

PRACTICE AID GUIDE

The Essentials of Law Office Management

Published by the Louisiana State Bar Association and
underwritten by Gilsbar L.L.C. and CNA Insurance Company



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.



Gilsbar

Enhancing Business. Improving Lives.

These materials are available online at www.lsba.org.

PRACTICE AID GUIDE: THE ESSENTIALS OF LAW OFFICE MANAGEMENT. Copyright © 2004, 2017 by Louisiana State Bar Association. Printed in the United States of America. All rights reserved. Published by the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Underwritten by Gilsbar L.L.C., P.O. Box 998, Covington, Louisiana 70434, and CNA Insurance Company, CNA Plaza - 333 S. Wabash Avenue, Chicago, Illinois 60685.

ISBN 0-9707819-3-8

Table of Contents

	Introduction to the 2017 Edition: The Essentials of Law Office Management	7
Chapter 1	Establishing the Attorney-Client Relationship.....	11
	Additional Resources	13
	Establishing the Attorney-Client Relationship Checklist	14
	Consultation Form.....	15
	Sample Engagement Letter (General).....	17
	Sample Non-Engagement Letter (General)	19
	General Information Questionnaire.....	20
Chapter 2	Conflicts of Interest.....	29
	Additional Resources	33
	Conflicts of Interest Checklist	34
	Conflicts of Interest Search Form	35
	Conflicts of Interest Search Results Memo	38
	Sample Conflict of Interest Non-Engagement Letter.....	39
	Sample Conflict of Interest Informed Consent Letter.....	40
	Sample Conflict of Interest Disengagement Letter	41
	Sample Conflict of Interest Financial Assistance Agreement	42
Chapter 3	Fees, Billing and Trust Accounts.....	47
	Additional Resources	55
	Contingency Fee Agreement	56
	Flat Fee Agreement.....	59
	Hourly Fee Agreement with Advance Deposit.....	62
	Hourly Fee Agreement with Advance Deposit (Domestic).....	65
	Sample Invoice.....	69
	Sample Settlement Statement	70
	Approval and Receipt	71
	Gilsbar Money Management Map	72
Chapter 4	Maintaining the Attorney-Client Relationship and Law Office Procedure.....	75
	Sample Client Activity Letter.....	78
	Sample Email Communication Letter.....	79
	Authorization for Release of Information from Former Attorney	80
	HIPAA Authorization to Disclose Protected Health Information	81
	Authorization for Release of Financial Records	83
	Sample Court Appearance or Hearing Letter	84
	Sample Deposition Scheduling Letter	85
	Deposition Instructions to Client	86
	Confidentiality Agreement	87

Table of Contents

Chapter 5	File Management	91
	Additional Resources	95
	General File Management Checklist	92
	Checklist for Opening Files.....	93
	Checklist for Closing Files	94
	Client File Surrender Letter.....	96
Chapter 6	Calendar Control	99
	Additional Resources	103
	General Checklist	101
	Louisiana Prescription Quick Reference Card	194
	Calendar Control System Installation Checklist	102
	Calendar Control Evaluation Checklist.....	103
Chapter 7	Termination of the Representation	107
	Checklist for Termination of the Representation	109
	Sample Disengagement Letter (Client Dissatisfaction)	110
	Sample Disengagement Letter (Non-Payment).....	111
	Sample Disengagement Letter (Conclusion of Representation)	112
Chapter 8	Ethics and Professionalism	115
	Louisiana Rules of Professional Conduct	116
	Overview of the Disciplinary Process	150
	10 Frequently Alleged Rule Violations	152
	What to Do When a Complaint Arrives.....	153
	What to Do When Formal Charges Are Filed	154
	Publications Subcommittee	155
	LSBA Ethics Service	156
	The Lawyer's Oath.....	157
	Code of Professionalism	158
	Louisiana State Bar Association Committee on the Profession	159
Chapter 9	Lawyer Advertising & Solicitation Rules	163
	Lawyer Advertising Frequently Asked Questions.....	163
	Filing Application.....	169
	Filing Application Addendum	171
Chapter 10	Disaster Planning	175
	Disaster Planning Additional Resources.....	179
Chapter 11	Closing Your Practice	183
	Additional Resources	187
	Voluntarily Closing Your Practice Checklist.....	185
	Involuntarily Closing Your Practice Checklist	186
Chapter 12	Additional Resources for Louisiana Lawyers	191
	Louisiana Prescription Quick Reference Card	194
	Acknowledgments.....	202

INTRODUCTION

The Essentials of Law Office Management

Introduction to the 2017 Revision

The committee members who compiled this little book are grateful to the Bar members who took the time to give us feedback. We have tried to incorporate all your suggestions in this revision.

Our purpose in writing the first edition in 2004 was to distill the subject to its essentials, primarily for the use of attorneys in solo and small-firm practices. We have kept things as simple as possible in this revision. This book is 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 you must do with each case or transaction that comes into your offices. You must get off to a good start with the client, which includes avoiding conflicts of interest. You 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 your 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 you an exemplar 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. Failure to do these essentials will often lead to a malpractice suit against you. So in addition to implementing the tips found in this guide, it's a good idea to have professional liability insurance, which can be obtained through the Bar-sponsored carrier or any other carrier licensed to sell malpractice insurance in the state.

In this version of the guide, we provide you with more sample forms that can be adapted to your practice. We also 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.

Many changes here were driven by technological change. We tried to provide ideas that work with the newest tools, but also attempted to avoid recommendations so specific that they would be obsolete by the time you need them. New features for this 2017 edition include:

1. A Chapter on Disaster Planning in the wake of Katrina and other possible disasters.
2. In Section 6, Calendar Control, we've added recommendations for cloud calendars, often free, that work on computers or smartphones and allow you to schedule a court date or appointment on the fly.
3. A Chapter on the proper ways of closing your practice.
4. A section on lawyer advertising and solicitation since the Rules of Professional Conduct were amended in 2008.

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.

Any corrections or other updates over the next few years will be available on the Louisiana State Bar Association's website, www.lsba.org.

The Practice Assistance and Improvement Committee
of the Louisiana State Bar Association

Chapter 1

Establishing the Attorney-Client Relationship

Additional Resources

Establishing the Attorney-Client Relationship Checklist

Consultation Form

Sample Engagement Letter (General)

Sample Non-Engagement Letter (General)

General Information Questionnaire

ESTABLISHING
the Attorney-Client Relationship

Chapter 1

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, agrees to give or gives the advice or assistance. **If the client reasonably believes that there is an attorney-client relationship, then the lawyer has professional obligations to that client.** Further, lawyers also have certain professional obligations to non-clients, including former clients (see La. Rule of Prof. Conduct 1.9) and prospective clients who ultimately do not retain the lawyer (see La. Rule of Prof. Conduct 1.18) 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 the representation. Because of the importance of this inquiry, Conflicts of Interest are addressed in a separate section in this Guide.

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 prospective client usually has with your office is by telephone, although many individuals now initially contact potential attorneys via the internet including email. Courteous, respectful treatment of all callers is important. Likewise, a prompt response to an email from a client or potential client is important. Whether the initial contact was via telephone or email, the receptionist or designated staff member should complete a Consultation Form 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 time and the necessary competence to handle the case. If not, you should refer the prospective client to multiple other attorneys, if possible, and explain that the prospective client should act without delay to protect his or her rights. 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 an ongoing process, but many conflicts can be avoided by initial screening.

Interview

The initial interview is not just a way for the prospective 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 competence to do so. It is also a key opportunity to discuss the scope of the representation of the potential client. You should have the prospective 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 attorney-client 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. However, 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 that you cannot guarantee a particular result;
- you understand exactly what it is that the client wants you to do.

Setting reasonable client expectations is also an essential component of the communication process. Make sure your new client knows and understands:

- the client knows and understands any limitations on the scope of the representation;
- you practice in a professional fashion, are civil to opposing counsel, and that the client should not expect you to employ "Rambo" litigation tactics;
- that while you will make every effort to make yourself available for your client when he or she calls, that may not always be possible because you are expected to address the concerns of other clients and that his or her case is not the only case on your docket;
- explain your policy of communicating regularly—including returning telephone calls and responding to emails—and live up to your policy;
- from the outset of the matter, make sure your client understands the strengths and weaknesses of his or her case;
- explain what the client can and cannot expect over the course of the matter, e.g., litigation is costly, risky, uncertain, and time-consuming; and
- never promise a certain result, e.g., an acquittal in a criminal case or a dollar amount of recovery in a personal injury case. It is always best to manage expectations (without promising, of course) and over-deliver.

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 multiple 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 check¹, and gathered information and impressions through an initial interview, you must tell the client whether you will represent her, **preferably in writing**. That writing should clearly define the scope of the attorney-client relationship. The best practice is to discuss the scope of the representation with the potential client in the initial consultation and then to confirm that in writing in the engagement letter. View sample letters of engagement and non-engagement on the internet or later in this chapter.

All clients should receive a written contract and/or engagement letter. The engagement letter welcomes a new client, confirms the scope of the representation, and clearly sets forth the essential terms applicable to the engagement including the fee arrangement. The engagement letter may also include useful provisions such as the client’s consent to electronic or cloud storage of file materials and authorization to communicate with the client via email. 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. See La. Rule of Prof. Conduct 1.5(c).** Fee arrangement letters can be found in the Fees and Billing Section of this Guide.

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.² 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.

Additional Resources

- ▶ Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice*, available at www.lalegaethics.org.
- ▶ 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).
- ▶ Plattmier, Charles B., *Ethics: De-mystifying the ODC*, available at <http://files.lsba.org/documents/Committees/DemystifyingDisciplinaryProcess.pdf>

1. See Chapter 2, Conflicts of Interest.

2. A non-engagement letter sent to a client reduces the chance of inadvertent formation of an attorney-client relationship because a purported client’s belief that the relationship exists is less reasonable when that client has been advised that no such relationship exists. See *St. Paul Fire & Marine Ins. Co. v. GAB Robins N. Am., Inc.*, 999 So. 2d 72, 77 (La. App. 4 Cir. 2008) (“The existence of an attorney-client relationship turns largely on the client’s subjective belief that it exists. ... However, a person’s subjective belief that an attorney represents him must be reasonable under the circumstances.”).

Establishing the Attorney-Client Relationship Checklist

Use this checklist to ensure that you are taking all the proper 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, but still make 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 additional representation.

Appointment Date & Time: _____

Interviewing Attorney: _____

Consultation Form¹

TO BE COMPLETED BY STAFF MEMBER FOR PROSPECTIVE CLIENT²:

Date: _____

Name: _____

Phone Number: _____

Email: _____

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 Checked: _____ OK? _____

Conflicts List Checked: _____ OK? _____

Non-Client Interview List Checked³: _____ 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 CONSULTATION⁴:

Client: _____ DOB: _____ SS#: _____

Address: _____

Home Telephone: _____ Cell: _____ Fax: _____

Personal email: _____ Work email: _____

Client's Employer: _____

Client's 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.

In the interest of facilitating our services to you, we may communicate by facsimile or email transmission, send data over the internet, store electronic data via computer software applications hosted remotely on the internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to you may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same.

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

To enable us effectively to render the services outlined above, you agree to cooperate fully with us in all respects relating to the matters for which we have been retained, to fully and accurately disclose to us all facts that may be relevant to those matters or that we may otherwise request, and to keep us apprised of developments relating to the matters. We agree to do the same. You also will make yourself reasonably available to attend meetings, hearings, and other proceedings as and when necessary. Your responsibilities will also include approving negotiation and litigation strategy; approving causes of action and parties to any litigation; and determining acceptable terms of any compromise, settlement or agreement. To help you with your responsibilities, we agree to keep you apprised of what is transpiring in your matter by providing regular status reports.

Continued

Either at the beginning or during the course of our representation, we may express our opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any member or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and must not be construed by you as a promise or guarantee of any particular result. No guarantees are possible in matters such as this.

If these terms and conditions expressed in this letter are acceptable to you, please confirm your acceptance by signing a copy of this letter in the space provided below and returning it to me. Should you wish to discuss any aspect of the letter or any of the terms of our proposed engagement, please feel free to call me at _____. Thank you for choosing our firm to represent you in this matter.

Sincerely,

FIRM NAME

Attorney Name

ACCEPTED AND AGREED:

Jane J. Client

Date: _____

Enclosure

(Note: See fee agreements in Fees and Billing Section of Guide)

Sample Non-Engagement Letter (General)¹

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

It is in your best interest 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,

FIRM NAME

Attorney Name

¹ While not required, you may wish to consider in some instances not only mailing this letter U.S. Mail, but also mail by U.S. Mail Certified Return Receipt Requested.

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 _____

Social Security Number _____

Present home address _____

Home Telephone: _____ Cell: _____ Fax: _____

Personal email: _____ Work email: _____

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

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:

Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

Continued

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: _____

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.

Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

Continued

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 _____

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.

Continued

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:

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

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

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

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Name _____

Address _____

Nature of treatment _____ Still under care? _____

Chapter 2

Conflicts of Interest

Additional Resources

Conflicts of Interest Checklist

Conflicts of Interest Search Form

Conflicts of Interest Search Results
Memo

Sample Conflict of Interest Non-
Engagement Letter

Sample Conflict of Interest Informed
Consent Letter

Sample Conflict of Interest
Disengagement Letter

Sample Conflict of Interest Financial
Assistance Agreement

CONFLICTS
of Interest

Chapter 2

Conflicts of Interest

Conflicts of interest can pop up at any time. The best practice 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 informed consent is 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 possibly malpractice claims. A non-engagement letter or a disengagement letter (see samples) 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 currently represents or previously represented in some other matter. Former clients also present a conflict with the matters one substantially related to one another.

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 entities, 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).
- Further, a conflict may arise in the context of a hidden interest (i.e., romantic or sexual involvement with a client). 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 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 lawyer 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 interests 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 and 1.3. See also Restatement (Third) of the Law Governing Lawyers § 122(2)(c) (2000). For this reason, representing opposing parties in the same litigation is uniformly prohibited. This conflict cannot be waived and is 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 - LA RPC Rule 1.8 (a)¹**

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 and is given a reasonable opportunity to seek advice of independent counsel; and
4. the client consents in writing.

► **Using information relating to a client’s representation – LA RPC Rule 1.8 (b).**

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 - LA RPC Rule 1.8 (f).**

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 the information relating to the representation of a client is protected as required by Rule 1.6 (Confidentiality of Information).

► **Multiple client settlements – LA RPC Rule 1.8 (g).**

You may not enter into an aggregate settlement of the claims of or against multiple 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, 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.

¹ Most legal malpractice insurance policies exclude from coverage claims arising out of legal services performed by the insured attorney for a client, if at the time of the act or omission in the performance of the legal services, the attorney owned a greater than 10% interest in the client’s business.

► **Former clients – LA RPC Rule 1.9 (a).**

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

► **Imputation of conflicts of interest - LA RPC Rule 1.10 (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.

► **Special conflicts of interest for former and current government officers and employees – LA RPC Rule 1.11 (a)(2) and Rule 1.11 (b)(1) &(b)(2).**

A lawyer who has formerly served as a public officer or employee of the government shall not represent a client in connection with a matter in which the lawyer 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, no lawyer in a firm with which that lawyer is associated may represent this client, unless the disqualified lawyer has been timely screened from any participation in the matter, is not given any part of the fee, and the former government agency is notified immediately in writing.

► **Former judge, arbitrator, mediator or other third-party neutral - LA RPC Rule 1.12 (a) and Rule 1.12 (c)(1) & (c)(2).**

You may not represent a client in connection with a matter in which you participated personally and substantially as a judge, other adjudicative officer, 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 timely screened, you are not given any part of the fee, and written notice is given to the appropriate tribunal.

► **Organization as client – LA RPC Rule 1.13 (a) and Rule 1.13 (g).**

If an organization is your client, you represent the organization acting through its duly authorized constituents. 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. 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 being represented, or by the shareholders.

► **Financial assistance to clients – LA RPC Rule 1.8 (e).**

Financial assistance to clients is allowed under certain circumstances.

Non-Consentable Conflicts

Some conflicts cannot be waived and are deemed non-consentable. Some examples of prohibited representations 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. LA RPC Rule 1.8 (c).
- Negotiating an agreement giving yourself literary or media rights to a portrayal of the representation. LA RPC Rule 1.8 (d).
- Directly adverse representation in the same matter. LA RPC Rule 1.7(a)(1).
- Despite the prohibition in Rule 1.8(e) against providing financial assistance to clients, it is permitted under certain circumstances. (See 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. LA RPC Rule 1.8 (h)(1) and (h)(2).
- 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. LA RPC Rule 1.8 (i)(1) and (i)(2).

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 mailing the non-engagement or disengagement letter.) First, you must conclude that the conflicting representation will not damage your client's case. The Rules of Professional Conduct require that this decision is 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." Rule 1.0 Terminology paragraph "e" 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 risks 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, including actual and foreseeable adverse risks associated with the representation, transmitted in writing to the client in a manner reasonably understood by the client. Tell the client that he now has a choice to make – stay with you and your conflict, or go with a lawyer that does not have a conflict. If he chooses the latter, additional costs may be incurred by the client for the conflict-free new lawyer to catch up. Also, explain to the client that, while you believe it is unlikely, one of the risks of your continued representation is your disqualification from the representation if it is determined that you have violated the conflict rules.
2. An acknowledgment that the client was given a reasonable opportunity, confirmed in writing, to seek the advice of independent counsel in consenting to the conflict, and whether or not the client sought independent counsel.
3. The client's consent in writing, which includes client acknowledgement that by allowing you to continue the representation, he is foregoing his right to retain another conflict-free lawyer. However, it should be understood by the client, that the client's representation in writing may still not prevent your disqualification, if a court so rules.
4. An acknowledgment that all affected clients were sent the informed consent letter, with the same disclosures described in number 1 above.
5. If applicable, an assurance that any disqualified lawyer will be timely screened from any participation in the matter, will not be given any part of the fee, and will not reveal any protected confidential information.

Having such a detailed informed consent letter, signed by the client, will likely insure against a client asserting that he did not give informed consent because the disclosure of the risks and relevant information was inadequate.

Any conflicts of interest checking system 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.

2 Schneider, Harry H. Jr., "An Invitation to Malpractice; Once a Conflict of Interest is Spotted, Take Action Promptly," ABA's Standing Committee on Lawyer's Professional Liability.

Additional Resources for Conflicts of Interest

See sample informed consent letter.

The “Conflict of Interest” Rules of Professional Conduct:

- ▶ Rule 1.7 - Conflict of Interest: Current Clients;
- ▶ Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules;
- ▶ Rule 1.9 - Duties to Former Clients;
- ▶ Rule 1.10 - Imputation of Conflicts of Interest: General Rule;
- ▶ Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees;
- ▶ Rule 1.12 - Former Judge, Arbitrator, Mediator or Other Third-Party Neutral; and
- ▶ Rule 1.13 - Organization as Client;
- ▶ Rule 1.18 - Duties to Prospective Clients.

Books 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 Rules of Professional Conduct*, 4th Edition (Louisiana State Bar Association, 2016) see <http://lalegaethics.org/louisiana-rules-of-professional-conduct/>
- ▶ Frank L. Maraist, *et al.* 21 LA. CIV. L. TREATISE, LOUISIANA LAWYERING §8.1, *et seq.* (2013 ed.)
- ▶ Louisiana State Bar Assn. Rules of Prof. Conduct Committee, *Conflict of Interest: Simultaneous Representation of Driver and Guest-Passenger*, Public Opinion No. 08-RPCC-016 (March 29, 2008)
- ▶ Louisiana State Bar Assn. Rules of Prof. Conduct Committee, *Conflicts of Interest and the Part-Time Prosecutor*, Public Opinion No. 07-RPCC-011 (February 15, 2007)
- ▶ CNA Sample Conflict of Interest Waiver Letter. See www.lsba.org/goto/cnaattorneytoolkit

Case Management (Conflicts) Software

- ▶ Practice Master 16.2, Software Technology, Inc., (402)423-1440
- ▶ Amicus Attorney V, Gavel & Gown Software, (800)472-2289
- ▶ Abacus Law, Abacus Data Systems, (800)726-3339
- ▶ Thomson Elite, (800)977-6529
- ▶ Tussman Program 7.1, Tussman Programs, Inc., (800)228-6589
- ▶ Lexis Nexis Practice Management, (800)328-2898
- ▶ Lawtopia's PC Law, (866) 306-9007
- ▶ Orion Law Management Systems, Inc. (800) 305-5867

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.
- 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.
- Thereafter, at the initial consultation, the potential clients must disclose more detailed information in order for a more comprehensive conflicts check to be made.
- 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.
- Follow up with any attorney or staff member who fails to return the Conflicts Search Results Memo within 24 hours of distribution.
- Analyze the results of the circulated memo and of the preliminary and comprehensive conflicts checks to determine whether a conflict exists.
- 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.
- 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.
- Accept the representation by sending an engagement letter.
- Perform another conflicts check each time a new party enters into the legal matter. If the new party creates an adverse non-consentable conflict, withdraw and send a disengagement letter.

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) _____
Other attorneys involved _____

If divorce matter, who is the:

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

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 _____
Other attorneys involved _____

If probate matter, who is the:

Deceased _____
Spouse/child(ren)/heir(s)/legatee(s) _____
Succession representative _____
Attorney for succession representative _____
Other attorneys involved _____

If worker's compensation matter, who is the:

Injured worker _____
Employer _____
Insurer _____
Other attorneys involved _____

If estate planning matter, who is the:

Testator/testatrix _____
Spouse/child(ren)/heir(s)/legatee(s) _____
Trustee _____
Other attorneys involved _____

Continued

If criminal matter, who is the:

Accused _____

Victim(s) _____

Witness(es) _____

Co-Defendant(s) _____

Other attorneys/prosecutors involved _____

If bankruptcy matter, who is the:

Client _____

Creditor(s) _____

Spouse _____

Other attorneys involved _____

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 believe I have a 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,
FIRM NAME

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 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 conflicts, which you used to make your decision.

- ▶ The actual risks associated with this representation are
- ▶ Some potential risks associated with this representation are
- ▶ Our firm may be disqualified if there is a finding of a non-concentable conflict of interest...
- ▶ You acknowledge that our retention may limit you financially from also retaining conflicts-free counsel at this time...

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, as is evidenced by your signature below, you knowingly and voluntarily consent to representation by the firm, (FIRM NAME), and waive any and all actual and potential conflicts of interest.

[Optional]

[Additionally, Attorney Smith has been disqualified from taking any role in the representation of your case and will be timely 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 may have obtained previously.

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

Sincerely,
FIRM NAME

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 a conflict of interest pursuant to the Rules of Professional Conduct. Therefore, we must withdraw from representing you at this time. Additionally, (Attorney Name) will refer A.B. Sea to independent counsel for representation in your matter only.

We are enclosing your entire file with this letter, as well as a check in the amount of \$750.00, representing a refund of unearned fees. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. A status report with deadlines, if applicable, is attached. Your new counsel should have adequate time to serve your best interests, and you should provide said counsel with the enclosed file and status report.

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. If we may be of service to you in other matters, please contact us.

Sincerely,
FIRM NAME

Attorney Name

Enclosures

(CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct, especially Rule 1.16(c) requiring permission of a tribunal when terminating a representation.)

Sample Conflict¹ 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 financial assistance to you 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 time frame 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:
 - o 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.
 - o 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.
 - o 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.]

Continued

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

- Financial assistance that we may provide to you using our own funds 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

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.

Chapter 3

Fees, Billing and Trust Accounts

Additional Resources

Flat Fee Agreement

Contingency Fee Agreement

Hourly Fee Agreement with Advance
Deposit

Hourly Fee Agreement with Advance
Deposit (Domestic)

Sample Invoice

Sample Settlement Statement

Approval and Receipt

Gilsbar Money Management Map

FEES, BILLING

and Trust Accounts

Chapter 3

Fees, Billing and Trust Accounts

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 in terms reasonably understood by the client.
- 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 preferably in writing 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. 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. The factors determining whether a fee is reasonable are set forth in Rule 1.5(a).

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 FEE ARRANGEMENTS

Contingent Fee Arrangements

According to Rule 1.5(c), 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;
- Whether the expenses are to be deducted before or after the contingent fee is calculated; and
- Any expenses for which the client will be liable, whether or not the client is the prevailing party.

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 Rules 1.8(e) must be given to the client as per Rule 1.4(c).

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 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 included in this chapter.

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 and disbursed only in accordance with Rule 1.15 and the contingency fee contract.

Rule 1.5(c) requires that, upon conclusion of a contingent fee matter, you 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) 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 pursuant to Rule 1.15(e).

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, but it does not necessarily provide the client with a complete outline of the scope of representation, conflicts of interest, and 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

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*.

² There is a 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, 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 perhaps unenforceable.

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. The authors recommend 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, subject to the discussion below. (See LSBA Fee Dispute Program.)

The Supreme Court, in *Hodges v. Reasonover*, 2012-0043 (La. 7/2/12), 103 So. 3d 1069, has held that a binding arbitration clause between an attorney and client does not violate the Rules of Professional Conduct, provided that the clause does not limit the attorney's substantive liability, provides for a neutral decision maker, and is otherwise fair and reasonable to the client. As the client must give informed consent, as defined in Rule 1.0(e), the attorney has the obligation to fully explain to the client the possible consequences of entering into an arbitration clause, including the legal rights the client gives up by agreeing to binding arbitration. Without clear and explicit disclosure of the consequences of a binding arbitration clause, according to the *Hodges* Court, the client's consent is not truly "informed." At a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:

- Waiver of the right to a jury trial;
- Waiver of the right to an appeal;
- Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- The fact that arbitration may involve substantial upfront costs compared to litigation;
- The explicit nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
- The fact that the arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities; and
- The fact that the client has the opportunity to speak with independent counsel before signing the contract.

Remember that there is no such thing as a non-refundable fee. All fees must be reasonably earned. 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 answered promptly and 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.

Sometimes lawyers are not precise about the terminology they use when referring to forms of fees or fee payments. That can lead to confusion about when and how client funds can be used by the lawyer. Rule 1.5(f) specifies which payments from clients can be spent by the lawyer immediately upon their receipt, still subject to being earned or refunded, and which payments must be put in trust because they remain client funds until earned.

Retainers, Advance Deposits, and Hourly Fee Agreements

Sometimes lawyers mistakenly call "advance deposits" by the name "retainer." The difference is important, 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).

A true *retainer* is an amount paid by a client on an agreed-upon basis in order to keep a lawyer generally available to the client. When paid, the money may be deposited into the operating account, can be used by the lawyer, subject to possible refund if a dispute arises.

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 use the money as she works or incurs reasonable expenses and bills for them. 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.

Detailed trust account records must be kept. Withdrawals should not be made from the trust account without issuing an invoice to the client, along with notification that money will be or has been withdrawn from the trust account to pay the invoice. The client should be updated on the status of the advance deposit on a periodic basis - ideally monthly.

Hourly fee agreements are 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.

Flat Fee, Fixed Fee, or Minimum Fee Agreements

A lawyer may sell her future services for a specified price. For example, you may charge a set amount for handling a divorce or a DWI defense. You may require that the flat fee be paid 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). You may still 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.

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, fixed or flat. 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 for any additional work.

Rule 1.5(f)(2) provides that a flat fee or minimum fee becomes the property of the lawyer when paid and may be deposited into the operating account. 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 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 that is earned.

As a practical matter, you may take and use any fee that is fixed, flat, or minimum. However, you should do so only if you have the ability to deposit an equivalent amount immediately in trust should a dispute arise. Should the lawyer be discharged prior to completion, the unearned portion of the fee should be promptly returned. Retaining the unearned portion after discharge would be unreasonable under Rule 1.5(a) and may subject the lawyer to discipline.

Ideally, attorneys in flat fee arrangements should obtain their client's informal consent to the scope of the representation in writing, signed by the client, which directly addresses what particular services the lawyer is agreeing to perform.

True Retainers

Rule 1.5(f)(1) defines the old-fashioned “true retainer.” This is a sum of money paid by a client in order to ensure the lawyer’s general availability to the client, such as serving as a bank’s general counsel. The fee is not necessarily 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 general availability 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 work should also be separately formalized with an engagement letter or contract 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).)

Other Points

- Be sure to obtain the client's signature on the contract and obtain any advance deposit *before* commencing the representation.
- Be sure any contract includes details about 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.
- Be sure any potential conflicts of interest are spelled out in the contract and are consented to in writing, signed by the client. Remember that some conflicts cannot be addressed by client consent. (See Rules 1.7 and 1.13.)
- Make sure to detail 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 regardless of who pays the fee, remember that your client is the one who makes the decisions about her case. (See Rule 1.8(f).)
- 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).

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 until costs and expenses are actually incurred. 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, for example, a bill or invoice.

You must determine that sufficient funds for each particular client are on deposit in the trust account *prior to* each and every withdrawal. 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 could write the check out of her operating account and 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. Alternatively, lawyer could write a \$200 check for suit from the trust account and write a \$50 check from her operating account, billing XYZ for that \$50.

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, many considered it unethical and improper to provide financial assistance to clients. The 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 in 2006 to settle the question.

Rule 1.4(c) provides that a lawyer who gives 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) is very lengthy, detailed and specific. Please read it carefully and understand it fully before rendering financial assistance to a client. A call to LSBA Ethics Counsel may be helpful if you are unclear regarding its meaning and limitations.

Other Important Information About Trust Accounts and Handling of Client Funds

- All lawyers who will take possession of any 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.
- 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.
- There is only one exception to the commingling rule: you may deposit a nominal amount of 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.
- 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 limited 10-year prescriptive period applicable to the filing of a disciplinary complaint where the mental element is merely negligence. There is no prescriptive period applicable to the filing of a complaint against an attorney accused of fraudulent conduct or where the mental element was “knowing” or “intentional”.
- Funds in a trust account must be subject to withdrawal upon request and without delay.
- Best practice is to 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 then always pay yourself promptly to avoid commingling your funds with those of other clients.
- Also, upon termination of representation, you must refund any advance payment of the legal fee, costs or expenses that have not been earned or incurred.
- 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.
- Issuance of NSF checks drawn on a lawyer’s trust account creates a suggestion 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” of funds in her trust account belonging to other clients constitutes conversion of the other clients’ funds.
- All trust account checks must be personally signed by a lawyer.
- 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.
- Lawyers are not permitted to use debit cards for their trust accounts or issue checks payable to cash. See Rule 1.15(f).

Property Belonging to the Client and/or 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(d); the latter is governed by Rule 1.15(e).

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 client trust account maintained in Louisiana or the state where your office is located, 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. However, you should also notify the client or third person that the funds will not be available for disbursement until the check actually clears the bank, which normally occurs within three (3) to five (5) business days following its deposit into your trust account.
- **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 obligations to a third person (as opposed to your client)¹ are defined by Rule 1.15(d) as:

- 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 a representation in which two or more persons (one of whom may be you) claim competing 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.

A 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. We recommend the use of informal dispute resolution methods, such as the Louisiana State Bar Association Legal Fee Dispute Resolution Program 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 IOLTA trust account be interest-bearing and used 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 client trust account. See Rule 1.15(f) for detailed IOLTA rules.

¹ See LSBA Public Ethics Opinion 05-RPCC-004 www.lsba.org/MemberServices/ethicsadvisoryopinions.asp

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 open a separate interest-bearing, non-IOLTA trust account for that client's funds so that the client may earn and receive interest. The factors that decide what amount of client's funds is "nominal" are:

- The amount of the deposit, keeping in mind that the deposit should be made into an account which is fully federally insured in the event of failure;
- 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.

Accepting Credit Cards for Payment of Fees and Costs

According to LSBA Public Ethics Advisory Opinion 12-RPCC-019, a lawyer may accept credit cards in payment for legal services rendered or advanced for fees and/or costs as long as the lawyer abides by the applicable Louisiana Rules of Professional Conduct, including those pertaining to proper communication with the client, fees and expense charges, confidentiality, and the safekeeping of property. Any merchant agreement between the lawyer and credit card vendor must allow a lawyer to be compliant with the appropriate Rules.

In general, before contracting with a vendor or credit card company to allow your firm to accept credit cards, study the merchant agreement carefully to make sure there are no obligations which would require you to violate the Rules, and communicate to the client any special fee arrangements which may be required by his use of a credit card.

In doing so, consider the following:

- Do you intend to charge the clients for the "transaction fee" associated with the use of the credit card? If so, have you obtained the necessary informed consent to do so?
- Does the credit card merchant require disclosures of any confidential information to process the charge; and if so, has the client provided informed consent as to that disclosure?
- Have you considered whether to link the credit card merchant agreement to an operating account or a trust account, given that the funds may be required to be held in trust?
- If you elect to link the credit card to a trust account, have you provided that any "charge backs" must only come from the operating account to avoid unintentional conversion of other clients' funds in the trust account?

Because the credit merchant agreement is a special circumstance requiring the client's informed consent, you should communicate with the client, preferably in writing, the obligations of the client and lawyer under the merchant agreement.²

If you treat this transaction fee as an overhead expense, you must make arrangements to treat the net remittance received from the credit card company, after deduction of its fee, as a remittance in satisfaction of the entire amount charged to the client's credit card. If you intend that the client still must pay the difference between the original charge amount and the remittance received, which is the "transaction fee," then you must be certain to comply with Rule 1.8(e)(3) and obtain the client's informed consent for such a charge.

For example, if the client uses a credit card to pay a \$500 advance deposit subject to a 2% transaction fee, which you treat as an overhead expense, that transaction fee should be deducted from your operating account in order that the client receives the full \$500 trust balance as a result of the credit card transaction. However, if you intend for the client to bear the expense of the transaction fee, with the client's informed consent, you could reflect that the original trust balance of \$500 has been reduced to \$490 to account for the transaction fee. Be aware, though, that some credit card vendors prohibit the lawyer from passing such transaction fees along to the client, in which case this option is not available to you, and you must elect to treat the transaction fee as an overhead expense. Likewise, if the credit card company only charges a monthly charge for a credit card processing machine, rather than charging a fee per transaction, then the monthly charge is a non-recoverable overhead cost which may not be passed on to the client.

If you are unable to negotiate with the credit card company an agreement to use generic service descriptions, such as "services rendered," then you must comply with Rule 1.6(a) by advising the client of the required disclosures and obtaining the client's informed consent. You should also advise the client that if there is a dispute regarding charges among the client, you and the credit card company, confidential information may not be protected due to exceptions contained in Rule 1.6(b)5.

If earned fees or costs have been transferred from your trust account to your operating account, and later the client disputes the fees or costs, a "charge back" by the credit card company against your trust account may result in a failure to safeguard or conversion of other clients' funds in violation of Rule 1.15. On the other hand, if your credit card processing account is only linked to your operating account, you would violate Rule 1.15 by putting advance deposits paid by credit card directly into your operating account because they have not yet been earned. If the client pays by credit card sums owed to you for past work performed, expenses incurred, or a flat fee, the funds may be deposited directly into your operating account, since those funds become your property when paid.

The Rules of Professional Conduct Committee, as well as these authors, recommend that you link both your trust account and your operating account to the credit card account so that funds charged to a client's credit card may be placed into the correct account. The contract between you and the credit card company should also provide that any "charge back," disputed transaction, or costs associated with use of the credit card will be charged solely to your operating account.

² See La. Rules of Professional Conduct 1.0(e), 1.4 and 1.5(B).

Additional Resources

- Foonberg, Jay G., *The ABA Guide to Lawyer Trust Accounts* (American Bar Association, 1996) or check out the book via the LSBA Lending Library www.lsba.org/PracticeManagement/LendingLibrary.aspx.
- *The Louisiana Lawyer and Other People's Money* (Louisiana Bar Foundation, 1998) or check out the book via the LSBA Lending Library www.lsba.org/PracticeManagement/LendingLibrary.aspx.
- LSBA Ethics Opinion 05-RPCC-004 Safekeeping the Property of Clients and Third Parties <http://files.lsba.org/documents/ethics/safekeepingproperty.pdf>.

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/her 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 yet; 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 and/or certified public accountant 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 herein below.

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 and before the deduction of costs and expenses as set forth in Section 2 herein:

____ % in the event of settlement before the suit is filed;

____ % in the event the suit is filed and the matter settles before a trial on the merits;

____ % in the event of settlement after the start of a trial on the merits;

____ % in the event a judgment is rendered at a trial on the merits and no appeals are filed by any party;

____ % in the event an appeal is filed by any party after conclusion of a trial on the merits.

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 expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$___ per page), mileage (not to exceed the IRS acceptable rate), and outside courier service charges.

Advance deposit required ___ Yes ___ No

I agree to advance \$ _____ for costs and expenses, which amount shall be deposited in Attorney's client 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. Client understands⁴ and agrees⁵ that neither attorney nor client shall receive any interest from these funds

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, if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time if otherwise permitted under the Rules of Professional Conduct.
4. **STATUTORY LIMITS ON 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 under this agreement shall be paid in accordance with the maximum allowed by law but no more than the amount specified herein.
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 FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;

- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. 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 Fee 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. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that time, then our office will maintain your file for a maximum of 5 years after termination of representation in this matter, after which your file may be destroyed without further notice.

11. **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 (Flat Fee)

I, _____, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ _____ and his/her 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 any such other attorneys shall be limited as set forth herein below.

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 client has breached this agreement and attorney can terminate representation. This agreement pertains to the representation through trial only. Any writ, appeal, motion for new trial, motion for reconsideration, or any other kind of post-trial relief is not covered by this agreement and first be agreed upon by Attorney and client on 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 promptly to reimburse Attorney. If an advance deposit is being held by Attorney, I agree promptly to 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 expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$____ per page), mileage (not to exceed the IRS acceptable rate), and outside courier service charges.

Advance deposit 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. Client understands and agrees that neither attorney nor client shall receive any interest from these funds.

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 subject to refund of any unearned fees, costs and expenses, 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, if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, and/or at any other time if otherwise permitted by the Rules of Professional Conduct.

[Optional]

4. **ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program. I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Fee Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. 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 Fee Dispute Resolution" provision.

Client's Initials _____

Attorney's Initials _____

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

6. **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.

- 7. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 years after termination of representation, after which your file may be destroyed without further notice.
- 8. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.
- 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 _____

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/her 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 minimum increments of 6 minutes, i.e., one tenth of an hour increment.

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 written request. Should no written 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.

It is understood and agreed that Attorney is authorized, with my prior knowledge and written consent, to employ other attorneys with their rates to be specified in writing and agreed upon, 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. Costs and expenses shall be billed to me as they are incurred, and I hereby agree promptly to reimburse Attorney. If an advance deposit is being held by Attorney, I agree promptly to 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 expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$0. per page), mileage (not to exceed the IRS accepted rate), and outside courier service charges.

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, if Attorney’s continued representation would result in a violation of the Rules of Professional Conduct, or at any other time if otherwise permitted under by the Rules of Professional Conduct.

4. **STATUTORY LIMITATION 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.

[Optional]

5. **ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program. I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. 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 Fee 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. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 years after termination of representation, after which your file may be destroyed without further notice.
10. **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 _____

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

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 has been depleted, 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 your original advance deposit. At the conclusion of the case, any unused portion of the advance deposit 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 if it has been depleted. 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 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 expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long-distance telephone charges, postage charges, copying charges (\$____ per page), mileage (not to exceed the IRS accepted rate), and outside courier service charges.

We will consult with you prior to employing any experts, such as accountants, appraisers, business valuation experts, and the like. 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 qualified defined benefit plans (such as pension plans) or qualified defined contribution plans (such as 401(k) or profit-sharing plans). Our representation also does not include preparation of Court Orders Approved for Processing to divide government and military benefits. These require extra work which may 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 **trial 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 and all fees 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 FEE DISPUTE RESOLUTION. In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program or another mutually-agreed upon arbitration process. I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. 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 Fee 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 offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 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, 2017

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

FOR PROFESSIONAL SERVICES RENDERED FOR THE PERIOD JANUARY 1 - JANUARY 31, 2017

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 Filing fees with 24th Judicial District Court Sheriff of East Baton Rouge Parish (service on Neverpay)	9.50 175.00 <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

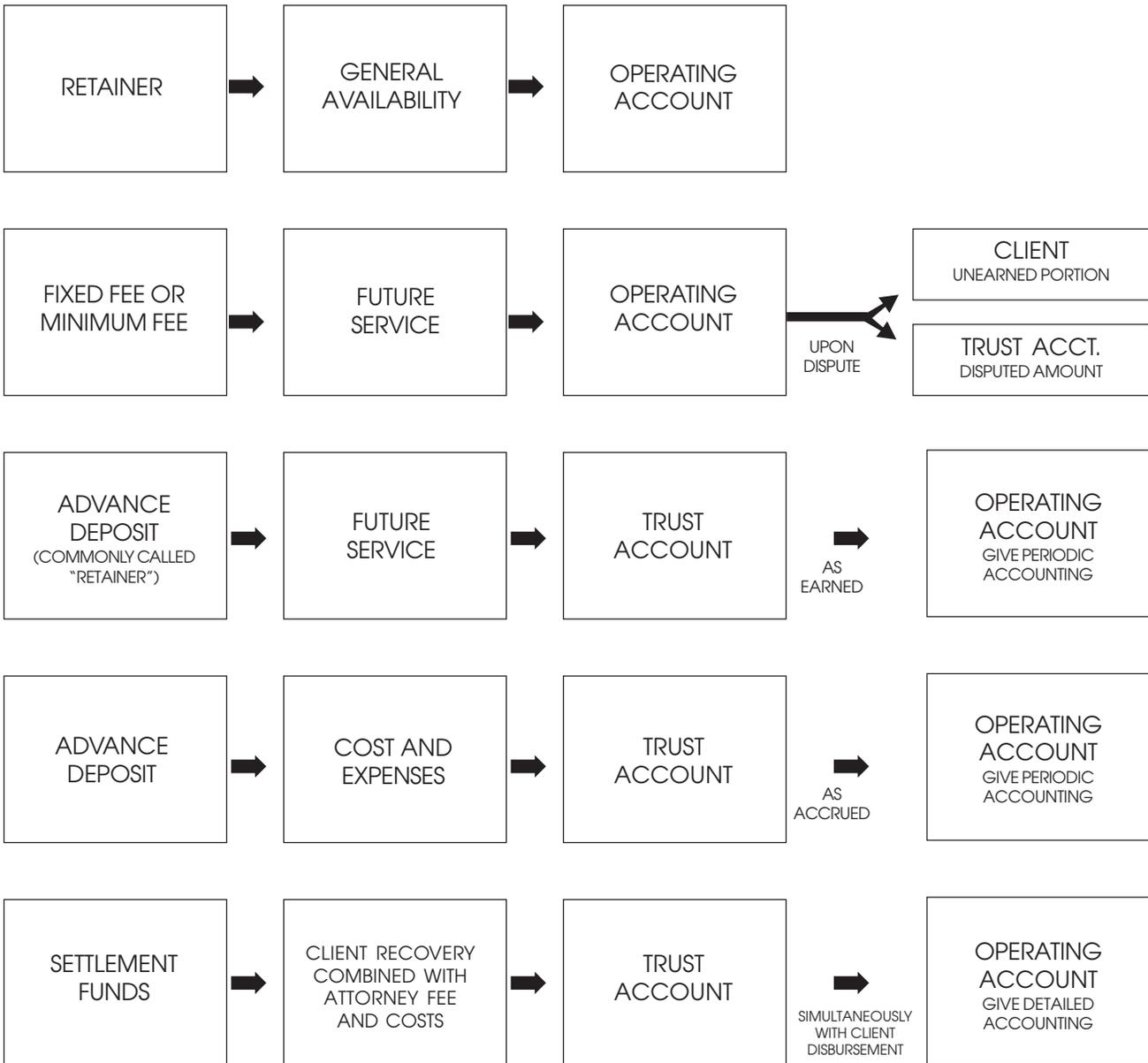
Receipt is hereby acknowledged of the sum of _____ cash, as the final amount due me in settlement of the claim for which the attached check is issued. This further acknowledges that I understand that, except as shown above, Attorney has not and will not pay any additional amounts which may still be due 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, LLC, Covington, LA.

Chapter 4

Maintaining the Attorney-Client Relationship and Law Office Procedure

Sample Client Activity Letter

Sample Email Communication Letter

Authorization for Release of Information from Former Attorney

HIPAA Authorization to Disclose Protected Health Information

Authorization for Release of Financial Records

Sample Court Appearance or Hearing Letter

Sample Deposition Scheduling Letter

Deposition Instructions to Client

Confidentiality Agreement Notification Authorization Form

MAINTAINING
the Attorney-Client Relationship
and Law Office Procedure

Chapter 4

Maintaining the Attorney-Client Relationship and Law Office Procedure

Communication: The single most frequent complaint filed against lawyers by their clients is the alleged failure by attorneys to communicate with them. Rule 1.4 speaks to this ethical duty and provides:

“(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.”

Recognize at the outset that, as a lawyer, **YOU WORK FOR THE CLIENT**. Keeping one’s ‘employer’ informed and responding to inquiries are just as naturally components of the attorney-client relationship as they are in any other employment setting. And yet we, as lawyers, often fall short in carrying out that duty, or fail to ‘meet the client’s expectations’ (see above!).

There are some things that we, as lawyers, can incorporate into our practice habits that will not only help to ensure that we are complying with our ethical obligations, but also will reduce complaints and/or provide a quality defense to allegations that we’ve shirked our duty to communicate.

- Honor the commitment you made at the start of the representation. Whatever you’ve committed to do when you were initiating the attorney-client relationship, keep your word! Making reasonable commitments to your client is only the beginning—you have to see it through.
- Send clients copies of relevant correspondence and pleadings that will keep the client abreast of developments in the client’s case.
- Return those phone calls! While not every phone call made to the lawyer by the client can be accepted on every occasion, **RETURN THEM TIMELY!** Where the phone calls become repetitive or excessive, call the client in to confront the issue right away.
- Make sure you identify decisions that are best left to the client and make the client take responsibility for a course of action to be taken in the client’s case.
- Set up periodic in-person office consultations with the client to personalize the representation and to get a sense of client satisfaction or frustration; **AND KEEP THE APPOINTMENT!**
- Develop a habit of confirming in writing all meaningful conversations held with clients. Not only does it give you the opportunity to make sure that both you and the client are on the same page, but it provides a powerful collection of evidence for the lawyer if confronted with baseless allegations that communications did not occur.

SPECIAL NOTE ABOUT TEXT MESSAGING WITH CLIENTS

Though a prevalent method of communication, text messaging with clients should be approached cautiously, if not avoided, for the following reasons:

- Short text messages are easily misconstrued;
- Text messages are often mistyped and/or “autocorrected” incorrectly;
- Text messages are not easily preserved;
- Short messages cannot convey enough information between client and attorney; and,
- Text messaging may be granting the client too much access, with an expectation of immediate access, to the attorney.

Instead, promote communication via other means: phone, in-person meetings, regular mail or email.

However, if a practice of client communication via text has already been established, keep it to a minimum, and avoid substantive discussion via text. Ideally, inform your client at the point of engagement that substantive discussions via text should be avoided. If substantive text conversations with your client cannot be avoided, at the very least learn how to screen capture the text exchange with your smartphone, and to email the screen capture to yourself and/or your client for preservation. If unable to screen capture texts, email yourself and/or your client the substance of the text exchange. Further, even if able to screen capture a text exchange, consider an additional email to yourself and/or your client if the text exchange is not self-explanatory or does not contain sufficient information.

Another very important reason to avoid text messaging with clients is to protect your free time. Rightly or wrongly, text messaging may set up an unmet expectation on your client’s part that you will be providing a response immediately, when in fact, you may have another idea altogether.

Documentation and File Organization

Standard procedures for documentation and file organization (preferably electronic) are 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, electronically if possible by the person who handled the contact and saved to the client’s electronic file. This will assist in ensuring that the status of the case is up to date every time you review the client’s electronic file. This procedure will help protect you should a dispute or confusion arise concerning actions taken by you or your office staff on behalf of a client. Keeping files organized and in chronological order will help you represent your clients and will document the services rendered in the representation should a disciplinary complaint or malpractice suit be filed. Further, it is advisable to maintain all drafts of pleadings and drafts of other substantive documents that reflect the date the draft was composed.

Below is an example of a brief and simple note to the file that can easily be electronically created and saved in the client’s electronic file from which a hard copy may be generated if necessary:

SMITH, Mary
11/20/13

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 later in this section.
- Remember computer encryption and digital file security measures.

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 be trained regarding 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 electronically documented, saved in the client's electronic file, and delivered to you immediately via email. If preferable, the emailed electronic message may be printed for your convenience.

Non-attorneys should not give legal advice. An electronic or 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, distributing, scanning and electronically saving to the client's file all incoming mail. You or your staff should review the incoming mail immediately and enter any court dates and deadlines on the electronic and/or manual calendar system. File all hard copies of mail immediately upon review by you after scanning or copying and emailing or mailing the document to the client. To ensure that outgoing mail is properly reviewed, signed and sent, have a designated proofing stack and a separate stack for urgent matters. If copies are sent to any third parties, always note on the document the persons to whom copies are 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;
- email communication letter;
- authorization to obtain information from a prior attorney;
- authorization to release medical information;
- authorization to release financial information;
- court appearance letter;
- deposition scheduling letter;
- deposition instructions to client; and
- confidentiality agreement.

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,

FIRM NAME

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 Email 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,

FIRM NAME

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 possible 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,

FIRM NAME

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

Chapter 5

File Management

File Management Checklist

Checklist for Opening Files

Checklist for Closing Files

Client File Surrender Letter

Additional Resources for File
Management

FILE MANAGEMENT

Chapter 5

File Management

If no conflicts preclude your representation and you have accepted the matter, it is time to open a new file and devise a system for managing the documents for your client's matter.

File management is the creation of a system which results in the filing of every document of every client matter. Good file management helps to discharge your obligation of competent representation, to safeguard client confidences and with the easy retrieval of needed documents. It is important to note that proper file management continues through the life of the representation and for a time thereafter. After a matter concludes, the file should be stored, and eventually destroyed and/or electronically copied 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.

Effective file management depends on: a system of centralized storage for all files; whether that method is electronic, through a "cloud" service or through local storage on your server or computer; by paper; or both. If storing files electronically, provide for regular redundant backup of your files. If using a "cloud" provider for file management, inquire how documents are backed up on the company's end. If storing files through a combination of electronic and paper, be clear which documents are to be stored electronically or by paper, and communicate this to staff. Whichever methods are chosen, basic file organization achieves the same purpose – the easy and efficient retrieval of client documents. Regardless of method, good categorization of the documents contained within a file is key to a good file management system.

For example, a personal injury matter might require the following document subfolders (whether labeled such in a separate manila folder in a larger expandable folder sleeve for the entire client matter, or in your server directory):

- File Opening Form (see below)
- Intake Notes
- Pleadings (in chronological date order)
- Discovery (Propounded; Responses) (in chronological date order)
- Client Correspondence (Letters, Emails) (in chronological date order)
- Research and Your Notes
- Client-Provided Documents
- File Closing Form (see below)

A transactional file might require different subfolder titles. The point is to create a filing system whereby you can retrieve documents quickly and efficiently.

Organize documents that you have on computers using the same categories that you would use if the file was a paper file. Create and adhere to a standard document naming and storage convention for your electronic file. Each file should have its own electronic file name with subfolders for the particular document categories. If you have many client matters that need organizing electronically, do one file at a time and chip away at the files, starting with the ones which are the most active.

You might consider a file naming convention that incorporates a date. For instance, instead of "Client Letter 1" and "Client Letter 2" to identify documents in your Correspondence subfolder, use "Client Letter 8-15-2016."

If scanning documents, make sure that the scanned document finds its way to the correct subfolder for the client matter.

Good, secure, electronic file management services in the cloud will cause you to organize your files efficiently. Adapt them to meet your file needs.

Please note that Rule 1.6(c) provides that a lawyer must make reasonable efforts to prevent inadvertent or authorized release of client information. The following checklists will assist lawyers in managing their files.

General File Management Checklist

- Create a *File Opening Checklist* for basic file information. Best practices would include a paper copy and the creation of an electronic, appropriately named copy. This document should be very easily retrieved.
- Maintain a master list of all files. Best practices would include a paper copy and the creation of an electronic, appropriately named master copy.
- If storing files by paper, use a sturdy OUT CARD when removing a file. The OUT CARD 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, whether electronically or by paper. 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. Store the file in a safe place (electronic storage with redundant backup will suffice, except for those documents which must be stored in their original forms (e.g., last wills, promissory notes, etc.) Never hold a client's file hostage for fees, and you should always keep a copy of the file.
- Create a *File Closing Checklist*, and when the matter concludes, place it with each file. Best practices would include a paper copy and the creation of an electronic, appropriately named copy, however, if you are "paperless," best practices would include redundant electronic digital backups.
- Maintain a master list of destroyed files, including name, file number, date opened, date closed, date destroyed, and whether it was duplicated using another medium.

Checklist for Opening Files

Your File Opening Checklist should be readily accessible so you can quickly retrieve basic file information. It should contain the following:

Client Contact Info:

- Client name and spouse's name
- Business and home addresses
- Business, home and cell phone numbers
- Work and personal email addresses

Client Number and Client Matter Number: Consider a file numbering convention. For example, the matter *Allen Johnson v. ABC Trucking, Inc.* might have the following file number: 12-045, indicating Mr. Johnson's client number is 12, and indicating that this is the 45th matter that you have handled for him.

How was the matter obtained? Indicate who referred the matter to you.

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 written fee 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

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

CHECKLISTS ARE TO BE PLACED IN FILE AND UPDATED UNTIL COMPLETED.

Client File Surrender Letter

SAMPLE "FILE SURRENDER" LETTER

Dear Client:

I/We have received your request for a copy of your file (Our File #(s): _____) dated _____. As per your request, please find your entire file, including any and all original documents related to your case/matter that we have not previously returned to you. In accordance with our firm's document retention policy (as detailed and provided to you originally within our written Attorney-Client Agreement), we will continue to retain our own internal copy of your legal file(s) for ___ years from this date. At the expiration of that _____-year retention period, we will permanently destroy our own internal copy of your file(s) unless you choose to notify us in writing before the end of that _____-year retention period that you also wish to take possession of that copy, as well. We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering such files.

Kindly please sign, date (as indicated below) and return to us the enclosed duplicate copy of this letter (using the enclosed pre-addressed, postage-paid envelope). By doing so, you are acknowledging our delivery and your receipt of the file(s) in question. If there are any questions or concerns about this, please do not hesitate to contact us.

In the event that you need legal representation in the future, I hope that you will consider engaging our law firm again. We thank you for allowing us to represent you in this matter.

Sincerely,
[Lawyer's Name]
[Law Firm's Name]
Enclosures

CLIENT ACKNOWLEDGEMENT OF RECEIPT OF CLIENT FILE(S)

I _____ (Client's Name) have reviewed the contents of my file and acknowledge receipt of my entire file from Smith and Associates on

_____ (date).

Additional File Management Resources

- **Document Management Software: The Electronic File Butler for the Law Office** by Steven J. Best, Esq., *Law Practice Today*, American Bar Association Law Practice Division Monthly Webzine (January 2011).
- ***Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer** (5th Ed. 2014), by K. William Gibson, Ed.
- **How to Organize Paperless Client Files** by Sam Glover, *The Lawyerist* (Nov. 13, 2013).
- ***Legal Project Management in One Hour for Lawyers** (2013) by Pamela H. Woldow and Douglas B. Richardson.
- ***Paperless In One Hour for Lawyers** (2014), Sheila M. Blackford and Donna S. M. Neff
- **Paralegal Basics – How to Organize a File** by Ana Pierro, *The Paralegal: Blogging about the Business of Being a Paralegal* (June 11, 2014).
- **The Basics of Client Files: File Organization** by Todd Scott, *Legal Law & Trends*, Practice Area Newsletter, ABA GP Solo and Small Firm Division.
- ***The Lawyer's Guide to Records Management and Retention** (2d Ed. 2014), by George C. Cunningham

*Members may borrow these titles and others, at no cost, from the LSBA's Lending Library.

Chapter 6

Calendar Control

Additional Resources

General Checklist

Louisiana Prescription Quick
Reference Card

Calendar Control System Installation
Checklist

Calendar Control Evaluation Checklist

CALENDAR Control

Chapter 6

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:

- 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 (or Appointments)* 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 most calendar software. 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 (or Tasks)* may be date-driven but are usually not time-driven. Examples are the steps in writing a brief or preparing for trial. 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 well before prescription runs.
- *Alerts (or Reminders)* are warnings of an event or a “To-Do item” in the future. If we forget to add an alert for an important event or “To-Do Item,” 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.
- *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. Internet calendar systems automatically solve the backup problem if you use a reliable vendor. Use data-entry confirmation procedures as well, 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.

State of the Art

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 if properly maintained. For information about setting up and using an index card system, see the Mississippi Bar Client Relations Form Book cited in the resources list at the end of this section.

If you are comfortable with computers and the Internet, you have many choices for cutting-edge calendar systems. Technology is constantly changing and depends on the natural preference of the user. For those reasons the LSBA is not specifically endorsing any product. However, a familiar example is Google Calendar. But other sources provide excellent alternatives, such as Apple iCloud or Microsoft Office Web, or Evernote, the useful multi-platform “cloud”-backup, note-taking software for computers, iPad, iPhone, as well as Android tablet and smartphone devices. Other examples include Wonderlist and Todoist which can send lawyer email and text messages when tasks are due and before.

Suppose you choose Google Calendar. Just sign up for a Gmail account on Google and start using the calendar with a smartphone app. It’s all transparent to the user without much adjustment necessary. It’s still there if your hard disk crashes. It automatically synchronizes from online to your desktop, laptop, tablet and smartphone, and your data can be protected by two-level authentication if you choose. A big payoff is efficiency. With a smartphone calendar, you’ll never need to guess at an open date in a pre-trial conference because you forgot your calendar, or call somebody back to confirm an appointment you tentatively set from memory.

Signing up for free Gmail takes about five minutes, and immediately you have a fully functional calendar that you can’t lose. It will send you reminders. It has a Tasks function, an automated list to keep track of undated projects, which you can prioritize as you wish. It has a Contacts function, which syncs to all your equipment.

Caveat: You will also need all the cross-checks and redundancies mentioned in this section to make sure human error doesn’t make these well-designed free calendars into tools for committing malpractice! At a minimum, keep a second calendar as a backup for important deadlines.

Question: How does one know what dates to put on the calendar system?

Answer: Checklists!

We recommend at a minimum that you add events, to-do items and alerts to your calendar system every time you:

1. Accept a representation;
2. Receive a trial date or other setting;
3. 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 the 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 and file surrender letter.
- Purge, close, surrender 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 the Gilsbar Office of Loss Prevention. Gilsbar updates the card approximately every few years. 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 in the back of this book.

Calendar Control System Installation Checklist

- Set up “events” or “appointments” (which means items timed and dated, *e.g.*, appointments and court hearings).
- Set up “to-do’s” or “tasks” (which means items that might be dated but not timed, *e.g.*, prescription deadlines or research needed).
- 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 reminds the calendar control person periodically to copy paper systems, backup local hard disk systems, and save a download of cloud calendars.
- 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 can 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 or computer calendar, coordinated with each legal assistant's desk or computer 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.
- 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.

Chapter 7

Termination of the Representation

Checklist for Termination of the Representation

Sample Disengagement Letter (Client Dissatisfaction)

Sample Disengagement Letter (Non-Payment)

Sample Disengagement Letter (Conclusion of Representation)

TERMINATION
of the Representation

Chapter 7

Termination of the Representation

The very end of the Attorney-Client Relationship is just as important as the beginning. There are multiple reasons for termination, such as: 1) the legal matter is completed; 2) the attorney is discharged by the client; or 3) the attorney withdraws. Regardless of how the representation ends, lawyers should always seek to protect their clients and themselves by closing their client's files properly. See the Checklist for Termination of Representation attached for a step by step way to accomplish this.

While the ideal is for an attorney to fully conclude every legal matter to the client's satisfaction, that is not always realistic. Sometimes, the right and ethical thing to do is to withdraw.

Simple Reasons for Termination

The termination of representation of a client may occur for several 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.

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)); or
- the lawyer has withdrawn from and/or terminated the representation due to an actual or potential conflict of interest.

Permissive Termination of Representation

Under Rule 1.16(b), 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;
- 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.

Exceptions

Nevertheless, under Rule 1.16(c), notwithstanding good cause for terminating the representation a lawyer must continue representation of a client when ordered to do so by a tribunal. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.

Discharge by a Dissatisfied Client

There may come a time when a client becomes dissatisfied with the representation and terminates the attorney for what the client believes is just cause. It is at this time when attorneys should strive to be at their **most professional and ethical**. Again, reference the Checklist for Termination of the Representation for what you need to do to protect the client and yourself. Do not retaliate against the client. Respond professionally and timely to all reasonable requests from the client, such as a request for the file, an accounting of fees and a request for refund of unearned fees. A copy of a Sample Letter Acknowledging Discharge by a Client is attached to this section. Make yourself available to the new attorney if needed. Acting in a reasonable manner toward a dissatisfied or unreasonable client may assist you in avoiding a complaint to the Office of Disciplinary Counsel or a malpractice suit.

File Retention

File Retention Period: please see LSBA Rules of Professional Conduct Committee Public Opinion on File Retention - 06-LSBA-RPCC-008 PUBLIC Opinion (1/4/2006) online at <http://files.lsba.org/documents/Ethics/06LSBARPCC008.pdf>.

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 some negligent attorney disciplinary violations and no prescriptive period applicable to the filing of a complaint against an attorney accused knowing or intended misconduct.

The file, including attorney "work product," 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 should retain a copy of the file, but may not condition release of the file 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 also the LSBA Rules of Professional Conduct Committee Public Opinion on Surrender of File upon Termination of Representation at <http://www.lsba.org/DocumentIndex/EthicOpinions/FileSurrenderPublicationProof.pdf>.

If not agreed to in the fee agreement or engagement letter, the responsibility for the cost of copying must be determined by a court in an appropriate proceeding. (Rule 1.16(d).) 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. Ideally, the fee agreement should specify that the client will bear the actual copying costs in the event of termination of 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 termination, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any fees or expenses that have not been earned or incurred. (Rule 1.16(d).)
- 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.
- Review the file. Make sure all client documents are returned to the client. Purge the file of any redundant or duplicate materials.
- If appropriate, 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. 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.
- Document and return all client funds held in trust and any other property, including original documents, belonging to the client.
- Keep complete records of any client funds held in a trust account and other property of a client for a period of at least five years after termination of the representation. (Rule 1.15(a).)

Sample Disengagement Letter (Client Dissatisfaction)

June 20, 20__

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

RE: File Subject or Matter Description

Dear Ms. Former Client:

We received your letter of June 19th, 20__ indicating that you no longer wish our legal representation in this matter. While we firmly disagree with your conclusions regarding our representation, we respect your right to terminate our legal services. We will immediately file a Motion to Withdraw.

(Advance Deposit Option)

Attached please find a full accounting for all fees and costs in this matter. Enclosed please find our check No. ____ for \$____, representing a refund of all unearned fees and costs remaining from the advance deposit. If you have a question as to any specific charge, please inform me and I will provide additional information and explanation.

(Flat Fee Option)

We were hired for a flat fee of \$5,000.00 on Jan 1st, 20__. Attached please find a full accounting indicating all the services provided to date and a conservative estimate of hours performed on your behalf. I am enclosing a refund check for \$____ as the unearned portion of the flat fee. If you have any question as to the fees, please inform me and I will be happy to speak with you. In the event disagree with my accounting for my fees, I would be happy to submit the fee dispute to the Louisiana State Bar Association's Lawyer Fee Dispute Resolution program.

A copy of your file is enclosed. We suggest you retain new counsel as soon as possible to protect your legal rights and interests in this case. This letter will confirm that our representation of you in this matter has now formally concluded.

Sincerely,

FIRM NAME

Attorney Name

Enclosures (as stated)

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,

FIRM NAME

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,

FIRM NAME

Attorney Name

Enclosures (as stated)

Chapter 8

Ethics and Professionalism

Louisiana Rules of Professional
Conduct

Overview of the Disciplinary Process

10 Frequently Alleged Rule Violations

What to Do When a Complaint Arrives

What to Do When Formal Charges
Are Filed

Publications Subcommittee

LSBA Ethics Service

The Lawyer's Oath

Code of Professionalism

LSBA Committee on the Profession

ETHICS and
PROFESSIONALISM

Chapter 8

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.



Louisiana Rules of Professional Conduct

With amendments through November 27, 2018

Published by the
Louisiana Attorney Disciplinary Board
2800 Veterans Memorial Boulevard
Suite 310
Metairie, Louisiana 70002
(504) 834-1488 or (800) 489-8411



Louisiana Rules of Professional Conduct

With amendments through July 1, 2016

Published by the
Louisiana Attorney Disciplinary Board
2800 Veterans Memorial Boulevard Suite 310
Metairie, Louisiana 70002

(504) 834-1488 or (800) 489-8411

TABLE OF CONTENTS

Rule 1.0.	Terminology
Client-Lawyer Relationship.....	
Rule 1.1.	Competence
Rule 1.2.	Scope of Representation and Allocation of Authority Between Client and Lawyer
Rule 1.3.	Diligence
Rule 1.4.	Communication
Rule 1.5.	Fees
Rule 1.6.	Confidentiality of Information
Rule 1.7.	Conflict of Interest: Current Clients.....
Rule 1.8.	Conflict of Interest: Current Clients: Specific Rules.....
Rule 1.9.	Duties to Former Clients
Rule 1.10.	Imputation of Conflicts of Interest: General Rule.....
Rule 1.11.	Special Conflicts of Interest for Former and Current Government Officers and Employees.....
Rule 1.12.	Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
Rule 1.13.	Organization as Client.....
Rule 1.14.	Client with Diminished Capacity
Rule 1.15.	Safekeeping Property

IOLTA Rules	
Rule 1.16.	Declining or Terminating Representation
Rule 1.17.	Sale of a Law Practice
Rule 1.18.	Duties to Prospective Client.....

Counselor	
Rule 2.1.	Advisor
Rule 2.2.	(DELETED).....
Rule 2.3.	Evaluation for Use by Third Persons
Rule 2.4.	Lawyer Serving as Third-Party Neutral

Advocate	
Rule 3.1.	Meritorious Claims and Contentions
Rule 3.2.	Expediting Litigation
Rule 3.3.	Candor Toward the Tribunal.....
Rule 3.4.	Fairness to Opposing Party and Counsel.....
Rule 3.5.	Impartiality and Decorum of the Tribunal.....
Rule 3.6.	Trial Publicity.....
Rule 3.7.	Lawyer as Witness.....
Rule 3.8.	Special Responsibilities of a Prosecutor.....
Rule 3.9.	Appearance in Nonadjudicative Proceedings

Transactions with Persons other than Clients.....	
Rule 4.1.	Truthfulness in Statements to Others
Rule 4.2.	Communication with Persons Represented by Counsel.
Rule 4.3.	Dealing with Unrepresented Person
Rule 4.4.	Respect for Rights of Third Persons

Law Firms and Associations	
Rule 5.1.	Responsibilities of Partners, Managers, and Supervisory Lawyers.....
Rule 5.2.	Responsibilities of a Subordinate Lawyer.....
Rule 5.3.	Responsibilities Regarding Nonlawyer Assistance
Rule 5.4.	Professional Independence of a Lawyer
Rule 5.5.	Unauthorized Practice of Law; Multijurisdictional Practice of Law
Rule 5.6.	Restrictions on Right to Practice

PUBLIC SERVICE	
Rule 6.1.	Voluntary Pro Bono Publico Service
Rule 6.2.	Accepting Appointments
Rule 6.3.	Membership in Legal Services Organization.....
Rule 6.4.	Law Reform Activities Affecting Client Interests
Rule 6.5.	Nonprofit and Court-Annexed Limited Legal Services Programs.....

INFORMATION ABOUT LEGAL SERVICES.....	
Rule 7.1.	General
Rule 7.2.	Communications Concerning a Lawyer's Services
Rule 7.3.	[Reserved].....
Rule 7.4.	Direct Contact with Prospective Clients
Rule 7.5.	Advertisements in the Electronic Media other than Computer-Accessed Communications
Rule 7.6.	Computer-Accessed Communications
Rule 7.7.	Evaluation of Advertisements
Rule 7.8.	Exemptions from the Filing and Review Requirement....
Rule 7.9.	Information about a Lawyer's Services Provided upon Request
Rule 7.10.	Firm Names and Letterhead.....

MAINTAINING THE INTEGRITY OF THE PROFESSION.....	
Rule 8.1.	Bar Admission and Disciplinary Matters
Rule 8.2.	Judicial and Legal Officials
Rule 8.3.	Reporting Professional Misconduct
Rule 8.4.	Misconduct.....
Rule 8.5.	Disciplinary Authority; Choice of Law



Rule 1.0. Terminology

- (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.⁷
- (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 video recording and electronic communication. 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

- (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

- (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

- (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

- (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

- (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;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interests between lawyers in different firms, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.7. Conflict of Interest: Current Clients

- (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

- (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 any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%.
 - (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

- (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

- (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

- (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 there from; 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

- (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 third-party 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.
- (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.

Rule 1.13. Organization as Client

- (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.



- (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

- (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

- (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. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. 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 or obtaining a waiver of those charges, 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) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to “Cash” are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule. [Last sentence added 1/13/2015 and effective 4/1/2015]
- (g) A lawyer shall create and maintain an “IOLTA Account,” which is a pooled interest-bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
- (1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in “eligible” financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least \$250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:
- (A) No earnings from such an account shall be made available to a lawyer or law firm.
- (B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
- (C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
- (2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
- (3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
- (A) Establishing the IOLTA Account as:
- (1) an interest-bearing checking account;
- (2) a money market deposit account with or tied to checking;
- (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or
- (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by



- applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.
- (B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or
- (C) Paying a “benchmark” amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of “allowable reasonable fees.”
- (4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:
- (A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible 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, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and
- (C) To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.
- (5) “Allowable reasonable fees” for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not “allowable reasonable fees” include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.
- (6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an “eligible” financial institution.
- (7) “Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.
- (8) “Unclaimed Funds” are client or third person funds on deposit in an IOLTA account for at least two years that after reasonable due diligence the owner cannot be located or the owner refused to accept the funds.
- (h) A lawyer who learns of Unidentified or Unclaimed Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).
- A lawyer who either remits funds in error or later ascertains the ownership of remitted funds, or the owner thereof, may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer or owner, as appropriate.

IOLTA Rules

- (1) The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.
- (2) The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:



- (a) No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.
- (b) Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non-IOLTA, interest-bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer-client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.
- (c) Funds of clients or third-persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.
- (d) In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:
- (1) The amount of the funds to be deposited;
 - (2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
 - (3) The rates of interest or yield at financial institutions where the funds are to be deposited;
 - (4) The cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
 - (5) The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
 - (6) Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
- (e) Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public-spirited members of the profession. The placement of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
- (3) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend 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.
- (4) 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 shall make recommendations to the Foundation with respect thereto.

Rule 1.16. Declining or Terminating Representation

- (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. Sale of a Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The selling lawyer has not been disbarred or permanently resigned from the practice of law in lieu of discipline, and permanently ceases to engage in the practice of law, or has disappeared or died;
- (b) The entire law practice, or area of law practice, is sold to another lawyer admitted and currently eligible to practice in this jurisdiction;
- (c) At least ninety (90) days in advance of the sale, actual notice, either by in-person consultation confirmed in writing, or by U.S. mail, is given to each of the clients of the law practice being sold, indicating:
 - (1) the proposed sale of the law practice;
 - (2) the identity and background of the lawyer or law firm that proposes to acquire the law practice, including principal office address, number of years in practice in Louisiana, and disclosure of any prior formal discipline for professional misconduct, as well as the status of any disciplinary proceeding currently pending in which the lawyer or law firm is a named respondent;
 - (3) the client's right to choose and retain other counsel and/or take possession of the client's files(s); and
 - (4) the fact that the client's consent to the transfer of the client's file(s) will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the notice.
- (d) In addition to the advance notice to each client described above, at least thirty (30) days in advance of the sale, an announcement or notice of the sale of the law practice, including the proposed date of the sale, the name of the



selling lawyer, the name(s) of the purchasing lawyer(s) or law firm(s), and the address and telephone number where any person entitled to do so may object to the proposed sale and/or take possession of a client file, shall also be published: 1) in the Louisiana Bar Journal; and 2) once a week for at least two (2) consecutive weeks in a newspaper of general circulation in the city or town (or parish if located outside a city or town) in which the principal office of the law practice is located. The announcement or notice required by this Rule does not fall within the scope of Rules 7.1 through 7.10 of these Rules.

- (e) The fees or costs charged clients shall not be increased by reason of the sale.
- (f)(1) A lawyer or law firm that proposes to acquire a law practice may be provided, initially, with only enough information regarding the matters involved reasonably necessary to enable the lawyer or law firm to determine whether any conflicts of interest exist. If there is reason to believe that the identity of a client or the fact of representation itself constitutes confidential information under the circumstances, such information shall not be provided to the purchasing lawyer or law firm without first advising the client of the identity of the purchasing lawyer or law firm and obtaining the client's informed consent in writing to the proposed disclosure.

If the purchasing lawyer or law firm determines that a conflict of interest exists prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the lawyer or law firm shall not review or continue to review the information unless the conflict has been disclosed to and the informed written consent of the client has been obtained.

- (f)(2) A lawyer or law firm that proposes to acquire a law practice shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the clients of the law practice were already the clients of that acquiring lawyer or law firm.
- (g) Consistent with Rule 1.16(c) of these Rules, before responsibility for a matter in litigation can be sold as part of a law practice, any necessary notice to and permission of a tribunal shall be given/obtained.
- (h) Notwithstanding any sale, the client shall retain unfettered discretion to terminate the selling or purchasing lawyer or law firm at any time, and upon termination, the selling or purchasing lawyer in possession shall return such client's file(s) in accordance with Rule 1.16(d) of these Rules.

Rule 1.18. Duties to Prospective Client

- (a) A person who consults with a lawyer about 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 learned information from a prospective client shall not use or reveal that information 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)



Rule 2.3. Evaluation for Use by Third Persons

- (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

- (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

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

- (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

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.
- (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.

Rule 3.5. Impartiality and Decorum of the Tribunal

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

- (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;
- (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

- (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

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. Appearance in Nonadjudicative Proceedings

A lawyer appearing before a legislative or administrative tribunal in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and

shall conform to the provision 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 Persons Represented by Counsel

Unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order, a lawyer in representing a client 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; or
- (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

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

- (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 or electronically stored information 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 or electronically stored information was not intended for the receiving lawyer, shall refrain from examining or reading the writing or electronically stored information, promptly notify the sending lawyer, and return the writing or delete the electronically stored information.

Law Firms and Associations

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

- (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

- (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 Assistance

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

- (a) A lawyer or law firm shall not share legal fees with a non lawyer, 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 non lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and
 - (4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or



other representative of that lawyer the agreed-upon purchase price; and

- (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13).
- (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**

- (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, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, 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.

- (2) The registration form provided for in Section (e)(1) shall include:
- (i) the identity and bar roll number of the suspended or transferred attorney sought to be hired;
 - (ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney, or the attorney transferred to disability inactive status, throughout the duration of employment or association;
 - (iii) a list of all duties and activities to be assigned to the suspended attorney, or the attorney transferred to disability inactive status, during the period of employment or association;
 - (iv) the terms of employment of the suspended attorney, or the attorney transferred to disability inactive status, 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, or the attorney transferred to disability inactive status; and
 - (vi) a statement by the employing attorney certifying that the order giving rise to the suspension or transfer of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney, or the attorney transferred to disability inactive status.
- (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 bylaw;

- (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 defined by law or Supreme Court decision as constituting the practice of law.
- (4) In addition, a suspended lawyer, or a lawyer transferred to disability inactive status, shall not receive, disburse or otherwise handle client funds.
- (5) Upon termination of the suspended attorney, or the attorney transferred to disability inactive status, 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

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

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

- (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. General

- (a) **Permissible Forms of Advertising.** Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with Rule 7.4.
- (b) **Advertisements Not Disseminated in Louisiana.** These rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Louisiana.
- (c) **Communications for Non-Profit Organizations.** Publications, educational materials, websites and other communications by lawyers on behalf of non-profit organizations that are not motivated by pecuniary gain are not advertisements or unsolicited written communications within the meaning of these Rules.



Rule 7.2. Communications Concerning a Lawyer's Services

[Enforcement of Rule 7.2(c)(1)(D) and Rule 7.2(c)(1)(J) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated April 27, 2011.]

[Enforcement of Rule 7.2(c)(1)(J) is reinstated, except for the portion of the Rule prohibiting “the portrayal of a judge or jury”, by order of the Supreme Court of Louisiana, dated April 29, 2011.]

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

- (1) *Name of Lawyer.* All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.
- (2) *Location of Practice.* All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.
- (3) The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2:
 - (A) Sponsorships. A brief announcement in any public media that identifies a lawyer or law

firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or the law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution, in keeping with Rule 7.8(b);

(B) Gift/Promotional Items. Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4; and

(C) Office Sign(s) for Bona Fide Office Location(s). A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer's services or a law firm's services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.

(b) Permissible Content of Advertisements and Unsolicited Written Communications.

If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

- (1) *Lawyers and Law Firms.* A lawyer or law firm may include the following information in advertisements and unsolicited written communications:
 - (A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney”, “lawyer” or “law firm”;
 - (B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or



committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

- (C) technical and professional licenses granted by the State or other recognized licensing authorities and educational degrees received, including dates and institutions;
- (D) military service, including branch and dates of service;
- (E) foreign language ability;
- (F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;
- (G) prepaid or group legal service plans in which the lawyer participates;
- (H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;
- (I) common salutatory language such as “best wishes,” “good luck,” “happy holidays,” or “pleased to announce”;
- (J) punctuation marks and common typographical marks; and
- (K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background

- (2) *Public Service Announcements.* A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

- (1) *Statements About Legal Services.* 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 law firm’s services. A communication violates this Rule if it:

- (A) contains a material misrepresentation of fact or law;
- (B) is false, misleading or deceptive;
- (C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;
- (D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer’s services provided upon request; (Suspended)
- (E) promises results;
- (F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (G) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated;
- (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;
- (I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10); or (iii) a still picture, photograph or other static image that, due to alteration or the context of its use, is false, misleading or deceptive;
- (J) the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;
- (K) resembles a legal pleading, notice, contract or other legal document;
- (L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or
- (M) fails to comply with Rule 1.8(e)(4)(iii).



- (2) *Prohibited Visual and Verbal Portrayals and Illustrations.* A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.
- (3) *Advertising Areas of Practice.* A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.
- (4) *Stating or Implying Louisiana State Bar Association Approval.* A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.
- (5) *Communication of Fields of Practice.* A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.2(c)(1) to communications concerning a lawyer’s services. A lawyer shall not state or imply that the lawyer is “certified,” or “board certified” except as follows:
- (A) **Lawyers Certified by the Louisiana Board of Legal Specialization.** A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” or “board certified in (area of certification).”
- (B) **Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar.** A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified,” or “board certified in (area of certification)” if:
- (i) (i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,
- (ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.
- (C) **Certification by Other State Bars.** A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” or “board certified in (area of certification)” if:
- (i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,
- (ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.
- (6) *Disclosure of Liability For Expenses Other Than Fees.* Every advertisement and unsolicited written communication that contains information about the lawyer’s fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any costs and/or expenses in addition to the fee.
- (7) *Period for Which Advertised Fee Must be Honored.* A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.
- (8) *Firm Name.* A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.
- (9) *Language of Required Statements.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written



communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

- (10) *Appearance of Required Statements, Disclosures and Disclaimers.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. All disclosures and disclaimers required by these Rules shall be clear, conspicuous and clearly associated with the item requiring disclosure or disclaimer. Written disclosures and disclaimers shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and clearly intelligible.
- (11) *Payment by Non-Advertising Lawyer.* No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.
- (12) *Referrals to Another Lawyer.* If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.
- (13) *Payment for Recommendations; Lawyer Referral Service Fees.* A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:
- (A) A lawyer may pay the 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. [Reserved]
Rule 7.4. Direct Contact with Prospective Clients

- (a) **Solicitation.** Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer's request or on the lawyer's behalf or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase "prior lawyer-client relationship" shall not include relationships in which the client was an unnamed member of a class action.
- (b) **Written Communication Sent on an Unsolicited Basis.**
- (1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:
 - (A) the written 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, unless the accident or disaster occurred more than thirty days prior to the mailing of the communication;
 - (B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;



- (C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;
 - (D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2; or
 - (E) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.
- (2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:
- (A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2.
 - (B) In instances where there is no family or prior lawyer-client 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) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.
 - (ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked “ADVERTISEMENT” in print size at least as large as the largest print used in the written communication. 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 and on the inside of the brochure or pamphlet. Written communications solicited by clients or prospective clients, or written communications sent only to other lawyers need not contain the “ADVERTISEMENT” mark.
 - (C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery.
 - (D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.
 - (E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.
 - (F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client’s legal problem.

Rule 7.5. Advertisements in the Electronic Media other than Computer-Accessed Communications

[Enforcement of Rule 7.5(b)(2)(C) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]

- (a) **Generally.** With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.
- (b) **Appearance on Television or Radio.** Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.
 - (1) *Prohibited Content.* Television and radio advertisements shall not contain:
 - (A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive; or
 - (B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm.



(2) *Permissible Content.* Television and radio advertisements may contain:

(A) images that otherwise conform to the requirements of these Rules;

(B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or

(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as that spokesperson shall provide a spoken and written disclosure, as required by Rule 7.2(c)(10), identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer and disclosing that the spokesperson is being paid to be a spokesperson, if paid.

Rule 7.6. Computer-Accessed Communications

[Enforcement of Rule 7.6(d) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]

(a) **Definition.** For purposes of these Rules, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on World Wide Web search engine screens and elsewhere.

(b) **Internet Presence.** All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;

(2) shall disclose one or more bona fide office location(s) of the lawyer or law firm or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

(c) **Electronic Mail Communications.** A lawyer shall not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;

(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) the subject line of the communication states “LEGAL ADVERTISEMENT”. This is not required for electronic mail communications sent only to other lawyers.

(d) **Advertisements.** All computer-accessed communications concerning a lawyer’s or law firm’s services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2 when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.

Rule 7.7. Evaluation of Advertisements

[Enforcement of Rule 7.7 as it pertains to filing requirements for Internet advertising is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.]

(a) **Louisiana State Bar Association Rules of Professional Conduct Committee.** With respect to said Committee, it shall be the task of the Committee, or any subcommittee designated by the Rules of Professional Conduct Committee (hereinafter collectively referred to as “the Committee”): 1) to evaluate all advertisements filed with the Committee for compliance with the Rules governing lawyer advertising and solicitation and to provide written advisory opinions concerning compliance with those Rules to the respective filing lawyers; 2) to develop a handbook on lawyer advertising for the guidance of and dissemination to the members of the Louisiana State Bar Association; and 3) to recommend, from time to time, such amendments to the Rules of Professional Conduct as the Committee may deem advisable.



- (1) *Recusal of Members.* Members of the Committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or by other lawyers in their firms.
 - (2) *Meetings.* The Committee shall meet as often as is necessary to fulfill its duty to provide prompt opinions regarding submitted advertisements' compliance with the lawyer advertising and solicitation rules.
 - (3) *Procedural Rules.* The Committee may adopt such procedural rules for its activities as may be required to enable the Committee to fulfill its functions.
 - (4) *Reports to the Court.* Within six months following the conclusion of the first year of the Committee's evaluation of advertisements in accordance with these Rules, and annually thereafter, the Committee shall submit to the Supreme Court of Louisiana a report detailing the year's activities of the Committee. The report shall include such information as the Court may require.
- (b) **Advance Written Advisory Opinion.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer's voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.
- (c) **Regular Filing.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.
- (d) **Contents of Filing.** A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:
- (1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);
 - (2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;
 - (3) a printed copy of all text used in the advertisement;
 - (4) an accurate English translation, if the advertisement appears or is audible in a language other than English;
 - (5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;
 - (6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and
 - (7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer's first dissemination of the advertisement or unsolicited written communication.
- (e) **Evaluation of Advertisements.** The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or



unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the thirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

- (f) **Additional Information.** If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of non-compliance for insufficient information.
- (g) **Notice of Noncompliance; Effect of Continued Use of Advertisement.** When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.
- (h) **Committee Determination Not Binding; Evidence.** A finding by the Committee of either compliance or noncompliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.
- (i) **Change of Circumstances; Re-filing Requirement.** If a change of circumstances occurring subsequent to the Committee's evaluation of an advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or a modified advertisement with the Committee along with an explanation of the change in circumstances and an additional fee as set by the Court.
- (j) **Maintaining Copies of Advertisements.** A copy or recording of an advertisement or written or recorded communication shall be submitted to the Committee in accordance with the requirements of Rule 7.7, and the lawyer shall retain a copy or recording for five years after its last dissemination along with a record of when and where it was used. If

identical unsolicited written communications are sent to two or more prospective clients, the lawyer may comply with this requirement by filing a copy of one of the identical unsolicited written communications and retaining for five years a single copy together with a list of the names and addresses of all persons to whom the unsolicited written communication was sent.

Rule 7.8. Exemptions from the Filing and Review Requirement

The following are exempt from the filing and review requirements of Rule 7.7:

- (a) any advertisement or unsolicited written communication that contains only content that is permissible under Rule 7.2(b).
- (b) a brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this Rule and the Rule setting forth permissible content of advertisements, the following are criteria that may be considered:
 - (1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;
 - (2) whether the announcement contains information concerning the lawyer's or law firm's area(s) of practice, legal background, or experience;
 - (3) whether the announcement contains the address or telephone number of the lawyer or law firm;
 - (4) whether the announcement concerns a legal subject;
 - (5) whether the announcement contains legal advice; and
 - (6) whether the lawyer or law firm paid to have the announcement published.
- (c) A listing or entry in a law list or bar publication.
- (d) A communication mailed only to existing clients, former clients, or other lawyers.
- (e) Any written communications requested by a prospective client.



- (f) Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients.
- (g) Computer-accessed communications as described in subdivision (b) of Rule 7.6.
- (h) **Gift/Promotional Items.** Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4; and
- (i) **Office Sign(s) for Bona Fide Office Location(s).** A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer's services or a law firm's services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.

Rule 7.9. Information about a Lawyer's Services Provided upon Request

- (a) **Generally.** Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rule 7.2 unless otherwise provided in this Rule 7.9.
- (b) **Request for Information by Potential Client.** Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:
 - (1) The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client.
 - (2) The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client includes a contingency fee contract, the top of each page of the contract shall be marked "SAMPLE" in print size at least as large as the largest print used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.
 - (3) Notwithstanding the provisions of subdivision (c)(1)(D) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are

not otherwise false, misleading or deceptive.

- (c) **Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm.** A statement and any information furnished to a prospective client, as authorized by subdivision (b) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

Rule 7.10. Firm Names and Letterhead

- (a) **False, Misleading, or Deceptive.** A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.
- (b) **Trade Names.** 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, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.
- (c) **Advertising Under Trade Name.** A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.
- (d) **Law Firm with Offices in More Than One Jurisdiction.** A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but 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.
- (e) **Name of Public Officer or Former Member in Firm Name.** 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 communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.



- (f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.
- (g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law 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 law firm, or of a predecessor firm in a continuing line of succession.
- (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.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact;
- (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

- (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.

Rule 8.4. Misconduct

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. Disciplinary Authority; Choice of Law

- (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.



Rules of Professional Conduct with
amendments through November 27, 2018.
Visit www.ladb.org for the most recent
version and updates.

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 Louisiana Supreme 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. That agency 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 are directed by a lawyer employed by the Board and performed by employees of the agency; the Office of Disciplinary Counsel; and
- The adjudicative functions are conducted by the Disciplinary Board, consisting of ten 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, hearing committees serve as the triers of fact.

There are over fifty 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, § H(a).* Otherwise, the complaint is dismissed.

If an investigation is conducted, deputy disciplinary counsel forwards the complaint to the respondent, informs him or her that the Office of Disciplinary Counsel has received a complaint, and requests a response. Deputy Disciplinary Counsel then conducts an 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 the LSBA's 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 deemed proven by clear and convincing evidence. The only issue at that juncture is for the committee to determine the appropriate sanction based on the charges as "deemed admitted."

The hearing committee order deeming the charges admitted shall be served on respondent. He or she 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 conclusions of 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 any sanction(s) 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 reprimand¹, suspension or disbarment. The Court also could order the entire matter be dismissed, finding that no sanction is appropriate. Probation may follow a suspension or reprimand, or may 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 Generally Receives More Than 3,000 Complaints a Year!

When a complaint arrives, what should I do?

The Louisiana State Bar Association's Practice Assistance and Improvement Committee has prepared a video entitled *"What to Expect if you Receive a Disciplinary Complaint"*

See also **"Demystifying the Office of Disciplinary Counsel"**

<https://www.lsba.org/Public/AttorneyDisciplinaryProcedures.aspx>

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 or her 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 or her 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 and can result in sanctions even if the respondent's initial complaint 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. In your initial response, submit any documentation that can help resolve your complaint.
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 why you cannot still be diligently representing the client. In fact, you are required to continue with the representation unless and until the representation is terminated - a complaint does not terminate representation. 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.
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. It has been said that 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 or herself 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 or her practice. The lawyer who does not care enough about his or her license to participate in the process will not keep that license for long.

Louisiana State Bar Association Publications Subcommittee

The Publications Subcommittee of the Rules of Professional Conduct Committee, with the assistance of Ethics Counsel, regularly reviews select ethics advisory opinions for issues and topics of interest, importance and/or significance to the general bar which are not highly fact-sensitive, with an eye towards developing them into advisory opinions which may be published for the benefit of the general bar. Public Opinions have been rendered as follows:

- **05-RPCC-001**, Lawyer Retirement—Ethical Requirements to Client
<http://files.lsba.org/documents/Ethics/LeavingPracticePublicationProof.pdf>
- **05-RPCC-002**, Contingency Fees in Domestic Relations Cases
<http://files.lsba.org/documents/Ethics/ContingencyFeesDomesticCases.pdf>
- **05-RPCC-003**, Surrender of Client File Upon Termination of Representation
<http://files.lsba.org/documents/Ethics/FileSurrenderPublicationProof.pdf>
- **05-RPCC-004**, Safekeeping the Property of Clients and Third Parties
<http://files.lsba.org/documents/Ethics/SafekeepingProperty.pdf>
- **05-RPCC-005**, Lawyer Providing “Hotline” Advice in the Wake of a Natural Disaster (*published on an expedited basis, following Hurricane Katrina*)
<http://files.lsba.org/documents/Ethics/05005RPCC.pdf>
- **05-RPCC-006**, Client Confidentiality vs. Subpoena/Court Order to Testify
<http://files.lsba.org/documents/Ethics/05006RPCCPublic.pdf>
- **05-RPCC-007**, Lawyer as a Witness
<http://files.lsba.org/documents/Ethics/05LSBARPCC007.pdf>
- **06-RPCC-008**, Client File Retention
<http://files.lsba.org/documents/Ethics/06LSBARPCC008.pdf>
- **06-RPCC-009**, Funds or Property of Missing Client
<http://files.lsba.org/documents/Ethics/FundsPropertyMissingClient06009RPCCPub.pdf>
- **06-RPCC-010**, Lawyer’s Duty to Report Professional Misconduct of Another Lawyer
<http://files.lsba.org/documents/Ethics/06010RPCCPublication.pdf>
- **07-RPCC-011**, Conflicts of Interest and the Part-Time Prosecutor
<http://files.lsba.org/documents/Ethics/PartProsecutor07011Publication.pdf>
- **07-RPCC-012**, Identification of a Law Practice - Fictitious or Trade Names
<http://files.lsba.org/documents/Ethics/07012RPCCPublicationPro.pdf>
- **07-RPCC-013**, Sharing Office Space Without Sharing Liabilities and Conflicts
<http://files.lsba.org/documents/Ethics/SharingOffice07013RPCC.pdf>
- **07-RPCC-014**, Permissible Communications with Persons Already Represented by Counsel
<http://files.lsba.org/documents/Ethics/SecondOpinionsPermitted07014RPCC.pdf>
- **07-RPCC-015**, Gifts to Clients
<http://files.lsba.org/documents/Ethics/GiftstoClients07015RPCC.pdf>
- **08-RPCC-016**, Conflicts of Interest: Simultaneous Representation of Driver and Guest-Passenger
<http://files.lsba.org/documents/Ethics/DriverGuestPassengerConflicts08016RPCC.pdf>
- **08-RPCC-017**, Sharing Office Space with Non-Lawyers
<http://files.lsba.org/documents/Ethics/08RPCC017.pdf>
- **12-RPCC-018**, Sharing Legal Fees with Suspended or Disbarred Lawyers
<http://files.lsba.org/documents/Ethics/LSBAAdvisoryOpinionFeeSharingredli113012.pdf>
- **12-RPCC-019**, Accepting Credit Cards for Payment of Fees and Costs
<http://files.lsba.org/documents/Ethics/12LSBARPCC019.pdf>
- **16-RPCC-020**, Communication Regarding Potential Malpractice
<http://files.lsba.org/documents/Ethics/PublicOpinion020.pdf>

Louisiana State Bar Association

Ethics Advisory Service

The Ethics Advisory Service provides confidential, informal, non-binding advice and opinions on matters of legal ethics to all eligible LSBA members (i.e., whose law license is active and in good standing with the LSBA). The service is provided by the Ethics Advisory Service Subcommittee of the Rules of Professional Conduct Committee, with the assistance of the LSBA's Ethics Counsel. The Subcommittee consists of experienced volunteer members of the LSBA.

Lawyers seeking advice or written opinions on matters of legal ethics may telephone, email, fax or write letters (with their requests for advice/opinions) to:

Richard P. Lemmler, Jr.
Ethics Counsel
601 St. Charles Avenue
New Orleans, LA 70130

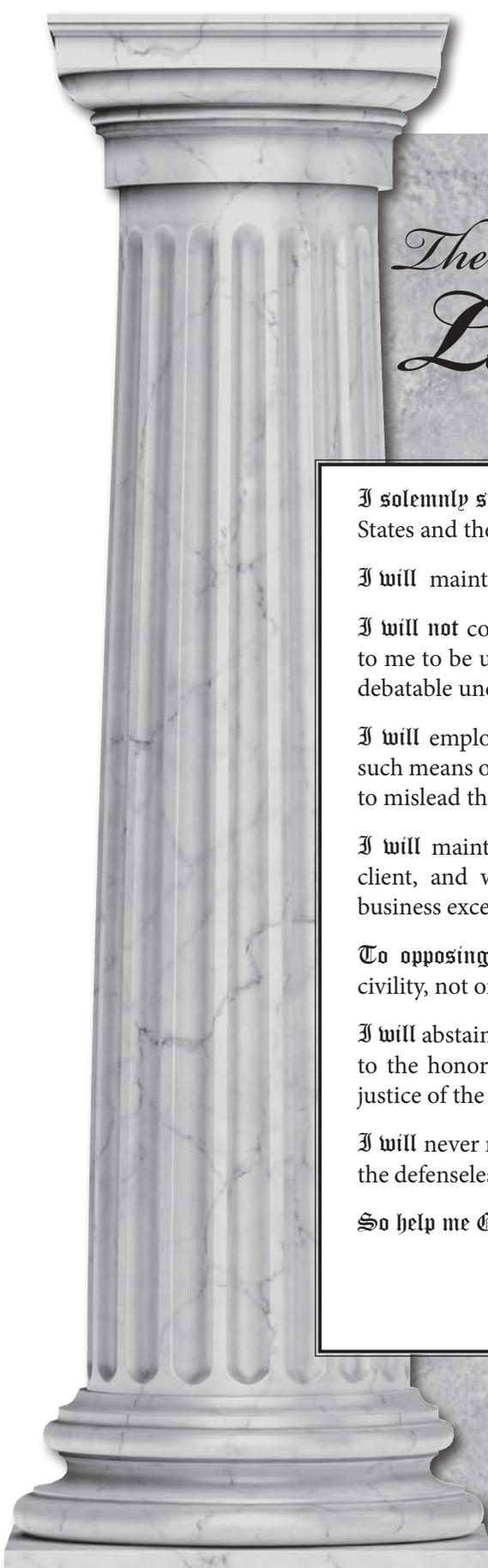
or

Eric K. Barefield
Ethics Counsel
601 St. Charles Avenue
New Orleans, LA 70130

direct dial: (504)619-0144
fax: (504)598-6753
email: rlemmler@lsba.org

direct dial: (504)619-0122
fax: (504)598-6753
email: ebarefield@lsba.org

The request must pertain to the lawyer's own prospective conduct—the Ethics Advisory Service does not evaluate or comment upon past or on-going conduct, on matters which are themselves the subject of pending litigation or disciplinary action, or on the conduct of a lawyer other than that of the requesting lawyer. Requests that are routine or of a repetitive nature can be answered by Ethics Counsel almost immediately.



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;

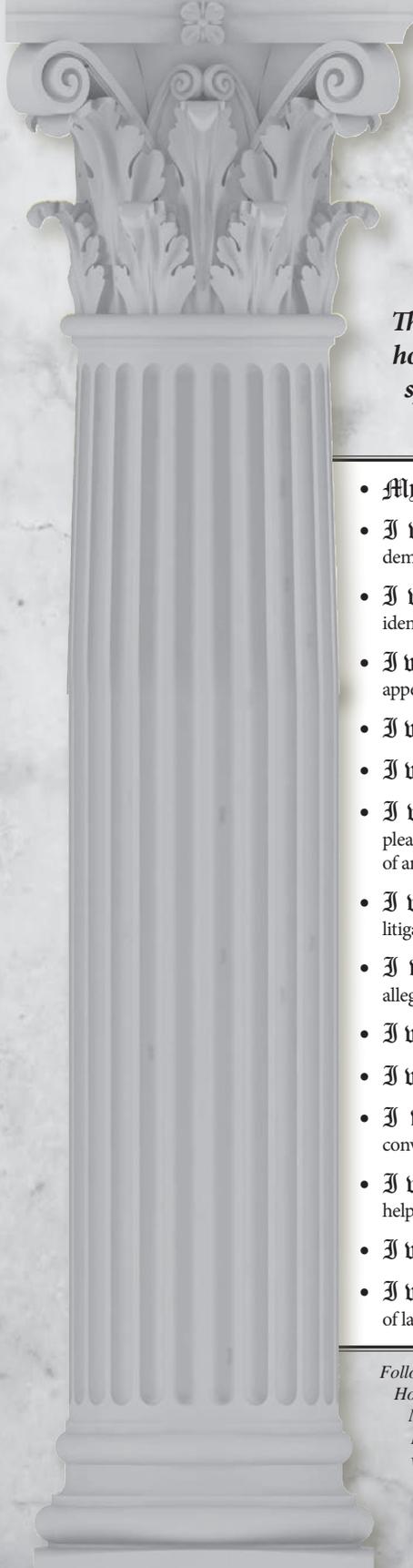
To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

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.





Code of Professionalism

The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.

- **My word** is my bond.
- **I will** conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- **I will not** knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- **I will** be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- **I will** allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- **I will not** abuse or misuse the law, its procedures or the participants in the judicial process.
- **I will** cooperate with counsel and the court to reduce the cost of litigation and 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 not** engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- **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** work to protect and improve the image of the legal profession in the eyes of the public.
- **I will** endeavor to improve our system of justice.
- **I will** use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- **I will** seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- **I will** be supportive of new members in the profession.
- **I will** stay informed about changes in the law, communication, and technology which affect the practice of law.

Following approval by the Louisiana State Bar Association House of Delegates and the 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 from the Professionalism and Quality of Life Committee, and was revised in June 2018.



Louisiana[®]
State Bar
Association

Serving the Public. Serving the Profession.

Louisiana State Bar Association Committee on the Profession

The Committee on the Profession is charged with conducting the Bar's professionalism programs and has numerous professionalism articles and information. For information on the Committee, visit <http://www.lsba.org/goto/committeeontheprofession>

The mission of the Committee will be to support and encourage lawyers to exercise the highest standards of integrity, ethics and professionalism in their conduct; to examine systemic issues in the legal system arising out of the lawyer's relationship and duties to his/her clients, other lawyers, the courts, the judicial system and the public good; to provide the impetus and means to positively impact those relationships and duties; to improve access to the legal system; and to improve the quality of life and work/life balance for lawyers.

Chapter 9

Lawyer Advertising & Solicitation Rules

Lawyer Advertising Frequently Asked
Questions

Filing Application

Filing Application Addendum

LAWYER
Advertising & Solicitation Rules

Chapter 9

Lawyer Advertising & Solicitation Rules

Frequently Asked Questions & Answers

On June 26, 2008, the Supreme Court of Louisiana issued an Order repealing and reenacting the entirety of the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association (i.e., the lawyer advertising and solicitation Rules of the Louisiana Rules of Professional Conduct). Those new Rules, containing, among other things, new provisions requiring filing and evaluation of all non-exempt advertisements and unsolicited written communications, ultimately became effective on October 1, 2009. In an effort to offer some basic information and practical guidance about the Rules pertaining to lawyer advertising and solicitation, what follows is a collection of questions about lawyer advertising and solicitation that are asked most frequently by lawyers—as well as the answers/advice provided in response by LSBA Ethics Counsel.

A. Q: Does my advertisement or unsolicited written communication have to be filed with the LSBA?

A. A: More than likely, yes, it will need to be filed with the LSBA—but there are items that are considered exempt from required filing and evaluation. Rule 7.8 contains a list of specific exemptions from the filing and evaluation requirements of Rule 7.7. If the advertisement or unsolicited written communication falls within any of those exemptions, no filing with the LSBA is required. Advertisements or unsolicited written communications that are not specifically exempt under Rule 7.8 must be filed with the LSBA, as per Rule 7.7(b) and Rule 7.7(c). There is a **Filing Application Form** that must be completed, signed by the lawyer responsible for the content of the advertisement or unsolicited written communication and submitted to the LSBA Ethics Counsel with each filing. For unsolicited written communications, there is also a second form, **Filing Application Addendum**, that must also be completed, signed and submitted to the LSBA Ethics Counsel with each filing. These forms are readily-available online at www.LSBA.org/goto/LawyerAdvertising; copies of the forms have also been included for ease of reference at the end of this section.

B. Q: Does my non-exempt advertisement or unsolicited written communication have to be evaluated by the LSBA before I can use it?

A: No. Rule 7.7(c) requires filing “either prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication.” Rule 7.7(b) also offers an optional process for filing at least thirty (30) days prior to first dissemination of the advertisement or unsolicited written communication in order for the filing lawyer to obtain a written advisory opinion concerning the compliance of the advertisement or unsolicited written communication. As such, while the lawyer may file prior to first dissemination, the Rules do permit filing concurrent with first dissemination. However, an item is technically not “filed” with the LSBA Ethics Counsel unless/until it has been received by the LSBA Ethics Counsel, so “concurrent” filing requires that the advertisement or unsolicited written communication must be physically received by the LSBA Ethics Counsel on the same day that the advertisement or unsolicited written communication will be first disseminated. In other words, filing is not accomplished merely by placing an item in the U.S. Mail—an advertisement or unsolicited written communication is not filed unless/until physically received, in hard-copy form, by the LSBA Ethics Counsel.

An additional concern with concurrent filing is that, once an advertisement or unsolicited written communication had been disseminated, any violation of the substantive rules governing lawyer advertisements subjects the advertising lawyer to potential discipline. Therefore, while concurrent filing is specifically permitted by Rule 7.7(c), prudence would suggest filing as early as possible prior to first dissemination in order to avoid the risk of rule violations and/or disciplinary consequences that might occur if the lawyer waits to file concurrent with first dissemination.

C. Q: What is the amount of the filing fee?

A: The fee for submissions filed prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication, including filings under the optional advance written advisory opinion process, (i.e., “regular filings”, under Rule 7.7(b), and “advance written advisory opinion filings”, under Rule 7.7(c)) is \$175.00.

The fee for submissions not filed until after the lawyer’s first dissemination of the advertisement or unsolicited written communication (i.e., “late filings”) is \$275.00.

D. Q: May the filing be faxed or emailed to expedite evaluation?

A: No. The review process cannot begin until the LSBA receives a check for the entire amount of the filing fee, made payable to “Louisiana State Bar Association”. While the LSBA will accept information related to filings by fax or email, the filing is technically not complete and ready for evaluation until the LSBA has also received the full amount of the correct filing fee. For that reason, filings should be made either using U.S. Mail, commercial courier (e.g., UPS, FEDEX, etc.) or hand-delivery to the LSBA Bar Center, 601 St. Charles Avenue, New Orleans, LA 70130, Monday – Friday (legal holidays excluded), between the hours of 8:30 a.m. to 4:30 p.m.

E. Q: What happens if I file an advertisement or unsolicited written communication but fail to submit the correct filing fee or any of the other elements needed for a complete filing?

A: Lawyers who submit filings without fees or with insufficient fees, and/or filings that are missing other necessary components (see Rule 7.7(d) for a complete list), will be notified in writing of the deficiency and requested to supply the appropriate item(s) needed to complete the filing and continue with the evaluation process. Failure to submit the requested item(s) following a written request for same from LSBA Ethics Counsel may result in: a written finding of “Non-Compliance for Insufficient Information”; written notice of same to the Office of Disciplinary Counsel (unless the filing lawyer certifies in writing within ten (10) days that the advertisement/communication has not and will not be disseminated); and termination of the filing.

F. Q: Once my advertisement or unsolicited written communication has been filed and deemed in compliance, must I re-file the advertisement or unsolicited written communication if I decide to use it later in its identical form?

A: Generally, the answer is “no”. If you will use it again in the same media indicated at the time of your original filing, you do not need to re-file the advertisement or unsolicited written communication unless you make changes to the advertisement or unsolicited written communication other than changes to “permissible content” (“safe harbor” content) as detailed in Rule 7.2(b). For example, if you change only the street address and/or a listing of practice areas (i.e., exempt “safe harbor”/“permissible content” under Rule 7.2(b)), the advertisement/communication does not need to be re-filed [although, for the sake of completeness, the lawyer is encouraged to send a final copy of the new version to LSBA Ethics Counsel, referencing the file number of the previous versions, so that the new version can be included within the existing file].

If, however, you make changes to the advertisement or unsolicited written communication that are not just considered “permissible content” under Rule 7.2(b), the advertisement or unsolicited written communication is effectively now a distinctly new advertisement/communication and, as such, must be filed as a new filing unless otherwise exempt under Rule 7.8.

Other changes requiring a new filing would include a plan to use the same advertisement or unsolicited written communication in an entirely new/different medium not originally specified in your original filing, as the change in medium may now require evaluation/analysis under a different set of Rules. For example, a lawyer would ordinarily need to re-file an advertisement specifically filed and first disseminated only as a newspaper advertisement if the lawyer subsequently decides to use the same advertisement as an unsolicited written communication—the new intended method of dissemination would constitute a new form of advertisement or unsolicited written communication and, therefore, require a new filing and new evaluation, unless otherwise exempt under Rule 7.8.

G. Q: What happens if the Supreme Court of Louisiana changes the Rules on lawyer advertising and solicitation after I have already filed an advertisement or unsolicited written communication that was deemed compliant?

A: If the Rules are amended by the Supreme Court of Louisiana, changes in the Rules may make a previously-compliant advertisement or unsolicited written communication non-compliant, or vice versa. Therefore, following a rule change, you should consider whether the changes affect your advertisement/communication and, if so, whether the advertisement or unsolicited written communication will need to be revised in order to comply with the changes in the Rules. If no revision is needed, no re-filing is required. You can always check with the LSBA Ethics Counsel for clarification and/or additional information.

However, if this “change of circumstances” occurring subsequent to the original evaluation of the advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the “change of circumstances”, you must promptly re-file your advertisement/communication, revised in keeping with the new changes in the Rules. The fee for re-filing under such an involuntary “change of circumstances” will be one-half of the amount of the regular filing fee for new filings (i.e., \$87.50).

H. Q: May I obtain a written advisory opinion before going to the expense of actually producing a radio or television advertisement?

A: Yes—Absolutely; in fact, you are strongly encouraged to do so. An advance written advisory opinion based upon scripts and/or storyboards can be sought prior to actual production, if submitted according to Rule 7.7(b) and 7.7(d). However, the advance written advisory opinion obviously will not cover any elements in the finished advertisement that are not clearly indicated in the previously-submitted scripts and storyboards. A hard-copy of the recording/digital file of the advertisement in its final form, readily-capable of duplication by the LSBA Ethics Counsel (e.g., a DVD or CD or flash drive), must be filed no later than the time of its first broadcast. Upon receipt of an advertisement in its final form, a final evaluation for compliance will be rendered.

I. Q: Must I submit a separate filing fee for each non-exempt advertisement I plan to run, even if the advertisements are all very similar?

A: Yes, separate/distinct advertisements must each be filed individually, along with payment of the appropriate filing fee for each filing, unless: (1) the advertisements are identical in content and your statement of intent includes all media in which the ad/communication will appear, in keeping with Rule 7.7(d)(6); (2) the only differences pertain to “permissible content” detailed in Rule 7.2(b); or (3) the advertisements are clearly/obviously subsets of another advertisement already filed. Final determination as to whether items may be eligible for “set/subset” treatment will rest with LSBA Ethics Counsel.

J. Q: What language in advertisements or unsolicited written communications is subject to size and other requirements?

A: Any words or statements required by the advertising rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. Rule 7.2(c)(10). Examples of required language include the following:

- **Rule 7.2(a)(1)** Name of at least one lawyer responsible for the content;
- **Rule 7.2(a)(2)** Disclosure, by town or city [or parish, if outside town or city], of one or more bona fide office location(s) [or city or town of lawyer’s primary registration statement address, if no bona fide office];
- **Rule 7.2(c)(5)** IF board specialty/certification/expertise claimed, name of certifying organization [and, if not approved by the Louisiana Board of Legal Specialization or another state bar or accredited by the ABA, disclosure that certifying organization is “Not Recognized by the Louisiana Board of Legal Specialization”];
- **Rule 7.2(c)(6)** IF fee information included, disclosure of client’s liability for expenses/costs other than fees;
- **Rule 7.2(c)(7)** IF fees or a range of fees for a particular service are advertised but will be honored for a period of less than ninety (90) days from the date last advertised, the advertisement or communication must specify the shorter period that the advertised fee(s) will be honored [Note: fees listed in yellow page/telephone directory advertisements and or public media that are not published more frequently than only once a year must be honored for at least one (1) year following publication];
- **Rule 7.2(c)(12)** IF the case or matter will be, or is likely to be, referred to another lawyer or law firm, a statement so advising the prospective client;
- **Rule 7.4(b)(2)(B)(ii)** IF the lawyer is sending an unsolicited written communication for the purpose of obtaining undefined employment to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the word “ADVERTISEMENT” must appear at the top of each page and on the lower left corner of the face of the envelope in which the written communication will be enclosed. “ADVERTISEMENT” must be plainly marked in all such locations in print size at least as large as the largest print used in the written communication;

IF the unsolicited written communication is a self-mailing brochure or pamphlet (or postcard) that will not be enclosed in an envelope, the “ADVERTISEMENT” mark must also appear above the address panel of the brochure or pamphlet (i.e., immediately above the name and mailing address of the intended recipient(s)) and on the inside of the brochure or pamphlet, in print size at least as large as the largest print used in the written communication;

- **Rule 7.4(b)(2)(D)** IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, IF another lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, the communication must contain a statement so advising the prospective client;
- **Rule 7.4(b)(2)(E)** IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship that is prompted by a specific occurrence involving or affecting the intended recipient or a family member of that person, the written communication must disclose how the lawyer obtained the information prompting the communication;
- **Rule 7.6(c)(3)** IF the advertisement or other communication about the lawyer or the lawyer’s services is on a website or home page accessed via the Internet, the lawyer must disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law, as well as the city or town of one or more bona fide office locations or, in the absence of a bona fide office location, the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2);

- **Rule 7.6(b)(1)** IF the advertisement or unsolicited written communication is sent via electronic mail to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the subject line of the email must state “LEGAL ADVERTISEMENT”;
- **Rule 7.9(b)(2)** IF the lawyer is sending information to a potential client that has been requested by the potential client, the lawyer may furnish an engagement letter to the potential client; however, if the information includes a contingency fee contract, the top of each page of the contract shall be marked “SAMPLE” in print size at least as large as the largest print used in the contract and the words “DO NOT SIGN” must appear on the client signature line;
- **Rule 7.9(c)** IF the lawyer is sending information to a potential client that has been requested by the potential client AND the sending lawyer reasonably believes that a lawyer or law firm not associated with the sending lawyer will be associated or act as primary counsel in representing the client, the sending lawyer must provide an appropriate disclaimer to that effect;
- **Rule 7.10(d)** IF the lawyer or law firm has offices in more than one jurisdiction, the lawyer or law firm may use the same firm name in each jurisdiction but the identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located;
- **Rule 7.10(g)** IF the lawyer or law firm uses, or continues to include in its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession, appropriate disclosure/qualifying language regarding the status of those members should be used (e.g., “(Retired)”; “(Deceased)”; “(1950-1990)”; etc.).

K. Q: What rules apply to newsletters?

A: Newsletters, if disseminated as unsolicited written communications to persons with whom the lawyer has no family or prior-lawyer client relationship, qualify as unsolicited written communications to prospective clients for the purpose of obtaining professional employment and, therefore, must comply with the requirements of Rule 7.4 (or Rule 7.6(c), if disseminated electronically) and must be filed for evaluation in accordance with Rule 7.7, if not otherwise exempt under Rule 7.8.

L. Q: What rules apply to seminar announcements?

A: Seminar announcements appearing in public print media must comply with the rules governing other forms of print advertisements set forth in Rule 7.2. Unsolicited seminar announcements disseminated through the mail by a lawyer or law firm, directly or indirectly, to persons with whom the lawyer has no family or prior-lawyer client relationship, must comply with Rule 7.4(b) governing unsolicited written communications. Exceptions may be made, however, if the lawyer has no financial responsibility for the seminar and no control over seminar advertisements. For example, if a lawyer will appear as a guest speaker at a seminar sponsored and financed by someone else (e.g., a third party CLE provider, a local bar, the LSBA, etc.), the advertisement may be outside the scope of the rules governing lawyer advertising.

M. Q: What rules apply to professional announcements?

A: Professional announcements appearing in the public print media must comply with the general rule governing communications concerning a lawyer’s services, namely Rule 7.2.

Provided they contain no illustrations or information beyond that set forth in Rule 7.2(b), professional announcements appearing in the public print media (e.g., newspapers) are exempt from the filing requirement under Rule 7.8(a).

Provided that they state only new or changed associations, new offices, and similar changes relating to a lawyer or law firm and are mailed only to other lawyers, relatives, close personal friends and existing or former clients, they are also exempt from the filing requirement under Rule 7.8(f). However, if they will also be mailed to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, professional announcements must comply with the rules governing unsolicited written communications, i.e., Rule 7.4(b)(2)(B).

N. Q: What about information disseminated on the Internet?

A: Lawyer and law firm websites (“internet presences”) are exempt from the filing and evaluation requirements of Rule 7.7, as per Rule 7.6(b).

However, websites are still subject to Rule 7.9, which, in turn, makes them subject to the requirements of Rule 7.2, unless otherwise provided in Rule 7.9 (i.e., law firm websites must still be compliant with the Rules even though there is no requirement for filing with and evaluation by the LSBA). Essentially, the two Rules, when read together, prohibit the use of false, misleading or deceptive information on the website of the lawyer or law firm. Websites are specifically subject to Rule 7.6(b)(1) and (2), which require lawyers to disclose on their websites “all jurisdictions in which the lawyer or members of the law firm are licensed to practice law” and to disclose “one or more bona fide office location(s) of the lawyer or law firm, or in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2”. Otherwise, websites are treated as “information provided upon request” and are governed by Rule 7.9.

Unlike websites, unsolicited electronic mail (“email”) communications directly or indirectly to prospective clients with whom the lawyer has no family or prior lawyer-client relationship must follow the requirements of Rule 7.6(c)(1) through 7.6(c)(3), especially including on the subject line the words “LEGAL ADVERTISEMENT”.

All other forms of computer-accessed communications—i.e., not a lawyer’s or law firm’s own website or unsolicited information disseminated by email—are currently, by order of the Court signed September 22, 2009, not subject to enforcement of the rules applicable to lawyer advertising and solicitation. Examples would include electronic lawyer advertisements displayed on websites managed/owned by third parties, various forms of electronic social media, etc.



FILING APPLICATION FORM

LAWYER ADVERTISING AND UNSOLICITED WRITTEN COMMUNICATIONS

Effective October 1, 2009, Rule 7.7 of the Louisiana Rules of Professional Conduct requires that a lawyer **file** with the Rules of Professional Conduct Committee of the Louisiana State Bar Association a copy of each advertisement and unsolicited written communication, unless exempt by Rule 7.8, prior to or at the time of its first dissemination. Alternatively, an Advance Written Advisory Opinion may be obtained by filing a copy of the advertisement or unsolicited written communication at least thirty (30) days prior to its first dissemination or mailing. (If an Advance Written Advisory Opinion is requested for an advertisement that is to be placed in a telephone directory or similar publication, the advertisement must be filed at least thirty (30) days prior to the printing deadline of the publication, rather than thirty (30) days prior to the dissemination date of the printed publication.) [Rev. 09-30-2010]

For Committee Use Only

EC Filing #:

INSTRUCTIONS FOR FILING ADVERTISEMENTS AND UNSOLICITED WRITTEN COMMUNICATIONS

How To Submit A Complete Filing Application Packet

1. Complete Application Form in full. Please print or type. The Form may be reproduced. Applicant must be a Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction.
2. Attach one (1) copy of the advertisement or unsolicited written communication:
 - For an unsolicited written communication (e.g., letter, mailing, etc.), attach a sample of the actual communication and of any envelope or packaging in which it will be mailed.
 - For a television or radio ad (or any other ad not embodied in written/printed form), attach a typewritten transcript of the ad or communication and a printed copy of any/all text used within the ad that is not contained or appearing within the transcript
 - For a television or radio ad, include ad title or number, and a copy/recording of the actual ad on DVD or CD.
 - If requesting an Advance Written Advisory Opinion for a TV or radio ad that has not yet been produced, a typewritten production script and storyboards may be submitted for review without the copy/recording of the actual ad [which must still be submitted prior to or at the time of the ad's first dissemination in order to complete the filing and evaluation process].
 - If a language other than English is used, attach a complete, typewritten, accurate English translation of the ad or communication, along with a copy of the ad or communication as it appears using the intended language.

- For internet sites or communications, include URL address and a hard-copy print-out of each/all page(s) of website(s)/communications to be evaluated.

3. Enclose check or money order in the amount of **\$175.00** payable to "Louisiana State Bar Association" for each separate advertisement or unsolicited written communication. Late Filings are \$275.00. An application is considered filed upon receipt by the LSBA.

4. Mail the completed Filing Application Packet to:

**Rules of Professional Conduct Committee
c/o Ethics Counsel
Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130**

NOTE:

A separate application packet must be submitted for each separate advertisement or unsolicited written communication. If submitting more than one filing application packet at a time, TV or radio commercials may be combined onto one DVD or CD. Filing fees may also be combined and submitted within one check. Incomplete filing application packets will result in delays in processing and evaluation.

Lawyer*: _____ LSBA Bar #*: _____

*Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction, responsible for content of the advertisement or unsolicited written communication. If not licensed to practice law in Louisiana, please indicate state(s) of licensure & corresponding state license #(s).

Firm: _____

Lawyer/Firm's Principal Office Address**: _____

** If the Lawyer has no regular office, use the Lawyer's Primary LSBA Annual Registration Statement Address _____

Phone: _____ Fax: _____ E-mail: _____

For questions concerning filing requirements, please visit our website, www.LSBA.org, or call 1-800-421-LSBA, ext. 144.

NATURE OF ADVERTISEMENT OR UNSOLICITED WRITTEN COMMUNICATION:

Check all that apply

- A. Letter (**Complete Addendum Form**)
- D. Brochure/Newsletter (**Complete Addendum Form**)
- G. Other (billboards, etc.)
- B. Telephone Directory
- E. Television/Radio (circle as appropriate)
- C. Magazine/Newspaper
- F. Firm Website/Internet Advertisement (circle as appropriate) URL: _____

Does Applicant seek an Advance Written Advisory Opinion? Yes No (if "Yes", filing must be at least 30 days before first use)

Date the advertisement/unsolicited written communication was or will be first disseminated: _____

Is this the first time you are filing/submitting this ad/communication with the LSBA? Yes No

If you answered **No**, please indicate the date last filed/submitted with the LSBA: _____

Is it likely that a client or case resulting from the advertisement/communication will be referred to another lawyer or law firm?

Yes No

Does the advertisement or communication contain any information about or reference to fees? Yes No

Does the advertisement or communication refer to or disclose the existence of an office other than the firm's principal office?

Yes No

If you answered **Yes**, does a lawyer regularly/consistently work from the other office(s)? Yes No

Does the advertisement or communication indicate that any lawyer in the firm is certified, an expert and/or a specialist in one or more specific areas of law? Yes No

If you answered **Yes**, is each lawyer for whom a specialty is claimed board certified in the area(s) of practice advertised?

Yes No

Has another lawyer or law firm paid for any part of the advertisement or communication? Yes No

In which geographic location(s) do you anticipate the advertisement/communication will be disseminated?

Please state the anticipated frequency of use of the advertisement or unsolicited written communication in each medium in which it will appear:

Please state the anticipated time period during which the advertisement or unsolicited written communication will be used:

Identify all lawyers depicted in the submitted material:

Identify any actual clients depicted in the submission:

Identify any actor(s) or non-lawyer spokesperson(s) used in the advertisement or communication:

If any non-lawyer(s) (including actual clients, actors, announcers, voice-talents, etc.) are used or depicted within the submission, did/will the non-lawyer(s) receive any payment or other compensation for the appearance/use within the advertisement? Yes No

Are depictions of events, scenes or pictures used within the advertisement actual or authentic (i.e., as opposed to "stock" and/or digitally-created/modified/enhanced images/video, dramatizations, etc.)? Yes No

Please include any additional information that you believe might be useful/important/pertinent to our review of your filing:

CERTIFICATION

I have reviewed the advertisement or unsolicited written communication submitted as required by Rule 7.7 of the Louisiana Rules of Professional Conduct, effective October 1, 2009. The representations contained therein and the information contained within this Application are true and correct to the best of my knowledge, information, belief and understanding. [Rev. 09-30-2010]

Signature of Lawyer-Applicant

Date

Page (2) of (2)



FILING APPLICATION ADDENDUM

LAWYER ADVERTISING AND UNSOLICITED WRITTEN COMMUNICATIONS

FOR PROPOSED UNSOLICITED WRITTEN COMMUNICATIONS

(letters, brochures, pamphlets, newsletters, e-mails, etc.)

For Committee Use Only
EC Filing #:

Lawyer*: _____ LSBA Bar #*: _____

*Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction, responsible for content of the unsolicited written communication. If not licensed to practice law in Louisiana, please indicate state(s) of licensure & corresponding state license #(s).

Firm: _____

Lawyer/Firm's Principal Office Address**: _____

** If the Lawyer has no regular office, use the Lawyer's Primary LSBA Annual Registration Statement Address _____

Phone: _____ Fax: _____ E-mail: _____

The attached letter, brochure, pamphlet, newsletter, e-mail or other unsolicited written communication will be used as follows. (Please check all that apply.) [If at all possible, please submit sample(s) exactly as it/they will appear when used/disseminated as intended.]

_____ Mailed unsolicited to prospective clients with whom I/we have no family or prior lawyer-client relationship. If yes, please complete the following:

_____ Mailed as a self-mailing brochure;

_____ Mailed in an envelope alone (attach copy of sample envelope as it will appear when sent); or

_____ Mailed in an envelope along with a written solicitation letter that complies with Rule 7.4(b) of the Louisiana Rules of Professional Conduct, effective 10/01/2009. (A sample copy of such letter must be attached/provided as part of this submission or must have been previously submitted and deemed in compliance by evaluation according to Rule 7.7.)

_____ Letter & Sample Envelope attached to this submission; or

_____ Letter previously evaluated and deemed in compliance - Ethics Counsel's File # _____.

_____ Mailed to other lawyers or law firms.

_____ Mailed to current and/or former clients or prospective clients who have requested the information.

_____ Made available or displayed in public places (other professional offices, businesses, etc.).

_____ Other use (please describe): _____

Signature of Lawyer-Applicant

Date

For questions concerning filing requirements, please visit our website, www.LSBA.org, or call 1-800-421-LSBA, ext. 144.

[Rev. 09-30-2010]

Chapter 10

Disaster Planning for Louisiana Lawyers

Disaster Planning and Business
Continuity

DISASTER
Planning for Louisiana Lawyers

Chapter 10

Disaster Planning for Louisiana Lawyers

Disaster Planning and Business Continuity

Effective disaster planning dictates whether your office will survive a disaster. **Keep in mind that during a disaster, natural or otherwise, a lawyer's professional and ethical obligations are not suspended.**

A destructive hurricane is certainly an example of a potentially business-ending event. However, the mundane (and more common) event, such as an employee termination gone awry or a computer malfunction (virus or other technology issues) can also wreak havoc on a law office. Other examples of business-interrupting events might include: illness or disability on your part, or on the part of a key member of your office; theft or burglary; workplace violence; sudden staff changes; client trust account theft; etc.

It is in your and your clients' best interests to have a basic disaster plan in place. Regardless of your firm size or practice, an easy-to-implement plan will assist you, or anyone in your office, in the event of an unexpected practice interruption.

Before the Disaster: Disaster Plan Basics

As a disaster can take many forms, so can a disaster plan. You cannot anticipate everything, but a little preparation ahead of the disaster will save you a lot of time.

Best advice: Keep it simple and be redundant in the way you keep basic firm information.

The more complicated the plan, the more likely that it will not be implemented. Place important information in several safe places, both electronically and in hardcopy. **Redundancy increases the chances that the information will be accessible when needed.**

An effective disaster plan accounts for these two challenges: interrupted access to your client's data; and/or a power or communication outage.

A Basic Disaster Plan should include the following:

- “No Tech” Solutions: Disaster “Basic Office Info Binder” and “Office Contact Wallet Card”
- Identification of Alternative Location(s) for Office.
- Communication Plan for Clients and Staff.
- Back-Up of Client Files.
- Plan for Cash Reserves and Emergency Line of Credit.
- Business Interruption Insurance.
- Family Plan.

The extent to which you will need to implement any of these elements will depend on the kind of disaster you are confronting. However, these items should be in place **BEFORE** a disaster occurs.

No Tech Solutions - Disaster Basic Office Info Binder and Office Contact Wallet Card

These “no tech” solutions address the need for basic office information in the event of a power outage and/or when electronic access to your data is not possible.

SMALL THREE-RING “DISASTER BINDER”: The binder should contain hard copies of the following items (and should be reviewed yearly):

1. Staff Contact List: Create a printed list of staff contact information including alternative email addresses, emergency contact information, and a possible location that each person may go if evacuating.
2. Client and Opposing Counsel Contact List: Create a printed list of your clients and opposing counsel, along with contact information, including email addresses.
3. Directory File List: Print a list of your directory files on your computer system or “in the cloud.”
4. Trust Accounts/Other Accounts: Banks; Bank Contact Information; and account numbers.
5. Copy of Insurance Policies.
6. Inventory of Office Equipment & Furnishings with Photos.
7. Copies of Software Licenses/Installation Disks.
8. Important Passwords: Firm social media and website passwords, account passwords, etc.
9. Vendor and Supplier Contact Information.
10. Cell Phone Charger (include a solar cell phone charger).

**Make electronic copies of the binder's contents in several places as follows,

- Email as an attachment to an email to yourself and to someone else you trust who lives in another area from you;
- Flash/Thumb drive (you can keep in your wallet or on your key chain);
- Electronic tablets (e.g., iPad);
- On the Hard Drive of your desktop or laptop;
- Directory on your local server; and/or
- A secure “cloud provider” (Dropbox, Box.net and others).

**Provide an electronic and hard-copy of the binder's contents to another responsible person (key staff member or partner or other).

LAMINATED “WALLET CARD”: Create a simple, credit-card-size card with key contact information. Laminate the card and keep in your wallet with your driver's license. One side of the card might contain key staff member contact information and the other side could be court contact information and community emergency numbers. Give a copy of this card to all staff.

Identification of Alternative Location(s) for Office: Create a list of possible temporary office locations should a disaster occur and require a temporary move. You might talk to a colleague about having a reciprocal agreement that either could use the other's office temporarily in the event of a disaster. Your alternative places to work might include your home or someone else's home. Inform staff ahead of time of these potential places. In the event of an area-wide power outage, these potential relocation spots, if known ahead of time, will also optimize your chances of finding or being found by your staff.

Communication Plan for Clients and Staff: Communication is often the first to go in a disaster. Create a default plan on what to do if you cannot communicate with each other.

- Be able, or have someone on staff able, to post remotely critical firm information on your firm website, email, Facebook, Twitter, LinkedIn, and/or other social media;
- Create a simple post-disaster default message for these sites that informs clients and staff of alternative methods of reaching and finding you; and
- Ensure that all important cell phone numbers and email addresses are stored on each other's cell phones.

Investigate other forms of communication (for example: Skype, Google voice, social media, and other electronic chat formats). Many are free.

Other tips: If you have a traditional telephone company landline, have a plain, non-cordless phone which connects directly into the phone line. When the power goes down, traditional phone lines often remain functional.

In extreme situations, the Red Cross will have satellite phones and may allow you to place a call or two.

Check your bar association for communication. During Katrina, the LSBA set up an open forum where people posted temporary location information and contact information. Local bar associations are likely to set up to respond similarly in a disaster.

After a disaster strikes, use all communication tools early and often. Do not assume what communication issues your target audience is having. Be prepared to send the same **message several different ways to optimize the chances that your intended recipient will receive it.**

Back-up Client Files and Important File Information: Back-up your client files and test your backup periodically.

Your backup method will depend on how you keep client files. Some lawyers are paper only, while others are nearly totally electronic. The vast majority are a blend of both. **Back-up methods favor the lawyer who digitizes data.** Lawyers should consider scanning/digitizing active files.

If not digitizing complete files, identify vital client records and other data that are essential for your business to continue operating. Use a small desktop scanner to scan these documents, and store copies off-site. At the very least, if you are storing paper files in your office, put them, whenever possible, in a file cabinet away from areas that potentially could suffer water damage.

There are several easy electronic back-up methods, and most are quite easy and inexpensive to do. The top methods used by lawyers are:

- **SIMPLE EXTERNAL HARD DRIVE:** Favored by the solo and small firm practitioner, this method is simple to use, easy-to-carry and inexpensive. A disadvantage is that if the device is left at the office and/or the lawyer is prevented from getting to the office, the back-up won't be available. Additionally, lawyers relying on this option often depend on only themselves to remember to do regular back-ups.
- **OFF-SITE STORAGE:** Many large firms backup data on tapes and then store them securely off-site in a safe place, like a bank, storage facility or firm administrator's home. A disadvantage is that backed-up data kept off-site is not always current.
- **ONLINE "CLOUD" STORAGE:** An increasingly popular method, secure "cloud" storage providers offer cost-effective backups, either in real time or at set times that you choose (e.g., at the end of the day or twice a day). A good "cloud" storage provider will have planned internally for its own disaster by making sure that it has multiple storage sites for its customers' data – providing easy access to your data. Research your provider before choosing. These services are very easy to use and back-ups can be scheduled so that it does not need to depend on your remembering to do so. Further, you can access your data anywhere there is internet access. Most "cloud" providers offer this as a subscription service, with cost depending on the amount of data stored. (Carbonite and Mozy are two examples of "cloud" data storage providers.)
- **PERSONAL or PRIVATE "CLOUD":** A relatively-new technology, lawyers not wanting an online "cloud" arrangement can create their own "cloud" relatively inexpensively. If you share files, often work remotely, and do not have a server for your firm, this could be a relatively inexpensive way to set up remote file storage, sync files, and file sharing. Such a device would allow you to access your documents from any device and collaborate with clients and colleagues while staying in control of your data. (Transporter is an example.)
- **OTHER METHODS:** Data can also be backed up to a network server, tape and even USB thumb drives and CDs. These methods are inexpensive and very easy to implement. A disadvantage is that these items are fragile, easily lost, and depend largely on your remembering to do the backup. Keep in mind that a disaster may cause you to move around frequently and risk damaging or losing these items.

Optimally, lawyers are storing and securely encrypting their client data and files, online and offline, in many different ways, and backing up in real time, or at least once a day. See Rule 1.6(c).

Whichever method(s) you employ, test your backup and make sure it is secure and works correctly.

Plan for Cash Reserves and Emergency Line of Credit. In major disasters, local ATMs do not always work and local banks are not open. Have cash ready to sustain you for at least a month. Establish an emergency line of credit.

Business Interruption Insurance: Know what your policy covers. Does your policy cover building contents as well as the structure? Do you have coverage for business interruption and extra expenses?

Family Plan: If the disaster affects an entire region, you will not be an effective steward of your clients' information and matters unless your family is safe. You will not be at your best in putting your office back together again unless and until your family is safe. Give some thought as to how you and your family might respond in the case of a regional disaster. Keep in mind the type of accommodations that you might need if your family has to evacuate. Consider pets or elderly members of your family who might need to accompany you.

A family plan also might include important family information in another hard-copy binder similar to the one previously described for your office where you can keep essential important papers, passwords and contact information. As with the binder for your office, scan your "family plan" binder's contents and save electronic copies in several places.

After the Disaster

So the disaster has occurred and you have a basic disaster plan. What now?

- **Attend to your family.** If necessary, take care of your family and yourself first. If your family and loved ones are not safe, you will not be useful to your firm, your staff or your clients. Encourage your partners and your staff to take care of their own families as well.
- **Keep a level head.** Everything goes wrong all at once during a major disaster and many will be at their wit's end. With a basic disaster plan binder and with your family safe and sound, you can be the level head to handle the next step.
- **Triage your issues and resolve the one having the biggest impact.** Re-establishing communications with your clients and staff is most likely going to be your biggest and most important task towards beginning recovery.
- **Implement your communication plan.**

ADDITIONAL RESOURCES

- *Backing Up Your Law Practice* by Allison Shields (*The Lawyerist*, November 16, 2011).
- *Disaster Planning: It's Not Just for Hurricanes. Are you Ready?* (LSBA 2012).
- *Resources for Lawyers & Law Firms* (Webpage by the ABA's Committee on Disaster Response and Preparedness and listing articles on "Technology Resources," "Disaster Planning and Recovery for Law Firms," and "Law Practice Management Resources.").
- *Surviving a Disaster: Lawyer's Guide to Disaster Planning* (American Bar Association, ABA Special Committee on Disaster Response and Preparedness by BDA Global LLC, 2011).
- *Surviving a Disaster: Are You Prepared?* (video by American Bar Association, ABA Special Committee on Disaster Response and Preparedness, 2011).

Chapter 11

Closing Your Practice

Voluntarily Closing Your Practice
Checklist

Involuntarily Closing Your Practice
Checklist

Additional Resources

CLOSING
Your Practice

Chapter 11

Closing Your Practice

A smooth law firm transition – whether it is due to voluntary considerations like retirement or a new job or involuntary issues such as illness, death or disbarment – is a lawyer’s responsibility.

Whether it is due to a new position, illness, or future retirement, lawyers should have plans in place to facilitate closing or transitioning his or her practice. A lawyer’s clients and family are owed that diligence and fiduciary responsibility.

What happens with no planning? You could have potential violations of the Louisiana Rules of Professional Conduct with risk to both clients and family. Consider distraught family members handling legal issues regarding client files and funds.

It Is Inevitable

When a lawyer stops practicing law varies. If you get a call regarding a lawyer-friend's death, what should you do? Consider Rule XIX Section 27.

SECTION 27 APPOINTMENT OF COUNSEL TO PROTECT CLIENTS’ INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES

A. Inventory of Lawyer Files.

If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent’s affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory.

Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

Plan Ahead

Do not rely on luck or the grace of others. Have proper planning in place for transition. Office practices to consider in anticipation of eventually closing or transitioning a lawyer's practice include:

- a) Selecting a "transitional lawyer" with emergency access to passwords and calendar and accounts.
 - Transitional lawyer issues:
 - Are there any conflicts?
 - Who do you represent?
 - Is this a voluntary or compensated position?

- b) Having financial clarity including regular reconciliation of a lawyer's trust account.
 - Financial clarity:
 - Why needed?
 - What kind of fee is it?
 - Is a refund owed?
 - To whom do funds in the operating and trust accounts belong?

- c) Having a method of distinguishing active files and important deadlines.
 - Active files and deadlines:
 - Failure to have a plan in place puts clients, the firm and/or your estate at risk.

- d) Having a file retention/destruction policy.
 - What happens to the files?
 - Whose responsibilities are the files? Storage? Review? Transfer? Destruction?

Recognizing that there could be numerous reasons for closing a firm, from death to disbarment, please consider the following general checklists.

Voluntarily Closing Your Practice Checklist

- Notification of plans to staff and clients
- Checking and resolving any conflicts due to transition
- Finishing work on active files and/or facilitating the transition of matter to new counsel
- Withdrawing from litigation files and/or ensuring substitute counsel, considering Rule 1.16 of the Louisiana Rules of Professional Conduct
- Providing copies of active files to clients, and for the destruction/return of old files in compliance with Rules 1.6 and 1.15 of the Louisiana Rules of Professional Conduct
- Taking steps for proper file storage for matters where the lawyer is required to retain a client's file or financial information
- Reconciliation of trust account
- If closed, notification to ODC of change in trust account status, although a lawyer may want to retain the trust account in anticipation of limited continued use (to receive a refund from the clerk of court, for example)
- Returning unearned or unused client funds
- Taking steps to forward calls and/or mail to new number/address
- Notifying LSBA and insurers of change in status and/or any address changes
- Considering the benefit of tail coverage (Note: your bar-sponsored insurance coverage may provide free tail coverage if you completely resign from the practice of law and have been continuously covered for at least three consecutive years.)

Involuntarily Closing Your Practice Checklist

List compiled from Susan Berson's article, *The Death of a Practice*.

- Binder, guidebook or packet with materials for staff, family and transition lawyer
- Selection and designation of transition lawyer
- Authorization for emergency access to accounts (check with bank)
- In case of incapacity, a power of attorney for transition lawyer
- List of passwords and contacts
- Explanation and access to calendaring system
- Instructions for family regarding estate and responsibilities of transition lawyer
- Draft of letters to be sent to clients, etc.

A lawyer may wish to consider including the following sample language in an engagement letter and/or contract.

Explanation of and notification of “Emergency Transition Lawyer”

In the event that, due to an emergency situation, your lawyer [name] becomes incapacitated or dies, you, the client, authorize [transition lawyer] to step in and take whatever reasonable steps are necessary on a limited and temporary basis to protect the client’s interests until client can hire new counsel.

Explanation of “File Retention Policy”

Please be aware that our file retention policy is [whatever the lawyer’s policy is] and we destroy client files [] years after the client’s case is completed. If you do not want us to destroy your file at that time, please make arrangements to come in and pick up your file.

Sample language to include in “Voluntary Closing Your Office Letter”

As of [date], I will be closing my law practice due to [reason]. I will be unable to continue to represent you. I recommend that you hire another lawyer to complete this matter immediately so as not to prejudice your case. The following are a list of lawyers whom you may wish to consider contacting, but please note that you can hire any lawyer you choose. Please contact me to schedule a time to get your file, or notify me in writing where to send same. If you or your new lawyer would like to communicate with me, please contact me at the following address or telephone number.

Sample Language to Include in “Involuntary Closing Your Office Letter”

Unfortunately, [lawyer’s] law practice is closing due to [reason]. I have been designated the transition lawyer to assist you with obtaining a copy of your file and finding new counsel. I recommend that you hire another lawyer to complete this matter immediately so as not to prejudice your case. The following are a list of lawyers whom you may wish to consider contacting, but please note that you can hire any lawyer you choose. Please contact me to schedule a time to get your file, or notify me in writing where to send same. If you or your new lawyer would like to communicate with me, please contact me at the following address or telephone number.

Additional Resources

- LSBA Public Opinion 05-RPCC-001, *Lawyer Retirement- Ethical Requirements to Client*
- LSBA Public Opinion 06-RPCC-008, *Client File Retention*

Chapter 12

Additional Resources for Louisiana Lawyers

Additional Resources

GilsbarPRO Louisiana Prescription
quick reference card

Acknowledgments

ADDITIONAL
Resources for Louisiana Lawyers

Chapter 12

Additional Resources

Louisiana State Bar Association Services and Website

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/ Judges and Lawyers Assistance Program, Inc.

(985)778-0571 or toll-free (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 Judges and Lawyers Assistance Program, Inc. hotline (see number above). Telephone anytime in confidence. J. E. "Buddy" Stockwell, Jr., the Judges and Lawyers' Assistance Program Director, is available to help. jlap@louisianajlap.com

Client Assistance Fund (formerly the Client Protection Fund)

The 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. cgrodsky@lsba.org.

Ethics Advisory Service Committee

The Committee encourages ethical lawyer conduct by providing informal non-binding ethics opinions. For further information, contact:

Eric K. Barefield, Ethics Counsel
Louisiana State Bar Association,
601 St. Charles Ave., New Orleans, La. 70130
(504)566-1600 or (800)421-5722, ext. 122
ebarefield@lsba.org

Richard P. Lemmler, Jr., Ethics Counsel
Louisiana State Bar Association
601 St. Charles Ave., New Orleans, LA 70130
504-619-0144 or (800)421-5722, ext. 144
rlemmler@lsba.org

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 website, 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. Of course, such disputes could be resolved through the courts; however, there are alternatives to going to court which are intended to provide quick, low cost and confidential solutions.

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 Shawn L. Holahan, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722, ext. 153.

Louisiana State Bar Association's Website

www.lsba.org

Check the LSBA's website for additional resources and services offered to members, including information on upcoming CLE programs.

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, Associate Executive Director, or William N. King, Professional Programs Counsel, 601 St. Charles Ave., New Orleans, La. 70130, (504)566-1600 or (800)421-5722, or email cgrodsky@lsba.org or bking@lsba.org.

Law Practice Management Advisory Service

If you have questions about the management and marketing of your office, the LPM Advisory Service can point you in the right direction. You may direct your inquiries to Shawn L. Holahan via email shawn.holahan@lsba.org or by calling (504)619-0153.

Other Lawyer Resources

Gilsbar L.L.C.

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 L.L.C., Office of Loss Prevention

P.O. Box 998, Covington, La. 70434 • (985)898-1584 • 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

400 Royal Street, New Orleans, La. 70130

(504)568-5707 • lasc.org

Judiciary Commission of Louisiana

Office of Special Counsel

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



Louisiana Prescription Card

Quick Reference Card

GILSBAR



COMMERCIAL TRANSACTIONS

Actions	Authority	Time Limitation
Accepted draft, other than certified check, Action to enforce	LSA R.S. 10:3-118(f)	5 years after due date in draft or acceptance if obligation of acceptor is payable at definite time; or within 5 years after date of acceptance if obligation of acceptor is payable on demand
Certificate of deposit, Action to enforce	LSA R.S. 10:3-118(e)	5 years after demand for payment is made to maker; or 5 years after demand for payment is in effect and the due date has passed if instrument states a due date and maker is not required to pay before that date
Certified, teller's, cashier's and traveler's checks, Action to enforce	LSA R.S. 10:3-118(d)	3 years after demand is made to acceptor or issuer
Commercial transactions under bank deposits & collections, Actions to enforce	LSA R.S. 10:4-111	3 years after cause of action accrues
Conversion of instrument, Action for	LSA R.S. 10:3-420(f)	1 year
Credit Repair Services Organizations Act, Violation	LSA R.S. 9:3573.12	4 years after execution of contract for services to which the action relates
Fiduciary obligations of bank and financial institutions, Breach of	LSA R.S. 6:1124	1 year after first occurrence
Letter of credit, Action to enforce	LSA R.S. 10:5-115	The later of: 1 year after expiration of relevant letter of credit or 1 year after cause of action accrues; 5 years after date of payment of funds for an action to enforce issuer's right of reimbursement under R.S. 10:5-108; either cause of action accrues when breach occurs, regardless of lack of knowledge
Louisiana Consumer Credit Law, Violation of	LSA R.S. 9:3552(E)	60 days after final payment of consumer credit contract or 1 year after violation if revolving loan or charge account
Louisiana Lemon Law, Duty to repair	LSA R.S. 51:1942	The earlier of: consumer's notice to manufacturer or dealer during the warranty period or 1 year after date of original delivery of motor vehicle to consumer
Money had and received, breach of warranty, or obligation, duty, or right arising under this Chapter and not governed by this section, Actions to enforce	LSA R.S. 10:3-118(g)	3 years after cause of action accrues
Negotiable and nonnegotiable instrument, Action on	LSA C.C. 3498	5 years from day payment is exigible
Note payable at definite time, Action to enforce	LSA R.S. 10:3-118(a)	5 years after due date or dates stated in note; or 5 years after accelerated due date if due date is accelerated
Note payable on demand, Action to enforce	LSA R.S. 10:3-118(b)	5 years after demand made to maker; Action barred if no demand made to maker and neither principal nor interest has been paid during 5 year period
Securities, Civil liability from sale of	LSA R.S. 51:714(C)	2 years from date of contract for sale, or date of sale if no contract; see statute for exceptions
UCC, Secured transactions	LSA R.S. 10:9-101 et. seq	Effectiveness of filed initial financing statement via 9-515(a): 5 years after date of filing Effectiveness of initial financing statement filed in connection with a public-finance transaction via 9-515(b): 30 years after date of filing Effectiveness of filing continuation statement via 9-515(e): Continues the effectiveness of initial financing statement for 5 years

COMMERCIAL TRANSACTIONS CONTINUED

Actions	Authority	Time Limitation
Unaccepted draft , Action to enforce	LSA R.S. 10:3-118(c)	The earlier of: 3 years after dishonor or 5 years after date of draft
Unfair Trade Practices and Consumer Protection Law , Violation of	LSA R.S. 51:1409(E)	1 year from time of transaction or act that gave rise to right of action
Usury , Action to recover	LSA R.S. 9:3500(C)(2)	2 years after payment of unlawful interest

CONTRACTS/AGREEMENTS

Actions	Authority	Time Limitation
Annulment of act , Revocatory action	LSA C.C. 2041	1 year from time obligee learned or should have learned of act or the result of failure to act, but no more than 3 years after date of act or result
Annulment of contract , Action for	LSA C.C. 2032	5 years after ground for nullity ceased or was discovered for relatively null contract; imprescriptible if absolutely null contract
Architects and contractors , Action against for defects of construction, renovation, repair	LSA C.C. 3500	10 years, but see R.S. 9:5607 and 9:2772 for 5 year peremptive periods. See also Engineers, surveyors, architects, designers, real estate developers , Action of damages, under TORTS, and Surveying, design, supervision or contraction of immovables or improvements thereon , Action involving deficiencies under TORTS
Arrears of rent and annuities , Action for	LSA C.C. 3494(2)	3 years
Educational institution or fund , Debts due	LSA R.S. 9:5701	30 years for debts including student loans, stipends, or benefits; 10 years for debts due to public institutions of higher education in the state other than student loans, stipends, or benefits
Health and accident insurance , Suit on proof of loss	LSA R.S. 22:975	See statute
Money lent , Action on	LSA C.C. 3494(3)	3 years
Motor vehicles , Uninsured motorist claims	LSA R.S. 9:5629	2 years from date of accident
Open account , Action on	LSA C.C. 3494(4)	3 years
Redhibition , Action for	LSA C.C. 2534	If seller did not know of defect: The earlier of: 2 years from delivery of thing to buyer or 1 year from buyer's discovery of defect If seller did know or is presumed to have known of defect: The earlier of: 1 year from buyer's discovery of defect or 10 years from perfection of contract of sale

COURTS/JUDGMENTS

Actions	Authority	Time Limitation
Abandonment of action , Prescription	LSA CCP 561	3 years
Judgment in favor of state , Prescription	LSA R.S. 9:5685(A)	10 years from signing/rendition of judgment
Revival of money judgments , Prescription	LSA C.C. 3501	10 years

FAMILY/ESTATE

Actions	Authority	Time Limitation
Abuse of minor , Action for	LSA C.C. 3496.1; R.S. 9:2800.9	3 years from date minor reaches majority; or imprescriptible if abuse results in permanent impairment or injury
Accounting between spouses , Time limit to comply	LSA C.C. 2369	3 years from termination of community property regime
Adoption , Action to annul	LSA Ch.C. 1263	For fraud/duress perpetrated by third party: The earlier of: 6 months from discovery of fraud/duress or 1 year from final decree For fraud/duress perpetrated by adoptive parent: The earlier of: 6 months from discovery of fraud/duress or 2 years from final decree
Annulment of testament , Action for	LSA C.C. 3497	5 years (suspended during minority)
Child support arrearages , Action to make executory	LSA C.C. 3501.1	10 years
Contributions by one spouse to education of other , Action for	LSA C.C. 124	3 years from judgment of divorce or nullity of marriage
Disavowal of paternity , Action for	LSA C.C. 189	The later of: 1 year from birth of child or when husband learns or should have learned he is not the father of the child; however, if husband lived separate and apart from mother continuously during the 300 days immediately preceding child's birth, prescription does not begin to run until husband receives written notice of assertion that he is the father
Divorce action abandoned	LSA C.C.P. 3954	2 years from service of origin petition or waiver of service if rule to show cause not filed
Donations , Reduction of excessive	LSA C.C. 3497	5 years (suspended during minority)
Estate tax , Recovery of	LSA R.S. 9:2436	Reasonable time after 1 year from payment
Inheritance , Action to recognize right	LSA C.C. 3502	30 years from opening of succession
Legal representative , Action for defect in private sales/mortgages	LSA R.S. 9:5632	2 years
Partition of effects of succession , Action to oppose	LSA C.C. 1305	Oppose suit if continuous possession for 30 years without interruption
Paternity , Action to prove	LSA C.C. 197	For succession purposes only, 1 year preemptive period from death of alleged father
Spousal support arrearages or installment payments awarded for educational or training contributions , Actions to make executory	LSA C.C. 3497.1	5 years
Succession , new creditors' action against paid creditors, Prescription	LSA C.C. 1188	3 years
Succession representative , Action against	LSA R.S. 9:5621	2 years from judgment homologating final account
Testaments , Action to probate	LSA R.S. 9:5643	5 years after opening of succession
Trust , Beneficiary's action against trustee	LSA R.S. 9:2234	2 years of date trustee rendered an accounting, but no more than 3 years
Unrecognized successor against third parties for interest in immovable , Action by	LSA R.S. 9:5630	2 years from final judgment of possession
Usufruct , Action to terminate for nonuse	LSA C.C. 621	10 years

GOVERNMENT/STATE

Actions	Authority	Time Limitation
Appropriation by parish/state , Action for compensation	LSA R.S. 13:5111	3 years from date of taking of property
Claims against state , Action for	LSA R.S. 39:339	2 years after claim accrues
Elections , Action to contest	LSA R.S. 18:1405	Varies; see statute
Elections , Campaign finance disclosure	LSA R.S. 18:1511.11	3 years from date of violation; or 1 year from filing report if violation is contained in filed report
Ethics violations of public employees , Action to enforce	LSA R.S. 42:1163	The earlier of: 2 years following discovery of occurrence, or 4 years after occurrence
Expropriation , Exercising right to	LSA R.S. 19:2.1	2 years from date property actually occupied and used for purpose of expropriation
Judicial sales , informalities	LSA R.S. 9:5622	2 years from sale; or 5 years from public adjudication or private sale if minor or interdicted owner
Levees or levee drainage , Action for lands and improvements destroyed for	LSA R.S. 9:5626	2 years from actual occupancy and use or destruction for construction of levee or levee drainage works
Liens and privileges in favor of State , Prescription	LSA R.S. 9:5685(B)	10 years from recordation; or any shorter prescriptive period applicable to claim secured by lien or privilege
Misfeasance or nonfeasance by sheriff , Recovery of damages	LSA R.S. 9:5623; 13:5548	2 years after date of act
Public contracts , Action against contractor, surety on contract, bond	LSA R.S. 38:2189; 38:2189.1	5 years from substantial completion
Public places, encroachments , Action to remove building	LSA R.S. 9:5627	The later of: 2 years from date of commencement of building, or 6 months from effective date of this statute
Public way , Damages from grading	LSA R.S. 9:5603	1 year from time damage was sustained
Sheriff's deeds , Action to set aside sale of property	LSA R.S. 9:5642	5 years from date of deed
Zoning, building restrictions , Violation of	LSA R.S. 9:5625	5 years from first act constituting commission of the violation

LABOR, LIENS and HUMAN RIGHTS

Actions	Authority	Time Limitation
Claim or privilege under Private Works Act , Enforcement of	LSA R.S. 9:4823(A)(2)	1 year after filing statement of claim or privilege
Compensation and salaries , Recovery of	LSA C.C. 3494(1)	3 years
Discrimination in employment , Action alleging	LSA R.S. 23:303	30 days to give written notice of intention to sue; 1 year to file suit, which is suspended for up to 6 months if administrative review ongoing
Louisiana Equal Housing Opportunity Act , Private action for violation	LSA R.S. 51:2613	2 years after alleged discriminatory housing practice occurred, or 1 year from breach of conciliation agreement
Persons with disability , Unlawful discrimination of	LSA R.S. 46:2256(A)	1 year from date of alleged discriminatory act
Special education , Request for due process hearing	LSA R.S. 17:1946	1 year from date parent or public agency knew or should have known about alleged action

LABOR, LIENS and HUMAN RIGHTS CONTINUED

Actions	Authority	Time Limitation
Subcontractors, materialmen and laborers on public works , Action on bond	LSA R.S. 38:2247	1 year from registry of acceptance of work or notice of contractor's default after following all notice and recordation requirements
Worker's Compensation , Claim for	LSA R.S. 23:1209; 23:1031.1	Varies; see statute

MISCELLANEOUS

Actions	Authority	Time Limitation
Asbestos abatement , Action to recover	LSA R.S. 9:5644	The later of: 5 years after party has completed abatement work or discovered manufacturer of the materials which require abatement
Building restriction , Violation of	LSA C.C. 781	2 years from start of noticeable violation
Carriers , Damage to shipments and recovery	LSA R.S. 45:1100	2 years from date of shipment
Dissolved LLC , Claim against	LSA R.S. 12:1338(D)	3 years after proceeding for dissolution
Foreign corporation , Action to set aside public sale of land made under attachment proceedings	LSA R.S. 9:5641	5 years from recordation of sale
Fugitive from justice , Prescription against	LSA R.S. 9:5802	Prescription does not run until fugitive returns
Invalid power of attorney , Action to set aside document or instrument	LSA R.S. 9:5647	5 years from recordation of document or instrument

PROPERTY

Actions	Authority	Time Limitation
Acquisitive prescription	LSA C.C. 3473 – 3489; R.S. 9:5633; C.C. 3490-91	<p>Immovables: 10 years with good faith possession and just title (runs against absent persons and incompetents, including minors and interdicts); or 30 years if no just title or good faith possession</p> <p>Immovables - blighted property: 3 years without need of just title or good faith possession</p> <p>Movables: 3 years with good faith possession and just title; or 10 years if no just title or good faith possession</p>
Contract to sell or transfer immovables , Action for breach	LSA R.S. 9:5645	5 years

PROPERTY CONTINUED

Actions	Authority	Time Limitation
Crops , Action for damages for injury, destruction, loss of profit, non-delivery, non-acceptance	LSA R.S. 9:5601	1 year from day act occurred, or cessation if a continuing act
Harvesting of timber without the consent of the owner , Action for damages	LSA C.C. 3497	5 years (suspended during minority)
Home Warranty Act , Warranties under	LSA R.S. 9:3144 - 9:3146	1 year for defects due to noncompliance with building standards 2 years for plumbing/electrical/heating/cooling/ventilating defects 5 years for major structural defects Action to enforce warranty subject to preemptive period of 30 days
Land patent , Action to annul	LSA R.S. 9:5661	6 years from issuance of patent
Legal entity, unincorporated association , Action to set aside sale, transfer, lease, mortgage of immovable property	LSA R.S. 9:5646	5 years from recordation
Mineral production royalties , Action to recover (excludes state owned properties)	LSA C.C. 3494(5)	3 years
Private property damaged for public purposes , Action for damages	LSA R.S. 9:5624	2 years after completion and acceptance of public works
Redemption , Right of	LSA C.C. 2568; LSA Const. Art 7, Sec 25 (B)	Immovables: 10 years Movables: 5 years Property sold at tax sales: 3 years after recordation
Rescission of partition and warranty of portions , Action for	LSA C.C. 3497	5 years (suspended during minority)
Uniform Unclaimed Property Act , Action under	LSA R.S. 9:171(B)	10 years after holder identified property or gave notice of dispute

TORTS

Actions	Authority	Time Limitation
Accountant professional liability , Action for damages	LSA R.S. 9:5604	1 year from act/omission or reasonable discovery; 3 year preemptive period
Attorneys , Action against	LSA R.S. 9:5605; C.C. 3496; R.S. 9:5605.1; LA S.C. Rule XIX, Sec. 31	Malpractice actions: 1 year from act or reasonable discovery; 3 year preemptive period, except for fraud (for claims of misappropriation of clients funds, prescriptive period interrupted by filing disciplinary complaint) Disciplinary complaints of negligence: 10 years Return of papers: 3 years
Crime of violence , Civil action for damages (excludes actions involving sexual assault under C.C 3496.2)	LSA C.C. 3493.10	2 years from day injury or damage sustained

TORTS CONTINUED

Actions	Authority	Time Limitation
Engineers, surveyors, architects, designers, real estate developer , Action for damages <ul style="list-style-type: none"> The provisions of this section shall take precedence over and supersede the provisions of R.S. 9:2772 and Civil Code 2762 and 3545. See also R.S. 9:2772, C.C. 3500. 	LSA R.S. 9:5607	5 year peremptive period, except for fraud; see also Surveying, design, supervision or contraction of immovables or improvements thereon , Action involving deficiencies under TORTS
Home inspectors , Action for damages	LSA R.S. 9:5608	1 year from act/omission, except for fraud
Insurance agents, brokers, salespersons , Action for damages	LSA R.S. 9:5606	1 year from act/omission or reasonable discovery; 3 year peremptive period, except for fraud
Medical malpractice by licensed physician, chiropractor, nurse, licensed midwife practitioner, dentist, psychologist, optometrist, hospital or nursing home , Action for damages <ul style="list-style-type: none"> See R.S. 40:1231.8 for medical review panel procedure 	LSA R.S. 9:5628	1 year from act/omission or reasonable discovery; 3 year peremptive period – applies to minors and infirm
Negligence , Action for damages	LSA C.C. 3492	1 year from day injury or damage sustained. Does not run against minors or interdicts in products liability actions involving permanent disability
Notaries public , Action for damages <ul style="list-style-type: none"> Action against notaries who are also attorneys is governed by R.S. 9:5605 	LSA R.S. 35:200	1 year from act/omission or reasonable discovery; 3 year peremptive period – applies to minors and infirm, but not in case of fraud
Nursing home, healthcare facility , Action for injunctive relief	LSA R.S. 40:2010.9	1 year from act/omission or reasonable discovery; 3 year peremptive period – applies to minors and infirm
Personal action , Liberative prescription	LSA C.C. 3499	10 years
Surveying, design, supervision or contraction of immovables or improvements thereon, whether based in tort or contract , Action involving deficiencies in <ul style="list-style-type: none"> Includes causes of action for any deficiency in the performing or furnishing of land surveying services; damage to property, movable or immovable, arising out of any such deficiency; injury to the person or for wrongful death arising out of any such deficiency; brought against a person for the action or failure to act of his employees. See also R.S. 9:5607, C.C. 3500 	LSA R.S. 9:2772	5 year peremptive period, except for fraud; see also Engineers, surveyors, architects, designers, real estate developers , Action of damages under TORTS



Get with the program for your professional liability insurance.

2100 Covington Centre, Suite A, Covington, LA 70433

(800) 906-9654

PLQsupport@gilsbar.com • www.gilsbar.com

This Prescription Quick Reference Card is provided by the Office of Loss Prevention, Gilsbar Specialty Insurance Services, LLC, in conjunction with Loss Prevention activities. Some periods of limitation may not apply to certain parties or in certain circumstances. As such, this card is informational only and shall not be a substitute for legal advice, nor shall it be a substitute for an attorney's thorough research, which may reveal changes to the time periods listed as a result of legislative updates, subsequent case law, legal nuances or inaccurate entries. The information contained in this card was updated on or before July 2023 © 2023 GILSBAR L.L.C.

Acknowledgments

The Louisiana State Bar Association gratefully acknowledges the contributions of the following authors, Reading Committee members, publications and organizations for materials contained in the guide:

2004 Authors

- Johanna G. Averill, Covington, La., Gilsbar L.L.C., Loss Prevention Counsel
- Cheri Cotogno Grodsky, New Orleans, La., Louisiana State Bar Association Associate Executive Director
- Lila Tritico Hogan, Hammond, La., Louisiana State Bar Association Practice Assistance and Improvement Committee
- William N. King, New Orleans, La., Louisiana State Bar Association Professional Programs Counsel
- Lindsey M. Ladouceur, New Orleans, La., Gilsbar L.L.C., Loss Prevention Counsel
- Fritz B. Ziegler, Covington, La., Louisiana State Bar Association Practice Assistance and Improvement Committee

2017 Authors

- Johanna G. Averill, Covington, La., Gilsbar L.L.C., Loss Prevention Counsel
- Eric K. Barefield, New Orleans, La., Louisiana State Bar Association Ethics Counsel
- Cheri Cotogno Grodsky, New Orleans, La., Louisiana State Bar Association Associate Executive Director
- Shawn L. Holahan, New Orleans, La., Louisiana State Bar Association Law Practice Management Counsel
- William N. King, New Orleans, La., Louisiana State Bar Association Professional Programs Counsel for Practice Assistance
- Lindsey M. Ladouceur, Abita Springs, La., Gilsbar L.L.C., Loss Prevention Counsel
- Richard P. Lemmler, Jr., New Orleans, La., Louisiana State Bar Association Ethics Counsel
- Ryan M. McCabe, New Orleans, La., Louisiana State Bar Association Practice Assistance and Improvement Committee
- Julie Brown White, Baton Rouge, La., Louisiana State Bar Association Practice Assistance and Improvement Committee
- Fritz B. Ziegler, Covington, La.

Organizations

- Gilsbar L.L.C., Office of Loss Prevention, Covington, La.
- Louisiana State Bar Association
- CNA Insurance Company

Publications

- The Ohio State Bar Association, *Client Keeper*, 1997, reprinted by permission.
- The Mississippi Bar, *Client Relations, Forms, Letters & Useful Information*, reprinted by permission.
- Louisiana Attorney Disciplinary Board, *The Disciplinary Review*, reprinted by permission.

2004 Reading Committee

- Brett A. Bonin
- Dana Marie Douglas
- E. Phelps Gay
- Charles B. Plattsmier
- Joseph L. “Larry” Shea, Jr.
- Richard C. Stanley
- James F. Willeford
- Christine Lipsey
- Carol M. Rider

2017 Reading Committee

- Johanna G. Averill
- Eric K. Barefield
- Dane S. Ciolino
- William N. King
- Lindsey M. Ladouceur
- Richard P. Lemmler, Jr.
- Charles B. Plattsmier
- Richard C. Stanley

Special Thanks

Special thanks to Gilsbar L.L.C. and CNA Insurance Company for providing funding for the Louisiana State Bar Association Practice Aid Guide.

- Barbara Baldwin, Production, Layout and Design



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.

Published by the Louisiana State Bar Association and underwritten by Gilsbar L.L.C. and CNA Insurance Company. These materials are available online at

www.lsba.org.



Gilsbar
Enhancing Business. Improving Lives.