geiserman v. MacDonald*, 893 F.2d 787, 793-94 (5th Cir. 1990) (stating that expert testimony may not be required in cases of "egregious negligence"); *Morgan*, 561 So. 2d at 929 (finding that expert testimony is not required in cases involving an obvious breach of the duty of care); *Dixon*, 528 So. 2d at 642 (concluding that expert testimony may not be required when the trial court is "familiar with the standards of practice in its community").

Once the plaintiff-client has proven the existence of a lawyer-client relationship (prong one), and that the lawyer's conduct was negligent (prong two), the client has established a prima facie case that the lawyer's conduct caused the client to suffer some loss (prong three). Thereafter, the burden "shifts to the defendant attorney to prove that the client could not have succeeded on the original claim." *See, e.g.*, *Johnson v. Tschirn*, 746 So. 2d 629, 632 (La. Ct. App. 4th Cir. 1999) (internal quotation omitted) (citing *Nelson v. Waldrup*, 565 So. 2d 1078 (La. Ct. App. 4th Cir. 1990); *Jenkins v. St. Paul Fire and Marine Ins. Co.*, 422 So. 2d 1109 (La. 1982)). The law shifts the burden in this manner because it presumes that the defendant-lawyer would not have handled the client's claim if it were completely devoid of merit.[62] For this reason, the client is not required to prove that the negligence caused him to lose his underlying case by trying a "case within a case." *See Jenkins*, 422 So. 2d at 1110; *Dier v. Hamilton*, 501 So. 2d 1059, 1061 (La. Ct. App. 2d Cir. 1987). On the contrary, the defendant-lawyer must go forward with evidence that the client would have lost[63] notwithstanding the lawyer's impropriety or negligence. *See Jenkins*, 422 So. 2d at 1110.

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[61] For a case finding that a lawyer did not breach any applicable standard of care, see *Spellman v. Bizal*, 755 So. 2d 1013 (La. Ct. App. 4th Cir. 2000) (no breach for withdrawing as counsel of record when no motions pending and no trial date set).

[62] The Fourth Circuit has held that "[t]he inference of causation of damages can easily be made in cases where the attorney enters into a 'relationship' with a client on the premise that the client has a valid cause of action, or on a contingency fee basis." *Broadscape.com*, 866 So. 2d at 1089 (La. Ct. App. 4th Cir. 2004).

[63] Put another way, a lawyer's malpractice is a cause in fact of damage to his client when proper performance by the lawyer would have prevented the harm. *See Schwehm v. Jones*, 872 So. 2d 1140 (2004) (La. Ct. App. 1st Cir. 2004); *see also Ault v. Bradley*, 564 So. 2d 374, 379 (La. Ct. App. 1st Cir. 1990).

RELEVANCE OF VIOLATION OF A RULE OF PROFESSIONAL CONDUCT

Whether a lawyer's violation of a rule of professional conduct is relevant to a claim for malpractice is a controversial issue. The "Scope" section of the ABA Model Rules of Professional Conduct states that "[t]he Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability." Model Rules of Professional Conduct Scope ¶ [20] (2002). Notwithstanding this statement, most jurisdictions permit experts to consider a disciplinary rule in "understanding and applying" the applicable standard of care if the rule is designed to protect the plaintiff and is relevant to the claim. *See* Restatement (Third) of the Law Governing Lawyers § 52(2) (2000); Note, *The Evidentiary Use of the Ethics Codes in Legal Malpractice: Erasing a Double Standard*, 109 Harv. L. Rev. 1102, 1119 (1996) (arguing that the "logic, feasibility, [and] functional value" warrant applying the Model Rules to the malpractice context); Model Rules of Professional Conduct Scope ¶ [20] (2002) (conceding that "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").

Unconstrained by the limiting language in the "Scope" section of the ABA Model Rules, Louisiana courts consider the Louisiana Rules of Professional Conduct to have the full force and effect of substantive law. *See, e.g.*, *Dazet Mortgage Solutions LLC v. Faia*, No.12-CA-486 2013 WL 1442558, at *2 (La. App. Ct. 5th Cir. Apr. 10, 2013); *In re Huddleston*, 655 So. 2d 416, 422 (La. Ct. App. 5th Cir. 1995); *Soderquist v. Kramer*, 595 So. 2d 825, 829 (La. Ct. App. 2d Cir. 1992). Thus, the Louisiana Rules of Professional Conduct create legal duties that are enforceable against a Louisiana lawyer in malpractice actions. *See Schlesinger v. Herzog*, 672 So. 2d 701, 707 (La. Ct. App. 4th Cir. 1996) (holding that the Rules of Professional Conduct "have the force and effect of substantive law" and transform ethical issues into legal duties); *Dier v. Hamilton*, 501 So. 2d 1059, 1061 (La. Ct. App. 2d Cir. 1987) (holding that alleged violation of Louisiana ethics rules on conflicts of interest established prima facie case of professional impropriety for purposes of legal malpractice action). However, liability based on such a rule-based duty turns on whether the rule in question exists to protect the plaintiff from the particular harm suffered. *See, e.g., Smith v. Haynsworth, Marion, McKay & Geurard*, 472 S.E.2d 612, 613-15 (S.C. 1996); *see also Gresham v. Davenport*, 537 So. 2d 1144 (La. 1989); *Tassin v. State Farm Ins. Co.*, 692 So. 2d 604, 608 (La. Ct. App. 3d Cir. 1997). The duty of competence prescribed by Rule 1.1 clearly is intended to protect clients.

Prescription and Preemption of Lawyer-Malpractice Claims

Louisiana Revised Statutes section 9:5605[64] sets forth a prescriptive[65] period of one year for all legal malpractice claims against a Louisiana lawyer: "No action for damages against any

[64] "[T]he prescriptive and peremptive period" for all legal malpractice claims against Louisiana lawyers "shall be governed exclusively by this section." *See* La. Rev. Stat. Ann. § 9:5605(C) (emphasis added).

[65] There is caselaw in Louisiana holding that the one-year period set forth in section 9:5605 is actually a peremptive period rather than a prescriptive period. For an exhaustive discussion of this issue, *see Dauterive Contractors, Inc. v. Landy & Watkins*, 811 So. 2d 1242, 1252 (La. Ct.

attorney at law duly admitted to practice in this state . . . whether based upon tort, or breach of contract, or otherwise . . . shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered . . . ." La. Rev. Stat. § 9:5605(A). Actions for malpractice are also subject to a three-year preemptive[66] period: "[E]ven as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect." *Id.* The Louisiana Supreme Court has held that:

> The 'date of discovery' from which prescription or peremption begins to run is the date on which a reasonable man in the position of the plaintiff has, or should have, either actual or constructive knowledge of the damage, the delict, and the relationship between them sufficient to indicate to a reasonable person he is the victim of a tort and to state a cause of action against the defendant. Put more simply, the date of discovery is the date the negligence was discovered or should have been discovered by a reasonable person in the plaintiff's position.

Teague v. St. Paul Fire & Marine Ins. Co., 974 So. 2d 1266, 1275 (La. 2008) (citations omitted).

The contra non valentem doctrine and continuous representation rule do not suspend the peremptive periods set forth in section 9:5605. In *Hendrick v. ABC Ins. Co.*, 787 So. 2d 283 (La. 2001), the Louisiana Supreme Court held as follows:

> The attorney-client relationship is built on trust[,] and the continuous representation rule as encompassed by *contra non valentem* seeks to protect clients who rely on that trust and fail to file legal malpractice suits against their attorneys within the appropriate prescriptive period. *Contra non valentem* does not suspend prescription when a litigant is perfectly able to bring his claim, but fails to do so. When a client does not innocently trust and rely upon his attorney, but rather actively questions

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App. 3d Cir. 2002) ("We hold that both the one-year and three-year periods are peremptive and are subject to all rules governing peremption.").

[66] Note that the peremptive period does not apply "in cases of fraud, as defined in Civil Code Article 1953." Id. § 9:5605(E). For this exception to apply, however, the plaintiff must "state a cause of action for fraud" in his petition by alleging "both a misrepresentation, suppression, or omission of true information and the intent to obtian an unjust advantage or to cause damage or inconvenience to another." *Fenner v. DeSalvo*, 826 So. 2d 39, 44 (La. Ct. App. 4th Cir. 2002). Thus, this exception does not apply if the plaintiff simply recites the word "fraud" in his petition without more particular allegations. *See id.* As to whether subsection E applies to the statute's one-year period, three-year period, or both, *see Dauterive*, 811 So. 2d at 1252-53 & supra note 66.

> his attorney's performance, the client may be denied the safe harbor of *contra non valentem* if equity and justice do not demand its application.

Id. at 293. However, this opinion did not specifically address whether the continuous-representation rule applied to the period set forth in section 9:5605. *See id.* at 289-93. *See, e.g., Reeder v. North*, 701 So. 2d 1291 (La. 1997); *Pena v. Williams*, 867 So. 2d 801 (2004) (La. Ct. App. 4th Cir. 2004); *Atkinson v. LeBlanc*, 860 So. 2d 60 (La. Ct. App. 5th Cir. 2003). In 2012, the Louisiana Supreme Court in *Jenkins v. Starn*, 85 So. 3d 612 (2012), squarely held that the continuous-representation rule does not suspend or interrupt the peremptive period set forth in La. R.S. 9:5605(B). *Id.* at 626.

Limitation of Malpractice Liability and Structured Settlements

Under Louisiana Revised Statutes § 37:222(A), "[a]n attorney who acts in good faith shall not be liable for any loss or damages as a result of any act or omission in negotiating or recommending a structured settlement of a claim or the particular mechanism or entity for the funding thereof or in depositing or investing settlement funds in a particular entity, unless the loss or damage was caused by his willful or wanton misconduct." Under this provision, "'[g]ood faith' is presumed to exist when the attorney recommends or negotiates, invests, or deposits funds with an entity which is funded, guaranteed, or bonded by an insurance company which, at the time of such act, had a minimum rating of 'A+9' or 'Double A', or an equivalent thereof, according to standard rating practices in the insurance industry." *Id.* § 37:222(B)(2).

Malpractice in Criminal Defense Practice

A cause of action for legal malpractice against a criminal defense lawyer exists even prior to final disposition of the underlying criminal case. Therefore, a potential plaintiff need not–and should not–delay filing such a claim until all writ applications and post-conviction proceedings have been exhausted. *See Augman v. Colwart*, 874 So. 2d 191 (La. Ct. App. 1st Cir. 2004) ("[T]he date of the negligent act itself, not the judgment giving definitive effect to that act, triggers the one-year and three-year periods.").

Mandatory Continuing Legal Education

A Louisiana lawyer must attend a total of twelve and one-half hours of qualified continuing legal education classes each year, unless a specific exception or exemption applies. Of these twelve and one-half hours, one hour must concern ethics and one must concern professionalism. *See* La. Sup. Ct. R. XXX(3)(a) & 3(c). The Louisiana Supreme Court has been relatively harsh in disciplining lawyers who do not comply with MCLE and dues-paying obligations in a timely manner. For example, in *In re McCarthy* the court suspended a lawyer for six months for failing to complete mandatory continuing legal education, failing to timely pay his annual bar dues and prior disciplinary assessment, and subsequently practicing law during these periods of ineligibility. 972 So. 2d 1143 (La. 2008). Likewise, in *In re Moeller* the court suspended a lawyer for a significant period of time for long history of noncompliance with MCLE requirements and dues payments. 111 So. 3d 325, (La. 2013) (noting that it was of no consequence that no actual harm occurred).

Criminal Defense Practice

The caseload of criminal defense counsel should not, "by reason of its excessive size, interfere[] with the rendering of quality representation," or otherwise "lead to the breach of professional obligations." ABA Stds. Relating to the Admin. of Crim. Justice–The Def. Function std. 4–1.3(e). Defense counsel should "at the earliest opportunity . . . take all necessary action to vindicate" the accused's rights, including considering "motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, and seeking dismissal of the charges." *Id.* std. 4–3.6. Defense counsel "should conduct a prompt investigation of the circumstances of the case," regardless of the accused's statements regarding guilt or regarding a desire to plead guilty. *Id.* std. 4–4.1. Finally, defense counsel should "be or become familiar with all of the sentencing alternatives available to the court" and other pertinent matters relating to sentencing. *Id.* std. 4–8.1; *see also*, *e.g.*, *In re Martin*, 982 So. 2d 765, 769 (La. 2008) (disciplining a lawyer for failing to provide the information necessary to complete his client's pre-sentence report, which could have resulted in his client receiving a significantly longer prison sentence).

In providing reasonably adequate death-penalty representation, capital defense counsel should consult and consider the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. The United States Supreme Court, however, has made clear that these standards are "guides to what reasonableness means, not its definition." *E.g., Bobby v. Van Hook*, 558 U.S. 4 (2009) (internal quotations omitted).

Technological Competence

In 2012, the ABA adopted an amendment to ABA Model Rule of Professional Responsibility 1.1, comment 8, noting that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . . ." *See* ABA, Commission on Ethics 20/20 Resolution 105A (August 2012). Thus, a Louisiana lawyer should acquire and maintain a minimum level of competency with the use of modern technology, including the use of email for lawyer-client and lawyer-lawyer communication, creating PDF files, searching and advising clients about social media, and using on-line resources for legal research and fact investigation.

Discipline

When a lawyer's incompetence causes injury or potential injury to a client, the following sanctions are generally appropriate: *disbarment*, when the lawyer does not understand "the most fundamental legal doctrines or procedures"; *suspension*, when the lawyer engages in an area of practice in which the lawyer knows he is not competent; and, *reprimand*, when the lawyer either fails to understand relevant legal doctrines or procedures, or is negligent in determining whether he is competent to handle a legal matter. ABA Stds. for Imposing Lawyer Sanctions stds. 4.51-4.53 (1992). If a lawyer's incompetence causes little or no actual or potential injury to a client, *admonition* is generally the appropriate sanction when the lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter. *Id.* Std. 4.54. The Louisiana Supreme Court has noted that

"a short suspension is the appropriate discipline for failure to render competent representation." *In re Downing*, 930 So. 2d 897, 904 (La. 2006) (citing *In re Young*, 849 So. 2d 25 (La. 2003)). The Louisiana Supreme Court has also held that although a lawyer's state of mind is not a defense to incompetence, it is a relevant factor in determining an appropriate sanction. *In re Pharr*, 950 So. 2d 636, 641 (2007) (holding disbarment would be unduly punitive where the lawyer did not intend to harm a client's financial interests and where the lawyer entered into a consent judgment to compensate the client's losses).

Professionalism Materials

Professionalism: In General

Over the past three decades[162] members of the bench, bar and legal academy have lamented the decline of professionalism among American lawyers[163]. Among the problems now perceived to plague our profession include[164] that we, as lawyers, have lost an understanding of the practice of law as a "calling."[165] That changes in the economics of the practice of law have transmuted our practice from a profession to a business.[166] That we have lost our way as independent intermediaries and counselors and, in so doing, have become "hired guns," or

[162] Excerpted from Dane S. Ciolino, *Redefining Professionalism as Seeking*, 49 Loy. L. Rev. 229, 229-31 (2003).

[163] *See, e.g.*, Warren E. Burger, *The Decline in Professionalism*, 61 Tenn. L. Rev. 1 (1993); *see generally* Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* (1994); Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993); Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994); *see also* Samuel J. Levine, *Essay, Faith in Legal Professionalism: Believers and Heretics*, 61 Md. L. Rev. 217 (2002); Therese Maynard, *Teaching Professionalism: The Lawyer as Professional*, 34 Ga. L. Rev. 895, 895 n.2 (2000) ("[t]he literature teems with articles that describe, often in rather distressing terms, the crisis within the legal profession today"); Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 Wm. & Mary L. Rev. 1303, 1307 (1995) ("[o]ver the past two decades, hundreds of articles and speeches have focused on the meaning of professionalism, its perceived 'decline,' and steps the bar should take to improve it").

[164] Some also have expressed concerns about the general competency of lawyers and their compliance with disciplinary codes. *See* A.B.A., Final Report and Recommendations of the Task Force on Professional Competence (1983). But this is more a matter of "legal ethics" than "professionalism."

[165] *See* Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 Wash. L. Rev. 573 (1994).

[166] *See, e.g.,* Wm. Reece Smith, Jr., *Teaching and Learning Professionalism*, 32 Wake Forest L. Rev. 613, 613 (1997); Eleanor W. Myers, *"Simple Truths" About Moral Education*, 45 Am. U.L. Rev. 823, 827 (1996); Norman Bowie, *The Law: From a Profession to a Business*, 47 Vand. L. Rev. 741 (1988).

"Rambos," content merely to do our clients' bidding.[167] And, finally, that the warm, collegial civility and comradery that lawyers once shared (or we think they shared) has been swallowed by an eat-or-be-eaten mentality.[168]

These malignancies, they say, are a cancer on our profession. Lawyers are increasingly disillusioned, clients dissatisfied, and the public disgusted. Because of this crisis, the public perception of lawyers continues to look for a bottom.[169] Where is Atticus Finch when the profession needs him?

In response to these widespread concerns, the profession has waged a multi-frontal crusade to improve professionalism in the practice of law. In addition to forming innumerable committees, the organized bar has conducted symposia[170] adopted civility creeds[171] offered continuing legal education programs,[172] and called upon American law schools to teach professionalism to law

[167] *See* Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 Notre Dame J.L. Ethics & Pub. Pol'y 305, 311-13 (2000); Margaret Ann Wilkinson, Peter Mercer & Terra Strong, *Mentor, Mercenary or Melding: An Empirical Inquiry into the Role of the Lawyer*, 28 Loy. U. Chi. L.J. 373 (1996); David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 Vand. L. Rev. 717 (1988).

[168] *See* E. Norman Veasey, *Rambo Be Gone*, 4 Bus. Law Today 12 (Jan/Feb 1995); N. Gregory Smith, *Ethics v. Professionalism and the Louisiana Supreme Court*, 58 La. L. Rev. 539, 541 (1998) (noting that bar journals, legal periodicals and discussions with practitioners "reveal that incivility and unprofessional conduct are far more pervasive than lawyer incompetency or dishonesty.").

[169] *See, e.g.,* Erica Moeser, *Standards, Change, Politics, and the Millennium*, 28 Loy. U. Chi. L.J. 229, 230 (1996).

[170] *See, e.g.,* A.B.A., *Teaching and Learning Professionalism: Symposium Proceedings (1996); A.B.A., Teaching and Learning Professionalism: Report of the Professionalism Committee* (1996).

[171] More than 100 county, city and state bar associations, and many federal courts, have adopted civility codes. *See, e.g.,* Allen K. Harris, *The Professionalism Crisis: The "Z" Words and Other Rambo Tactics*, 53 S.C. L. Rev. 549, 582-83 (2002).

[172] *See, e.g.,* Joryn Jenkins, *Teaching and Learning Professionalism*, Fed. Lawyer, Aug. 1997, at 6 (discussing "The Florida Lawyers Ethics School").

students.[173] Courts have adopted lawyer–and judge–civility codes and, perhaps most controversially, have implemented mandatory professionalism CLE requirements. For example, the Louisiana Supreme Court in 1997 amended its Rules for Continuing Legal Education[174] to require that every Louisiana lawyer attend at least one hour of professionalism CLE each year.[175] Some of these professionalism codes, creeds and CLE requirements affecting Louisiana lawyers are collected in this section.

PROFESSIONALISM RESOURCES

LOUISIANA

1. Louisiana Supreme Court Rules Relating to Litigation Conduct in Louisiana Courts.
2. LSBA Committee on the Profession Website.
3. LSBA Code of Professionalism.
4. Louisiana Association for Justice Lawyer's Creed.
5. United States District Court for the Eastern District of Louisiana Code of Professionalism.

AMERICAN BAR ASSOCIATION

1. ABA Tort, Trial & Insurance Practice Lawyer's Creed of Professionalism.
2. ABA Section of Litigation Guidelines for Litigation Conduct.
3. Professionalism Codes in the States.

NATIONAL CONFERENCE OF CHIEF JUSTICES

1. National Action Plan on Lawyer Conduct and Professionalism (1999).
2. Plan for Implementation of National Action Plan (2001).

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[173] *See* A.B.A. *Report on Teaching and Learning Professionalism*, supra, at 13-25 ("Law School Professionalism Training").

[174] *See* Smith, *Ethics v. Professionalism*, supra, at 544-47 (discussing the new rule).

[175] Louisiana Supreme Court Order of May 23, 1997. The general reception among practicing, CLE-attending Louisiana lawyers to professionalism CLE has been chilly, at best, and hostile, at worst.

MAY I ADD AN ARBITRATION CLAUSE TO MY ENGAGEMENT AGREEMENT?

Yes. Most state courts that have considered the enforceability of lawyer-client arbitration clauses have approved them. The issue was an open question in Louisiana, however, until the Louisiana Supreme Court addressed the issue in *Hodges v. Reasonover*, 103 So. 3d 1069 (La. 2012). Noting that an arbitration clause "does not inherently limit or alter either party's substantive rights; it simply provides for an alternative venue for the resolution of disputes," the court held that a "binding arbitration clause between an attorney and client does not violate Rule of Professional Conduct 1.8(h) provided the clause does not limit the attorney's substantive liability, provides for a neutral decision maker, and is otherwise fair and reasonable to the client." *Hodges*, 103 So. 3d at 1076. However, the court imposed a number of "minimum" requirements for enforceable arbitration clauses:

> "At a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:
>
> Waiver of the right to a jury trial;
>
> Waiver of the right to an appeal;
>
> Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
>
> Arbitration may involve substantial upfront costs compared to litigation;
>
> Explicit disclosure of the nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
>
> The arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities;
>
> The client has the opportunity to speak with independent counsel before signing the contract."

See id. at 1077. If a Louisiana lawyer includes these terms in the lawyer's engagement agreement, it will be enforceable.

MUST I REPORT MY OWN MISCONDUCT?

No, but sometimes self-reporting is advisable.

Louisiana Rule 8.3(a) provides that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel."

Self-reporting is not required by Rule 8.3, which pertains only to a violation of the Rules of Professional Conduct by "another" lawyer. Moreover, compelled self-reporting of lawyer misconduct could raise Fifth Amendment issues.

Nevertheless, self-reporting is sometimes the prudent course of action. The Office of Disciplinary Counsel may consider a lawyer's self-report as a "mitigating" factor if disciplinary sanctions are ever imposed after litigation or by consent. The best advice is to consult with counsel experienced in dealing with disciplinary matters before making a final decision to self-report.

HOW LONG MUST I KEEP THIS FILE?

It depends. In deciding to discard a file, the lawyer should consider the nature of the client, the matter and the document. Louisiana Rule 1.15(a) provides as follows:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a bank or similar institution in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. . . . Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Furthermore, under Louisiana Civil Code Article 3496, "[a]n action by a client against an attorney for the return of papers delivered to him for purposes of a law suit is subject to a liberative prescription of three years. This prescription commences to run from the rendition of a final judgment in the law suit or the termination of the attorney-client relationship."

Given these standards, a good rule of thumb is to keep client files for five (5) years following termination of the matter, unless there is a good reason for maintaining the file for a longer period of time. Such a good reason would exist if the file contains promissory notes, wills, trusts or similar documents.

MAY I "FRIEND" AN UNREPRESENTED PERSON ON SOCIAL MEDIA TO GATHER INFORMATION TO HELP MY CLIENT?

A June 2013 ethics advisory opinion from the New Hampshire Bar Association Ethics Committee advises against a lawyer "friending" a nonparty witness if the lawyer "omit[s] identifying information" from the request. The committee opined that such an omission "may mislead the witness." *See* New Hampshire Bar Ass'n Ethics Comm. Op. 2012-13/5 (opinion that such conduct would violate Rules 4.1 and 8.4(c)). Ethics opinions from other jurisdictions have given similar full-disclosure advice. *See* Philadelphia Ethics Op. 2009-2 (2009); San Diego County Ethics Op. 2011-2 (2011).

In my view, Louisiana would not require as much disclosure. Louisiana Rule 4.1 prohibits a lawyer from "making a false statement of material fact or law to a third person." Furthermore, in dealing with an "unrepresented person," Louisiana Rule 4.3 provides that a lawyer "shall not state or imply that the lawyer is disinterested," and must make "reasonable efforts" to correct any misunderstanding that the person might have about the "the lawyer's role in a matter." Thus, a Louisiana lawyer must not lie to anyone as to his identity or purpose in making a friend request on social media. Further, the lawyer must make efforts to affirmatively correct any misunderstandings the would-be friend may have about the the lawyer's loyalties. Beyond that, there is no requirement that a lawyer Mirandize a would-be friend in the course of making the friend request.

The takeaway? A Louisiana lawyer may make a friend request to an *unrepresented* person, but the lawyer can't lie or mislead. If the lawyer's would-be friend is confused as to the lawyer's role, the lawyer must correct the confusion. As to the propriety of making such a request to a *represented* person, Rule 4.2 would prohibit any friend requests whatsoever if the friend request relates to a matter on which the would-be friend is represented by counsel.

MAY I ADVISE MY CLIENT TO TAKE DOWN HARMFUL SOCIAL-MEDIA CONTENT?

Given the potential harm social media can cause to peoples' lives and cases, is it appropriate for a lawyer to advise a client to take down an embarrassing or case-imperiling post? An ethics opinion from the New York County Lawyers' Association reached this conclusion:

> An attorney may advise clients to keep their social media privacy settings turned on or maximized and may advise clients as to what should or should not be posted on public and/or private pages, consistent with the principles stated above.

> Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, an attorney may offer advice as to what may be kept on "private" social media pages, and what may be "taken down" or removed.

See NYCLA Ethics Op. No. 745 (Jul. 2, 2013); *see also* N.C. Bar Assoc. Formal Ethics Opinion 5 (July 25, 2014). This is good advice. Rule 1.1, which requires a lawyer to be competent, suggests that a lawyer not only can, but should, advise his client about the possible case-related consequences of social-media postings. A client needs to know that the other side will be watching.

Rule 4.1 and Rule 3.3 would prohibit a lawyer from advising a client to post false images or information on a social media site for purposes of manufacturing favorable evidence (for example, by encouraging a personal injury client to post a sad picture of herself in a wheelchair when she was neither sad nor wheelchair-bound).

The issue of a lawyer-directed take down is more difficult. Rule 3.4(a) prohibits a lawyer from counseling a person, including a client, to "unlawfully obstruct another party's access to evidence" or to "unlawfully alter, destroy or conceal a document or other material having potential evidentiary value." A picture of a personal injury plaintiff jumping on a trampoline *is* a document "having potential evidentiary value" in a case in which the plaintiff claims that she cannot walk. Therefore, a lawyer clearly could not advise the plaintiff to destroy all copies of the photograph. But advising a client to remove a photo from Facebook is not advice "to destroy" or "to conceal" it. Such advice is equivalent to advising a client to remove—but not to destroy—an embarrassing picture posted on a billboard. In short, advising a client to take down a Facebook photo and to preserve it for production in the course of discovery[204] should not run afoul of the rules.

[204] In contrast, a lawyer who advises a client to take down and destroy digital photographs from a social media site would violate Rule 3.4 and face the risk of severe sanctions. *See* Debra Cassens Weiss, *Lawyer Agrees to Five-Year Suspension for Advising Client to Clean Up His Facebook Photos*, ABA Journal On-Line, Aug. 7, 2013 (http://www.abajournal.com/news/article/lawyer_agrees_to_five-year_suspension_for_advising_client_to_clean_up_his_f).

Model Fee Agreements

MODEL LAWYER-CLIENT HOURLY FEE AGREEMENT

LAWYER-CLIENT HOURLY FEE AGREEMENT

1. Parties. This Lawyer-Client Agreement ("Agreement") is entered into by and between _____ ("Lawyer"), and _____ ("Client") as of the latest date set forth below. Lawyer is an independent contractor. There are no other parties whatsoever to this Agreement.

2. Scope of Representation. Client has engaged Lawyer in connection with _____ ("Matter"). Lawyer's representation is in connection with Matter only, unless otherwise agreed in a signed writing.

3. Fees and Costs

   a. Costs. Client will be responsible for all costs. Lawyer, however, may advance such costs. As used herein, the term "Costs," includes, but is not limited to, filing fees, filing boxes and supplies, copying costs, deposition costs, computerized research costs, outsourced document scanning/coding/indexing costs, travel expenses, expert fees, court costs, postage expenses, witness fees, and reasonable interest paid by Lawyer to third-party lenders to cover any cost advances.

   b. Hourly Fee for Billable Time

      i. Rates

         (1) Lawyers. Client agrees to pay Lawyer at Lawyer's regular hourly rate, currently $_____ per hour, for all Billable Time incurred by lawyers associated with Lawyer.

         (2) Paraprofessionals. Client agrees to pay Lawyer at the hourly rate of $_____ per hour for all Billable Time incurred by paraprofessionals associated with Lawyer (including law clerks, paralegals, research assistants and investigators). Paraprofessional Billable Time includes, among other things, time incurred scanning and electronically indexing documents.

      ii. Billable Time. Billable Time includes *all* time spent on the Matter, including, but not limited to, the following: legal research; drafting/reading email, letters, pleadings and documents; telephone calls;

Lawyer _____ Client(s) _____

Page 1 of 6

consultations and conferences with Client, witnesses, court personnel and other persons; settlement negotiations; pretrial preparation; fact investigation; reviewing materials; travel time; and, court appearances. All Billable Time will be rounded up to the nearest one-tenth of an hour.

iii. Bills. Lawyer will bill Client either upon written request by Client or periodically at Lawyer's discretion. All bills are due and payable by Client upon receipt. If a bill is not paid within thirty (30) days of receipt, simple interest of 1% per month (or portion thereof) shall be charged by Lawyer calculated from the date due and payable.

iv. Not a Contingent Fee. Client's obligation to pay Fees and Costs is not contingent on the outcome of the Matter and must be paid by Client irrespective of the results obtained.

v. Advanced Deposit.

(1) Generally. Upon request by Lawyer, Client will pay Lawyer an advanced deposit for Fees and Costs. Upon receipt, Lawyer will place the advanced deposit in Lawyer's client trust account and credit it toward the *final payment* in this matter or, at the discretion of Lawyer, toward interim periodic invoices. Lawyer may apply all or part of any advanced deposit toward interim periodic invoices without further authorization from or notice to Client. Any part of the deposit not used at the conclusion of the case (after all Costs and Fees have been paid) shall be refunded to Client. Lawyer shall fully account for all funds held in trust at the conclusion of the Matter and Lawyer will not provide interim accountings unless requested in writing by Client. Any advanced deposit is neither the total fee in this Matter nor an estimate of the total fee. Client's failure to pay an advance deposit upon request shall constitute good cause for Lawyer to terminate this agreement and to withdraw from any further representation of Client.

(2) Initial Advanced Deposit. Client will pay lawyer an Initial Advanced Deposit of $_____.

vi. No Guarantees Regarding Total Fees and Costs. Lawyer has made no promises or guarantees whatsoever as to the total Fees and Costs of the Matter.

4. Arbitration of All Lawyer-Client Disputes

a. Arbitrable Disputes. Any dispute, controversy or claim that may arise between Lawyer and Client shall be resolved by arbitration. Furthermore, any award rendered by any arbitrator(s) may be entered in any court having jurisdiction thereof, including but not limited to Civil District Court for the Parish of Orleans. Among other disputes, the parties hereby agree to arbitrate the following:

i. Disputes Regarding Fees, Costs and Other Compensation Due to Lawyer. All disputes relating to Costs, Fees, compensation or remuneration to Lawyer, including but not limited to, disputes arising under the law of contract, unjust enrichment, restitution and/or quantum meruit shall be resolved by arbitration administered by the Louisiana State Bar Association ("LSBA") Program of Arbitration of Legal Fee Disputes.

ii. All Other Disputes. All other disputes, including but not limited to, those arising under the law of tort, contract, restitution and/or legal malpractice shall be resolved by arbitration administered by the American Arbitration Association ("AAA") in New Orleans, Louisiana under the Commercial Arbitration Rules, Expedited Procedures effective at the time of the dispute.

b. Miscellaneous Arbitration Provisions.

i. Responsibility for Costs and Fees of Arbitration. The nonprevailing party shall pay all Costs incurred by the prevailing party. In addition, the nonprevailing party shall pay the prevailing party for all billable time incurred in connection with arbitration and with enforcement of any arbitration award, whether such billable time is incurred by Lawyer acting on his own behalf or by a lawyer or a law firm retained by the prevailing Lawyer or Client. The applicable rate for billable time shall be the same as set forth above. *See supra* Billable Time.

ii. **Informed Consent to Arbitration. Arbitration proceedings are ways to resolve disputes without use of the court system. Lawyer and Client understand that in agreeing to arbitrate, they are expressly waiving their right to file any lawsuit in court, to broad discovery under the applicable rules of procedure, to a trial by a judge or a jury and to appeal. These are important rights that should not be given up without careful consideration. Arbitration may be more expensive**

than litigation and often involves substantial up-front costs. Lawyer and Client understand that this paragraph does not prospectively limit Lawyer's liability to Client in any way, nor does it impinge upon Client's right to make a disciplinary complaint to the appropriate authorities. Client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel regarding this arbitration provision. Client is further advised to review the detailed procedures and costs associated with arbitration at the LSBA and AAA websites. To provide these opportunities, this paragraph shall not be effective until 21 days after signing. If Client does not wish this paragraph to become effective, Client shall within this 21-day period provide written notice to Lawyer via certified United States mail, return-receipt requested.

5. Retention, Delivery and Destruction of Files. Lawyer will scan and store all Client files in electronic PDF format and destroy all hard-copy (paper) files given to or received by Lawyer immediately after scanning. Lawyer will store at Lawyer's expense all relevant PDF files relating to Matter for a period of up to one (1) year following termination of Lawyer's representation and may thereafter destroy same without further notice to Client. In addition, Lawyer will store all relevant PDF files relating to property of Client that Lawyer has held in trust for a period of five (5) years and may thereafter destroy same without further notice to Client. Client may request in writing that Lawyer make available to Client or the Client's designee any PDF files in Lawyer's possession. Within seven (7) days of receipt of such request, Lawyer shall make electronic (not hard-copy) files available for pick-up at Lawyer's office.

6. No Guarantee. Client acknowledges that Lawyer has made no guarantee regarding the disposition of any phase of this case. During the course of representation, Lawyer may provide Client with his candid advice and professional predictions regarding how the Matter may be resolved by a jury or other finder of fact. In so doing, Lawyer makes no guarantee regarding the outcome.

7. Governing Law. This agreement shall be governed by the law of the State of Louisiana.

8. Complete Agreement, Amendment and Severability. This is the complete agreement between Lawyer and Client with regard to matters addressed herein. Any changes or amendments to this Agreement and any future agreement(s) as to Costs and/or Fees owed under this Agreement must be set forth in a writing signed by the parties in order to be effective. There are no oral agreements of any kind relating to Lawyer's representation of Client. If any portion of this Agreement, or any portion of any paragraph of this Agreement, is declared invalid, the remaining portions shall be given full effect.

Lawyer _____ Client(s) _____

9. Electronic Signatures and Copies. Lawyer and Client agree that a digital signature shall be effective to prove assent to the terms of this Agreement. Furthermore, Lawyer and Client agree that the terms of this Agreement may be proved through an electronic facsimile, including a scanned electronic copy in Portable Document Format ("PDF") or other digital format, and that no "original" hard-copy document shall be retained by Lawyer to prove the terms of this Agreement.

10. Notices. All notices shall be provided to the parties at the addresses or email addresses set forth below.

11. Commencement; Effective Date. Lawyer will not begin work on Matter, has not been retained by the Client, and is under no duty to represent the Client until Lawyer has signed the Agreement and returned it to Client. Unless otherwise provided herein (*i.e.*, arbitration clause), this Agreement is effective as of the date of Lawyer's signature. However, if Client engages Lawyer, Client is responsible for any authorized Billable Time and Costs incurred by Lawyer prior to the effective date.

12. Consultation and Informed Consent. By signing below, Client acknowledges that Client has had the opportunity to discuss the terms of each paragraph of this Agreement with Lawyer.

13. Applicability of Louisiana Rules of Professional Conduct. Lawyer and Client understand that Lawyer is bound by all provisions of the Louisiana Rules of Professional Conduct ("Rules"). Any obligation arising under this Agreement that conflicts with Lawyer's obligations under the Rules shall have no effect.

Signed (either manually or digitally) as of the dates set forth below.

Lawyer _____ Client(s) _____

_____	_____
Lawyer	**Client**
_____	_____
_____	_____
_____	_____
Date Signed: _____	Date Signed: _____

* * * END OF LAWYER-CLIENT AGREEMENT * * *

Index

ABA
  Standards for Imposing Lawyer Sanctions 409
ABA Ethics 2000 Commission 6
ABA Model Rules of Professional Conduct
  Preamble 13
  Preface 12
  Scope 15
Accepting appointments 285
Administrative proceedings
  Lawyer as advocate in 224
Advertising
  By email 321
  By internet 321
  By lawyers who are not members of the firm 319
  By nonprofit organizations 295
  Copies of advertisements must be kept 327
  Disclaimers
    Form of 304
  Firm names 303
  Intent to refer case must be disclosed 304
  Lawyer referral services 304
  Lead generation 308
  On electronic media other than the web 319
  Outside of Louisiana 295
  Payment by lawyer in different firm prohibited 304
  Period during which ad must be honored 303
  Permissible content of ads 298
  Permissible forms of 295
  Prohibited content 300
    False areas of practice 302
    False or deceptive 300
    Fee information without cost information 303
    Implies LSBA approval 302
    Misrepresentations 300
    Missing information 300
    Past results 300
    Portrayal of lawyer by nonlawyer 301
    Promises results 300
    Specialist or expert claim 302
    Undisclaimed portrayals of clients by nonclients 301
    Undisclosed paid testimonials 301
    Unsubstantiated comparisons 301
  Public service announcements 300
  Referral fees prohibited 304
  Required content of ads 297
    City of practice 297
    Name of lawyer 297
  Review by LSBA 323
    Contents of filing 325
    Exemptions 328
    Notice of noncompliance 326
Advisor
  Candid advice required 173
  Lawyer as 173
Advocate-witness rule 214
Aiding and abetting disciplinary violation 347
Ancillary services 278
Authority
  Allocation between lawyer and client 38

Belief
Defined 19
Bribery 206
Candidates
Lawyers as candidates for judicial office 340
Child support
Lawyer's failure to pay 388
Choice of law 356
Conduct regarding a tribunal 356
Other conduct 356
CLE *See* MCLE requirement
Client crimes
Obligation to disclose 228
Client files
Cloud storage of 472
Client identity
Organization 134
Cloud storage
Of client data 472
Commingling funds 153
Communication 49
Between opposing parties 231
Receipt of unintended communication 240
With unrepresented person 237
Competence 26
Conditional admission
Revocation of 403
Conduct prejudicial to administration of justice by lawyer 347
Confidentiality
Exceptions
To comply with law 69
To prevent bodily harm 69
To prevent financial harms 69
To secure legal advice 69
Generally 68, 74
Lawyer's personal use of confidential information 76
Nonlawyer assistants 77
Prospective clients 169
When duty attaches 74
Confirmed in writing
Defined 19
Conflicts of interest
Advancing costs 92
Aggregate settlements 96
Business organizations 89
Business transactions with client 92, 106
Common representation 85
Concurrent conflicts 78
Consent confirmed in writing 83
Consent to future conflicts 84
Consentabililty 82
Criminal prosecutors 89
Disqualification of lawyer 116
Financial assistance to clients 92
Former clients 110
Former judge or third-party neutral 131
Gifts from clients 107
Government lawyers, officers and employees 124
Imputation 97, 118
"Firm" 121
Former government lawyers 119
Personal interest conflicts 118
Informed consent 83, 90
Insurance defense 88
Lawyer moving firms 111, 121
Literary or media rights 92
Litigation conflicts 84
Personal interests 81
Power of attorney authorizing settlement 97
Proprietary interest in cause of action 97
Prospective clients 169
Representing an organization and its constituents 135
Screening 122

Settling client claims 96
Sex with client 99, 174
Specific rules 92
Third-party fee payment 82, 96
Use of client information 106
Using information of client 92
Conflicts of law
Disciplinary standards 356
Contact with represented persons 469
Contingent fee agreements
Form required 55
Impermissible 55
Cooperation with ODC
Duty to cooperate 336
Costs
Reimbursable vs. overhead 93
Court appointments
Duty to accept 285
Crimes
Lawyers convicted of 386
Crimes by lawyer 347
Deceased lawyers
Appointment of counsel to protect clients 405
Destruction of evidence 200
Diligence 45
Diminished capacity
Obligations when dealing with a client with diminished capacity 141
Disbarment
Readmission 398
Disbarred lawyers
Practicing with 269
Disciplinary authority 356
Disciplinary enforcement procedural rules
Rule XIX 359
Discipline
Access to disciplinary information 382
Appeal by complainant 407
Consent discipline 390
Diversion and other alternatives 408
Duty to notify clients, adverse parties and other counsel 404
Grounds for 370
How to avoid complaints 476
Immunity of participants 379
Interim suspension 389
Interim suspension by consent 390
Liberative prescription 408
Permanent resignation in lieu of 391
Procedure
Burden of proof 385
Discovery 381
Standard of proof 385
Procedure for proceedings 374
Reciprocal 393
Sanctions available 370
Stay during pending litigation 386
Disciplined lawyers
Appointment of counsel to protect clients 405
Discovery
Failure to comply with rules 200
Dishonesty or deceit by lawyer 347
Disobeying obligation to tribunal 200
Email
Advertising by 321
Engagement agreements
Arbitration clauses 467
Contingent fee agreements 55
Model contingent fee agreement 487
Model hourly fee agreement 481
Model joint representation and fee-division agreement 492
Sending samples 330
Ethics 2000 Commission 1, 6, 7, 9, 10

Ex parte communications with court 206
Extrajudicial statements 210
By prosecutors 219
False statements
In bar admissions and disciplinary matters 336
Falsifying evidence 200
FAQs 457
Fee sharing
With lawyer in jurisdiction allowing nonlawyer firm ownership 257
Fees 54
Accounts in which deposited 55
After termination 65
Agreements 54
Form required 59
Collection 64
Contingent fees 55
Division between lawyers 55
Nonrefundable fees 475
Prohibited fees 55
Sharing between lawyers 57, 59, 62
Sharing with nonlawyers prohibited 254
Third-party fee payment 96
Unreasonable fees 60
Fifth Amendment
Assertion in disciplinary proceeding 338
File retention
How long to keep? 468
Financial assistance to clients *See* Conflicts of interest
Firm *See* Law firm
Firm names 332
Deceased members 332
Members who are public officers 332
Retired members 332
Trade names 332
Formation of lawyer-client relationship 40
Client subjective belief 40
Former clients
"Same or substantially related matters" 114
Confidentiality obligation 110
Conflicts of interest 110
Playbook knowledge 115
Fraud
Client crimes and frauds 36
Defined 19
Frequently asked questions 457
Frivolous claims 184
Historical background 1
Hot lines 292
Impaired clients
Communication 52
Improper influence of judge
Lawyer's claimed ability to 347
In house lawyers
Limited admission for 273
Inadvertent communications
Receipt of 240
Incompetent or incapacitated lawyers 395
Information provided upon request
Disclosure of intent to refer case 330
Sending sample engagement agreement 330
Informed consent
Defined 19
Information required 51
Interim suspension 389
Internet
Advertising by 321
Investigators
Responsibility for "unethical" conduct of 249, 471
Judges

Lawyer assisting in violation of Canons 347
Lawyers as candidates for judicial office 340
Lawyer's fale statments about qualifications 340
Payments to 206
Jurors
Communication with 206
Knowingly
Defined 19
Knows *See* Knowingly
LADB *See* Louisiana Attorney Disciplinary Board
Law firm
Defined 19
Law firms 243
Obligations of associates and subordinate lawyers 247
Partners and supervisory lawyers 243
With nonlawyer members prohibited 254
Law reform activities 290
Law-related services 278
Lawyer as witness 214
Legal fees *See* Fees
Legal malpractice 28
Continuous representation rule 32
Contra non valentem 32
Liability to third persons 180
Relevance of rule violation 31
Legal services organization
Membership in 288
Legislative proceedings
Lawyer as advocate in 224
Letterhead 332
Limited scope representation 36, 41, 464
Litigation
Delay 189
Duty to expedite 189
Local counsel arrangements 42
Louisiana Attorney Disciplinary Board 359
Assessment 368
Jurisdiction 366
Subpoena power 380
Lying to third persons 226, 227
Malpractice See Legal malpractice
MCLE requirement 26, 33
Minors as clients 144
Misconduct 347
No obligation to self-report 468
Missing clients
What to do with funds and file 471
Model engagement agreements
Contingent fee agreement 487
Hourly fee agreement 481
Joint representation agreement 492
Multijurisdictional practice 260
Reciprocity 272
Negotiation
Lying during 228
Nonadjudicative proceedings
Lawyer as advocate in 224
Nonlawyer assistants
Responsibility for "unethical" conduct of 249
Responsibility for "unethical" conduct of investigators 471
Nonlawyers
Assisting in the unauthorized practice of law 269
Office sharing 465
Nonprofit limited legal services programs 292
ODC *See* Office of Disciplinary Counsel
Office of Disciplinary Counsel
Powers and duties 364
Office sharing
With nonlawyers 465

Opposing parties
Client contact with 233
Opposing parties and counsel
Duties to 200
Organization as client 134
Derivative actions 139
Duty to report up ladder 134
Limited partnership 139
Paralegals
Responsibility for "unethical" conduct of 249
Partner
Defined 19
Partners at law firms
Obligations re ethical compliance 243
Practice of law
Defined 269
Defined by statute 270
Prescription
Of disciplinary claims 408
Pro hac vice admission
Lawyers from outside of Louisiana 272
Professional independence 254
Professionalism
ABA Guidelines for Litigation Conduct 451
ABA Lawyer's Creed 446
ABA Young Lawyers' Division Pledge 450
As seeking 439
Defined 439
In general 439
La. Sup. Ct. Rules on Litigation Conduct 443
LSBA Code 442
Prosecutors 218
Brady obligation 218
Charging decision 218
Exculpatory evidence 218
Extrajudicial comments 219
Subpoenas to lawyers 218
Prospective clients 169
Confidentiality 169
Conflicts of interest 169
Readmission after disbarment 398
Reasonable
Defined 20
Reasonable belief
Defined 20
Reasonably should know
Defined 20
Reciprocity
Lawyers from outside of Louisiana 272
Referral fees
Prohibited 254
Referral to another lawyer
Disclosure of intent 330
Reinstatement from suspension 398
After a year or less 398
Reporting professional misconduct
No duty to self report 346
Of judges 343
Of other lawyers 343
Represented persons
Communication with 231
Constituents of represented organizations 231
Restrictions on right to practice
In partnership agreements 276
In settlements 276
Retainers
Nonrefundable retainers 475
Rule 11 184
Rule XIX 359
Safekeeping Property 146
Sale of law practice 165
Sanctions
ABA Standards for Imposing Lawyer Sanctions 409
Scope of representation 36
Screened

Defined 20
Self-reporting misconduct
Must a lawyer report his own misconduct? 468
Settlements
Aggregate settlements 96
Authority to settle 43
Power of attorney authorizing settlement 97
Restriction on lawyer's right to practice 276
Settling client claims against lawyer 96
Structured 33
Sex with client *See* Conflicts of interest:Sex with client
Social media 201, 469
Ethical issues 457
Solicitation
By telephone 311
In person 311
In writing 311
Must be marked ADVERTISEMENT 312
Waiting period after accident 311
Specialization 474
Designation as "specialist" or "expert" 474
Subordinate lawyers
Acting at direction of other lawyer 247
Responsibilities of 247
Safe harbor 247
Substantial
Defined 20
Suspended lawyers
Practicing with 269
Suspension
Reinstatement 398
Reinstatement after a year or less 398
Termination of representation 160
Discharge by the client 164
Duty to return client file 163
Third persons
Harassment by lawyer 240
Lawyer's evaluation for use by 178
Respect for rights 240
Tort liability to 180
Truthfulness to 226
Threats
By lawyer to present criminal charges 347
By lawyer to present disciplinary charges 347
Trade names
Advertising under 332
For firms 332
Trial misconduct 200
Trial publicity 210
Tribunals
Disrupting 206
Trust accounting 146
IOLTA accounts 147
Location of account 154
Recordkeeping 157
Where to deposit funds 64
Trust accounts
Overdraft notification 406
Record keeping 406
Unauthorized practice of law
Assisting 260, 269
Defined 260
Unrepresented person
Communication with 237
Constituents of represented organization 239
Giving legal advice to 237
Web sites
Advertising by 321
What to think about when creating 479
Withdrawal from representation 160

Witnesses
Lawyer as witness 214
Payments to 203
Preparation of 202
Requesting noncooperation 200
Writing
Defined 20
Zealous representation 46