



Practice Aid Guide

The Essentials of Law Office Management



Published by the Louisiana State Bar Association and underwritten by Gilsbar, Inc. and CNA Insurance Company

 **GILSBAR**

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Practice Aid Guide

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The Essentials of Law Office Management

Introduction

Things should be as simple as possible, but not more so.

Albert Einstein

The committee members who compiled this little book were inspired by our work with the Louisiana State Bar Association Ethics School. We teach this class to members of the Bar who have accepted disciplinary diversion or who have been disciplined by the Louisiana Supreme Court. Many of these colleagues got into trouble because of what they did not know about law office management.

The committee saw early on that there were many good books available on law office management — from other bar associations and from commercial publishers. Finding ourselves working with limited funds and wanting to give every lawyer in the state a copy, we realized that no single book of affordable size could cover every aspect of the business side of law practice. Furthermore, we saw no need to duplicate the work already on the market, and we doubted our ability to improve on those books.

Among the many good books on law office management, we did not see any that distilled the subject to its essentials. So, we chose to take a shot at producing an outline of the key procedures and forms, the irreducible minimum below which a lawyer will usually find malpractice, unethical behavior, degradation and despair — or at least a bad day at the office.

The chapters are keyed to what we must do with each case or transaction that comes into our offices. We must get off to a good start with the client, which includes avoiding conflicts of interest. We must handle fees, billing and trust accounts, at the peril of a serious disciplinary complaint. Maintaining client relationships and file management can be irksome but necessary parts of our work, so we have chapters that show how the best lawyers do those tasks. Calendar control can ease the tension of a busy practice and make us exemplars of promptitude — or at least an exception to the cliché that lawyers are always late. Both danger and opportunity lurk in the termination of a client relationship, and the suggestions we provide will help you steer clear of the dark side. Sample forms that can be adapted to your practice and a CD with those forms are included in this book. Finally, we give you easy access to the ethical rules and point the way to more comprehensive information on law office management with lists of other resources. (This information also is available on the Louisiana State Bar Association's website, www.lsba.org.)

We request that you judge our work by the standard of whether our presentation on the subject of law office management is *necessary to competent law practice*. If something is missing, or is included but should be omitted, please give us your feedback, and the next edition will be better.

The Practice Assistance and Improvement Committee
of the Louisiana State Bar Association
July 1, 2004

NOTES

Establishing the Attorney-Client Relationship

The establishment of the attorney-client relationship involves two elements: a person seeks advice or assistance from an attorney; and the attorney appears to give or agrees to give the advice or assistance. **If the client reasonably believes that there is an attorney-client relationship, then the lawyer does have professional obligations to that client.** Therefore, it is essential that both attorney and client understand whether the attorney-client relationship exists.

Before establishing an attorney-client relationship, you will need to determine if you have a conflict of interest prohibiting your representation. Because of its importance, Conflicts of Interest is addressed in a separate section in this Guide. (See page 20.)

Several steps lead to the formation of the attorney-client relationship:

- initial client contact;
- screening;
- interview;
- accepting or declining representation; and
- confirming the acceptance or declination in writing.

The following forms will assist you and your office in the decision whether to accept the representation and how to do it.

Initial Client Contact and Screening

The first contact a potential client usually has with your office is by telephone. Courteous, respectful treatment of all callers is important. The receptionist or designated staff member should complete a Consultation Form, similar to the one on pages 10-11, to obtain the basic information for you to determine if you even want to interview the potential client and to assist in screening for conflicts. A major consideration is whether you have the necessary expertise to handle the case. If not, you should refer the caller to another attorney. Failure to know or properly apply the law accounts for many malpractice claims in Louisiana.

Also, you should use the form to determine if there is an obvious conflict. As discussed in the Conflicts Section, determining conflicts of interest is ongoing, but many conflicts can be avoided by initial screening.

Interview

The initial interview is not just a way for the potential client to determine whether to hire you. It's also your opportunity to decide whether you have a conflict of interest and cannot represent the client, whether you want to represent the client, and whether you have the expertise to do so. You should have the client complete the remainder of the Consultation Form, which you should review immediately before the meeting. Be thorough and listen carefully, both to what is said and how it is said.

First impressions are key. The prospective client should be warmly welcomed by you and your staff, thanked for coming, treated with respect, and seen timely.

If the initial interview reveals that you are not qualified to practice in the area of law at issue, decline the representation. If you take the case anyway, disclose your limitations. Do not make misrepresentations about experience.

Communication is key to a positive relationship. Ideally, communication with the client should not be set out separately as a discrete task; it should be a part of every action you take. But so many attorneys have difficulty with this aspect of representation that it is worth reviewing. Communication in the initial consultation involves (at a minimum) making sure that:

- the client understands the scope of the representation;
- the client understands the type of fee arrangement, what fees are charged, why, and what they will be applied to;
- the client understands how client trust money will be used;
- you have all the facts you need to make sure the client's objectives have a good faith basis;
- the client understands what additional actions on her part are necessary to handle the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);
- the client understands what you believe is the desired objective, but that you are not guaranteeing a particular result; and
- you understand exactly what it is that the client wants you to do.

Client Screening — Avoid the Difficult Client

As a rule, you should avoid inordinately demanding clients, untruthful clients, those with unreasonable expectations, uncontrollable clients, and clients with a personal vendetta. Also, clients who “lawyer shop” or have previously been represented by other attorneys in the same or a similar matter may be difficult to control or please.

Accepting or Declining Representation and Confirming in Writing

After you have screened a prospective client, conducted the conflicts check, and gathered information and impressions through an initial interview, you must tell the client whether you will represent her, **preferably in writing**. Sample letters of engagement and non-engagement are on pages 12 and 13, respectively.

The engagement letter welcomes a new client, confirms the scope of the representation, and clearly sets forth the fee arrangement. All new clients should receive an engagement letter. The fee arrangement should be put in writing and either made part of that engagement letter or attached to it. **Contingent fee contracts are required to be in writing**. Fee arrangement letters can be found in the Fees and Billing Section of this Guide. (See pages 44-51.)

And, yes, it is recommended that, when you decide not to represent someone, you should send non-engagement letters so it will be abundantly clear that you are not representing the prospective client and that you have no further professional obligations to the person. You should try not to make any judgment regarding the merits of the person's case, but should urge the person to be mindful of time constraints and suggest that she may want to confer with another attorney. You should return any original documents the prospective client left for review.

If you decide to represent an existing client in a new matter, you should send a letter explaining that relationship. Again, the fee arrangement for that matter also should be confirmed in writing.

The following is a quick checklist to ensure that you are taking the major steps in establishing attorney-client relationships or in declining representation. Forms follow the checklist. These forms are on the CD as well.

Additional Resources

- Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice 2004*, 2nd Edition (Louisiana State Bar Association, 2004).
- Foonberg, Jay G., *How to Start and Build a Law Practice*, Millennium Fourth Edition (American Bar Association, 1999).
- Jones, Nancy Byerly, *Easy Self Audits for the Busy Law Office* (American Bar Association, 1999).

Establishing the Attorney-Client Relationship Checklist

Use this checklist to ensure that you are taking all the major steps to successfully establish the attorney-client relationship or decline representation.

- Have receptionist or staff member complete initial section of Consultation Form.
- Have staff member do initial conflicts check, making any judgment calls yourself.
- Review the Consultation Form to determine whether to refer the case or to have the receptionist set the appointment.
- Have the prospective client complete the Consultation Form when she arrives for the appointment.
- Review the Consultation Form immediately prior to interviewing the potential client.
- Do full consultation with the prospective client, including completion of substantive interview forms for certain areas of the law.
- Explain to the prospective client whether the firm will accept or decline representation, the scope of the representation, the fee arrangement, and what is still needed from the client.
- Send engagement or non-engagement letter to the prospective client.
- If you agree to handle a new matter, send another engagement letter to reflect the addition.

Appointment Date & Time: _____

Interviewing Attorney: _____

Consultation Form¹

TO BE COMPLETED BY STAFF MEMBER FOR PROSPECTIVE CLIENT:²

Date: _____

Name: _____

Phone Number: _____

Alternate Contact Name & Phone Number: _____

Re: _____

Served with papers: _____ When: _____ Court Date: _____ Judge: _____

What Parish: _____

Other Side's Name: _____

Referred By: _____

Have you or anyone you know been here before? Who? _____

Do you have or have you spoken to an attorney in this matter? Who? _____

Told to bring in paperwork pertaining to consultation: _____

Adverse Party Card Checked: _____ OK? _____

Conflicts List Checked: _____ OK? _____

Non-Client Interview List Checked:³ _____ OK? _____

Form Completed By: _____

Attorney's Instructions: _____

Continued

¹ Note to Attorney: Modify this as needed.

² The first page of this form is used by the staff member to obtain basic information from a potential client prior to setting an appointment. The attorney will review it and give additional instructions.

³ The Non-Client Interview List is a list of people interviewed and the attorney-client relationship was never established. There may be a conflict if confidential information was obtained from the non-client.

TO BE COMPLETED BY PROSPECTIVE CLIENT BEFORE THE CONSULTATION:⁴

Client: _____ DOB: _____ SS#: _____

Address: _____

Home Telephone: _____ Fax: _____ E-mail: _____

Client's Employer: _____

Your Position: _____

Employer Telephone: _____

Spouse: _____

Spouse's Employer: _____

Spouse's Employer Telephone: _____

Emergency Contact(s), (Name) (Relationship) (Telephone): _____

Names of Associated and/or Related Parties: _____

Name of Opposing Counsel: _____

Please state briefly the nature of the problem you wish to discuss with the attorney: _____

TO BE COMPLETED BY STAFF:

Initial and Date the Following Items When Completed: _____

Fee Contract: _____ Engagement Letter: _____ Case Entered on Master List: _____

Prescription/Time Deadline/Hearing Date: _____

Form Completed By: _____

⁴ Prospective client completes this section when she comes in for appointment immediately prior to the consultation. The attorney again searches for conflicts before seeing the prospective client.

Sample Engagement Letter (General)

June 20, 20—

Ms. Jane J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Ms. Client:

We enjoyed meeting with you on _____ concerning our representation of you against _____. We have completed a conflict of interest search and determined that there is no conflict at this time, so we can accept this matter. We will be doing the following to represent you:

Our engagement is limited to your claim against _____ for _____.

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed. ***Note to Attorney: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.***

We will keep you informed as this matter progresses. In the meantime, if you have any questions, please call. Thank you for choosing our firm to represent you in this matter.

Sincerely,

FIRMNAME

Attorney Name

Enclosure

(Note: See fee agreements in Fees and Billing Section of Guide, pages 44-51.)

Sample Non-Engagement Letter (General)

June 20, 20—

Ms. Jane J. Non-Client
123 Main Street
Anytown, Louisiana 45678

RE: Non-Engagement Letter

Dear Ms. Non-Client:

Thank you for coming into my office yesterday for a consultation. As we discussed, I will not be able to represent you because

Please feel free to consult with another attorney as soon as possible. Most legal rights have strict time limitations, so you may have a deadline to file something soon. For this reason, I suggest that you contact another attorney immediately if you plan to pursue this matter.

Sincerely,

FIRMNAME

Attorney Name

General Information Questionnaire

(Privileged and Confidential)

Note to Attorney: Questions 1-12 in this questionnaire are designed to be useful in most civil and criminal representations. Questions 13-20 should be added when screening prospective personal injury litigation clients. The questionnaire can be completed by the attorney during a first meeting with prospective clients or mailed to the client in advance and reviewed at a first meeting.

PLEASE COMPLETE CAREFULLY. USE ADDITIONAL PAGES IF NECESSARY.

1. Personal and Family History

Full name _____

Present home address _____

Home phone _____ Business phone _____

2. Have you ever used, or been known by, any other name than that shown above? If so, list here each other name, and state when and why each other name was used: _____

3. State the addresses where you have resided during the past 10 years, and the period of time at each residence, including dates: _____

4. Place of birth _____ Date _____

5. Are you presently married? _____

Date of marriage _____ Place of marriage _____

Full name of spouse _____

Have you ever been divorced or legally separated? _____

6. List the names, ages and addresses of all those (including children) who are dependent upon you for support, and your relationship to each:

NAME	ADDRESS	AGE	RELATIONSHIP
------	---------	-----	--------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Continued

7. Employment History

Social Security number _____

Most recent employer _____

Employer's address _____

Ending date _____ Beginning date _____

Job classification _____

Beginning pay rate _____ Ending pay rate _____

Reason(s) for leaving _____

Employer prior to last listed _____

Employer's address _____

Ending date _____ Beginning date _____

Job classification _____

Beginning pay rate _____ Ending pay rate _____

Reason(s) for leaving _____

8. Educational Background

What education have you had, including any special job training? _____

9. Military Background

Have you been in the military service? _____ If so, give branch of service: _____

If so, give service number: _____

Type of discharge _____

Dates of service _____

Have you ever been rejected for military service because of physical, mental or other reasons? _____

If so, explain: _____

Do you have any service-connected injuries or disabilities? _____

If so, give details: _____

Percentage of disability _____

Present condition of service-connected injury or disability _____

Do you receive payments for service-connected injuries? _____

Continued

10. **Prior Claims and Lawsuits**

Many cases have been damaged beyond repair by a history of other claims and lawsuits which your attorney did not know about. It is **NOT** the fact that one has had other claims or lawsuits that is important, for one will not be penalized by a court or jury if the claims are reasonable and genuine. It is the **DENIAL** of previous claims and suits that damages the case. List every claim you have ever made for personal injury or property damage, and give details:

- a) Date _____ Nature of claim _____
 Against whom _____ Suit filed? _____
 Result _____
- b) Date _____ Nature of claim _____
 Against whom _____ Suit filed? _____
 Result _____
- c) Date _____ Nature of claim _____
 Against whom _____ Suit filed? _____
 Result _____

11. **Police Record**

Under the rules of evidence, there are circumstances under which a person’s prior criminal record may be relevant in a proceeding. The other attorney will make a complete investigation of your background, and we must be **PREPARED AGAINST** development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

12. **Worker’s Compensation**

Have you ever made a claim for Worker’s Compensation? _____

If so, when was the date of your injury? _____

Are you receiving payments at present? _____

If so, explain: _____

Who is handling your Worker’s Compensation action? _____

Are you receiving disability payments from any source other than Worker’s Compensation at present? If so, explain:

13. **Date of Injury or Accident**

(If you are not certain about a specific date, please discuss with the lawyer *immediately*.)

Location of accident/injury _____

Names of other people involved in the accident/injury: _____

Continued

Have you missed any time from work as a result of your injury? _____

If so, list the dates you were unable to work:

FROM:

TO:

14. Prior Physical Examinations

List here **EVERY** physical examination you have ever had during the last five years, for any purpose, including employment, promotion, insurance, selective service, armed forces, etc. State date, name of doctor, and result, as fully as you can recall.

a) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

b) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

c) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

15. Prior Accidents and Injuries

Failure to mention other accidents or injuries can undermine a lawsuit, no matter how trivial they may seem. List here every such incident, whether it resulted in a claim for damages or not, stating the date, place, nature of the accident and extent of your injuries. If none, so state: _____

16. Illness or Disease

No matter how trivial an illness, either before or since your accident, we must know about it. This is particularly true if there is any connection with your present physical complaints. At the trial, the defendant will have a complete history of your past physical condition, made available through medical and hospital records, veteran's records, insurance records, etc.

a) Date _____ Nature of illness _____

Duration _____ Treated by _____

Hospitalized? _____ If so, give dates: _____

Name and address of hospital _____

Continued

b) Date _____ Nature of illness _____
Duration _____ Treated by _____
Hospitalized? _____ If so, give dates: _____
Name and address of hospital _____

c) Date _____ Nature of illness _____
Duration _____ Treated by _____
Hospitalized? _____ If so, give dates: _____
Name and address of hospital _____

Do you now, or have you ever had trouble with: eyes? _____ ears? _____

If so, give details: _____

Have you ever worn glasses? _____ an artificial eye? _____
a hearing aid? _____

If so, give details: _____

Have you ever worked with radioactive substances, asbestos or any other substance alleged to cause diseases, such as cancer? _____

Have you ever been denied life or health insurance? _____

If so, by which company and why? _____

17. Alcoholism, Drug Addiction and Venereal Disease

If you have ever been treated for these conditions, please be sure to discuss it with your attorney **CONFIDENTIALLY**, long before your case goes to trial.

18. The Injury

State all injuries known to be a result of the accident: _____

Length of time confined to bed _____

Length of time confined to house _____

State present physical condition, including scars, disabilities, deformities, discomforts, etc., due to the injuries:

Continued

19. List all physicians and surgeons you have seen for your injury/injuries.

- a) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- b) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- c) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- d) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- e) Name _____
Address _____
Nature of treatment _____
Still under care? _____

20. List all nurses, therapists or other health care professionals that you have seen.

- a) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- b) Name _____
Address _____
Nature of treatment _____
Still under care? _____
- c) Name _____
Address _____
Nature of treatment _____
Still under care? _____

Conflicts of Interest

Conflicts of interest can pop up at any time. The best advice is to perform a preliminary conflicts check before the initial consultation with a potential client, and then another, more comprehensive, conflicts check after the initial consultation but before accepting the representation. Finally, another conflicts check should be performed each time a new party enters into the legal matter. If a conflict is found and the conflict is one that is not consentable, or is consentable, but the consent was not obtained, then the lawyer must decline the representation, or if already representing the client, withdraw from the representation. Otherwise, the lawyer may face grave consequences, including disqualification, mandatory withdrawal, disciplinary actions, reversal of proceedings, forfeiture of fees, and malpractice claims. A non-engagement letter or a disengagement letter (see pages 30 and 32) should be sent to document such declination or termination of the representation.

Types of Conflicts

Generally, conflicts of interest fall into two categories. Conflicts may arise from directly adverse representations or where the representation of a client is materially limited as a result of the lawyer's other responsibilities or interests. A directly adverse conflict arises when you are called upon to represent one client against another client. A lawyer cannot represent two opposing parties in the same litigation. Moreover, a lawyer may not act as an advocate in one matter against a client the lawyer represents or represented in some other matter. Former clients are an excellent example of this type of conflict.

Even when there is no directly adverse conflict, a conflict of interest may nevertheless exist if there is a significant risk that the lawyer's representation may be materially limited as a result of the lawyer's responsibilities to other clients, to third persons, or as a result of the lawyer's own personal interest.

- This type of conflict may arise in the context of dual or multiple representations (*i.e.*, representing a husband *and* a wife, or a buyer *and* a seller, or two or more clients forming a business entity).
- It also may arise in the context of a financial interest (*i.e.*, owning a percentage of a client's business or making an agreement to limit malpractice liability to a client).
- Further, a conflict may arise in the context of a hidden interest (*i.e.*, romantic involvement with a client). You should not have sex with your clients. Nor should you enter into any business transactions with your clients, or knowingly acquire an ownership or other pecuniary interest adverse to your clients.¹
- You should not enter into an agreement to limit your malpractice liability without first making sure that your client is represented by independent counsel.

You should closely scrutinize the circumstances of each representation to determine whether the clients have "differing interests" that may call for different attorneys representing each client. It is also your duty to reject or disengage from any representation which is going to cloud your independent professional judgment and not allow you to render objective advice.

Consentable Versus Non-Consentable Conflicts

You must independently and objectively decide whether a conflict is consentable. "When a *disinterested* lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly

¹ Most legal malpractice insurance policies exclude from coverage claims where the insured attorney has a greater than 10 percent interest in his client's business.

ask for such agreement or provide representation on the basis of the client’s consent.” Annotated Model Rule of Professional Conduct at p. 124 (ABA 2d ed. 1992) (emphasis added). When in doubt, the attorney should decline the adverse representation.

While clients may consent to representation notwithstanding a conflict, some conflicts are non-consentable. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client. Consentability is typically determined by considering whether the interest of the clients will be adequately protected if the clients are permitted to give their informed consent to a representation burdened by a conflict of interest. Representation is prohibited if under the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation as required by Rules of Professional Conduct 1.1 (see page 81) and 1.3 (see page 82). For this reason, conflicts where clients are aligned directly against each other in the same litigation are non-consentable. Other conflicts are non-consentable because applicable law prohibits the representation. For example, under federal criminal statutes, certain representations by a former government lawyer are prohibited, despite the informed consent of the former client.

Consentable Conflicts

Not all representations containing the types of conflicts described above have to be declined or terminated, if the potential or existing client gives informed consent. The following types of transactions can be entered into, but only with the client’s informed consent:

➤ **Business transaction or acquiring pecuniary interest adverse to the client.**

You may not enter into a business transaction or acquire an ownership or other pecuniary interest adverse to the client unless:

1. the transaction is fair and reasonable to the client;
2. the terms are fully disclosed and given to the client in writing, in a manner clearly understood by the client;
3. the client is advised in writing well in advance of the transaction to seek advice of independent counsel; and
4. the client consents in writing.

➤ **Using information relating to a client’s representation.**

You may not use information relating to the representation of an existing or former client to the disadvantage of the client, unless the client has been fully informed and consents to its use.

➤ **Compensation from another party.**

You may not accept compensation for representing a client from any person other than the client unless the client gives informed consent, or the compensation is provided by contract with a third person, such as an insurance contract or a prepaid legal service plan; there is no interference with a lawyer’s independence or professional judgment or with the client-lawyer relationship; and none of the client’s confidential information is revealed.

➤ **Multiple client settlements.**

You may not enter into an aggregate settlement of the claims of multiple clients unless each client gives informed consent in a writing signed by the client.

➤ **Former clients.**

If you formerly represented a client in a matter, you may not represent another person in the same or a substantially related matter if that person’s interests are materially adverse to the interest of the former client, unless your former client gives informed consent, confirmed in writing.

➤ **Imputation of conflicts of interest.**

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 (see page 84) or 1.9 (see page 87), unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

➤ **Special conflicts of interest for former and current government officers and employees.**

You may not represent a private client in connection with a matter in which you participated personally and substantially as a public government officer or employee, unless the government agency gives its informed consent, confirmed in writing, to such representation. Additionally, your firm and associates may not represent this client, unless you have been screened from any participation in the matter, you are not given any part of the fee, and your former government agency is notified immediately in writing.

► **Former judge, arbitrator, mediator or other third-party neutral.**

You may not represent a client in connection with a matter in which you participated personally and substantially as a judge, other adjudicative office, or law clerk to such a person, or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing. Additionally, your firm may not represent this client, unless you are screened, you are not given any part of the fee, and written notice is given to the appropriate tribunal.

► **Organization as client.**

If an organization is your client, you may not represent any of its directors, officers, employees, members, shareholders, or other constituents unless the organization consents. If you represent an organization, you may also represent any of its directors, officers, employees, members, shareholders, or other constituents subject to the provisions of Rule 1.7 (see page 84). If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate officer of the organization.

► **Financial assistance to clients.**

Financial assistance to clients is allowed under certain circumstances. See Rules 1.4(c) and 1.8(e) and discussion on page 39.

Non-Consentable Conflicts

Some conflicts simply cannot be waived. Not even a very detailed consultation and a subsequent written client consent evidencing the client's desire for your representation will do. Consequently, you must not enter into certain prohibited representations and transactions with your clients. These prohibited transactions include, but are not limited to:

- Preparing an instrument giving yourself or any person related to you any substantial gift from your client, including a testamentary gift, unless you and your client are related.
- Negotiating an agreement giving yourself literary or media rights to a portrayal of the representation.
- Directly adverse representation in the same matter.
- Despite the prohibition in Rule 1.8(e) (see page 85) against providing financial assistance to clients, it is permitted under certain circumstances. (See page 39 in the Fees, Billing and Trust Accounts section.)
- Agreeing prospectively to limit your liability to a client for malpractice unless the client is independently represented in making the agreement or settle a claim or potential claim for malpractice liability with an unrepresented client or former client without first advising the client in writing that independent representation is appropriate.
- Acquiring a proprietary interest in the cause of action or subject matter of the litigation, except you may acquire a lien authorized by law to secure your fees/expenses and contract with your client for a reasonable contingent fee in a civil case.

Informed Consent

You've determined that there is a conflict and that the conflict is consentable. What do you do next? (Remember, if the conflict is non-consentable, your job is finished except for the mailing out of the non-engagement or disengagement letter.) First, you must conclude that the conflicting representation will not inure to the detriment of your client or clients. The Rules of Professional Conduct require that this decision must be made using objective, reasonable and independent standards. Second, each client must consent to the representation after being informed of the conflict. And the consent that is required is "informed consent." New Rule 1.0 Terminology paragraph "e" (see page 81) defines informed consent as the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risk of and reasonably available alternatives to the proposed course of conduct. Informed consent is voluntarily and knowingly granted after full disclosure of all relevant information that likely would influence the client's decision.² So what should be included in the client's informed consent letter?

1. The full disclosure of all relevant information transmitted in writing to the client in a manner reasonably understood by the client.
2. An acknowledgment that the client was given an opportunity in writing to seek the advice of independent counsel in consenting to the conflict.
3. The client's consent in writing.

² Schneider, Harry H. Jr., "An Invitation to Malpractice," ABA's Standing Committee on Lawyer's Professional Liability.

4. An acknowledgment that all affected clients were sent the informed consent letter.
5. If applicable, an assurance that the disqualified lawyer is being screened from any participation in the matter and will not be given any part of the fee, nor reveal any protected confidential information.

See page 31 for a sample informed consent letter.

The following Rules of Professional Conduct should be reviewed when embarking on a conflicts of interest check:

- Rule 1.7 - Conflict of Interest: Current Clients (see page 84);
- Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules (see page 84);
- Rule 1.9 - Duties to Former Clients (see page 87);
- Rule 1.10 - Imputation of Conflicts of Interest: General Rule (see page 87);
- Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees (see page 87);
- Rule 1.12 - Former Judge, Arbitrator, Mediator or Other Third-Party Neutral (see page 88); and
- Rule 1.13 - Organization as Client (see page 88).

Additionally, all conflicts of interest checking systems should:

- Be integrated with other office systems;
- Provide conflicts data for everyone in the office;
- Check for varying spellings of names;
- Show any party's relationship with the client; and
- Remind lawyers to document all conflict search results with memos in the file.

Conflicts of Interest Checklist

- All attorneys and staff must disclose necessary information concerning potential conflicts relating to past clients at prior places of employment, but not confidential information. (See page 29.)
- Prior to the initial consultation, the potential clients must disclose all name information, including their other names (*i.e.*, maiden, other marital, etc.), opposing parties' names, and associated persons' and/or entities' names. (See pages 26-28.)
- Thereafter, at the initial consultation, the potential clients must disclose more detailed information in order for a more comprehensive conflicts check to be made. (See pages 26-28.)
- The attorney then performs the conflicts check, reviewing the master client list, the former client list, and the subject matter list, if applicable.
- The Conflicts Search Results Memo must be circulated to all attorneys and staff for their review and input. (See page 29.)
- Follow up with any attorney or staff member who fails to return the Conflicts Search Results Memo within 24 hours of distribution. (See page 29.)
- Analyze the results of the circulated memo and of the preliminary and comprehensive conflicts checks to determine whether there exists a conflict.
- If no conflict is found, the new client is entered into the conflict system and sent an engagement letter.
- If a conflict is found and the attorney is not allowed to accept the representation, send a non-engagement letter explaining the conflict. (See page 30.)
- If a conflict is found and the attorney is allowed to accept the representation:
 - disclose the circumstances which give rise to the actual or potential conflict;
 - disclose a description of actual/foreseeable adverse effects of those circumstances;
 - if the potential conflict arises out of dual or multiple representation, then disclose that no attorney-client privilege exists as between the clients;
 - if the potential conflict arises out of a past representation (*i.e.*, past representation of adverse party in an unrelated matter), then disclose all pertinent non-privileged facts necessary for the potential client to make an informed decision as to whether to waive the conflict.
- Obtain written informed consent after advising the potential client to seek independent legal advice regarding the waiver. (See page 31.)¹
- If a conflict is found, all necessary disclosures are made, and written informed consent is obtained, accept the representation by sending an engagement letter.²
- Once representation has been accepted, perform another conflicts check each time a new party enters into the legal matter. If the new party creates a conflict, withdraw and send a disengagement letter. (See page 32.)

¹ Remember, some conflicts cannot be waived, even though an informed consent was obtained.

² However, we recommend that you do *not* accept the representation because informed consents do not cure all conflicts and there may still be a violation of the ethical rules.

Additional Resources for Conflicts of Interest

Book and Articles

- ▶ ABA, *The Business Lawyer*, Conflict of Interest Issues, 50 Bus. Law 1381 (1995).
- ▶ *Lawyers Liability Review*, Vol. 14, No. 10 (Oct. 2000).
- ▶ Mallen, Ronald E., Smith, Jeffrey M., *Legal Malpractice No. 2*, Chapter 14, Fiduciary Obligations in General; Chapter 15, Fiduciary Obligations - Conflicting Interests; Chapter 16, Fiduciary Obligations Adverse Representation (4th ed. 1996).
- ▶ National Reporter on Legal Ethics and Professional Responsibility, *Kansas Formal and Informal Opinions*, Opinion No. 95-04, Conflict of Interest; Adverse Representation (University Publications of America).
- ▶ Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice 2004*, 2nd Edition (Louisiana State Bar Association, 2004).

Case Management (Conflicts) Software

- ▶ Case Master 10, Software Technology, Inc., (402)423-1440
- ▶ Amicus Attorney V, Gavel & Gown Software, (800)472-2289
- ▶ Abacus Law, Abacus Data Systems, (800)726-3339
- ▶ CLS/Summit, Computer Law Systems, (800)932-9038
- ▶ Thomson Elite, (800)977-6529
- ▶ Tussman Program 7.1, Tussman Programs, Inc., (800)228-6589
- ▶ TimeMatters, Data.Txt Corp., (800)328-2898
- ▶ Northshore Technology Center, (985)893-7062

Conflicts of Interest Search Form

(Privileged and Confidential)

The following must be completed by the potential client, attorneys and staff:

1. Obtain all the information on the potential client:

Name _____
Other names _____
Nicknames _____
Address _____
Spouse's name _____
Spouse's other names _____
Spouse's nicknames _____
Address (if different) _____
Opposing parties' names _____
Associated persons or entities _____

Potential client stops here and Preliminary Conflict Check performed. If no conflict is found, potential client completes § 2 and then attorneys and staff complete the remainder.

2. Determine which area of law is involved and write in the names, nicknames or other names of the associated persons/entities involved:

If litigation matter, who is the:

Insured _____
Plaintiff(s) _____
Defendant(s) _____
Insurer _____
Tutor/minor _____
Expert witness(es) _____

If divorce matter, who is the:

Client _____
Spouse _____
Child(ren) _____
What is/are the age/ages of the child(ren)? _____

Continued

If corporate/business/real estate matter, who is the:

Owner(s)/spouse(s) _____

Buyer(s) _____

Partner(s) _____

Seller(s) _____

Officer(s) _____

Directors _____

Shareholder(s) _____

Subsidiaries/affiliates _____

Key employees _____

Property address(es) _____

Any opposing party in a transaction _____

If probate matter, who is the:

Deceased _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Succession representative _____

Attorney for succession representative _____

If worker's compensation matter, who is the:

Injured worker _____

Employer _____

Insurer _____

If estate planning matter, who is the:

Testator/testatrix _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Trustee _____

Continued

If criminal matter, who is the:

Accused _____

Victim(s) _____

Witness(es) _____

Co-Defendant(s) _____

If bankruptcy matter, who is the:

Client _____

Creditor(s) _____

Spouse _____

Results of Search

Conflict System Search done by _____

Title _____ Relationship to firm _____

Instructions:

- Duplicate of this form and attached Conflicts Search Results Memo routed to and signed by all attorneys and staff.
- No conflict found; entered as new client into conflict system and engagement letter sent by _____
- Conflict found, analyzed, and client accepted (explain reasons)

- Engagement and Informed Consent letters sent by _____
- Conflict found, client not accepted, non-engagement letter sent by _____

Conflicts of Interest Search Results Memo

1. Circulate this form to all attorneys and staff, making sure to attach the completed Conflicts of Interest Search Form.
2. Give a deadline for the return of the memo: _____
3. Have all attorneys and staff answer all of the following questions:
 - a. Do you have any business interest with:
Client? Yes _____ No _____
Anyone associated with client? Yes _____ No _____
Anyone associated with persons/entities? Yes _____ No _____
 - b. Do you have any personal interests with:
Client? Yes _____ No _____
Anyone associated with client? Yes _____ No _____
Anyone associated with persons/entities? Yes _____ No _____
 - c. Have you had any current or past relationship, affiliation or association with this client? Yes _____ No _____
 - d. Do you know of any reason we should not represent this client? Yes _____ No _____

If you have answered yes to any of the above, please give details below:

Signature of Attorney/Staff: _____ Date: _____

Sample Conflict of Interest Non-Engagement Letter

June 20, 20—

Mr. John J. Non-Client
123 Main Street
Anytown, Louisiana 45678

Re: Conference on June 19, 20—;
Potential Personal Injury Claim against Mr. Smith.

Dear Mr. Non-Client:

I enjoyed meeting with you recently regarding your potential claim against Mr. Smith. As we discussed, I have a possible conflict of interest. Although we did not discuss the particulars of your potential claim, it does not appear to be appropriate under the ethical rules for our firm to represent you. We must therefore decline to represent you. Under these circumstances, you should consult other counsel immediately to determine your rights and interests. Please keep in mind that you may be facing important deadlines, so you should not delay in contacting other counsel.

Thank you for offering us this engagement. If we may be of service to you in other matters in the future, we hope you will contact us then.

Sincerely,

FIRMNAME

Attorney Name

Sample Conflict of Interest Informed Consent Letter

June 20, 20—

Mr. John J. Potential Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Potential Client:

Below is your Informed Consent of our firm representing you in a business acquisition, to which you may agree after careful consideration of all the facts, even though there are actual and potential conflicts of interest. At this time, we wish to remind you of the relevant information with respect to the potential conflict, which you should use to make your decision.

- This representation will
- This representation will also
- “ _____”

We previously recommended to you in writing that you seek independent legal advice regarding the conflicts. Having followed that advice, you sought independent legal counsel and were apprised of conflicts that exist and may arise. Nevertheless, if you knowingly and voluntarily consent to representation by the firm, (FIRM NAME), and waive any and all actual and potential conflicts of interest, please sign below and return this letter to us.

[Optional]

[Additionally, Attorney Smith has been disqualified from taking any role in the representation of your case and will be screened from any participation in the matter. He will not be given any part of the legal fee, nor will he be allowed to reveal any of your confidential information he obtained while working at his prior law firm.]

All affected clients have been put on notice by being sent a copy of this informed consent letter.

Sincerely,

FIRMNAME

Attorney Name

Client Signature _____

Client Name Typed _____

Date _____

Sample Conflict of Interest Disengagement Letter

June 20, 20—

Mr. John J. Former Client
123 Main Street
Anytown, Louisiana 45678

Re: File Subject or Matter Description
Calcasieu Parish, Louisiana

Dear Mr. Former Client:

Thank you for allowing us to be of service to you in the above-captioned matter. The joining of A.B. Sea, Inc. in your lawsuit has created a conflict of interest for our firm because one of our partners, (Attorney Name), has been and continues to be A.B. Sea's primary counsel in other matters. Your continued representation would result in an adverse conflict of interest.¹ Therefore, we must withdraw from representation of you at this time. Additionally, Mr. Wisdom will refer A.B. Sea to independent counsel for representation in your matter.

We are enclosing your entire file with this letter, as well as a check in the amount of \$750.00, representing a refund to you of the amount of the advance deposit which has not been earned. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. Your new counsel should have adequate time to serve your best interests, and you should provide said counsel with your file for necessary review. A complete status of the matter with deadlines noted is attached.

Our final invoice for service rendered is enclosed. It was a pleasure serving you, and we wish you the best in all your future endeavors.

Sincerely,

FIRMNAME

Attorney Name

Enclosures

(CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct, see page 91.)

¹ A conflict that is reasonably anticipated, although not present at the inception of the representation, can be waived in advance with adequate disclosure and consent by the client.

Sample Conflict of Interest Financial Assistance Agreement

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Client:

This is a Financial Assistance Agreement between you, Client, and our firm, outlining the terms by which this firm may advance you financial assistance in connection with pending or contemplated litigation, as permitted by Rule 1.8 (e) of the Rules of Professional Conduct and jurisprudence.

Subject to your written consent below, we may advance you any or all of the following:

- Court costs and expenses of litigation, including but not limited to: Filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other specific expense directly related to our representation. [Your repayment of these expenses advanced by our firm is contingent on the outcome of the matter for which you hired our firm, provided these expenses were reasonably incurred] or [Your repayment of these expenses advanced by our firm is not contingent upon the outcome of the matter for which you hired our firm, and you remain liable to us for these expenses]. We will provide you with a written statement of our specific financial assistance and the timeframe within which you have to repay it;
- [If you are an indigent client, and are unable to pay for legal representation, our firm may pay court costs and expenses of litigation on your behalf];
- Actual invoiced costs incurred solely for purposes of our representation: Computer legal research charges; long distance telephone expenses; postage charges; copying charges; mileage and outside courier service charges. *We cannot* pass on to you any overhead costs that may be incurred by us, which may include, but are not limited to: Office rent; utility costs; charges for local telephone services; office supplies; fixed asset expenses; ordinary secretarial and staff services. [However, if you are paying us at an *hourly rate*, and not at a fixed rate or on a contingency basis, we may advance you reasonable charges for paralegal services. If we do advance paralegal services to you, you will be notified at the beginning of the representation.]
- If you are in necessitous circumstances (after a determination by us that without minimal financial assistance, your case would be adversely affected), we may provide financial assistance to you, in addition to court costs and litigation expenses, as follows:
 - You acknowledge that we have not used this advance or loan guarantee as an inducement by us, or anyone acting on our behalf, to secure employment;
 - You acknowledge that neither our firm, nor anyone acting on our behalf, has offered to make advances or loan guarantees prior to being hired by you, nor that we publicized or advertised a willingness to make advances or loan guarantees to you;
 - Financial assistance may not exceed the minimum sum necessary to meet your needs, and/or your spouse's needs, and/or your dependents' needs for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other *documented expenses* necessary for living; [Please note that a blanket request for assistance without documented receipts or invoices cannot be honored.]
 - You agree that you will not broadcast to others our financial assistance to you.

Subject to your written consent below, we may advance you financial assistance, with the following restrictions:

- Financial assistance that we may provide to you cannot bear interest, fees or charges of any nature;
- We may use our firm's line of credit or loans obtained from financial institutions in which we have no ownership, control and/or security interest (unless our ownership, control and/or security interest of a publicly traded financial institution is less than 15%), provided we make reasonable, good faith efforts to obtain a favorable interest rate;
- In using a line of credit or loan, we may not pass on to you interest charges, including any fees or other charges connected to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less;

- We may only provide a guarantee or security on a loan to you to the extent that the interest charges, including any fees or other charges connected to such loans, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding;
- Prior to the execution of any settlement documents, approval or any disbursement sheet (as provided in Rule 1.5), or upon submission of a bill for our services, we will provide you with a complete text of Rule 1.8 (e), as re-enacted, of the Louisiana Rules of Professional Conduct, effective date of April 1, 2006;

This Agreement is null unless you date and sign below.

Sincerely,

FIRM NAME

ATTORNEY'S NAME (typed or printed)

CLIENT'S NAME (typed or printed)

ATTORNEY'S SIGNATURE

CLIENT'S SIGNATURE

DATE

DATE

WITNESS NAME (typed or printed)

WITNESS'S SIGNATURE

DATE

Fees, Billing and Trust Accounts

As stressed, the most important aspect of the attorney-client relationship is COMMUNICATION. And nowhere is communication more important than in dealing with legal fees and the attorney-client fee agreement. From the moment that the attorney-client relationship commences, the client *must* be made aware, preferably in writing, of:

- the scope of the representation.
- the type of fee arrangement (hourly? contingency? flat fee?).
- the amount of any advance deposit that is necessary and how it will be drawn against.
- the billing cycle and when payment is expected.
- the amount that it is likely to cost the client:
 - in the case of an hourly rate, the exact amount of the hourly rate and, if possible, an estimate of the hours necessary to handle the matter;
 - in the case of a flat fee, exactly what will and will not be covered by the flat fee;
 - in the case of a contingency fee, the percentage that will be charged by the lawyer and any other deductions that will come out of the recovery.
- the charges for identifiable direct costs/expenses, such as photocopies, long distance calls, and computer research.
- the additional expenses that will or are likely to be incurred on behalf of the client. This should be projected at the commencement of the relationship, if possible. As incurred, the exact amount of the expenses should be reported to and authorized by the client, even in contingency fee contract situations where costs are being advanced by the lawyer.
- any changes in the basis or rate of the fee or expenses.

After the attorney-client relationship has commenced, the client should be informed of the status of the case on a periodic, preferably monthly, basis and the work being done to earn the fee.

Rule 1.5 of the Rules of Professional Conduct governs fees. (See page 82.) It is long and complicated, but starts with an easy-to-understand and basic premise: ***a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.*** This means that the work and effort expended by you on the client's behalf should match the fee and expenses charged by an *objective* standard.

Thus, even in contingency fee or flat fee matters, you should be sure that the file reflects the work that you have done. Keeping time records is the surest way to do that, as is keeping notes and documentation of your work. If you have spent the afternoon at the library, be sure the research makes it into the file. If you talked to someone on the phone, make a memo to the file. Not only will your efficiency be increased by this recordkeeping, but you will be protecting yourself from client complaints and dissatisfaction.

Types of Arrangements

Contingent Fee Arrangements

A contingent fee arrangement *must* be in writing, and the writing *must* be signed by the client. The writing *must* provide:

- the method by which the fee is to be determined, including the percentage or percentages that will accrue to the lawyer in the event of settlement, trial or appeal;
- the litigation and other expenses that are to be deducted from the recovery; and
- whether the expenses are to be deducted before or after the contingent fee is calculated.
- A copy of the contract must be given to the client at the time of the agreement.
- If financial assistance is provided to a client, a copy of the rules [1.4(c) and 1.8(e)] must be given to the client.

The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

Contingency fee agreements are specifically prohibited in most domestic relations cases and all criminal matters. They are most commonly utilized in plaintiff personal injury matters, where the courts view the client as unsophisticated and vulnerable. Accordingly, you should take special care to explain all the provisions of the contingency fee contract to the client and be sure that she understands the contract. A sample form for a contingency fee contract is on pages 46-47.

The entire amount of proceeds of settlements or judgments received by you on behalf of your client, if handled on a contingency fee basis, must be deposited into the trust account. The funds may be disbursed only in accordance with Rule 1.15 (see page 89) and the written contingency fee contract.

Rule 1.5(c) (see page 83) requires that, upon conclusion of a contingent fee matter, you must provide the client with a written statement indicating the outcome of the matter and, if there is a recovery, showing the remittance to the client and an itemization of the fees and expenses incurred. If the client has agreed to pay expenses such as court reporters, investigators, health care providers, experts, or others, Rule 1.15(d) (see page 83) requires that those funds be promptly paid from the proceeds of settlement or judgment. Also, you must pay any other person with a claim against the settlement or judgment fund if (a) you have actual knowledge of that person's interest; and (b) the claim is (1) recognized by a statutory lien or privilege; (2) recognized in a final judgment addressing disposition of the claim; or (3) contained in a written agreement (executed by the client or by you on behalf of the client) guaranteeing payment out of those funds or property.¹

If you come into possession of funds or property in which both you and another person (such as a lawyer who previously represented your client in the same matter) claim interests, you must keep the property separate until there is an accounting and severance of both persons' interests. If the amount of both persons' interests is or becomes disputed, then you must keep separate the portion in dispute until the dispute is resolved.

Often lawyers who enter into contingent fee contracts with their clients do not feel the need to send an engagement letter also. Unfortunately, most contingent fee contracts do not cover all of the issues that are addressed in an engagement letter. A sample contingent fee contract is included on pages 46-47, but it does not necessarily provide the client with a complete outline of the scope of representation, conflicts of interest, or a plan for communication. Accordingly, even the contingent fee arrangements should begin with both the contract and a letter which outlines what you plan to do and how you plan to communicate about it.²

Fee Disputes

You should have a plan or standard practice for handling fee disputes when they arise. It is wise to specify the method of resolving the fee dispute in the engagement letter or the contract. It is recommended that you include an agreement whereby any fee disputes will be handled by the Legal Fee Dispute Resolution Program, a quick and inexpensive program administered by the Louisiana State Bar Association. (See page 110.)

¹ The foregoing discussion pertains to disbursement of funds obtained pursuant to a contingent fee contract. There are special rules which apply to funds or property in which the client and/or third persons have an interest. These rules are discussed more fully in *Property Belonging to Third Persons, Infra*, on page 41.

² You should be aware of an apparent conflict between the statute governing contingent fee contracts, *La. Rev. Stat. § 37:218*, on the one hand, and the Rules of Professional Conduct and prevailing Louisiana jurisprudence, on the other hand. *La. Rev. Stat. § 37:218* states that a contingent fee contract may stipulate that neither the attorney nor the client may, without the other's written consent, settle, compromise, release, discontinue, or otherwise dispose of the suit or claim. According to the statute, any settlement, compromise, discontinuance, or other disposition of the suit or claim by either the attorney or the client, without the other's written consent, is null and void; and the suit or claim shall be proceeded with as if no such settlement or disposition has been made. This provision of the statute is in direct contravention to Rule 1.2 of the Rules of Professional Conduct (see page 82), as well as the Supreme Court's decision in *Hayes v. Saucier Dairy Products*, 373 So. 2d 102 (La. 1978), and *LSBA v. Edwins*, 329 So. 2d 437 (La. 1976). In *Hayes*, the Supreme Court interpreted *La. Rev. Stat. § 37:218* as merely establishing a privilege guaranteeing payment of a fully-earned contingent fee to an attorney discharged without cause. However, the Supreme Court recognized that the statute could not and does not prevent the client from discharging his attorney, with or without cause, at any time, pursuant to Rule 1.2. The *Hayes* court also reaffirmed its exclusive authority conferred by the Louisiana Constitution to regulate the practice of law (first recognized in *Edwins*), confirmed that the Rules of Professional Conduct have the force and effect of substantive law, and declared that only legislative enactments which aid its inherent powers to regulate attorneys' practices will be approved by the court. Therefore, the clause in *La. Rev. Stat. § 37:218* which purports to nullify any settlement reached by the client without the attorney's approval is unenforceable.

Remember that there is no such thing as a non-refundable fee. Any funds reasonably in dispute must be placed in the client trust account for safekeeping pending resolution of the fee dispute.

Fee disputes often can be handled as a part of the ongoing communication between the client and the lawyer. A client's inquiries about billing always should be promptly answered with complete explanations and documentation. Reciprocally, your relationship with the client ought to be such that you can make direct and frank inquiries about when and how payment is to be expected. Such inquiries should be made at the commencement of the representation and continued throughout, so that the client does not get too far behind in payment. Many malpractice claims are the result of dissatisfaction over billing; you can avoid dissatisfaction by practicing good communication skills.

Lawyers are sometimes not careful about the terminology they use when referring to forms of fees or fee payments. That sloppiness has led to considerable confusion about when and how client funds can be used by the lawyer. Subsection (f) of Rule 1.5 (see page 83) was rewritten in 1992 in an effort to clarify what payments from clients can be spent by the lawyer immediately upon their receipt, and what payments must be put in trust because they remain client funds until earned.

Advance Deposits and Hourly Fee Agreements

Sometimes lawyers mistakenly call "advance deposits" by the name "retainer." It is important to know the difference because the money received from the client must be handled differently in the two situations. Advance deposit fee arrangements are governed by Rule 1.5(f)(3). (See page 83.)

A *retainer* is an amount paid by a client in order to keep a lawyer generally available to the client. When paid, the money belongs to the lawyer and may be used by her. An *advance deposit*, however, is money which the client puts on deposit with the lawyer in order to ensure that future work can and will be paid for. When paid, the money still belongs to the client and must be deposited in the attorney's trust account. The lawyer may only take possession of the money as she works and bills for it.

In this sort of transaction, the lawyer generally quotes an hourly fee and an estimate of her expenses. She asks for some amount of money "up front" to ensure that her fee will be paid. Since she does not earn her fee until she actually does the work, the money which she obtains in advance is not hers and must be put in her trust account. At agreed-upon intervals, the lawyer may withdraw a portion of the advance deposit to pay a fee/expense invoice. She may do so without obtaining the prior permission of the client, but she is obliged to make periodic accountings to the client.

While obtaining an advance deposit protects you from a client who doesn't pay, it is a rather complicated transaction. Careful trust account records must be kept. Withdrawals should not be made from the trust account without issuing an invoice. A copy of the invoice should be sent to the client, along with notification that money has been withdrawn from the trust account in order to pay the invoice. The client should be updated on the status of the deposit on a monthly basis.

Hourly fee agreements do not necessarily entail advance deposits as a matter of course. Hourly billing is often used when it is difficult to determine the amount of time necessary to pursue the legal matter. Detailed records should be kept as to the time spent on the matter, and the client should be invoiced at regular intervals, preferably monthly. Sample hourly fee agreements are included on pages 48-51.

Flat Fee, Fixed Fee or Minimum Fee

A lawyer may sell her future services for a specified price to be paid in advance. For example, you may charge a set amount for handling a divorce or a DWI defense. You may require that the flat amount be paid in advance and before you begin to work on the case. The only requirement is that the fee not be "unreasonable" within the framework of Rule 1.5(a). (See page 82.)

A hybrid of fixed or flat fee billing is a "minimum fee" agreement. Generally, this sort of arrangement occurs when the lawyer and the client agree that a matter will be handled until a particular point in the proceeding, or a particular date, or a particular event, for a set fee. If the matter is resolved by the pre-arranged point, then no additional amount is due from the client. If, on the other hand, the matter is not resolved by that point, then the client is charged (usually hourly) an additional amount.

Rule 1.5(f)(2) (see page 83) defines this sort of fee relationship and provides that a flat fee or minimum fee becomes the property of the lawyer when paid and may be deposited into the operating account and spent. The caveat, however, found under subsection (f)(5), is that you must ***immediately refund any amount of an unearned fee when a fee dispute arises***. If there is a disagreement as to what amount of the fee is unearned, you must ***immediately refund to the client the amount, if any, that you and the client agree has not been earned and deposit any and all other amounts in dispute into your trust account*** pending resolution of the dispute. You also should suggest a means for prompt resolution of the dispute, such as the Louisiana State Bar Association’s Legal Fee Dispute Resolution Program. (See page 110.) You are specifically prohibited from using retention of the disputed portion of the funds to coerce the client into accepting your contention as to the amount of the fee.

As a practical matter, you may pocket any fee that is fixed, flat or minimum. However, you should do so only if you have the ability to *immediately* deposit an equivalent amount in trust should a dispute arise. Also, you should keep in mind that you may have to justify the amount charged, so time records remain important even in flat fee situations. A sample of a “flat fee” arrangement is included on pages 44-45.

True Retainers

Rule 1.5(f)(1) (see page 83) defines the old-fashioned “true retainer.” This is a sum of money paid by a client in order to assure the lawyer’s general availability to the client, such as serving as a bank’s general counsel. The fee is not related to any particular matter or litigation. When paid, this fee becomes the property of the lawyer and may be deposited into the operating account and spent.

The “true retainer” relationship is somewhat unusual in this day and age. If you enter into such an agreement with the client, you must be sure to clarify, in writing, what services are to be expected in exchange for the retainer and when “retainer” work ceases and “hourly” work commences. (As “true retainers” are rare, an example has not been provided in this Practice Aid Guide). Any hourly fee engagements should be formalized with an engagement letter signed by you and your client.

Division of Fees Among Lawyers

A division of fees between lawyers who are not in the same firm may be made only if:

- (1) The client agrees in writing to the representation by all of the lawyers involved and is advised in writing as to the share of the fee that each lawyer will receive;
- (2) The total fee is reasonable; and
- (3) Each lawyer renders meaningful legal services for the client in the matter. (See Rule 1.5(e) on page 83.)

Other Points

- Be sure to obtain the client’s signature on the contract and obtain any advance deposit *before* commencing the representation.
- Be sure to detail in any contract who will perform the services: you, your partner, an associate, a paralegal, or all of the above.
- Be sure any arrangements to advance costs are carefully spelled out, are understood by the client, and comply with the Rules of Professional Conduct. (See page 80.)
- Be sure any potential conflicts of interest are spelled out in the contract and are waived in writing by the client. Remember that some conflicts cannot be waived.
- Make sure who is responsible for payment of the fee. If a family member or friend is responsible for paying the client’s fee, then get her signature on the contract. But remember that your client is the one who makes the decisions about her case. (See Rule 1.8(f) on page 86.)
- Be sure to specify when payment is due.
- Specify when termination of the contract is acceptable, such as failure to pay the fee, non-cooperation of the client, or other good cause per Rule 1.16(b). (See page 91.)

Funds Advanced for Costs

An advance deposit by the client to the lawyer for payment of costs and expenses remains the property of the client and must be placed in the attorney's trust account. Advance deposits for costs and expenses never become the property of the lawyer. You may expend these funds as costs and expenses accrue, without specific authorization from the client. However, you must render to the client a periodic accounting for these funds as is reasonable under the circumstances.

You must determine that sufficient funds of each particular client are on deposit in the trust account *prior to* each and every withdrawal therefrom. Therefore, you should either verify that client's trust account balance prior to writing the check, or write the check out of the operating account and transfer the funds out of the client's trust balance, if adequate funds are on deposit. If adequate funds are not on deposit in trust to cover the check, then you must obtain another advance from the client for the difference or advance the difference from your own funds.

For example, XYZ has advanced \$500 toward costs to Lawyer. Last month, Lawyer spent \$300 on investigative fees and deducted that amount from the deposit. This month, Lawyer is filing suit on XYZ's behalf. The filing and service fees will total \$250. Because this amount exceeds XYZ's trust balance of \$200, Lawyer must write the check out of her operating account. She must then bill XYZ for the \$50 difference. However, Lawyer may withdraw the \$200 trust balance to partially reimburse her operating account. Upon receipt of the remaining \$50 from the client, Lawyer may deposit those funds directly into her operating account.

Funds Advanced to the Client by the Lawyer

The question of cost advances on behalf of clients used to be a particularly difficult one in Louisiana. For years it was considered unethical and improper to provide financial assistance to clients. The court decision in *Louisiana State Bar Association v. Edwins*, 329 So.2d 437 (La. 1976), qualified the general rule and allowed financial assistance under certain circumstances. The Rules of Professional Conduct were amended on April 1, 2006, to settle the question. The pertinent rules are very technical in nature, as follows:

Rule 1.4(c) provides:

A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 1.8(e) provides:

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.
 - (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).
 - (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
 - (3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal

services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

- (4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.
 - (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.
 - (ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.
 - (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.
 - (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.
- (5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.
 - (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.
 - (ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to publicly traded financial institutions where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.
 - (iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
 - (iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.
 - (v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.
 - (vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.
 - (vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

Other Important Information About Trust Accounts and Handling of Client Funds

- All lawyers who handle money belonging to a client, no matter how insignificant the amount, are required to maintain a trust account in a bank or other financial institution in the state in which her office is located. Only attorneys who never handle client funds, such as government or corporate attorneys, are not required to maintain a trust account.
- You must *segregate* all funds in which a client or third person has an interest in your trust account.
- Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.
- Commingling of your funds with those of your client is a serious disciplinary violation.
- Although there is a one-year/three-year prescriptive/peremptive period, set forth in La. Rev. Stat. § 9:5605, for legal malpractice actions by the client against an attorney, there is a 10-year prescriptive period applicable to the filing of a disciplinary complaint. There is no prescriptive period applicable to the filing of a complaint against an attorney accused of fraudulent conduct.
- There is only one exception to the commingling rule: you may deposit your own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose. If possible, have the bank tie the trust account to your operating account and sweep the service charges from your operating account.
- Funds in a trust account must be subject to withdrawal upon request and without delay.
- Make sure the bank is federally insured in the event of its failure. If the amount of deposits for a particular client is large, consult with your banker to make sure that the deposit is fully insured and, if necessary, open a separate trust account for that client.
- Upon receiving funds or other property in which a client or third person has an interest, you must promptly *notify* the client or third person.
- Another obligation of a lawyer with respect to client funds is that of delivery. Except as stated in Rule 1.15 (see page 89) or otherwise permitted by law or by agreement with the client, you must promptly *deliver* to the client any funds which she is entitled to receive and, upon request by the client or third person, shall promptly render a full *accounting* regarding such property.
- Also, upon termination of representation, you must refund any advance payment of the legal fee that has not been earned.
- You must keep complete records of client funds and other client property and must preserve those records for a period of **five years** after termination of the representation.
- Do not be tempted to “borrow” a client’s funds, no matter how nominal or for how short a period of time. This is a disciplinary violation, even if repaid within the next hour. The possible consequences are not worth the risk.
- You should pay yourself last. Pay the client first, then any third parties (court reporters, health care providers, etc.), then yourself. Never withdraw your fees until after the client has received her share and approved all disbursements. However, you should always pay yourself promptly to avoid commingling your funds with those of other clients.
- Issuance of NSF checks drawn on a lawyer’s trust account creates a presumption of conversion of client funds.
- A draft or check deposited into a lawyer’s trust account should clear the account on which it is drawn prior to any disbursements of the trust funds. The risk that a draft may not clear should not be borne by other clients. For a lawyer to take advantage of a “float” in her trust account of funds in the account belonging to other clients constitutes conversion of the other clients’ funds.
- A non-lawyer should handle and distribute clients’ money only under close supervision.
- Note that all bank overdrafts are reported to the Office of Disciplinary Counsel, subject to Rule XIX, Section 23.D.

Property Belonging to Third Persons

Funds or property coming into your possession in which the client and/or a third person claim an interest are subject to special rules, as are funds or property in which both you and a third person claim an interest in the course of representation. The former situation is governed by Rule 1.15(b) on page 89; the latter is governed by Rule 1.15(c) on page 89.

Funds in Which Your Client and/or a Third Person Claim an Interest

Upon receiving funds or other property in which a client and/or a third person has an interest, you have five distinct obligations to the client and/or third person:

- **Segregation.** You must keep the funds or other property separate from your funds or property. Funds must be kept in a separate account maintained in Louisiana, or may be kept elsewhere if the client or third person consents. Other types of property must be identified as such and appropriately safeguarded.
- **Notification.** You must promptly notify the client and/or third person of receipt of the funds or other property.
- **Delivery.** You must promptly deliver to the client and/or third person any funds or other property to which they may be entitled.
- **Accounting.** Upon request by the client or third person, you must promptly render a full accounting regarding the funds or property.
- **Recordkeeping.** You must keep complete records of account funds and other property for five years after termination of the representation.

However, the above obligations owing to a third person (as opposed to your client) arise only under certain conditions, unless otherwise permitted by law or by agreement with the client:

- First, you must have actual knowledge of the third person's interest.
- Second, the third person's interest must arise by virtue of one of the following:
 - (1) A statutory lien or privilege;
 - (2) A final judgment addressing disposition of the funds or property; or
 - (3) A written agreement by the client or by you on the client's behalf guaranteeing payment out of those funds or property.

Property in Which Both You and Another Person Claim Interests

When you come into possession of property during representation in which two or more persons (one of whom may be you) claim interests, you must keep the property separate until the dispute is resolved. You must promptly distribute all portions of the property as to which the interests are not in dispute.

The most common situation in which this scenario arises is when the client discharges a lawyer and retains another lawyer, both of whom have an interest in a contingent fee. Again, we recommend the use of informal dispute resolution methods, such as the Louisiana State Bar Association Legal Fee Dispute Resolution Program (see page 110) and mediation, as the most efficient and economical ways to handle these issues.

Interest on Lawyer Trust Accounts (IOLTA)

The IOLTA program is a mandatory program requiring participation by most attorneys and law firms. The program requires that a lawyer's trust account be interest-bearing for any clients' funds which are either nominal in amount or to be held for a short period of time. Neither the lawyer nor the client has access to the earnings from IOLTA accounts. Rather, the Louisiana Bar Foundation administers these funds for the benefit of numerous law-related causes. You may be exempted from the IOLTA program at the discretion of the program administrator by certifying that participation would be economically impractical or if you do not ever handle any client funds (*i.e.*, corporate counsel or assistant district attorney). Even if exempted from the requirement of IOLTA participation, any lawyer who holds any property of clients or third persons must still keep them separate from her own funds in a non-interest-bearing account. See Rule 1.15(f) for detailed IOLTA rules (page 90).

When a Separate Trust Account May Be Required

In certain cases, where the amount of funds is not nominal and the funds are to be held for a longer period of time, you may be required to open a separate trust account for that client's funds. The factors that decide what amount of client's funds is "nominal" are:

- the amount of interest which would reasonably be expected to be earned during the deposit period;
- your cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit (*i.e.*, Forms 1099); and
- the capability of financial institutions to calculate and pay interest to individual clients.

You may assume that \$50 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income. In the end, your “sound judgment” determines whether the funds could be invested to provide a positive net return to the client.

Ledgers and Billing

Even if you have a rock-solid written fee agreement with your client, it means little without the proper office procedures to back it up. Therefore, simple and efficient timekeeping and billing systems must be implemented. Most clients appreciate detailed invoices showing that the lawyer has performed services on the case. Included in this Guide are simple forms for: documenting expenses (ledger sheet); and billing and invoicing the client.

You should keep track of the hours spent in all your legal matters, even if the contract isn’t hourly. This will bolster any claim or defense in case a fee dispute or malpractice suit arises. Bill as frequently and as promptly as is practical. This will avoid the client’s feeling “ambushed” at the end of a case by receiving a large bill and will promote better communication in the representation.

Additional Resources

- Foonberg, Jay G., *The ABA Guide to Lawyer Trust Accounts* (American Bar Association, 1996).
- *The Louisiana Lawyer and Other People’s Money* (Louisiana Bar Foundation, 1998).

Fee Agreement and Authority to Represent (Flat Fee)

I, _____, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ _____ and his law firm (hereinafter referred to as “Attorney”), as my Attorney to represent me in connection with the following matter:

The firm will provide all services necessary to the representation of the above matter, including court appearances, investigation, pretrial discovery, negotiations with opposing counsel, and trial on the merits, if necessary. I also authorize Attorney to retain and employ other attorneys with my prior knowledge and written consent; however, the entire fee of Attorney and such other attorneys shall be limited as set forth hereinbelow.

1. **ATTORNEY’S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

Flat Fee

I understand that the flat fee for these legal services is \$_____, which amount is due and payable before _____. The fee reflects not simply the number of hours which individual lawyers may devote to my representation, but also the experience, reputation, skill and efficiency of the attorneys, as well as the potential inability of the firm to accept other employment during the pendency of the representation. I understand that if all of the flat fee is not received by _____, then this agreement is null and void. This agreement pertains to the representation through trial only. Any writ, appeal, new trial motion or any other kind of post-trial relief must be the subject of a new written fee agreement.

2. **COSTS AND EXPENSES.** In addition to paying Attorney’s fees, I agree to pay all costs and expenses in connection with Attorney’s handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree to promptly reimburse Attorney. If an advance deposit is being held by the Attorney, I agree to promptly reimburse the Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying (____ per page), postage, facsimile costs, Federal Express or other delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff’s and service fees, travel expenses and investigation fees.

Advance required Yes No

I agree to advance \$_____ for costs and expenses, which amount shall be deposited in Attorney’s trust account and shall be applied to costs and expenses as they accrue. Should this advance be exhausted, I agree to replenish the advance promptly upon Attorney’s request. If I fail to replenish the advance within ten (10) days of Attorney’s request, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney.

3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney’s professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, I fail to abide by the terms of this agreement, and/or if Attorney’s continued representation would result in a violation of the Rules of Professional Conduct.

[Optional]

4. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Dispute Resolution” provision.

Client’s Initials

Attorney’s Initials

5. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

6. **ENTIRE AGREEMENT.** I have read this agreement in its entirety and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this ____ day of _____, 20__.

CLIENT

The foregoing agreement is hereby accepted on this ____ day of _____, 20__.

ATTORNEY

Fee Agreement and Authority to Represent (Contingency Fee)

(In accordance with amended Rule 1.5 (c) of the Louisiana Rules of Professional Conduct, effective date April 1, 2006)

I, _____, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ and his law firm (hereinafter referred to as “Attorney”), as my Attorney to represent me in connection with the following matter:

This claim is not in litigation; and I specifically authorize Attorney to undertake negotiations and/or file suit or institute legal proceedings necessary on my behalf. As used herein, the term “suit” includes, where applicable, the institution of proceedings to impanel a medical review panel. I further authorize Attorney to retain and employ, at my expense, the services of any experts, including physicians and doctors, as well as the services of other outside contractors, as Attorney deems necessary or expedient in representing my interests. I also authorize Attorney to retain and employ other attorneys with my prior knowledge and written consent; however, the combined fee of Attorney and all other attorneys shall be limited as set forth hereinbelow.

1. **ATTORNEY’S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

Contingency Fee

Attorney shall receive the following percentage of the amount recovered before the deduction of costs and expenses as set forth in Section 2 herein:

- _____ % if settled without suit;
- _____ % in the event suit is filed;
- _____ % in the event a trial actually starts;
- _____ % in the event an appeal is filed by any party.

It is understood and agreed that this employment is upon a contingency fee basis and, if no recovery is made, I will not be indebted to my Attorney for any sum whatsoever **as Attorney’s Fees**. (However, I agree to pay all costs and expenses as set forth in Section 2 herein, regardless of whether there is any recovery in this matter. In the event of recovery, costs and expenses shall be paid out of my share of the recovery.)

2. **COSTS AND EXPENSES.** In addition to paying Attorney’s Fees, I agree to pay all costs and expenses in connection with Attorney’s handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree to promptly reimburse Attorney. If an advance deposit is being held by Attorney, I agree to promptly reimburse Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying (\$ ___per page), postage, facsimile costs, Federal Express or other delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff’s and service fees, travel expenses and investigation fees.

Advance required ___ Yes ___ No

I agree to advance \$ ___ for costs and expenses, which amount shall be deposited in Attorney’s trust account and shall be applied to costs and expenses as they accrue. Should this advance be exhausted, I agree to replenish the advance promptly upon Attorney’s request. If I fail to replenish the advance within ten (10) days of Attorney’s request, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney.

3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney’s professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, I fail to abide by the terms of this agreement, and/or if Attorney’s continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under the Rules of Professional Conduct.

4. **STATUTORY ATTORNEY'S FEES.** In the event of recovery under the provisions of the Longshore and Harbor Workers' Compensation Act, or under Louisiana Workman's Compensation laws, or under any other laws which specify attorney's fees to be paid, then Attorney's fees shall be paid in accordance with the maximum allowed by law.
5. **PRIVILEGE.** I agree and understand that this contract is intended to and does hereby assign, transfer, set over and deliver unto Attorney as his fee for representation of me in this matter an interest in the claim(s), the proceeds or any recovery therefrom under the terms and conditions aforesaid, in accordance with the provisions of Louisiana Revised Statute § 37:218, and that Attorney shall have the privilege afforded by Louisiana Revised Statute § 9:5001.

[Optional]

6. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the "Alternative Dispute Resolution" provision.

Client's Initials _____
 Attorney's Initials _____

7. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

8. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.
9. **TERMINATION OF REPRESENTATION.** I understand that I have the right to terminate the representation upon written notice to that effect. I understand that I will be responsible for any fees or costs incurred prior to the discharge or termination.
10. **ENTIRE AGREEMENT.** I have read this agreement in its entirety, a copy of which I have received, and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this ___ day of _____, 20__ .

CLIENT _____

The foregoing agreement is hereby accepted on this ___ day of _____, 20__ .

ATTORNEY _____

Fee Agreement and Authority to Represent (Hourly with Advance)

I, _____, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ _____ and his law firm (hereinafter referred to as “Attorney”), as my Attorney to represent me in connection with the following matter:

-
1. **ATTORNEY’S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

Hourly Fee — with Advance Deposit

I agree to pay Attorney’s Fees at the rate of \$_____ per hour and paralegal fees at the rate of \$_____ per hour. I agree that time is billed in increments of 6 minutes.

[It is understood and agreed that I shall pay Attorney an initial Advance Deposit of \$_____ due upon Attorney’s acceptance of this agreement, which deposit shall be applied toward the payment of Attorney’s fees and costs and expenses. This deposit shall be deposited into Attorney’s trust account, and Attorney is authorized to pay Attorney’s fees and costs and expenses out of the existing deposit, at least on a monthly basis. Periodically Attorney shall provide me with itemized Statements for Professional Services Rendered (including costs and expenses). Should the work performed by Attorney exceed the amount held in trust, I agree to replenish the Advance Deposit upon Attorney’s request. Should no request be made, I agree to pay all invoices submitted by the firm within 30 days of receipt. I agree that, pursuant to this agreement, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney based on my failure substantially to fulfill an obligation to Attorney.]¹

It is understood and agreed that Attorney is authorized, with my prior knowledge and written consent, to employ other attorneys to work on my case. Said additional attorney’s fees shall be paid solely by me; and Attorney is authorized to deduct said fees from any Advance Deposit made by me.

2. **COSTS AND EXPENSES.** In addition to paying Attorney’s fees, I agree to pay all costs and expenses in connection with Attorney’s handling of this matter. I agree to promptly reimburse Attorney for any amount in excess of what is being held in deposit. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying (\$_____ per page), postage, facsimile costs, express delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff’s and service fees, travel expenses and investigation fees. Should the advance be exhausted by the payments of costs, expenses or fees, I agree to replenish the advance promptly upon Attorney’s request. If I fail to replenish the advance within ten (10) days of Attorney’s request, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney.
3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney’s professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, and/or I fail to abide by the terms of this agreement, and/or if Attorney’s continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under by the Rules of Professional Conduct.
4. **STATUTORY ATTORNEY’S FEES.** In the event of recovery under the provisions of the Longshore and Harbor Workers’ Compensation Act, or under Louisiana Worker’s Compensation laws, or under any other laws which specify attorney’s fees to be paid, then the Attorney’s fees shall be paid in accordance with the maximum allowed by law.

¹ This paragraph may be omitted if no advance deposit is being made by the client.

[Optional]

5. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Dispute Resolution” provision.

Client’s Initials

Attorney’s Initials

6. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

7. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.

8. **TERMINATION OF REPRESENTATION.** I understand that I have the right to terminate the representation upon written notice to that effect. I understand that I will be responsible for any fees or costs incurred prior to the discharge or termination. At the time of any termination in the representation, I understand that I will be given an accounting for all fees, expenses and costs. Any unearned portion of the deposit will be returned to me. I will still be responsible for paying any fees, costs or expenses in excess of the advance deposit.

9. **ENTIRE AGREEMENT.** I have read this agreement in its entirety and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this ____ day of _____, 20__.

CLIENT

The foregoing agreement is hereby accepted on this ____ day of _____, 20__.

ATTORNEY

Attorney-Client Fee Agreement (Hourly with Advance Deposit, Domestic)

DATE _____

CLIENT NAME _____

We appreciate the confidence you have shown in retaining our firm to represent you. This letter sets forth our respective participation and responsibilities in your case. You have hired us to handle the following matter for you:

DIVORCE, CHILD CUSTODY, CHILD SUPPORT, SPOUSAL SUPPORT AND COMMUNITY PROPERTY PARTITION

Legal services on your case will not begin until after we have received your deposit for fees *and* a signed copy of this agreement, unless the attorney decides otherwise. You have paid a deposit of \$_____ to secure the services of our firm, to compensate us for assuming responsibility for your case, and to ensure our availability to represent you.

The deposit will be applied toward payment of legal services rendered on your behalf. You authorize us to transfer expenses incurred and fees earned from our client trust account to our business account. When your credit balance with us falls below 50% of the amount of the deposit, you agree to replenish your deposit, so that you maintain a minimum credit balance on deposit with the firm at all times in the amount of at least 50% of your original advance fee. At the conclusion of the case, any unused portion of the advance will be refunded to you. We will send you itemized statements each month. If your statement shows a balance due to the firm, you agree to pay both that balance due and to replenish your advance deposit each time you receive a statement from us. You agree to make these required payments no later than ten (10) days from the date of the statement.

This firm does not finance legal services. If you fail to maintain the terms of this agreement, and to pay fees as expressly set forth herein, we may file a Motion to Withdraw as your counsel of record.

You agree to pay the firm for attorneys' services at the rate of \$_____ per hour. You also agree to pay \$_____ per hour for paralegal services rendered to you. The time expended on your matter will be computed on the basis of one-tenth of an hour increments.

Any figures we quote you for the total cost of our services are merely estimates. The opposing party, the opposing attorney or others may engage in activities beyond our control, requiring us to expend additional time not originally contemplated.

In addition, you will be responsible for all costs which we may incur on your behalf. These costs include filing fees, service of process, depositions, appraisals, witness fees, court reporter fees, copy and telephone expense, and fees for accountants, investigators, psychologists and other experts. We will consult with you prior to employing any such services. We will mutually decide whether such expert fees are paid out of the advance deposit or directly by you. You authorize us to hire other attorneys, with your prior knowledge and written consent, to work with us on this engagement, at your expense.

Our representation does not include preparation of Qualified Domestic Relations Orders to divide community retirement or profit-sharing benefits. This requires extra specialized work which will usually be referred to another attorney.

We also do not give advice on the tax consequences in community property, spousal support, child support and succession cases. We advise you to confer with a tax attorney or Certified Public Accountant to determine the tax consequences of any proposed action prior to settlement or trial.

We make every reasonable effort to settle contested issues without the emotional and financial burden of trial. Sometimes, though, it is not possible to reach agreement. If it becomes apparent that your case will have to go to trial, you agree to pay the firm a **trial deposit** in an amount to be determined by the attorney, within one week after we notify you of the amount required. If your case is subsequently resolved without the necessity of a trial, any unused portion of your deposit will be refunded to you. If you do not pay the trial deposit within one week of notification, we may file a Motion to Withdraw in your case.

We reserve the right to terminate this agreement for any of the following reasons:

1. You fail to pay fees, costs, advance fee replenishment or trial deposits in accordance with this agreement.
2. You fail to cooperate and comply fully with all reasonable requests of the firm in reference to your case.
3. You insist on pursuing an objective that the firm considers repugnant, illegal or imprudent, or contrary to your legal best interest.
4. You engage in conduct which makes it unreasonably difficult to carry out the purposes of this employment.
5. Any other reason allowed under the Rules of Professional Conduct.

You have the right to terminate our services upon **written** notice to that effect. You will be responsible for any fee for services performed or costs expended prior to our withdrawal or discharge, including time and costs expended to duplicate the file, turn over the file, and withdraw as counsel of record.

You understand and agree that this contract is intended to and does hereby assign, transfer, set over and deliver unto us as the fee for representing you, an interest in the claims, proceeds or any recovery therefrom under the terms and conditions above, and that our firm shall have a privilege afforded by Louisiana Revised Statute § 9:5001.

We have explained to you that the court dockets are crowded, and that it might take a long time to have a contested matter heard. While most cases will settle, some do not. You acknowledge that we have made no promises regarding when the matter will be concluded or any particular results. We will work as quickly as possible to get the matter concluded, consistent with our caseload and the proper protection of your rights.

New fee arrangements will be required at our discretion for appellate work and the collection of amounts which the opposing party may be required to pay to you. This agreement is only for services to be performed through the trial court level and does not extend beyond the entry of judgment or motion for new trial.

[Optional]

[ALTERNATIVE DISPUTE RESOLUTION. In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Dispute Resolution” provision.

Client’s Initials

Attorney’s Initials

ADDITIONAL TERMS. Attorney and Client agree to the following additional terms:

FILE RETENTION. Our office will maintain your file for a minimum of five years after termination of representation, after which your file may be destroyed without further notice.

Please read this document carefully. It sets forth all the terms of our agreement. If you agree with these terms, please sign in the place provided for your signature and return one signed copy to the firm. You should also retain a copy for your files so that you will have a memorandum of your agreement.

APPROVED AND AGREED TO THIS _____ DAY OF _____, 20__.

CLIENT _____

ATTORNEY _____

Sample Invoice

FIRM NAME
Attorneys at Law
P.O. Box 0000
New Orleans, LA 70000

January 31, 2004

Ms. Jane J. Good Client
1234 Shady Lane
Covington, LA 70433

FOR PROFESSIONAL SERVICES RENDERED FOR THE PERIOD JANUARY 1 - JANUARY 31, 2004

DATE	PROFESSIONAL	DESCRIPTION	HOURS/RATE	AMOUNT
1/2/04	JJJ	Telephone conference with defense attorney regarding scheduling of Ms. Client's deposition	0.10 / \$175	\$17.50
1/7/04	JJJ	Meeting with Ms. Client to review file and prepare for her deposition	1.50 / \$175	\$262.50
1/10/04	JJJ	Attend the deposition of Ms. Client	4.00 / \$175	\$700.00
1/17/04	MLT	Review and summarize deposition of Ms. Client	1.50 / \$75	\$112.50
1/18/04	JJJ	Prepare Motion for Summary Judgment, Memorandum in Support of Motion for Summary Judgment, and Affidavit of Ms. Client	3.00 / \$175	\$525.00
1/20/04	MLT	Court run to Civil District Court to file Motion for Summary Judgment; obtain hearing date from division; walk through service to Sheriff	1.00 / \$75	\$75.00
		TOTAL FEES		\$1,692.50
		COSTS EXPENDED ON YOUR BEHALF		
1/18/04		Crackerjack Court Reporters - one copy of Ms. Client's deposition		\$245.00
2/20/04		Clerk, Civil District Court - filing fee - Motion for Summary Judgment		\$25.00
1/20/04		Civil Sheriff, Orleans Parish - service fee - Motion for Summary Judgment		\$20.00
		TOTAL COSTS		\$290.00
		TOTAL AMOUNT DUE	\$1,982.50	

SAMPLE SETTLEMENT STATEMENT

JANE J. GOOD CLIENT
versus
NEVERPAY INSURANCE COMPANY

24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON
CASE NO. 144488, DIVISION "J"

Settlement Amount:	\$25,000.00	\$25,000.00
Attorney's Fee: 40% of gross amount recovered after filing suit	10,000.00	(10,000.00)
Payments to Third Parties:		
East Jefferson General Hospital - Emergency Room fees	252.00	(252.00)
Expenses:		
UPS overnight charges	9.50	
Filing fees with 24th Judicial District Court	175.00	
Sheriff of East Baton Rouge Parish (service on Neverpay)	<u>40.00</u>	
	<u>\$224.50</u>	<u>(224.50)</u>
Advance by Attorney:		
Net to Client:		<u>\$14,523.50</u>
SUMMARY		
Net to client		\$14,523.50
Net to third parties		\$252.00
Net to attorney		\$10,224.50
TOTAL SETTLEMENT		<u>\$25,000.00</u>

Approval and Receipt

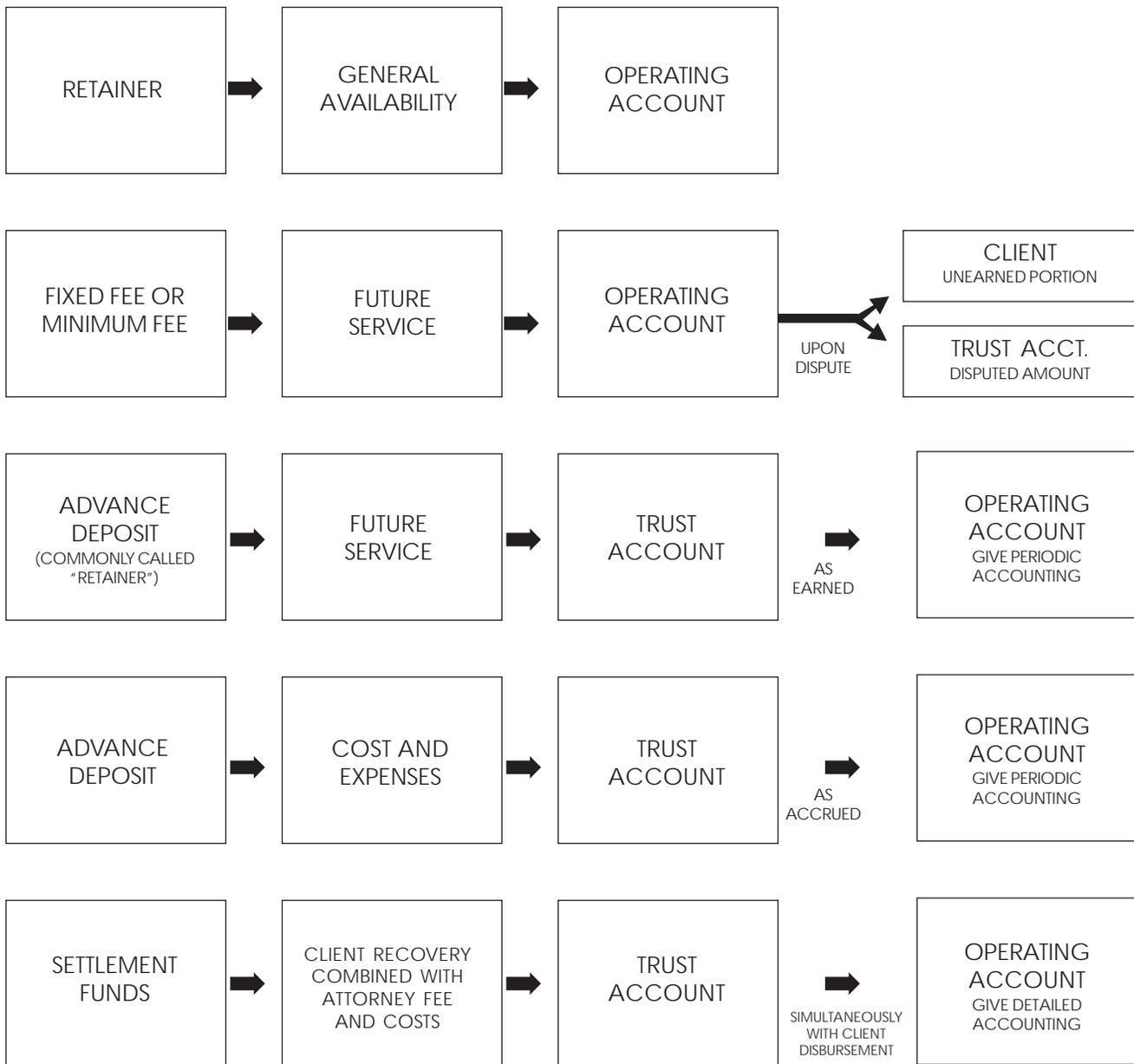
Receipt is hereby acknowledged of the sum of _____ cash, as the final amount due me in settlement of the claim for which the attached check is issued. This further acknowledges that I understand that, except as shown above, Attorney has not and will not pay any additional amounts which may still be due and owing to health care providers, insurance companies, or others, and Attorney has no knowledge of any such amounts. If there are any such amounts, that is my responsibility. This also acknowledges that this disbursement statement has been explained to me. I understand it, and have been given a copy of it. I acknowledge that this settlement was entered into freely and voluntarily on my part.

Date _____ Client _____



MONEY MANAGEMENT MAP

When An Attorney Receives:	For This Purpose:	Funds Should Be Placed in:
----------------------------	-------------------	----------------------------



For detailed information, see the Rules of Professional Conduct. Compliments of Office of Loss Prevention, Gilsbar, Inc., Covington, LA.

Supreme Court Implements Trust Account Overdraft Notification

The Louisiana Supreme Court amended the Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement to provide for trust account overdraft notification. The Court's action follows the passage of complementary legislation (2005 La. Acts 249), which facilitates overdraft notification and which recognizes the Supreme Court's rulemaking authority in this area. Such notification was supported by the Louisiana State Bar Association through its House of Delegates.

Pursuant to the new rules, the Attorney Registration Statement for 2006/2007 and subsequent years will include a Trust Account Disclosure and Overdraft Notification Authorization form which all LSBA members will be required to complete. The Court has made provisions for law firm reporting and for attorneys who do not hold client funds and are therefore not required to maintain trust accounts. Further, the Office of Disciplinary Counsel has developed an Overdraft Notification Protocol which provides that no formal investigation will be opened if the ODC's Screening Department determines the overdraft incident was a one-time occurrence attributable to simple inadvertence or employee mistake.

See the Rule below and form on page 56.

Part 1. Louisiana Supreme Court Rule XIX, §28 be and is hereby amended to change the Section title and to enact a Subpart D, to read as follows:

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

* * *

D. Overdraft Notification. Any lawyer or law firm maintaining a client trust or escrow account in accordance with this rule and Rule 1.15 of the Louisiana Rules of Professional Conduct shall execute an agreement with the federally-insured financial institution or its affiliate that holds the attorney's trust or escrow account funds. The agreement shall authorize the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft on such account(s). Notification of trust or escrow account overdrafts shall be made in accordance with the written agreement between the federally-insured financial institution and the attorney or law firm and in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Every lawyer practicing or admitted to practice in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the overdraft provisions mandated by this rule.

A copy of the executed agreement shall be forwarded to the Office of Disciplinary Counsel within thirty (30) days of its execution. A Court-approved overdraft notification agreement that attorneys and federally-insured financial institutions and their affiliates shall utilize is included as Appendix F to these rules.

Part 2. This rule change shall become effective on April 15, 2006, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court. Notwithstanding the effective date of this rule change, all attorneys who maintain trust or escrow accounts on the effective date of this rule change shall execute agreements with their financial institution(s) so that the overdraft notification procedure shall become effective on November 1, 2006 and thereafter. Attorneys who open trust or escrow accounts in accordance with La. S. Ct. Rule XIX, §28 and Rule 1.15 of the Rules of Professional Conduct between April 15, 2006 and November 1, 2006 shall execute agreements with their financial institutions so that the overdraft notification procedure shall become effective on November 1, 2006 and thereafter. Any attorney who opens a client trust or escrow account on or after November 1, 2006 shall not deposit funds in any such account until an agreement in conformance with these rules is executed between the attorney and the financial institution(s) in which the trust or escrow account funds are to be placed.

Supreme Court of Louisiana

Trust Account Disclosure & Overdraft Notification Authorization

Bar Roll Number _____ Attorney's Name (Type or Print) _____

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule 19, every attorney licensed to practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of their practice that they are not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such accounts with a federally insured financial institution with whom they have executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft created on such accounts. Use of this form complies with the rules of the Supreme Court.

_____ I certify that because of the nature of my practice, I do not maintain a client trust or escrow account. I further certify that I do not handle funds of clients or third persons, and that I do not expect to receive the funds of a client or third person within the next twelve (12) months. Should these facts change, I am required to notify the Office of Disciplinary Counsel within 30 days and execute this form providing the required information.

(Attorney's Signature) _____ (Date) _____

Trust Account Certification:

As an officer of the Court, I _____ do certify that I am a duly licensed Louisiana attorney and I am familiar with the provisions of the Supreme Court rules regarding trust accounts. I acknowledge that:

1. all attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to as a trust or escrow account);
2. every attorney maintaining a trust or escrow account must participate in the Interest On Lawyers Trust Account (IOLTA) Program unless a written notice is issued by the Louisiana Bar Foundation exempting an attorney's account from participation; and
3. all attorneys who are required to maintain trust and escrow accounts must do so with a federally insured financial institution with which they have executed an agreement requiring the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft incident created on such accounts.

I certify that the following information regarding my trust and escrow account(s) is truthful and accurate and that should such information change, I am ethically obligated to notify the Office of Disciplinary Counsel within 30 days of any change.

<u>Bank Name and Address</u> _____ _____ _____	<u>Name Listed On Account</u> _____
	<u>Account Number</u> _____

(Attorney's Signature) _____ (Date) _____

Law Firm Reporting

I am a member of the law firm of (insert firm name) _____ and all trust and escrow accounts are maintained under the name of that law firm. The firm has designated one Louisiana licensed attorney, (insert name) _____ as the responsible reporting counsel for our firm and that attorney's bar roll number is _____. I adopt the reporting as made by our designated reporting attorney.

(Attorney's Signature) _____ (Date) _____

Authorization To Financial Institution

The financial institution with whom I (or my law firm) maintain a trust or escrow account is hereby authorized to provide written and/or electronic notification to the **Office of Disciplinary Counsel** of an instance of overdraft occurring on such account(s) in accordance with the rules of the Louisiana Supreme Court and Act 249 of the Louisiana Legislature (Regular Session 2005). Notification shall be sent to:

Office of Disciplinary Counsel, 4000 S. Sherwood Forest Blvd., Suite 607, Baton Rouge, La. 70816
 (phone: 225-293-3900 fax: 225-293-3300 e-mail: overdraft@ladb.org)

_____ (Attorney's Signature)	_____ (bar roll number)
---------------------------------	----------------------------

Authorization is Accepted: _____ (Bank Officer) _____ (Date)

(Notice to Financial Institution: Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice shall not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The Act provides that no civil or criminal action may be based upon a disclosure or a non-disclosure of financial records made pursuant to the Act.)

Maintaining the Attorney-Client Relationship and Law Office Procedure

The number one complaint against lawyers received by the Office of Disciplinary Counsel is failure to communicate. Communication is vital at every stage of representation. Keep in mind that, while a particular case represents one of many for you, it is the *only* case a client is thinking about. Even if there is no “big news” to report, status letters let a client know you are continuing to work on his case. The key to having a positive relationship with a client is not winning the case — it’s open and frequent communication. Unless instructed otherwise by the client, send copies of all pleadings and correspondence to the client.

Communication

Communication includes:

- keeping the client up to date continually on the status of the matter, even if nothing has happened;
- keeping the client aware of how developments may affect the anticipated outcome of the matter;
- notifying the client of depositions and court dates;
- returning all client phone calls immediately;
- obtaining documents from the client (for example, signed releases);
- sending the client copies of all relevant correspondence received or sent;
- sending the client copies of all court documents generated during the course of the matter;
- investigating all important matters and obtaining corroboration of the client’s position;
- updating the client regularly on how many hours have been billed, what work has been charged or what deductions have been made from the advance payment, etc., even when the client owes no money;
- listening to the client;
- allowing the client to make all decisions, after information and advice. If the client makes a decision contrary to your advice, confirm in writing; and
- avoiding personal involvement with the client.

Documentation and File Organization

Documentation and file organization are also important. A record should be kept of all contacts with a client or third party. Correspondence is self-proving. But telephone or in-person conferences should be memorialized with the initials of the person who handled the contact. This is to help you know the status of the case every time you review it. It also helps to answer clients’ questions and protects you in case of a dispute or confusion over a client’s actions. Keeping files organized and in chronological order will help you represent your clients and protect you if disciplinary complaints or malpractice suits are filed. Also, keep dated copies of all drafts and pleadings or substantive documents.

Below is a sample filenote kept in one section of the client’s file.

SMITH, Mary

11/20/04

Mary called in. She said that she had received the copy of the pleadings. Mary said that her husband has not given her any child support, nor has he attempted to see the children since he left home. She wanted to know what she could do to make him give her some money. I told her that I would ask you if there is something that can be done in the meantime and get back with her. gk (paralegal)

Law Office Procedures

Law office procedures are important to maintaining a positive attorney-client relationship because they keep you and your staff organized and your client treated fairly, competently and courteously. Your personnel should be polite, qualified and understanding. A few areas in law office practice deserve special attention: confidentiality, phone call and walk-in procedures, and mail procedure.

Confidentiality

Every member of your firm, from the senior attorney to the part-time file clerk, is under a strict obligation to protect the client's privacy. The following are some points to remember about client confidentiality:

- Do not discuss clients outside the office.
- Do not discuss client information with another client or in any place where another client or third person can hear.
- Remember that your duty of confidentiality continues even after the case is closed. It also continues after you leave the firm.
- You should be wary when clients or strangers want to use your office to make a few telephone calls. Make sure no client files or documents are lying around.
- Never release information to callers such as a client's accountant or an insurance adjuster without authorization.
- Be careful when disposing of confidential papers, even rough drafts or duplicates. Use shredders or other secure disposal methods for sensitive material.
- Never forget that the attorney-client relationship is built on mutual trust and confidence. Clients come to you expecting a form of sanctuary. You must honor that.
- A good idea is for firms to require all employees to sign confidentiality forms, which are placed in personnel files. A sample form is provided on page 68.

Phone Call and Walk-in Procedures

Office personnel should be trained to be courteous and accurate in taking messages and setting appointments. The staff should know who backs up the receptionist and what to say when answering the phone or greeting walk-ins. When you are unavailable, a message — complete with date, time, caller's name, phone number and reason for the call — should be written on a carboned message pad. This message should be put immediately in a regular place for you to pick up.

Non-attorneys should not give legal advice. A written record of all client contact should be maintained. Except in cases of emergencies, you should not take any telephone calls or interruptions while you are with another client.

Mail Procedure

Establish a procedure for opening, date-stamping and distributing all incoming mail. Your secretary should review it immediately to enter court dates and deadlines on the calendar system. It also is essential to file all mail immediately upon review by you and after copying and sending it to the client. To ensure that outgoing mail is properly reviewed, signed and sent, have a designated place for a proofing stack. If a matter has to be sent immediately or by a certain date, a post-it note should be placed on it noting the urgency. If copies were sent to other people, have the secretary note on the file copy the persons to whom copies were sent. Certified or registered mail procedures should be established to ensure that the proof of delivery, the "green card," is attached to the appropriate file copy of the letter or pleading when the card is returned.

On the following pages are sample documents which assist in maintaining the attorney-client relationship, including:

- client activity letter (page 59);
- e-mail communication letter (page 60);
- authorization to obtain information from a prior attorney (page 61);
- authorization to release medical information (page 62-63);
- authorization to release financial information (page 64);
- court appearance letter (page 65);
- deposition scheduling letter (page 66);
- deposition instructions to client (page 67); and
- a confidentiality agreement (page 68).

Sample Client Activity Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: File Subject or Matter Description
Our File _____

Dear Mr. Client:

Enclosed please find copies of the following:

1. _____;
2. _____; and
3. _____.

Please note the following:

- ____ We are sending this to you for your information and file only; no action is required at this time.
- ____ Review the enclosed and call me if you have any questions or comments.
- ____ Review the enclosed and call me after your review; I would like to discuss the enclosed with you.
- ____ Review the enclosed and call _____ in my office to discuss these.
- ____ Sign on the designated signature blanks and return same to me.
- ____ Sign on the designated signature blanks before a notary and two witnesses, and return same to me.
- ____ Note your comments on the enclosed and return same to me.
- ____ Have these documents reviewed by all appropriate parties and call me to discuss.
- ____ Forward copies of the documents requested so that we may proceed accordingly.
- ____ Other: _____

If you should have any questions, please don't hesitate to give me a call.

Sincerely,

FIRMNAME

Attorney Name

[NOTE: Instead of a letter, three-part carbon transmittal slips or message reply/memo sheets can be used for the same purposes.]

Sample E-Mail Communication Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Client:

Please send me a reply to this e-mail so that I can be sure that I have your correct e-mail address before I transmit anything via e-mail. Also, as previously discussed, e-mail is not secure. If you are concerned about the security of our communications, please contact me immediately and advise me not to transmit correspondence via e-mail in the future. Otherwise, I will continue to assume that you desire for me to continue to transmit correspondence to you via e-mail.

All future correspondence transmitted via e-mail will be attached in an Adobe PDF document that is encrypted and password-protected for your security. If you cannot remember the password that I have supplied to you, please contact me via telephone.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

FIRMNAME

Attorney Name

Authorization for Release of Information from Former Attorney

TO: _____

RE: _____

You are hereby authorized to furnish to the law firm of _____, and their duly authorized representatives, copies of any and all information and/or documentation they may request concerning your prior representation of me in the following matter: _____.

This authorization shall constitute valid authorization for the firm of _____ to inspect all such items set forth above, and to copy, and to request and receive copies, including certified copies, thereof from you. You are also authorized to discuss any and all aspects of your former representation of me with said firm. It is my understanding that, to the extent provided by law, such information shall be deemed confidential.

This authorization is valid until you receive written revocation. A copy of this authorization shall be sufficient and as good as the original, and permission is hereby granted to honor a photostatic copy of this authorization.

Signed at _____, Louisiana, this ____ day of _____, 20__.

Signature of Client

Typed Name of Client

HIPAA Authorization to Disclose Protected Health Information

I hereby give permission for my personal medical information to be used and given out as described below.

Patient Name: _____

Patient Social Security Number: _____

Patient Date of Birth: _____

The following person(s) or organization(s) are permitted to provide the information:

The following attorney(s) or law firms(s) are permitted to receive and use the information (name, address and telephone number):

The above-named attorney(s) and law firm(s) are permitted to receive the information and are hereby appointed as my representative pursuant to La. R.S. 40:1299.96(A)(2)(b) for the limited purpose of obtaining and using any and all information the releasing person(s) or organization(s) may have concerning treatment or services rendered to the undersigned for any reason, including but not limited to notes (handwritten and/or typed), charts, medical reports, face sheets, discharge summaries, history and physical, consults, laboratory results, reports of x-rays and copies of any and all actual films and/or x-rays, outpatient records, test results, operative reports, pathology reports, physician orders, progress notes, emergency records, therapy records, nurse's notes, opinions, diagnoses, prognoses, histories, statements and/or bills, correspondence, pharmaceutical records, including but not limited to date of prescription, prescribing physician, name of drug, dosage and amount dispensed, and/or any other medical information regarding any treatment, whether inpatient or outpatient. This specifically includes documents to and from other health care providers, attorneys, insurance companies, etc.

The information will be used or given out for the purposes of handling the attorney's or law firm's duties in the investigation and possibly litigation of claims in which I am involved. This authorization is initiated at my request and the health information will be disclosed at my request. Health information released as a result of this authorization may be re-disclosed or shared by the persons or organizations receiving the information and might not be protected by federal or state regulations upon such disclosure.

I understand that I may refuse to sign this authorization. I further understand that my refusal to sign will not affect my ability to obtain treatment unless a third party requests that treatment and/or release of information.

I understand that I may revoke, or withdraw, this authorization at any time by sending a written notice to the above-named person or organization authorized to release the information. This revocation will be effective for future uses and disclosures of the information described above. The revocation will not have any effect on information already used or given out.

This authorization expires upon final resolution of the litigation entitled:

I authorize the release of records only, and do not authorize oral communications by the health care provider to the authorized requesting person(s) or organization(s).

The authorized requesting party shall provide to me or my attorney a copy of this authorization at the same time the authorization is provided to the health care provider(s) authorized above to release information.

The authorized requesting party shall mail to me or my attorney a copy of all records received pursuant to this request within seven days of receipt of the information.

A photocopy of this form will serve as an original.

Signature of Patient or Representative

Date

Printed Name of Patient

Relationship to Patient if Signed by Representative

A copy of this completed form must be given to the patient or the person signing on the patient's behalf.

Authorization for Release of Financial Records

TO: Custodian of Records

RE: _____

DATE OF BIRTH: _____

SOCIAL SECURITY NUMBER: _____

You are hereby authorized to furnish to the law firm of _____, and their duly authorized representatives, copies of any and all information they may request concerning any salaries, bonuses, commissions, allowances, travel expenses, stocks, investments, retirement and pension plans, stock ownership or option plans, pay deferral or provident funds, defined contribution plans, other employee benefit plans, incentive plans, termination benefits, mutual funds, growth funds, life insurance policies, bank accounts, credit union accounts, savings accounts, money market accounts, certificates of deposit, installment loans, mortgage loans, personal loans, signature loans, any other direct indebtedness or obligation incurred by me or on my behalf, any indirect indebtedness or obligation incurred by me or on my behalf (including, but not limited to, any indebtedness or obligation for which I am a co-borrower, guarantor, or surety), savings plans, 401(k) accounts, and Individual Retirement Accounts in which I may have or had an interest, or other information in your possession regarding me, as to the following:

This authorization shall constitute valid authorization for the firm of _____ to inspect all such items set forth above, and to copy, and to request and receive copies, including certified copies, thereof from you.

This authorization is valid until you receive written revocation. A copy of this authorization shall be sufficient and as good as the original, and permission is hereby granted to honor a photostatic copy of this authorization.

Signed at _____, Louisiana, this ____ day of _____, 20__.

Signature of Employee or Customer

Typed Name of Employee or Customer

Sample Court Appearance or Hearing Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: {Case Name & Number}

Dear Mr. Client:

Your case has been set for hearing/trial on _____ at _____ o'clock in the parish courthouse, located at _____ in _____. Your case is before Judge _____ in courtroom _____.

You will find it most convenient to park {specify parking lots, etc.}. Judge _____'s courtroom is located on the _____ floor. I will meet you {location} at _____ o'clock the day of the trial.

This is a hearing on {issue}. {This is a trial on the merits.}

Please be present for this. If you have any questions, please feel free to call.

Sincerely,

FIRMNAME

Attorney Name

Sample Deposition Scheduling Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: Deposition
Our File _____

Dear Mr. Client:

Your discovery deposition has been scheduled for _____ at ____ o'clock here in our offices. I will meet with you in our office at ____ o'clock, one hour prior to the deposition, to answer any questions you may have concerning this matter. Please review the enclosed Deposition Instructions before we meet.

I look forward to seeing you on _____ for your deposition. Until then, if you have any questions, please feel free to call.

Sincerely,

FIRMNAME

Attorney Name

Enclosure

Deposition Instructions to Client

Note to Attorney: Some of the advice provided below is applicable primarily in personal injury cases. Practitioners will wish to tailor these instructions to suit particular cases.

Under the law, the other lawyer has a right to take your “discovery deposition.” This means that you will be put under oath and the lawyer will ask you questions relating to this case. The lawyer’s questions and your answers will be taken down by a court reporter. One of your lawyers will be present at all times.

There will be no judge or jury present. However, after the deposition is over, the court reporter will type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed in court.

The deposition will assist the opposition in evaluating your case for settlement purposes and can be used at trial if your testimony is different than at the deposition. For this reason, it’s important to prepare before your deposition and handle yourself well during the deposition. Below is a list of instructions.

Instructions:

1. You should be clean, and wear clean, neat clothing.
2. Consider this an important and solemn occasion, and treat all persons in the deposition room with respect.
3. Come prepared to exhibit any and all injuries which you have suffered.
4. If this is a personal injury case, have with you the facts and figures of time lost from work, lost wages, and all medical bills incurred as a result of your injury.
5. Tell the truth.
6. Never lose your temper.
7. Don’t be afraid of the lawyers.
8. Speak slowly and clearly, and answer “yes” or “no” rather than “uh huh” or a nod or shake of your head.
9. Answer all questions directly and concisely.
10. NEVER VOLUNTEER any information. After the question has been asked, answer it. If “yes” or “no” will answer the question, do so and then STOP.
11. Do not magnify your injuries or losses.
12. If you don’t know, admit it. It is IMPERATIVE that you be HONEST and STRAIGHTFORWARD in your testimony.
13. Do not try to memorize your story. Tell your story to the best of your ability.
14. Do not answer a question unless you have heard it and clearly understand it. Ask for the question to be repeated or explained.
15. Do not guess or estimate time, speed or distance unless you are sure that the estimate is correct. When you answer, state that this is your estimate. Review these estimates with us beforehand.
16. Many of the questions you will be asked will not be admissible at the trial. The opposition is entitled to an answer in order to help them prepare their case. Do not try to hide information because you are afraid it can be used at trial to discredit you.
17. If we object to a question, stop talking and wait for our instructions to answer or not answer.
18. If you want to discuss something after the deposition, wait until we are alone.

REMEMBER, if you give the appearance of earnestness, fairness and honesty, and if you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of the litigation in which you are involved.

Confidentiality Agreement

As an employee of (Law Firm), I acknowledge that I have been instructed regarding the confidentiality of all firm business, client disclosures, activity and records and, except as required by law in the course of my duties, or where instructed in writing by my supervisor, I am aware that all client disclosures, firm books, records, files and memoranda are to be treated in strict confidence. I pledge that I will not disclose information relating to the firm, its business or its clients during my employment or after termination thereof, whether such termination be voluntary or involuntary. I understand that any breach of confidentiality will be grounds for my immediate dismissal as a firm employee.

This the ____ day of _____, 20__.

Signature

Witness

Attorney's Signature

File Management

Once the conflicts screening procedure has been successfully completed and the matter has been accepted, it is time to open a new file. The file has to be properly managed during the life of the representation. At the conclusion, the file has to be stored, and eventually destroyed, to make room for new files. To determine when and what types of files can be destroyed and how long files need to be stored, refer to the Termination of Representation Section. The following checklist will assist lawyers in managing their files.

File Management Checklist

- Place a File Opening Form in each new file. (See page 70.)
- Maintain a master list of all files, and all documents in the files, in key locations throughout your office. This list will help you keep track of all matters being handled.
- Use a sturdy OUT CARD* when removing a file. The OUT CARDS should indicate who removed the file, when it was removed, and which file was removed.
- Create a policy for identifying physical objects or other documents that cannot be stored with the original file. This policy will help you locate these necessary objects and documents when needed during the matter, or at the close of the matter when it is time to return them to the client.
- Return any original documents to the client when the matter has ended.
- If requested, return the file to the client, whether or not the client still owes fees and expenses. If not, store the file in a safe place. You may never keep a client's file hostage for fees, and you should always keep a copy of the file.
- Place a File Closing Form in each file at the close of the matter. (See page 71.)
- Maintain a master list of destroyed files, including name, file number, date opened, date closed, date destroyed, and whether it was duplicated on another medium.

* OUT CARDS may be purchased at any office supply store.

Additional Resources for File Management

- ABA, Law Practice Management Section, *Law Office Policy and Procedure Manual* (4th ed. 2000).
- ABA, Committee on Continuing Professional Education, *A Practical Guide to Achieving Excellence in the Practice of Law* (1st ed. 1992).
- Lawyers Liability Review, "Closed Client Files: When Can They be Destroyed?", Vol. 14, No. 6 (June 2000).

Checklist for Opening Files

- Client Name: _____ Client Number: _____
- Client Matter: _____ Matter Number: _____
- Client Home Address: _____
- Client Home Telephone: _____ Client Home E-Mail: _____
- Client Business Address: _____
- Client Business Telephone: _____ Client Business E-Mail: _____
- Client Cell Phone Number: _____
- How was the matter obtained? _____
- Date file opened: _____
- Attorney assigned to the matter: _____
- Is the file for a new client, a new matter for a current client, or a new matter for a former client? _____
- Are there any partners, affiliates, subsidiaries, parent corporation or other related persons or entities? _____
- Was file placed on the Master File List/Client List and the Bookkeeping/Accounting List? _____
- Was written resolution of the Conflicts Search Results Memo placed in the file? _____
- Did the client sign an informed consent or waiver, if conflict found? _____
- What is the basis for the fee and the method for paying the fees and expenses? _____
- Was an Advance Deposit collected? _____
- Was the Deposit made into the client Trust Account? _____
- Was an Engagement Letter or other agreement sent to the client? _____
- Did the client sign or acknowledge the engagement letter? _____
- Were all critical dates, including prescription periods and closing dates, marked on the appropriate calendars? _____
- Who are the attorneys for the other parties, and/or the judge and arbitrator or mediator?
(Obtain necessary information to communicate with each.)

- Were all necessary Client Authorizations and Consents obtained (including medical, financial, educational, etc.)?

- Is an expert or consultant needed for the matter? _____
- If so, name them and all necessary information to contact them. _____

- Has a copy of the fee agreement been given to the client at the time of execution?
- Has a copy of Rule 1.8(e) been given to the client in every instance where the client has been provided financial assistance?

Checklist for Closing Files

- 1. Date closed: _____
- 2. Attorney closing: _____
- 3. Date that refund was requested from Clerk's office: _____
- 4. Reconcile client trust account monies - completion date: _____
- 5. Return funds to client: \$_____ Date returned: _____
- 6. Withdraw money, if necessary, to pay bill: \$_____ Date: _____
- 7. Items recorded in public records: (Recordation information)
 - Act of Sale: _____, _____ Parish
 - Mortgage: _____, _____ Parish
 - Judgment: _____, _____ Parish
 - Lien: _____, _____ Parish
 - UCC Financing Statement: _____, _____ Parish
 - Other: _____, _____ Parish
- 8. Items recorded with Secretary of State: _____
 - Description: _____
 - Recordation information: _____
- 9. If money judgment not paid, calendar date to file suit to revive judgment: _____
- 10. Motion to Withdraw, if necessary - filing date: _____
- 11. Close out on Master File List/Client List, Bookkeeping/Accounting List and Subject Matter List - completion date: _____
- 12. Put on Closed File List/Delete from Active Case List - completion date: _____
- 13. Judgments/settlement documents sent to client - date: _____
- 14. Letter sent to client confirming conclusion of representation - date: _____
- 15. File reviewed for documents to be returned to client - date: _____
- 16. Original documents returned to client - list: _____
 - Method of delivery: _____
 - Date returned: _____
- 17. File reviewed and all duplicates removed - date: _____
- 18. Items retained by the firm: _____
- 19. Items destroyed: _____

COMMENTS:

NOTE: Place one copy in the file, one copy in the Closed File Register and one copy in the closing attorney's Closed File Record.

CHECKLIST IS TO BE PLACED IN FILE AND UPDATED UNTIL COMPLETED.

Calendar Control

Time is relative to the position of the observer. When the new client calls, next month looks wide open and promises flow freely. When the promised deadline approaches, things look different. Calendar control methods help us make promises we can keep.

A calendar system needs six elements for safe and effective calendar control:¹

- ▶ The *calendar control person* is an important element of the system. This person is responsible for daily maintenance and backups and for making sure that everyone properly uses the calendar. You also need a backup person who can fill in when the main responsible person is out.
- ▶ *Events* in a calendar system are date-driven and time-driven items, for example, a court hearing. They are segregated from other types of items in Time Matters and most calendars, such as the Palm operating system appointment and to-do programs. Make sure the entries are double-checked before you put away the source documents, such as a deposition notice or an order that sets a case for trial.
- ▶ *To-do items* are date-driven but not time-driven. Examples are briefing deadlines and prescription dates. Also, add a to-do item as a reminder to follow up an important outstanding task, such as obtaining the clerk's confirmation of filing a suit before prescription runs.
- ▶ *Alerts* are warnings of an event or a to-do in the future. If we forget to add an alert for an important event or to-do, we will squeeze ourselves so much that problems arise. Unless you're better than most about looking ahead on your calendar, a one-month alert for a brief that is due is necessary to avoid setting a trial or closing too close to the brief's due date. Many attorneys use two alerts, a long-range heads-up and an emergency status flag. Time Matters can do a countdown reminder for any number of days set, so the number of days left to write the brief is there on the first screen that comes up. A nagging assistant or partner can do the same thing.
- ▶ *Maintenance* gives you the freedom to use the calendar system without worrying about perfection. Immediate calendar changes are best. But if every change in the schedule requires perfectly accurate modifications and assorted other data entry tasks, you won't use the calendar properly. If you can confine clean-up/updating functions to one session a day or week, perhaps delegating much of the work, you'll get more value and security out of the calendar system. During a maintenance scan, mark all questionable entries — things-not-completed-or-moved, duplications and changes not completely made earlier — and fix them after consultation with the responsible party. This is also a good time to add alerts.
- ▶ *Backups* are the last line of defense. Keep good daily rotating backups if you're on computer. Use backup procedures, such as having your assistant check that you have entered every important date, by comparing your calendar entries to the mail and any file notes you've made. Have your assistant remind you in notes and in person about the important deadlines.

¹ We emphasize here the use of computer-based calendars because most lawyers have at least one computer these days. There is nothing wrong with the time-honored manual calendar systems. For information about setting up and using an index card system, please see Mississippi Bar, *Client Relations: Forms, Letters & Useful Information* (undated).

**Question: How does one know what dates to put on the calendar system?
Answer: Checklists!**

Here's a very short checklist to start with. We recommend at a minimum that you add events, to-do items and alerts to your calendar system every time you:

- Accept a representation
- Receive a trial date or other setting
- Put the file away.

Checklists tell the lawyer what to put on the calendar for complicated cases and transactions. Use checklists as often as possible and keep them fresh with frequent improvements.

The following is an example of a simple master file checklist. This general checklist should be augmented with detailed checklists. Good commercial checklist systems are available. Choosing or creating moderate checklists that the lawyer and his staff will use is more important than searching for the exhaustively perfect checklist.

General Checklist

File: _____

Date Opened: _____

- Rule out conflicts of interest.
- Open file.
- Calendar deadlines. Prescription date? _____
- Send engagement letter.
- Sign written fee agreement.
- Make client trust account deposit.
- Investigate.
- Recommend action to client.
- Obtain client approval of action.
- Complete litigation or transaction.
- Update client.
- Do follow-up.
- Collect fees and expenses.
- Terminate representation ethically.
- Send trust accounting.
- Send disengagement letter.
- Purge, close and archive file.

Caveat: Supplement with detailed checklists!

Louisiana Prescription Quick Reference Card

Another good starting point is the Louisiana Prescription Quick Reference Card, created and distributed by Gilsbar. Gilsbar updates the card every fall. While it is unwise to rely solely on such a device, it is a place to start before checking the books.

The Louisiana Prescription Quick Reference Card can be found on page 117.

Calendar Control System Installation Checklist

- Set up “events” (which means items timed and dated, *e.g.*, appointments and court hearings).
- Set up “to-do’s” (which means items dated but not timed, *e.g.*, prescription deadlines).
- Add a to-do for each matter, at least for a periodic status check. Every matter must have at least one entry in the system at all times to avoid “the forgotten file syndrome.”
- Consider using some type of visual aid, perhaps a monthly wall calendar. This allows you to see calendar squeezes early.
- Put alerts (early warnings) on your calendar for key dates, *e.g.*, 21, 14, 7-1 days before the due date.
- Double-check each initial entry. Early errors can later propagate throughout the system.
- Add a to-do when any important matter is done, for follow-up as necessary.
- Provide for periodic maintenance; try daily, weekly and monthly.
- The calendar control person may delegate tasks but is always responsible. One person! Owing to the importance of this job, give it to the most compulsively gifted person in your office.
- Install a backup system. At a minimum, make an entry in the calendar that requires the calendar control person to copy paper systems and backup computer systems periodically.
- Add calendar entries for key dates when you accept a representation, when you receive a hearing date or each time you put the file away. This prevents forgotten files. This is a good time to double-check prescription dates.
- Create detailed checklists that go with each element of your calendaring system.
- A key to successful deadline management is using checklists as much as possible. These should remind you of dates and times that should be placed on your calendar system.

Calendar Control Evaluation Checklist

Use this checklist to determine whether you are taking all the major steps to successfully manage your calendar control system.

- Have you designated a single person to be responsible for calendar control?
- Do you have two calendar control systems? Backup calendar systems reduce your malpractice insurance rates and give you a better chance of avoiding malpractice and disciplinary problems. At a minimum, use the firm's central system, backed up with each attorney's hand calendar, coordinated with each secretary's desk calendar.
- Do you calendar, and react to, deadlines properly?
- Do you periodically review usage of your calendar control system?
- Do you refine the calendar control system when problems are encountered?
- Do you document the changes to the calendar control system on appropriate checklists, which serve as your written office policy? Include the checklist or other policy in your employee manual and in orientation for new staff members.
- Do you use a 12-month wall calendar to plan long-term for court hearings, vacations and major events?
- Have you developed a follow-up procedure to make sure calendared matters have been completed? Depending on your practice, you will do this on all items or only on significant items.

Additional Resources

References

- American Bar Association Web site, www.abanet.org.
- Allen, David, *Getting Things Done* (Viking, New York, 2001). Not keyed to law office management, but very exhaustive and well thought out.
- Altman Weil Publications, Inc., at (888)782-7297, www.altmanweil.com. Everything the big-firm lawyer would ever want to spend money on.
- Burns, David D., M.D., *Feeling Good*, (Avon Books trade paper, rev. 1999), Chapter 5, "Do-Nothingism: How to Beat It." Excellent on procrastination, especially the "Anti-Procrastination Sheet" exercise on page 99.
- Louisiana State Bar Association Web site, www.lsba.org. This site contains, among other things, an explanation of an index-card-file docket/tickler system.
- Mallen, Ronald E. and Smith, Jeffrey M., *Legal Malpractice* (4th ed. 1996), Section 2.20, Appendix T, "Work Control." One of the major authorities in malpractice prevention.
- Mississippi Bar, *Client Relations: Forms, Letters & Useful Information* (undated). This excellent book includes a detailed and graphic description of a manual calendar control system using inexpensive card-file supplies; see pages 77-82.

Software

- Amicus Attorney, at Gavel & Gown Software Inc., 184 Pearl St., Ste. 304, Toronto, Ontario M5H 1L5 Canada, (416)977-6633, (800)472-2289, info@amicusattorney.com. One of the top file management programs; has a warm-and-fuzzy "corner law office" interface.
- Time Matters, at Data.Txt Corporation, 215 Commonwealth Court, Cary, N.C. 27511, (919)467-1221, sales@timematters.com. One of the top file management programs; has a no-nonsense interface.

Termination of the Representation

Mandatory Termination of Representation

A lawyer may not represent a client, or where representation has commenced, must withdraw from the representation of a client, if:

- the representation will result in violation of the Rules of Professional Conduct or other law;
- the lawyer's physical or mental condition materially impairs her ability to represent the client;
- the lawyer is discharged (see Rule 1.16(a) on page 91); or
- the lawyer has withdrawn from and/or terminated the representation due to an actual or potential conflict of interest.

Permissive Termination of Representation

A lawyer is permitted to withdraw from representation of a client, if withdrawal can be accomplished without material adverse effect on the client's interests, or if:

- the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- the client has used the lawyer's services to perpetrate a crime or fraud;
- the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- other good cause for withdrawal exists. (Rule 1.16(b).) (See page 91.)

Exceptions

Nevertheless, a lawyer must continue representation of a client notwithstanding good cause for terminating the representation when ordered to do so by a tribunal. (Rule 1.16(c).) (See page 92.)

Also, a lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.

Other Reasons for Termination

The termination of representation of a client may occur for several other reasons:

- the matter has been concluded by closure, settlement, judgment, appeal or dismissal.
- the client and the lawyer have mutually decided to terminate the representation.

Checklist for Termination of the Representation

After the representation for which you were retained has concluded, certain procedures should be undertaken in terminating the representation:

- Take all steps which are reasonably practicable to protect the client's interests, such as giving reasonable notice of the withdrawal to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned. (Rule 1.16(d).) (See page 92.)
- Ensure that you have complied with all applicable law, including local rules of court, before filing a motion to withdraw as counsel of record.
- Write the client a disengagement letter, signifying that the representation has ended. See sample Disengagement Letters on pages 78-79.
- Review the file. Make sure all client documents are returned to the client. Purge the file of any redundant or duplicate materials.
- Calendar any future deadlines in the case, such as reinscription of a mortgage, revival of a judgment, etc.
- Prepare a file closing sheet. See sample form, "Checklist for Closing Files," in the File Management Section on page 71. This form should be adapted for your particular practice. This form also should be used to record vital information regarding client records and the client's file.
- Close the file.
- Generate a final invoice to the client.
- Return all client funds held in trust and any other property, including original documents, belonging to the client.
- You must keep complete records of any client funds held in a trust account and other property of a client for a period of five years after termination of the representation. (Rule 1.15(a).) (See page 89.)
- Client files should be retained for a minimum of five years after termination of the representation. [NOTE: There is a 10-year prescriptive period for attorney disciplinary violations and no prescriptive period applicable to the filing of a complaint against an attorney accused of fraudulent conduct.]
- The file is the property of the client, not the lawyer. Upon written request by the client, you must promptly release the entire file to the client or the client's new lawyer. You may retain a copy of the file, but may not condition its release over issues relating to the expense of copying the file or for any other reason, the most common of which is payment of fees or costs. (Rule 1.16(d).) (See page 92.)
- The responsibility for the cost of copying must be determined by the court in an appropriate proceeding. (Rule 1.16(d).) (See page 92.) In essence, this means that you must release the file first and pursue the client for the cost of copying it later. If you have recorded your contract or filed an intervention to protect your fees, and have been discharged without good cause, you may be entitled to recover the copying costs in that proceeding. If you were discharged for cause, arguably you should bear the cost of copying the file which you seek to retain. In hourly fee cases, the contract should specify that the client will bear the copying costs in the event of termination of the representation.

Sample Disengagement Letter (Non-Payment)

June 20, 20—

Ms. Jane J. Former Client
123 Main Street
Anytown, Louisiana 45678

Certified mail. Return receipt requested.

RE: File Subject or Matter Description

Dear Ms. Former Client:

Thank you for allowing us to be of service in the above-captioned matter. As you know, our invoices have not been paid and are now more than 30 days past due. Therefore, as was explained at the outset of the engagement and in our written fee agreement, we must withdraw from representing you at this time.

We are enclosing a copy of the pleadings, correspondence and depositions taken in your case, as well as the original documents tendered to us during the representation. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. Your new counsel should have adequate time to serve your best interests, and you should provide your new counsel with your file for necessary review. A memorandum detailing the complete status of the matter with deadlines noted is attached.

We regret that this action was necessary.

Sincerely,

FIRMNAME

Attorney Name

Enclosures (as stated)

[CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct.]

Sample Disengagement Letter (Conclusion of Representation)

June 20, 20—

Ms. Jane J. Former Client
123 Main Street
Anytown, Louisiana 45678

RE: File Subject or Matter Description

Dear Ms. Former Client:

[Win]

We are pleased to report that the judgment rendered in your favor is final and all legal delays have expired with no further action being taken by opposing counsel. Opposing counsel has confirmed to me in writing that his client has decided not to appeal the judgment; and a copy of that letter is enclosed for your file. Our representation of you in this matter has come to an end.

-or-

[Loss]

As you have decided not to appeal the judge's decision in the captioned proceeding, our representation of you in this matter has come to an end.

We are enclosing the following original documents:

1. Original insurance policy with XYZ Insurance Company, Policy No. 1235555;
2. Multiple original of the Act of Cash Sale of your home at 123 Main Street;
3. Original title insurance policy issued by Home Trust Title Insurance Company, Policy No. 006789; and
4. Copy of the abstract for your property dated May 3, 1996, prepared by Goodsearch, Inc.

These documents should be kept in a safe place for future reference. Also enclosed is a final invoice for services rendered. Thank you for entrusting this legal matter to us. I hope we can be of service to you in the future.

Sincerely,

FIRMNAME

Attorney Name

Enclosures (as stated)

Ethics and Professionalism

Most lawyers are ethical. Most lawyers strive to be professional. However, lawyers are human. They make mistakes. They do occasionally fall short of both professional and ethical standards. Very generally, ethics is what lawyers absolutely **are required** to do. Professionalism is what wise lawyers **choose to** do. A lawyer can be strictly ethical and still fall short of the ideals of professionalism. The good lawyer always strives to be both. Adherence to the Rules of Professional Conduct and the Code of Professionalism will allow a lawyer to practice safely, successfully and honorably.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Effective April 1, 2006

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RULE 1.0 TERMINOLOGY

(added 3/1/2004)

- (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- (b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- (d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

- (f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
- (l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- (n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

CLIENT-LAWYER RELATIONSHIP

RULE 1.1 COMPETENCE

(amended 4/15/2006)

- (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.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER
(amended 3/1/2004)

- (a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, religious, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RULE 1.3 DILIGENCE

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

RULE 1.4 COMMUNICATION
(amended 4/1/2006)

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
- (c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

RULE 1.5 FEES
(amended 4/1/2006)

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional

- relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
 - (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- (e) A division of fee between lawyers who are not in the same firm may be made only if:
 - (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;
 - (2) the total fee is reasonable; and
 - (3) each lawyer renders meaningful legal services for the client in the matter.
- (f) Payment of fees in advance of services shall be subject to the following rules:
 - (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.
 - (2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.
 - (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.
 - (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.
 - (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed

funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

RULE 1.6 CONFIDENTIALITY OF INFORMATION
(amended 3/1/2004)

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (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; or
 - (6) to comply with other law or a court order.

**RULE 1.7 CONFLICT OF INTEREST:
CURRENT CLIENTS**
(amended 3/1/2004)

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or

- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

**RULE 1.8 CONFLICT OF INTEREST:
CURRENT CLIENTS: SPECIFIC RULES**
(amended 4/1/2006)

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift, is related to the client. For purposes of this paragraph, related persons include a spouse, child,

grandchild, parent, or grandparent.

- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.
 - (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).
 - (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
 - (3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

- (4) In addition to costs of court and expenses of litigation, a lawyer may provide financial

assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

- (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.
 - (ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.
 - (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.
 - (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.
- (5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.
 - (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.
 - (ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to publicly traded financial institutions where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith

- efforts to procure a favorable interest rate for the client.
- (iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
 - (iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.
 - (v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.
 - (vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.
 - (vii) For purposes of Rule 1.8(e), the term

“financial institution” shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent, or the compensation is provided by contract with a third person such as an insurance contract or a prepaid legal service plan;
 - (2) there is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client, or a court approves a settlement in a certified class action. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
 - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
 - (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
 - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
 - (2) contract with a client for a reasonable contingent fee in a civil case.

- (j) [Reserved].
- (k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument given in settlement of the client's claim, but only after the client has approved the settlement.
- (l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (k) that applies to any one of them shall apply to all of them.

RULE 1.9 DUTIES TO FORMER CLIENTS
(amended 3/1/2004)

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE
(amended 3/1/2004)

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any

one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES
(amended 3/1/2004)

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
 - (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a

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

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
 - (1) is subject to Rules 1.7 and 1.9; and
 - (2) shall not:
 - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or
 - (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).
- (e) As used in this Rule, the term “matter” includes:
 - (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
 - (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(amended 3/1/2004)

- (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter

in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other thirdparty neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer.
- (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
 - (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.
- (d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13 ORGANIZATION AS CLIENT

(amended 3/1/2004)

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can

act on behalf of the organization as determined by applicable law.

- (c) Except as provided in paragraph (d), if
 - (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
 - (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.
- (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.
- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(amended 3/1/2004)

- (a) When a client's capacity to make adequately considered decisions in connection with a

representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15 SAFEKEEPING PROPERTY

(amended 3/1/2004)

- (a) 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. Other property shall be identified as such and appropriately safeguarded. 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.
- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual

knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (f) A lawyer shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:
 - (1) No earnings from such an account shall be made available to a lawyer or firm.
 - (2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time except as described in (6) below.
 - (3) An interest-bearing trust account shall be established with any bank or savings and loan association or credit union authorized by federal or state law to do business in Louisiana and insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.
 - (4) The rate of interest payable on any interest bearing trust account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors.
 - (5) Lawyers or law firms depositing client funds in a trust savings account shall direct the depository institution:
 - A. To remit interest or dividend, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;
 - B. To transmit with each remittance to the Foundation a statement showing the name

of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and C. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

- (6) Any account enrolled in the program which has or may have the net effect of costing the IOLTA program more in bank fees than earned in interest over a period of time may, at the discretion of the program's administrator, be exempted from and removed from the IOLTA program. Exemption of an account from the IOLTA program revokes the permission to use the administrator's tax identification number for that bank account. Exemption of a pooled clients' trust account from the IOLTA program does not relieve an attorney or law firm from the obligation to maintain the property of clients and third persons separately, as required above, in a non-interest-bearing account.

IOLTARULES

(added 01/01/1991)

- (1) The IOLTA program shall be a mandatory program requiring the participating by attorneys and law firms, whether proprietorships, partnerships or professional corporations.
- (2) The program shall apply to all clients of the participation attorneys or firms whose funds on deposit are either nominal in amount or to be held for a short period of time.
- (3) The following principles shall apply to clients' funds which are held by attorneys and firms.
 - (a) No earnings on the IOLTA accounts may be made available to or utilized by an attorney or law firm.
 - (b) Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive.
 - (c) Clients' funds which are nominal in amount to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest (net of any service charge or fees) made payable to the Louisiana Bar Foundation, Inc., said

- payments to be made at least quarterly.
- (d) In determining whether a client's funds are nominal in amount, the lawyer or law firm shall take into consideration the following factors:
- (i) The amount of interest which the funds would reasonably be expected to earn during the period they are to be deposited;
 - (ii) The lawyer's cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit; and
 - (iii) The capability of financial institutions to calculate and pay interest to individual clients.
- The determination of whether funds to be invested could be utilized to provide a positive net return to the client rests in the sound judgment of each attorney or law firm. In making the determination, the attorney or law firm may assume that \$50.00 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income.
- (e) Although notification to clients whose funds are nominal in amount or to be held for a short period of time is not required, many attorneys may want to notify their clients of their participation in the program in some fashion. There is no impropriety in an attorney for the firm advising all clients of the members of the firm's advancing the administration of justice in Louisiana beyond their individual abilities in conjunction with other public-spirited members of their profession. In fact, it is recommended that this be done. Participation in the program will require communication to an authorized financial institution.
- (4) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest income derived from trust accounts in the IOLTA program. Interest earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
- (a) to provide legal services to the indigent and to the mentally disabled;
 - (b) to provide law-related educational programs for the public;
 - (c) to study and support improvements to the administration of justice, and
 - (d) for such other programs for the benefit of the

public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

- (5) The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and make recommendation to the Foundation with respect thereto.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(amended 3/1/2004)

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.

- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

RULE 1.17 [RESERVED]
(added 3/1/2004)

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT
(added 3/1/2004)

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
 - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

- (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.

COUNSELOR

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

RULE 2.2 (DELETED)
(amended 3/1/2004)

RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS
(amended 3/1/2004)

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

RULE 2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL
(added 3/1/2004)

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

ADVOCATE

**RULE 3.1 MERITORIOUS CLAIMS
AND CONTENTIONS**
(amended 3/1/2004)

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

RULE 3.2 EXPEDITING LITIGATION

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

RULE 3.3 CANDOR TOWARD THE TRIBUNAL
(amended 3/1/2004)

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding

shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

**RULE 3.4 FAIRNESS TO OPPOSING PARTY
AND COUNSEL**
(amended 3/1/2004)

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client, and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

**RULE 3.5 IMPARTIALITY AND DECORUM
OF THE TRIBUNAL**
(amended 3/1/2004)

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

RULE 3.6 TRIAL PUBLICITY
(amended 3/1/2004)

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), a lawyer may state:
 - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) information contained in a public record;
 - (3) that an investigation of a matter is in progress;
 - (4) the scheduling or result of any step in litigation;
 - (5) a request for assistance in obtaining evidence and information necessary thereto;
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not

initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

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

RULE 3.7 LAWYER AS WITNESS
(amended 3/1/2004)

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR
(amended 4/12/2004)

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
 - (1) the information sought is not protected from disclosure by any applicable privilege;
 - (2) the evidence sought is essential to the

- successful completion of an ongoing investigation or prosecution; and
- (3) there is no other feasible alternative to obtain the information;
 - (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS
(amended 3/1/2004)

A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.

**TRANSACTIONS WITH PERSONS
OTHER THAN CLIENTS**

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL
(amended 3/1/2004)

In representing a client, a lawyer shall not communicate about the subject of the representation with:

- (a) a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.
- (b) a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and
 - (1) who supervises, directs or regularly consults

with the organization's lawyer concerning the matter;

- (2) who has the authority to obligate the organization with respect to the matter; or
- (3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

RULE 4.3 DEALING WITH UNREPRESENTED PERSON
(amended 3/1/2004)

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in a matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS
(amended 3/1/2004)

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a writing that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing was not intended for the receiving lawyer, shall refrain from examining the writing, promptly notify the sending lawyer, and return the writing.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS
(amended 3/1/2004)

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to

ensure that the other lawyer conforms to the Rules of Professional Conduct.

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(amended 3/1/2004)

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

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

(amended 3/1/2004)

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

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and

knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(amended 3/1/2004)

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
 - (4) [Reserved]
 - (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(b).
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:
 - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(amended 4/1/2005)

- (a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
 - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, §14; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e)(1) A lawyer shall not:
 - (i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or
 - (ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, during the period of suspension, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.
- (e)(2) The registration form provided for in Section (e)(1) shall include:
 - i) the identity and bar roll number of the suspended attorney sought to be hired;
 - ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney throughout the duration of employment or association;
 - iii) a list of all duties and activities to be assigned to the suspended attorney during the period of employment or association;
 - iv) the terms of employment of the suspended attorney, including method of compensation;
 - v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney; and
 - vi) a statement by the employing attorney certifying that the order giving rise to the suspension of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney.
- (e)(3) For purposes of this Rule, the practice of law shall include the following activities:
 - i) holding oneself out as an attorney or lawyer authorized to practice law;
 - ii) rendering legal consultation or advice to a client;

- iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;
 - iv) appearing as a representative of the client at a deposition or other discovery matter;
 - v) negotiating or transacting any matter for or on behalf of a client with third parties;
 - vi) otherwise engaging in activities defamed by law or Supreme Court decision as constituting the practice of law.
- (e)(4) In addition, a suspended lawyer shall not receive, disburse or otherwise handle client funds.
- (e)(5) Upon termination of the suspended attorney, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE
(amended 3/1/2004)

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

PUBLIC SERVICE

RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE
(amended 3/1/2004)

Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this aspirational goal, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
- (3) participation in activities for improving the law, legal system or the legal profession.

RULE 6.2 ACCEPTING APPOINTMENTS

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

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

**RULE 6.5 NONPROFIT AND COURT-ANNEXED
LIMITED LEGAL SERVICES PROGRAMS**
(added 4/1/2004)

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
 - (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
 - (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

INFORMATION ABOUT LEGAL SERVICES

**RULE 7.1 COMMUNICATIONS CONCERNING
A LAWYER'S SERVICES**
(amended 3/1/2004)

- (a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the services of the lawyer's firm. For example, a communication violates this rule if it:
 - (i) Contains a material misrepresentation of fact or omits a fact necessary to make the communication, considered as a whole, not misleading; or
 - (ii) Contains a statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits; or
 - (iii) Contains a statement or implication that the lawyer can influence unlawfully any court, tribunal or other public body or official; or
 - (iv) In the case of a bankruptcy matter, fails to state clearly that the matter will involve a bankruptcy proceeding; or
 - (v) Compares the lawyer's or the law firm's services with any other lawyer's services, unless the comparison can be factually substantiated; or
 - (vi) Contains an endorsement by a celebrity or public figure without disclosing that (A) the endorser is not a client of the lawyer or the firm, if such is the case, and (B) the endorser is being paid or otherwise compensated for his or her endorsement, if such is the case; or
 - (vii) Contains a visual portrayal of a client by a

nonclient or a lawyer by a nonlawyer without disclosure that the depiction is a dramatization; or

- (viii) Contains misleading fee information. Every communication that contains information about the lawyer's fee shall be subject to the following requirements:
 - (A) Communications that state or indicate that no fee will be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.
 - (B) A lawyer who advertises a specific fee, hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days from the date it was last advertised; provided that for advertisements in print media published annually, the advertised fee shall be honored for a period not less than one year following initial publication.
- (b) In determining whether a communication violates this rule, the communication shall be considered in its entirety including any qualifying statements or disclaimers contained therein.
- (c) A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the lawyer.

RULE 7.2 ADVERTISING
(amended 3/1/2004)

A lawyer shall not give anything of value to a person for recommending the lawyer's services; provided, however, that

- (a) a lawyer may pay the reasonable and customary costs of an advertisement or communication not in violation of these rules, and
- (b) a lawyer may pay usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:
 - (i) refers all persons who request legal services to a participating lawyer;
 - (ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and
 - (iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(amended 3/1/2004)

- (a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.
- (b) In instances where there is no family or prior professional relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these rules:
 - (i) A copy or recording of each such communication and a record of when and where it was used shall be kept by the lawyer using such communication for three (3) years after its last dissemination.
 - (ii) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.
 - (iii) In the case of a written communication:
 - (A) such communication shall not resemble a legal pleading, notice, contract or other legal document and shall not be delivered via registered mail, certified mail or other restricted form of delivery;
 - (B) the top of each page of such communication and the lower left corner of the face of the envelope in which the communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication, provided that if the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet; or in the case of an electronic mail communication, the subject line of the communication states that "This is an advertisement for legal services"; and
 - (C) if the communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom

the communication is addressed or a relative of that person, such communication shall not be initiated by the lawyer unless the accident or disaster occurred more than 30 days prior to the mailing of the communication.

- (iv) In the case of a recorded communication, such communication shall be identified specifically as an advertisement at the beginning of the recording, at the end of the recording and on any envelope in which it is transmitted in accordance with the requirements of subparagraph (iii)(B) above.
 - (v) If the communication is prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of the intended recipient, such communication shall disclose how the lawyer obtained the information prompting the communication.
- (c) Notwithstanding anything herein to the contrary, a lawyer shall not solicit professional employment from a prospective client through any means, even when not otherwise prohibited by these rules, if:
- (i) the prospective client has made known to the lawyer a desire not to be solicited; or
 - (ii) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence.

RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE

(amended 3/1/2004)

A lawyer shall not state or imply that the lawyer is certified, or is a specialist or an expert, in a particular area of law, unless such certification, specialization or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization.

RULE 7.5 FIRM NAMES AND LETTERHEADS

(amended 3/1/2004)

- (a) A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates the provisions of these rules. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association. A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer's letterhead, business cards, office signs and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

- (b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but the identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.
- (c) The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communication on its behalf during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.
- (e) If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession.

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

(amended 3/1/2004)

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;
- (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; or
- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(amended 5/29/2004)

- (a) 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.
- (b) A lawyer who knows that a judge has committed a violation of the applicable rules of judicial conduct that raises a question as to the judge's honesty, trustworthiness or fitness for office shall inform the Judiciary Commission. Complaints concerning the conduct of federal judges shall be filed with the appropriate federal authorities in accordance with federal laws and rules governing federal judicial conduct and disability.
- (c) This rule does not require the disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program or while serving as a member of the Ethics Advisory Service Committee.

RULE 8.4 MISCONDUCT

(amended 3/1/2004)

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 especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
- (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

RULE 8.5 JURISDICTION

- (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer

not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless

the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Overview of the Disciplinary Process: From Complaint Through Louisiana Supreme Court Opinion

The following is a general description of the attorney discipline process from the inception of a complaint through the imposition of the sanction by the court. Most complaints do not result in a sanction. Many complaints result in the imposition of admonitions or reprimands which are imposed by the Louisiana Attorney Disciplinary Board rather than the court. This overview, however, pertains to those complaints which travel completely through the system and result in a suspension or disbarment which can only be imposed by the court.

The Disciplinary System

The Louisiana Supreme Court has the exclusive right to regulate lawyers who practice in this state under the authority of Article V, Section 5(A) and (B), of the Louisiana Constitution of 1974 and the inherent power of the court. The rules for lawyer discipline are set forth in Louisiana Supreme Court Rule XIX (effective April 1, 1990), wherein the court created the statewide agency called the Louisiana Attorney Disciplinary Board which consists of the board, hearing committees, disciplinary counsel and staff. *Rule XIX, § 2A*. While the agency is a unitary one, the prosecutorial and adjudicative functions are separated within the agency:

- the investigative and prosecutorial functions directed by a lawyer employed by the board and performed by employees of the agency, the Office of Disciplinary Counsel; and
- the adjudicative functions conducted by the Disciplinary Board consisting of 10 practicing lawyers and four public members appointed by the Louisiana Supreme Court. *Rule XIX, § 2A, B*.

Further, the Disciplinary Board is divided into an adjudicative committee of nine members and an administrative committee of five members. The adjudicative committee consists of three panels with two lawyer members and a public member on each board panel. *Rule XIX, § 2G*. While the Disciplinary Board serves an appellate function in the system, smaller hearing committees serve as the trier of fact.

There are approximately 51 hearing committees around the state. Each hearing committee consists of two lawyer members and one public member. One of the lawyer members is appointed as chair of the committee. Hearing committee members serve for three years and may not serve more than two consecutive terms. *Rule XIX, § 3A-B*. The hearing committees have assigned powers and duties. Primarily, the committees conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status. Following the hearings, the committees submit to the board written findings of fact, conclusions of law and recommendations for proposed discipline. Hearing committees also review dismissals of complaints by the Office of Disciplinary Counsel upon a request for review by the complainant. The chair of the hearing committee has additional duties, such as conducting pre-hearing conferences, ruling on pre-hearing motions and reviewing admonitions proposed by disciplinary counsel and accepted by a respondent. *Rule XIX, § 3E(1)-(4)*.

The Disciplinary Process

A complaint is any information which comes to the attention of the Office of Disciplinary Counsel concerning a lawyer subject to the jurisdiction of the agency (*i.e.*, lawyers admitted to practice in the state, lawyers specially admitted by a court for a particular proceeding, lawyers not admitted but who render or offer to render any legal services in the state, and former judges who have resumed the status of lawyer). Every complaint is screened by the Office of Disciplinary Counsel to determine whether the information relates to lawyer misconduct or incapacity. If the information alleges facts which, if true, would constitute misconduct or incapacity, the complaint is investigated unless in the discretion of disciplinary counsel the matter qualifies for referral to the Louisiana State Bar Association's Practice Assistance and Improvement Program (Attorney-Client Assistance Program). *Rule XIX, § 11A*. Otherwise, the complaint is dismissed.

If an investigation is conducted, deputy disciplinary counsel forwards the complaint to the respondent, informs him that the Office of Disciplinary Counsel has received a complaint, and requests a response. Deputy disciplinary counsel then conducts its investigation and evaluates the matter. After completing the investigation, deputy disciplinary counsel may:

- suggest that respondent agree to an admonition, a private, confidential sanction issued by the board (although complainant is informed that respondent has been admonished);
- request approval by a hearing committee to file formal charges (this approval essentially constitutes a determination of probable cause by the committee);
- petition for respondent's transfer to disability inactive status which, if ordered by the court, would result in a stay of the proceedings until the disability is resolved;
- close the case (complainants have 30 days to appeal closures); or
- in some instances of minor misconduct, the subject attorney may be referred into the Louisiana State Bar Association's Diversion Program, an educational/monitoring program coordinated by practice assistance counsel. The primary element of the diversion program is an Ethics School.

Assuming that formal charges are approved, disciplinary counsel will serve or attempt to serve the charges on respondent at his primary registration statement address. Respondent has 20 days after service in which to respond (unless a continuance is requested and granted) with his answer to the formal charges. If respondent answers, a hearing on the merits is set. If there is no answer within the prescribed period, the factual allegations contained within the formal charges are deemed admitted and proven by clear and convincing evidence. The only issue at that juncture is for the committee then to determine the appropriate sanction based on the charges deemed admitted.

The hearing committee order deeming the charges admitted shall be served on respondent. He then has 20 days from the mailing of the order to request that the "deemed admitted" order be recalled upon a showing of good cause. Additionally, even when the formal charges are deemed admitted and the order is not recalled, respondent may submit mitigating evidence and/or request a hearing in mitigation.

Whether there is a hearing on the merits or merely a determination of sanction based on charges deemed admitted, the hearing committee will render an opinion recommending a certain sanction. The hearing committee opinion is served on the respondent and disciplinary counsel. Either may object to the recommended sanction, findings of fact and/or law. The hearing committee report is then reviewed by one of three panels of the adjudicative board and oral argument is conducted before the board panel. An opinion from the entire nine-member adjudicative committee of the board is rendered recommending certain findings and sanction to the Louisiana Supreme Court. The board opinion is filed with the court and served on both parties. Again, either side may object and, if the court receives objections, the case usually will be docketed for oral argument.

In any event, the court renders the final decision imposing the sanction, usually in the form of a *per curiam* opinion. Sanctions from the court may include a public reprimand,¹ suspension or disbarment. The court also could order the entire matter dismissed finding that no sanction is appropriate. Probation may follow a suspension or reprimand, or be imposed in lieu of discipline in rare circumstances. After the court has rendered its opinion, either side may file a motion for rehearing, but these are rarely granted.

¹ Although the board may order a reprimand without the case going up to the court, if the board has recommended a suspension or disbarment which requires filing the recommendation with the court, the court can always lessen the sanction to a reprimand. Respondents and the Office of Disciplinary Counsel also can object to the board's imposition of a reprimand and seek review by the Louisiana Supreme Court.

10 Frequently Alleged Rule Violations

1. Lack of communication.
2. Lack of diligence.
3. Misrepresentation/dishonesty.
4. Unearned fees.
5. Scope of representation/failure to recognize client authority.
6. Failure to promptly release a client file/client property.
7. Improper funds handling.
8. Ineffective assistance of counsel.
9. Conflict of interest.
10. Unreasonable/excessive fees.

The Office of Disciplinary Counsel Gets More Than 3,000 Complaints a Year!

When a complaint arrives, what should I do?

1. **Don't panic.** More than 85 percent of complaints are dismissed. Review the complaint calmly and completely.
2. **Don't ignore the complaint.** The worst thing an attorney can do is to stick his head in the sand and ignore a complaint. If disciplinary counsel doesn't receive a substantive response to its inquiry within 15 days, it will often issue a subpoena for the attorney's appearance and take his sworn statement. A failure to initially reply may be treated as independent misconduct in violation of Rule 8.1 of the Rules of Professional Conduct (see page 101) and can result in sanction even if the respondent's initial file has been dismissed on the merits.
3. **Do not attack the messenger.** Many attorneys are furious when they first receive what they believe may be a spurious complaint. However, disciplinary counsel is obligated to investigate all complaints which allege misconduct. Disciplinary counsel does not know there is nothing to the complaint until the attorney provides counsel with that information. Generally, the Office of Disciplinary Counsel wants to close files as soon as possible.
4. **Do you need help?** Upon receiving the complaint, make a reasoned determination whether you should seek counsel to represent you in the investigation. Most complaints are dismissed with or without the respondent obtaining counsel. At the very least, you should consult with another attorney whose opinion you respect for an independent review of the complaint.
5. **Cooperate with disciplinary counsel as much as possible.** As stated earlier, failure to cooperate can be considered as independent misconduct. It also can be used as aggravating evidence on the issue of sanction. Answer queries and forward any documentation requested as soon as possible. Submit any documentation that can help resolve your complaint in your initial response.
6. **Keep the lines of communication open.** Most complaints are by former or current clients. If the complaint is one by the client, it usually involves issues of communication and diligence. Unless your client now has new counsel, there may be no reason you cannot still be diligently representing the client. If you keep the complainant reasonably informed and complete his matter during the pendency of the investigation, the disciplinary counsel may dismiss the matter based on the client's satisfaction. Also, consider enrolling in the Louisiana State Bar Association Legal Fee Dispute Resolution Program if the matter appears to be a fee dispute. (See page 110.)
7. **Be patient.** Sometimes investigations take longer than expected. Further, even if the matter is dismissed, the complainant can appeal the dismissal. Remain cooperative and reasonable throughout the process even when you do not feel like doing so.
8. **Finally, do not retaliate against the client or complainant.** Respondents are forbidden under Louisiana Supreme Court Rule XIX from suing a complainant for the filing of a complaint against them, whether the complaint has merit or not.

When Formal Charges Are Filed Against Me, What Should I Do?

1. As they say, the lawyer who represents himself has a fool for his client. Take that advice to heart. Yes, representing yourself is cheaper in the short run. But losing your license is a high price to pay in the end. It is virtually impossible for a lawyer to represent himself properly. There are many top-notch lawyers who represent other attorneys in the disciplinary system.
2. Notify your malpractice carrier promptly of the complaint. Your policy may cover all or part of your legal expenses.
3. Answer the charges within the prescribed time limit of 20 days. If you need additional time, request an extension of time from the committee chair. The disciplinary counsel and committee chair will rarely oppose reasonable requests for additional time. If you fail to answer, the charges can be deemed admitted against you.
4. Cooperate and participate in discovery. Under Louisiana Supreme Court Rule XIX, there are at least 60 days in which to utilize discovery before the matter gets to trial. Few respondents utilize discovery and, as a result, they do not know what evidence disciplinary counsel has against them.
5. Comply with the provisions of Louisiana Supreme Court Rule XIX concerning submissions and time limitations. Hearing committee chairs are very similar to judges. They don't appreciate or respect late answers, dilatory and incomplete discovery, and missing pre-hearing memoranda. Under Rule XIX, both parties are obligated to file pre-hearing memoranda within 10 days of the hearing. Disciplinary counsel always submits it. Respondents often do not. However, the pre-hearing memorandum is one of the first places where respondents can get their side of the story before the hearing committee.
6. Utilize evidence of mitigation as much as possible. Mitigating factors can be:
 - Absence of a prior disciplinary record.
 - Absence of dishonest or selfish motive.
 - Personal or emotional problems.
 - Timely good faith effort at restitution or rectifying consequences of misconduct.
 - Cooperation with disciplinary proceedings.
 - Inexperience in the practice of law.
 - Character or reputation.
 - Physical or mental disability.
 - Delay in disciplinary proceedings.
 - Interim rehabilitation.
 - Imposition of other penalties or sanctions.
 - Remorse.
 - Remoteness of prior offenses.

Remorse and restitution are especially important.

7. Soften aggravating factors as much as possible. Aggravating factors can be:
 - Prior disciplinary record.
 - Dishonest or selfish motive.
 - Patterns of misconduct.
 - Multiple offenses.
 - Bad faith obstruction of disciplinary proceedings.
 - Submission of false evidence during the disciplinary process.
 - No remorse.
 - Vulnerability of victim.
 - Substantial experience in the practice of law.
 - No restitution.

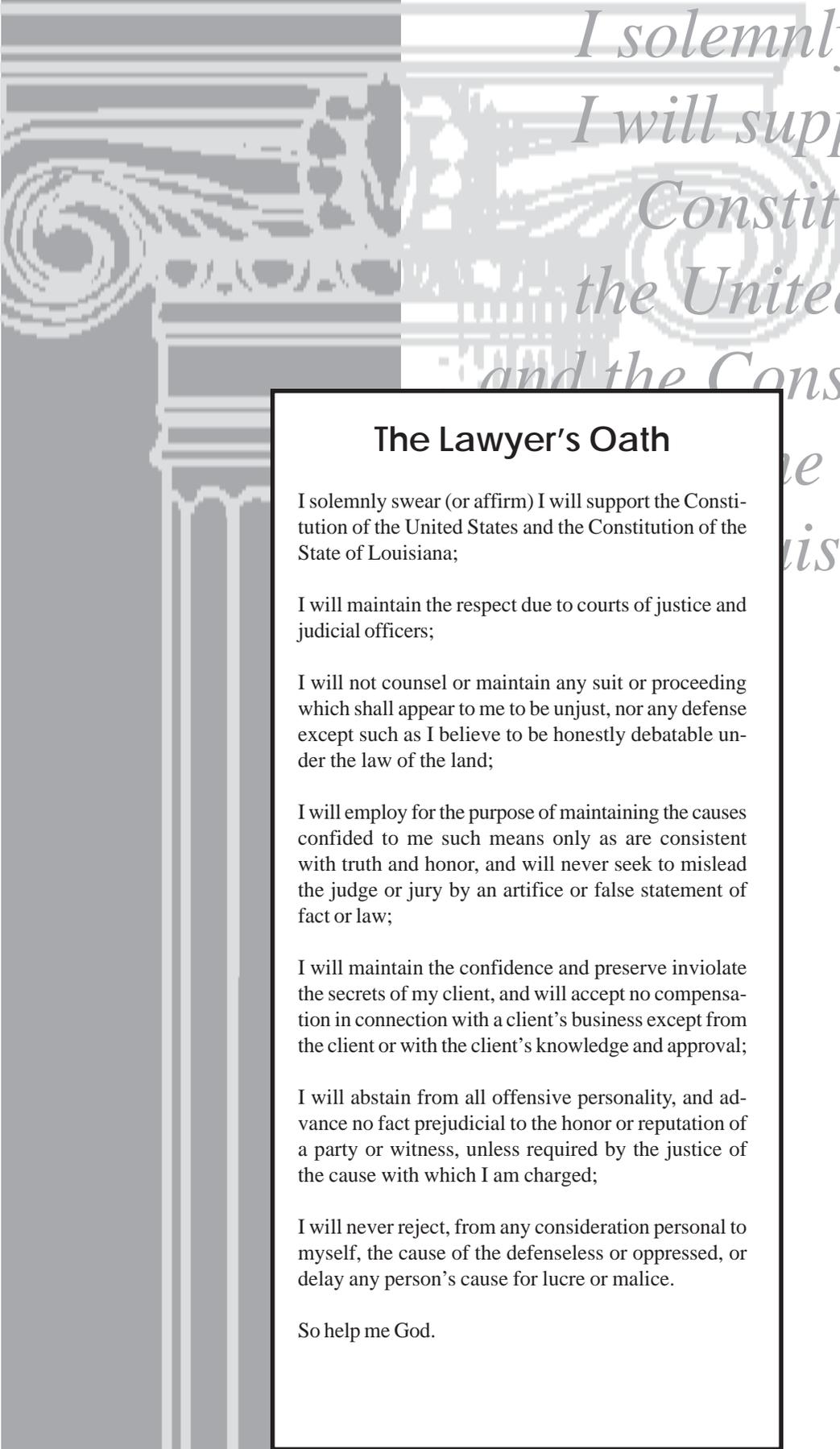
Again, if possible, give restitution and show remorse.

8. Consider consent discipline. Consents can often be worked out with disciplinary counsel provided the respondent will admit to all or part of the misconduct. If the evidence is clearly against you, consent may be a way to get a slightly better sanction.

9. Show up. It is amazing how many respondents:

- Fail to file an initial response.
- Fail to file an answer.
- Fail to show up for the hearing.

Hearing committees, the board and the court take very dim views of the attorney who clearly has abandoned his practice. The lawyer who does not care enough about his license to participate in the process will not keep that license for long.



*I solemnly swear
I will support the
Constitution of
the United States
and the Constitution
of the State of
Louisiana. . .*

The Lawyer's Oath

I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

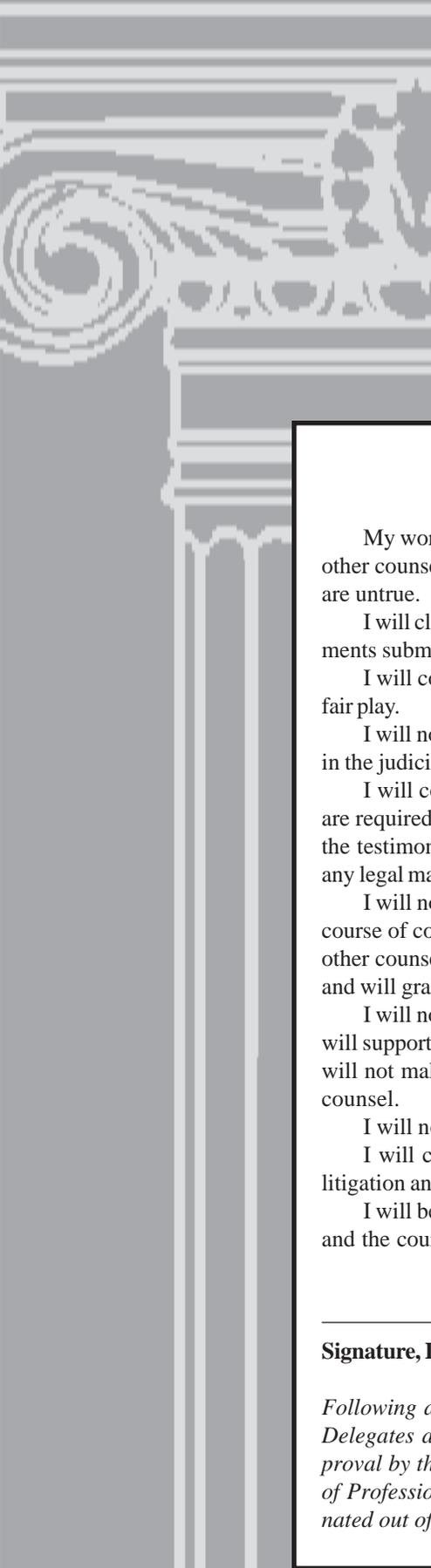
I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

So help me God.



*My word is my
bond. I will never
intentionally
mislead the court or
counsel.*

Code of Professionalism

My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.

I will clearly identify for other counsel changes I have made in documents submitted to me.

I will conduct myself with dignity, civility, courtesy and a sense of fair play.

I will not abuse or misuse the law, its procedures or the participants in the judicial process.

I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.

I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.

I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.

I will not use the threat of sanctions as a litigation tactic.

I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.

I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Signature, Louisiana State Bar Association Member

Following approval by the Louisiana State Bar Association House of Delegates and Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated out of the Professionalism and Quality of Life Committee.

Additional Resources for Louisiana Lawyers

Louisiana State Bar Association Services

The Louisiana State Bar Association is located at:

Louisiana State Bar Association
601 St. Charles Ave. • New Orleans, La. 70130
(800)421-5722 • (504)566-1600 • *LSBA.org*

Alcohol and Drug Abuse Hotline/Lawyers Assistance Program

(866)354-9334

Confidential Help for Lawyers and Judges

Have you ever wished that you could sit down and talk in complete confidence with someone about your law practice; someone whose drinking or drug problem may have been worse than yours; someone who can tell you what drinking or the use of drugs did to her practice, family and health; or perhaps just someone to listen with an understanding heart rather than with judgment and condemnation?

Have you ever thought what a relief it would be, without any cost whatsoever, to be able to talk frankly with just such a person — a person who is solving problems just like yours and is living happily and usefully in so doing?

Now you can by calling the Lawyers Assistance Program, Inc. hotline (see number above). Telephone anytime in confidence.

Client Assistance Fund (formerly the Client Protection Fund)

Compensates clients who lose money or property due to their lawyers' dishonest conduct. The fund can reimburse clients up to a certain amount for thefts by a lawyer. For further information, contact Cheri Cotogno Grodsky, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722.

Ethics Advisory Service Committee

Encourages ethical lawyer conduct by providing informal non-binding ethics opinions. For further information, contact Richard P. Lemmler, Jr., Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722, ext. 144.

Fastcase (online legal research)

Fastcase, a Web-based legal research program, is available free to members of the Louisiana State Bar Association. The program provides online access to millions of cases, statutes and regulations via the American Law Library. Users can search all jurisdictions at one time, resulting in the most often cited references from the database. Inquiries can be made using keywords, Boolean phrases and citations. Fastcase also features dual-column printing and hyperlinked citations. Access the program via the LSBA's Web site, www.lsba.org/Member_Services/fastcase.asp.

Legal Fee Dispute Resolution Program

Although most attorney-client relationships are concluded without fee disputes, disputes and controversies will occasionally arise regarding fees. The dispute may be between the lawyer and the client or it may be between lawyers who have been involved in a case. Such disputes could, of course, be resolved through the courts; however, there are alternatives to going to court which are intended to provide quick, low cost and confidential solutions. These are generally called alternative dispute resolution programs or "ADR" programs.

The Louisiana State Bar Association sponsors one program for the resolution of legal fee disputes through impartial arbitration. Some local bar associations may sponsor similar programs and the LSBA encourages their use. In addition, several private organizations sponsor dispute resolution programs. For further information or assistance regarding the LSBA program, contact William N. King, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722, ext. 109.

Louisiana State Bar Association's Web Site, *www.lsba.org*, and E-Newsletter, Louisiana Bar Today

Check the LSBA's Web site for additional resources and services offered to members, including information on upcoming CLE programs. Sign up to receive the free e-newsletter, Louisiana Bar Today, posted every Tuesday. To sign up, go to: *www.lsba.org/publications/louisiana_bar_today.asp*.

Practice Assistance and Improvement Committee

The mission of the Practice Assistance and Improvement Committee is to serve the bar and the public in furtherance of the LSBA goals of prevention and correction of lawyer misconduct and assistance to victims of lawyer misconduct by evaluating, developing and providing effective alternatives to discipline programs for minor offenses, educational and practice assistance programs, and programs to resolve minor complaints and attorney-client disputes.

If you need assistance with your practice, contact Cheri Cotogno Grodsky, Director of Professional Programs/Practice Assistance Counsel; William N. King, Practice Assistance Counsel; or Eric K. Barefield, Deputy Practice Assistance Counsel, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722, or e-mail *cgrodsky@lsba.org*, *bking@lsba.org* or *ebarefield@lsba.org*.

Other Lawyer Resources

Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice 2004*, 2nd Edition
(Louisiana State Bar Association, 2004).

Gilsbar, Inc.

The best way to protect yourself from losses is to prevent them in the first place. Gilsbar, under the auspices of the Malpractice Insurance Committee, offers a number of loss prevention programs specifically designed for attorneys.

The Office of Loss Prevention can be contacted at:

Gilsbar, Inc., Office of Loss Prevention

P.O. Box 998, Covington, La. 70434 • (985)898-1785 • fax (985)898-1636 • *lossprevention@gilsbar.com* • *Gilsbar.com*

American Bar Association

American Bar Association Service Center

541 N. Fairbanks Ct., Chicago, Ill. 60611-3314 • (312)988-5522 • *abanet.org*

American Bar Association Center for Professional Responsibility

The center provides programs and educational materials to help all lawyers manage their practice ethically and professionally.

ABA Center for Professional Responsibility

541 N. Fairbanks Ct., Chicago, Ill. 60611-3314 • (312)988-5304 • *ctrprofresp@abanet.org* • *abanet.org/cpr/*

Louisiana Attorney Disciplinary Board

Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002

(504)834-1488 • (800)489-8411 • fax (504)834-1449 • *ladb@ladb.org* • *ladb.org*

Office of Disciplinary Counsel

Charles B. Plattsmier, Chief Disciplinary Counsel

Ste. 607, 4000 S. Sherwood Forest Blvd., Baton Rouge, La. 70816

(225)293-3900 • (800)326-8022 • fax (225)293-3300

Louisiana Supreme Court

301 Loyola Ave., New Orleans, La. 70112

(504)568-5707 • *lasc.org*

Judiciary Commission of Louisiana

Steve Scheckman, Special Counsel

601 St. Charles Ave., New Orleans, La. 70130 • (504)568-8299 • *OSC@lajas.org*

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