

Legal Ethical Concerns and Case Law

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ABA Rules of Professional Conduct

- 1983 - ABA Model Code of Ethics

Residency Requirements

- Admission to Practice Law
 - Most States
 - Graduation from Accredited Law School
 - Passing State's Bar Exam
 - Demonstration of Good Moral Character
- Imposing Residency Requirements
 - Since 1985 The U.S. Supreme Court has struck down
 - Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L.Ed2d 205 (1985)
 - Issue: Court refused to swear in Vermont Resident Who had Passed New Hampshire Bar Exam
 - Rule: Violated the Constitution's Privileges and Immunities Claims
 - Exception: if the State can Demonstrate a substantial reason for discriminating against non residents and can show the difference in treatment bears a close relation to those reasons.
 - Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L.Ed.2d 56 (1988)
 - Court struck down a Virginia rule that let permanent Virginia residents licensed out of state waive into the Virginia bar, but required non-Virginia residents to take the state bar examination.
 - Rule: violated the privileges and immunities clause because it burdened the right to practice law by discriminating against otherwise equalling qualified applicants.
 - Barnard v. Thorstenn, 489 U.S. 546, 109 S. Ct. 1294, 103 L.Ed.2d 559 (1989)
 - Issue: Where the following Substantial Reasons to discriminate against non resides of the Virgin Islands bar's one year residency Requirements?

- 1. The Virgin Islands' Geographic isolation and communications difficulties would make it difficult for non residents to attend court proceedings on short notice
- 2. Delays in accommodating nonresident lawyers' schedules would increase the courts' caseloads
- 3. Delays in publication and lack of access to local statutory and case law would adversely affect nonresident lawyers competence
- 4. The bar does not have adequate resources to supervise a nationwide bar membership.
- 5. Nonresident bar members would be unable to take on a fair share of indigent criminal defense work.
- Holding- The first two requirements would be satisfied in the nonresident lawyer associated with local counsel. Full dockets and maintaining knowledge of local law was not a reasonable justification to exclude non residents. Dues paid by non residents will provide money needed to meet the added burden of supervising them. Requiring non residents to meet the burden of supporting indigent client personally is too heavy of a burden to the the privileges of non residents and bears no substantial relation to the Virgin Islands objectives.

Character Requirements

- All state require than an applicant for admission to the bar possess Good Moral Character.
 - Honest
 - Respect for the Law
 - Respect for the Rights of Others
- Rule 8.1 Bar Admission And Disciplinary Matters
 - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
 - (a) knowingly make a false statement of material fact; or
 - (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.
- Rule 8.4: Misconduct Common sense rule. This is what unprofessional is all about.

- It is professional misconduct for a lawyer to:
 - ● (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - ● (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - ● (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - ● (d) engage in conduct that is prejudicial to the administration of justice; ○ Some states use this as a broad discrimination rule
 - ● (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
 - ● (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
- Other State Rule Comparison
 - California has not adopted the ABA rules. Out for comment. They have a specific ethics rule that deals with this
 - Rhode Island added a section that included harmful or discriminatory treatment litigants, jurors, witnesses, lawyers, and others. ○ Illinois add paragraphs
 - New Jersey ■ 8.4(g): Added a Section specifically deals with this. Made an exception for employment discrimination among attorney people in the court and beyond because NJ has an entire body of law on employment discrimination. Commentary states it was intended to be construed broadly.
 - North Carolina ■ 8.4(d): Comments state it should be read broadly. Including conduct outside the scope of judicial proceedings
- In Re DeBartolo - Supreme Court of Illinois, 1986
 - An applicant to the bar must show that he possesses the good moral character and general fitness necessary for the practice of law.
 - Lied on bar application about residence
 - Incurred over 400 parking tickets
 - Represented himself as a police officer

Discipline

- Rule 8.3(a) Reporting Professional Misconduct
 - (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- In Re Mountain - Supreme Court of Kansas, 1986

- In Re Holmay - Supreme Court of Minnesota, 1987
 - In Re Holmay Supreme Court of Minnesota, 1987. 399 N.W.2d 564
 - Attorney forged his client's signature on documents which he falsely notarized. He submitted to the court and served on the opposing party.
- ***Lawyer must make fair disclosure of the basis on which the fees will be based***

The Attorney's Oath

- It is the duty of an attorney
 - A. To support the Constitution and laws of the United States and of this State
 - B. To maintain the respect due to the courts of justice and judicial officers
 - C. To counsel or maintain such actions, proceedings or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense
 - D. To employ for the purposes of maintaining the causes confided to him or her such means only as are consistent with trust, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law
 - E. To maintain inviolate the confidence, and at every peril to himself or herself to persevere the secrets of his or her client
 - F. To advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
 - G. Not to encourage either the commencement or the construction of an action or proceeding from any motive corrupt or passion or interest
 - H. Never to reject, for any considerations personal to him or herself, the course of the defenseless or the oppressed.

Lawyer- Client Relationship

- Bothwell v. Republic Tobacco
 - While incarcerated, plaintiff, Earl Bothwell filed a complaint to request to proceed in forma pauperis, a civil complaint, and a motion for appointment of counsel with regards to a suit against Republic Tobacco Co. After a series of motions to withdraw and appointments of substitute counsel, the court appointed Paula Metcalf as plaintiff's counsel.

- Does a federal court have statutory or inherent authority to force an attorney to take an ordinary civil case for no compensation?
- A federal district court does possess the inherent power to compel an unwilling attorney to accept a civil appointment.
- Ruskin v. Rodgers
 - Plaintiff sued defendant for specific performance of a written agreement for purchase of an apartment building and its conversion into condominiums. Plaintiff prevailed. Defendant contends he was deprived of a fair trial because of denial by the trial court of defendant's motions for continuance and substitution of attorneys
 - Denial of such a motion will not be disturbed on appeal unless there has been a manifest abuse of discretion or a palpable injustice. Grave reasons for granting a continuance must be given once a case has reached the trial stage.
 - Does the defendant have an absolute right to replace his attorney at any time without cause? To allow defendant to substitute attorneys at this point would have been extremely disruptive to the trial and would have resulted in a significant and prejudicial delay.
- Rosenberg v. Levin
 - The proper basis for compensating an attorney discharged without cause by his client after he has performed substantial legal services under a valid contract of employment.
 - A lawyer discharged without cause is entitled to the reasonable value of his services on the basis of quantum meruit, but recovery is limited to the maximum fee set to the contract entered into for those services.
 - Contract rule - an attorney discharged without cause may recover damages for breach of contract under traditional contract principles
 - Quantum Meruit Rule - limits recovery to the maximum amount of the contract fee in all premature discharge cases involving both fixed and contingent employment contracts (Court's Holding)
- Holmes v. Y.J.A. Realty Corp
 - Code of Professional Responsibility states that an attorney's withdrawal from employment is permissible where a client "renders it unreasonably difficult for the lawyer to carry out his employment effectively",
- Kriegsman v. Kriegsman
 - When a firm accepts a retainer to conduct a legal proceeding, it impliedly agrees to prosecute the matter to a conclusion. With trial imminent, it would be extremely difficult for plaintiff to obtain other representation, and therefore she clearly would be prejudiced by the firm's withdrawal.

Advertising and Solicitation

- Bates v State Bar of Arizona
 - Two Arizona lawyers violated Arizona's ban on lawyer advertising.
 - Bates held that the First Amendment commercial speech doctrine protects attorney advertising that is truthful and not misleading.
 - The Court based its First Amendment conclusion on arguments that carry the strong antitrust - free competition among lawyers raises quality and reduces prices, and competition works best when consumers are well informed about their choices.
- Florida Bar v. Went for It, Inc
 - Rules of the Florida Bar prohibit personal injury lawyers from sending targeted direct-mail solicitations to victims and their relatives for 30 days following an accident or disaster.
 - Advertising may be regulated by the government if it satisfies a three pronged test
 - The Government must assert a substantial interest in support of its regulation
 - The government must demonstrate that the restriction on commercial speech is directly and materially advances that interest and
 - The regulation must be "narrowly drawn"
- ABA Model Rules
 - 7.1 - Communications concerning a lawyer's service
 - 7.2 - Advertising
 - 7.3 - Direct Contact with Prospective Clients
 - 7.4 - Communications of Fields of Practice and Specialization
 - 7.5 - Firm Names and Letterhead
 - 7.6 - Political Contributions to Obtain Legal Engagements Or Appointments by Judges
- Ohralik Case
 - Rule: Professional ethics rules for the legal profession that ban in-person solicitation of non-lawyers do NOT violate free speech guarantees under the First and Fourteenth Amendments
- Primus Case
 - A state CAN NOT punish an attorney who advises someone of her legal rights and discloses that free legal assistance is available from a non-profit organization with which the attorney is affiliated

- Peel v. Attorney Registration
 - Rule: Listing National Board of Trial Advocacy certifications on an attorney's letterhead does NOT warrant a ban on that advertising.

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Attorney Fees

- Robert L. Wheeler, Inc. v. Scott - Supreme Court of Oklahoma, 1989
 - Question is after summary judgment was entered against appellant in a mortgage foreclosure proceeding, and after the trial court subsequently reduced the fee charge by Scott's attorney, the fee was still excessive.
 - Factors
 - Time and labor required
 - Novelty or difficulty of issues
 - The Skill requisite to perform
 - Loss of opportunity for other employment
 - The customary fee
 - Where the fee is fixed or contingent
 - Time limitations imposed by the client or circumstances
 - The Amount involved and the results obtained
 - Experience, reputation, and ability of attorney
 - The undesirability of the case
 - Casual or regular employment
 - Awards in similar cases
- Rules - 1.5 - Fees
- 1.8(e) - A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
 - (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.
- 1.15 - Safekeeping property

Confidential Information

- Washington v. Olwell - Supreme Court of the State of Washington, 1964
 - Issue: May an attorney refuse to produce, at a coroner's inquest, material evidence of a crime by asserting the attorney-client privilege or by claiming the privilege against self-incrimination on behalf of his client?
 - Rule: Attorney's refusal to testify and produce the evidence in his possession was not contemptuous. To be protected as a privileged communication, information or objects acquired by an attorney must have been communicated or delivered to him by the client, and not merely obtained by the attorney while acting in that capacity for the client.
- People v. Meredith
 - Defendant, Frank Earl Scott, was convicted of first degree murder. A crucial component of the prosecution's case was the location of the victim's wallet. The location of the wallet was revealed by Defendant Scott is his attorney, and he seeks to have such communication protected as privileged.
 - Rule: The attorney-client privilege allows certain disclosures of information "reasonably necessary" to accomplish the purpose for which the attorney was hired.
- Exceptions to Confidentiality
 - Rule 1.6(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

- (6) to comply with other law or a court order; or
- (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Bias

- In Re Plaza Hotel Corporation
 - Bankruptcy court granted a motion to disqualify the debtor's counsel for unacceptable gender-biased behavior toward the trustees' female counsel.
- Sexual Orientation
 - In Re Vincenti
 - Attorney disbarred because of behaviors including harassment and intimidation on the basis of sexual orientation

Conflicts of Interest (Lawyers)

- *Beckwith v. Travelers*, 638 F.Supp. 1179 (WDPA1986),
 - Where an insurer undertakes representation of an insured for claims potentially within the policy coverage and fails to provide the insured with a timely reservation of rights, the insurer will subsequently be estopped from denying coverage or asserting an otherwise valid coverage defense.
- *Phillips v. Carson*
 - The attorney, at no time advised the client to seek independent counsel regarding loan transactions between himself and his client. At the time an existing attorney-client relationship was in place. *That relationship gave rise to the duty on the atty to properly, competently, and adequately counsel, advise, and represent the client. That duty was breached.*
 - Rule: An attorney may not enter into a business transaction with a client in which his interests are adverse to his client if the client expects his attorney to exercise his professional judgment for the client's protection unless the client consents after full disclosure
- *AAA Plumbing Pottery Corp v. St. Paul Insurance Co. Of Illinois*
 - Rule: If an attorney knows or reasonably should know as a witness other than on behalf of his client, the attorney may act as an advocate in the proceeding, unless the attorney knows, or reasonably should know that his testimony is or may be prejudicial to the client
- Between Two Clients

- State Farm Mutual Automobile Insurance Company v. K.A.W.
 - Rule: A third party to a lawsuit may seek disqualification of an attorney, even if the client consents after full disclosure, if the fair administration of justice is in doubt.

- Haagen-Daz Co., Inc. v. Perche No! Gelato, Inc., and Double Rainbow Gourmet Ice Cream, INC.
 - a lawyer who formerly represented a client in a matter cannot represent another person in the same or “substantially related matter.” IF the factual contexts in the two representations are similar or related, regardless of “whether confidences were imparted,” the attorney, to avoid even the appearance of impropriety, must be disqualified, (unless the client consents).
- Rule 1.7 Conflict of Interest: Current Clients
- Rule 1.8 Conflict of Interest: Current Clients Specific Rules
 - 1.8 (e)- Conflict of Interest: Current Clients: Specific rules - A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that