ETHICS IN JUVENILE CASES

PRESENTED AUGUST 14, 2009

NUTS & BOLTS OF JUVENILE LAW CONFERENCE

BY:

BRIAN J. FISCHER
ATTORNEY AT LAW
6200 GULF FREEWAY
SUITE 202
HOUSTON, TEXAS 77023
(713) 520-7500
FAX# (713) 644-8080
Email: bjflaw@hotmail.com

ETHICS IN JUVENILE PROCEEDINGS

A. The Defense Perspective

1. Overview

The defense attorney in juvenile cases is charged with the responsibility of representing his or her client zealously within the bounds of the law (Preamble: Texas Disciplinary Rules of Professional Conduct, Paragraph 2). It is the intent of this paper to discuss the parameters of ethics concerning the roles of the defense attorney.

2. Duties and Responsibilities of Counsel

All persons licensed to practice law in Texas are bound by the regulations of the State Bar Act and by the Rules governing the State Bar that are adopted by the Supreme Court. (Govt. C. Sec. 81.051(a), ***McGregor v. Clawson***, 506 S.W.2d 922, (Civ. App.-Waco, 1974, no writ). The Rules include the Disciplinary Rules of Professional Conduct.

a. *Perjury by Client*

An attorney must not offer evidence that he or she knows to be false. (Texas Rules of Professional Conduct, Rule 3.03(a)(5)). This means that an attorney must not permit a respondent to testify when the attorney knows that the resulting testimony will constitute perjury. The problem develops because the respondent has an absolute right to testify and the right to effective assistance of counsel. The possibility of perjured testimony by a respondent presents unique problems for the practitioner. There is a difference between what the defense counsel knows to be false and what he or she believes to be false. The ethical rule is not triggered by potential testimony the defense attorney believes to be false and all doubts in this regard are to be resolved in the respondent's favor and testimony presented. (Texas Rules of Professional Conduct, Rule 3.03.

If the defense attorney determines that the testimony will constitute perjury then the first duty is to attempt to dissuade the respondent from such course of conduct. ***Nix v. Whiteside***, 475 U. S. 157, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986). If the client insists on testifying falsely then the defense attorney, outside the presence of the jury can state to the Court that the respondent is testifying over the objection of counsel and wishes to give a narrative statement. The defense attorney should refrain

from referring to the perjured testimony during final argument. Another method of dealing with perjured testimony is to advise the respondent and his parents that it is counsel's obligation to either withdraw form representation or report to the Court that the testimony is false. Such action has been found to fall within the accepted standards of professional conduct. See ***Nix v. Whiteside***, id.

The Texas Disciplinary Rules of Professional Conduct also require that counsel take remedial measures if counsel becomes aware of perjured testimony after it has been presented. In this event counsel must make a good faith effort to persuade the respondent not to perjure himself or to authorize the attorney to correct or withdraw the perjured testimony. If not permitted by the respondent then counsel must take other remedial measures, which might include disclosure of the true facts. (Texas Disciplinary Rules of Professional Conduct, Rule 3.03(b)). A strict interpretation of the rules requires counsel to reveal the respondent's perjury to the Court if all other remedial measures fail.

b. Representation of Multiple Respondents

Undivided loyalty is an essential element in counsel's representation of the client. (Texas Disciplinary Rules of Professional Conduct, Rule 1.06). Therefore, an attorney must not represent one respondent if that respondent's interests are materially and directly adverse to the interests of another respondent represented by the attorney. (Texas Disciplinary Rules of Professional Conduct, Rule 1.06). An attorney may represent multiple respondents if it is clear that the attorney can adequately represent the interests of each and if each co-respondent and their parents consent to the representation after full disclosure of the possible effect of such representation on the exercise of the attorney's independent judgment. (Texas Disciplinary Rules of Professional Conduct, Rule 1.06). ***Alamanzar v. State***, 702 S.W.2d 653 (Crim. App. 1986).

c. Evidence

An attorney must not knowingly offer or use evidence that he or she knows to be false. (Texas Disciplinary Rules of Professional Conduct, Rule 3.03(a)(5)). Counsel should refuse to offer any evidence that is known to be false, even if the client requests that the evidence be tendered. (Texas Disciplinary Rules of Professional Conduct, Rule 3.03). When a lawyer comes to know of the falsity of material evidence after it has been offered the attorney must make a good faith effort to persuade the respondent to permit counsel to correct or withdraw the

evidence. If these efforts are unsuccessful, and then counsel must take remedial efforts, which may include disclosure of the true facts. (Texas Disciplinary Rules of Professional Conduct, Rule 3.03(b)).

d. Attorney as Witness

An attorney who testifies, other than to attorney's fees, concerning a contested matter in the case is playing the roles of both advocate and witness. Therefore, an attorney must not accept or continue employment if the attorney knows or believes that the attorney may be a witness necessary to establish an essential fact on behalf of the client. (Texas Disciplinary Rules of Professional Conduct, Rule 3.08(a)).

e. Attorney-Client Privilege

The attorney-client privilege protects confidential communications made for the purpose of facilitating the rendition of professional services to a client. (T. R. Cr. Evid. 503(b)). There is no privilege under the rule if the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should know to be a crime or fraud. (T. R. Cr. Evid. 503(d)(1)). It is imperative that the attorney adhere to the attorney-client privilege. This includes revealing anything within the privilege to the district attorney without the client's express permission, even in settlement negotiations or plea bargain negotiations.

f. Withdrawal of Counsel

An attorney must withdraw from representation of a respondent when the representation will result in the violation of Rule 3.08 of the Disciplinary Rules of Professional Conduct. Texas Disciplinary Rules of Professional Conduct, Rule 3.08), the attorney's physical, mental or psychological condition materially impairs his or her fitness to represent the respondent, or the attorney is discharged by the client with or without good cause. An attorney may seek permission from the Court to withdraw from a case if such withdrawal can be accomplished without material adverse effect on the client, the client persists in a course of action involving the attorney's services that the attorney reasonably believes may be criminal or fraudulent, or the attorneys services were used to perpetrate a crime or fraud, the respondent insists on pursuing an objective that counsel considers repugnant or imprudent or with which counsel has fundamental disagreement, the representation

will result in an unreasonable financial burden or has been rendered unreasonably difficult by the respondent or his parents, the respondent or his parents have failed to substantially fulfill an obligation to counsel for his or her services, or other good cause. (Texas Disciplinary Rules of Professional Conduct, Rule 1.15(b)).

g. Dealings with the District Attorney

It is imperative in the representation of the respondent that you deal honestly and at arms length with the district attorney in representing the respondent in the juvenile case. As we all know, in the practice of law the only thing that we really have, as an asset is our word. If you misrepresent facts to the district attorney you lose their trust. More importantly, as an officer of the court you are ethically bound to speak the truth to all other officers of the court.

h. *Special Obligations in Juvenile Cases*

The defense attorney has a special obligation to his client in juvenile cases from the outset of the case. The first and foremost obligation is to advise the client of his constitutional rights and his right to remain silent. This is important for several reasons. This first reason is that the juvenile court may order psychological and psychiatric evaluations of the client. The court will also order a family background history and social evaluation. Probation officers, court representatives and mental health professionals will all have contact with the client, whether he is in custody or not.

The defense attorney also has a duty to advise the client that he has the right to have the attorney present for all testing and any interviews, which may be given.

The defense attorney also has a duty to determine the mental capacity of the client. In many of the cases which transfer motions are filed in there is a real question of the competency and/or mental health of the client. In the event that the attorney feels that there is an issue regarding the client's fitness to proceed then the attorney must raise this issue and request an evaluation to determine such fitness.

The defense attorney also has the duty to investigate the facts. This includes reading the State's file, interviewing witnesses and interviewing the client in a secure environment away from parents, probation officers and any other persons who might influence the candor of the client.

The other unique situation in juvenile cases is the obligation to the respondent, after adjudication, to insure the proper placement for the respondent to succeed on probation. It is also the obligation of the practitioner to be cognizant of the sanction

lever assigned to the respondent and that the proper sanction level is assigned.

B. The Prosecution Perspective

(Special thanks to Kris Moore of the Harris County District Attorney's Office for the use of her paper which she presented at the 19th Annual Robert O. Dawson Juvenile Law Institute. Her paper is included verbatim below)

1. Special Provision for Prosecutors

"It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done." Texas Code of Criminal Procedure, Art. 2.01.

Although all attorneys are covered under the Texas Disciplinary Rules of Professional Conduct, only ONE group of attorneys is singled out for disciplinary rules specific to that group: Prosecuting Attorneys. As is pointed out in Comment 1 to Rule 3.09, "A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. This responsibility carries with it a number of specific obligations."

Rule 3.09 of the Texas Disciplinary Rules of Professional Conduct is entitled "SPECIAL RESPONSIBILITIES OF A PROSECUTOR" and requires that a prosecutor "shall" do the following:

(a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;

(b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not to initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pretrial, trial, or post-trial rights;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that 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 a prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.07.

2. Duties and Responsibilities of Juvenile Prosecutors

The adversarial model contemplated by the rules pits the defense attorney against the prosecuting attorney, with both of the attorneys governed by the rules of court and the disciplinary rules. While the new rules also represent an effort to discourage abusive adversarial tactics, the adversarial model continues to be firmly established in the juvenile court as well as the other courts. This model is somewhat at odds with the historical context and purpose of the juvenile court, which had been created as a court separate from adult court with the ideals of "rehabilitation" of the juvenile and "protection" of the public as worthy goals. (See the purpose as set out in Sec 51.01 of the Family Code). In this "ideal" juvenile court, all parties, the state, the judge, the parents, the juvenile social worker, and everyone in the process are presumed to have the same goal and interest in the child's welfare.

The nature of the "defendant" juvenile is such that our law has recognized certain protections and privileges that are not accorded to adult defendants. Thus, the lawyers, defense as well as prosecution, are required to be aware of these special protections and apply them in the context of the other rules and procedures. A few of these protections (you can probably think of others) are:

(a) Confidentiality of the records. Sec. 58.005 of the Family Code limits who may be permitted to access and inspect juvenile court records. Also Sec. 58.007 limits access to the records and files concerning juveniles. This covers prosecutor's files, as well as probation department files and law enforcement records and provides that they shall not be disclosed to the public.

(b) The court can limit public access to hearings. Sec. 54.08 provides that for "good cause shown" the public can be excluded from a juvenile court hearing and requires closed hearings for juveniles under 14.

(c) Limitations on who can collect and keep information regarding juveniles, and what they can do with the information. Family Code Chapter 58.

(d) While not exempted from registration as a Sexual Offender, juveniles have some special provisions regarding the circumstances of their registration (deferred decision until counseling completed and then alternatives where the court can excuse registration, order non-public registration or after registration is ordered, allow un-registration or de-registration). Also there are some protections as to who has access to the information provided when the juvenile is registered. (See Chapter 62 and Subchapters G and H of the Code of Criminal Procedure).

Prosecutors need to aware of not only the Rules of Court and the Disciplinary Rules, but the specific provisions in the Texas Family Code that govern their dealings with the various parties and persons involved with the juvenile case. These rules and provisions affect not only the prosecutor's dealing with the defense attorney and the judge, but also with the parents (who are "parties"), law enforcement, probation, the schools, victims and even jurors!

3. Ethical Problems Confronted by Prosecutors

Here is a "top ten" list of disciplinary rules situations that are raised with respect to prosecutors. Usually either the prosecutor has been accused of violating the rule, or the prosecutor finds him/herself in a situation where they wonder if their conduct would constitute a violation:

(1) Suppression of exculpatory evidence. See Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct; Brady v. Maryland, 373 U.S. 73 (1963). Note that "mitigating" evidence must be disclosed as well. The evidence need not establish innocence to be "exculpatory."

(2) Improper statement to the press. See Rule 3.07. This includes public criticism of judges controlled by Rule 8.02. Prosecutors enjoy "prosecutorial immunity" for statements made in the courtroom (Marrero v. City of Hialeah, 625 F. 2d 499(5th Cir. 1980) cert. denied 450 U.S. 913 (1981), but only "qualified immunity" for other public statements within the scope of their duties (see Marrero (supra); Wyse v. Dept. of Public Safety, 733 S.W. 2d (Tex. App-Waco, 1986, writ ref. N.R.E.). There is NO immunity for statements not within the

scope of duties, and none for incorrect out-of-court statements motivated by bad faith or malice. (see Wyse , supra.). If your juvenile case is open to the public, it is always a good idea to urge the media to come and hear the case for themselves as testimony is presented in the courtroom.

(3) Ex parte communication with the trial court. Rule 3.05(b); and Canons 3(A)(5) and 8(K), Code of Judicial Conduct.

(4) Prosecuting or threatening to prosecute a case unsupported by probable cause. Rule 3.09(a)

(5) Knowing use of false evidence. Rule 3.03(5)

(6) Communications with a party represented by counsel concerning the subject of that representation. Rule 4.02(a). In juvenile cases, "parents, spouses, guardians, and guardians-ad-litem" are "parties" under the definition in Sec. 51.02(10). Keep this in mind when the parents call you and want to discuss the case.

(7) False statements of material fact. Rules 3.03 (concerning statements made to the court) and 4.01(a) (statements made to anyone else).

(8) Threats of criminal prosecution or grievance proceeding intended to influence or discourage a person's service as a witness. Rule 4.04

(9) Comments made to harass, or "embarrass" or influence the future jury service of a juror who has made the "wrong" decision. Rule 3.06(d).

(10) Being so eager to "win" or so angry because you didn't that you allow your judgment to fail and you lose sight of "seeing that justice is done" and done properly.

4. Ethical Problems Special to Juvenile Prosecutors

These hypotheticals are intended for discussion. Every single one of these situations has happened to me. Be warned, some of these answers are strictly my own opinion, and another prosecutor might see things differently:

Hypothetical #1: Filing and Disposing of a Case:

(1) You are doing intake on an assault case. You know that the victim is now deceased and their death was unrelated to the offense. Do you file the case?

No, I believe it would be unethical to file a case that you know that you cannot make. See Rule 3.09

(2) Along the same lines, the case is filed, but an element of the offense is missing. For example, in a DWI (or UUMV), you cannot prove the juvenile was operating the vehicle. Do you try to get them to stipulate anyway?

Maybe, it might depend on the circumstances.

(3) Would you offer deferred prosecution instead?

If the juvenile is "not guilty" he shouldn't be on "deferred prosecution". In addition, even if you have the proper evidence and probable cause to file a DWI, "deferred prosecution" on a DWI is prohibited by the Family Code Sec. 53.03(g)(1).

Hypothetical #2: Advising the Victim/Witness about talking to the other side:

(1) You are talking to the victim in a case and she tells you the defense attorney has been calling her. She asks whether or not she should talk with the defense attorney or his investigator. What do you tell her?

I would tell her that it was up to her whether she talked to the lawyer or the investigator, and that I could not tell her not to talk to them. However, I would caution her that they would

probably record in some way what she said and if she were to testify differently they would ask about it. I would also caution and urge her to be truthful at all times if she did talk to them.

Relevant Rules: 3.04 and 4.03 of the Rules of Professional Conduct

Hypothetical #3: Dealing with the Weak case and/or the Ignorant Defense Attorney:

(1) You are assigned to prosecute a very weak case – though not so weak that a dismissal is warranted. You know in your mind that if the defense attorney approaches you with a request for a reduction in the charge or a request for a deferred prosecution, you would agree to it. The defense lawyer never bothers to look at your file and never even talks to you about the case. Are you required to tell the defense lawyer about weaknesses in the case?

No, I don't think you are. Besides, his client may have told him what happened and admitted guilt – including facts that you don't even know about.

(2) Are you obligated to offer a reduction or tell the lawyer about the availability of deferred?

No, I don't believe the prosecutor is obligated to try to talk the lawyer into a reduction of some sort. If you honestly believe that the reduction was warranted, then refile the case with the offense and pleadings that you believe are proper.

I once tried to tell a lawyer about deferred and urged him to consider it, and he ended up writing me a letter threatening to file a grievance on me, because he took it as though I was saying he didn't know what he was doing. Sometimes lawyers won't listen to prosecutors.

(3) With the above in mind, what if you find yourself dealing with an attorney who normally does not practice juvenile law and it is obvious he doesn't know what he is doing – what is your obligation? What do you do?

i. Help him by instructing him on the law?
ii. Just tell him what to do?
iii. Take advantage of him?

What if he admits he doesn't know what he is doing and asks for your help? How much are you obligated to keep him from doing something totally wrong?

Whatever you do, I believe that a prosecutor has a moral duty and a self interest (when the case gets reversed, you have to do it over again!) in keeping a lawyer from doing something totally wrong. When this has happened to me in the past, I have directed lawyers to particular sections of the law. I have tried to explain the law, as I understood it and, on some occasions, I have suggested that the lawyer might want to discuss his options with one of the juvenile attorneys and directed him to one or more of them.

SUBTOPIC: DOES THE LAWYER KNOW WHAT HE'S DOING?

These dilemmas actually happened to me:

1. You ask for your file back and the lawyer tells you his client "isn't finished reading it."
2. The lawyer takes your file to the clerk of the court and talks the clerk into making him a copy of YOUR file.
3. You ask for your file back, and the lawyer says "I don't know where it is" as he walks out of court with his reset form. (You know for certain that you gave it to him).

Look at Rule 3.03, 3.09 and 4.01 of the Rules of Professional Conduct and Article 2.01 of the Code of Criminal Procedure.

Hypothetical #4: Who represents Who?:

What happens when several of the "parties" have lawyers and you – the prosecutor – are caught in the conflict?

1. Child and parent each have a lawyer and they each want something different.
2. One – or both – parents come to court with their lawyer to make sure that the juvenile isn't sent home to them!
3. The parents are obviously going to try to use the juvenile case to somehow further or change their ongoing custody battle.
4. The parents come in and file their own pleadings in the case asking that their parental rights be terminated and the child be placed in the custody of the state. (They want to be sure the child knows he can never come home again!)

Look at Rules 4.02 and 4.03. Also Sec. 51.02(10) in the Family Code.

Hypothetical #5: Dealing with the difficult Complainant/Witness:

1. The victim gets up to testify and tells a completely different story. Surprise!!

2. You become aware, prior to any hearing, that the victim/witness is not credible.
    a. You KNOW he's lying or planning to lie
    b. You SUSPECT he's lying or planning to lie
    c. Other variations – he's got his friends, or worse, his gang members to lie for him

3. The victim from Hell:
    a. The family member victim who, after letting the kid sit in detention for a month awaiting trial, wants to drop the charges, says the police are lying, and/or refuses to come to court.

b. The Victim who only filed to get money. This victim suddenly remembers that the briefcase that was taken from his vehicle contained his diamond Rolex watch, $10,000.00 in cash, and a very expensive camera. He just forgot to tell the police about those items. He also tells the juvenile's family that he will "drop" the charges if they pay him.
c. The Victim who is so upset and angry that he will NOT be happy no matter what you – the prosecutor - do. You could get the "death penalty" and an 8-million dollar settlement and he still wouldn't be OK.

Look at Rules 3.03, 3.04, 3.09, and 4.01.

Hypothetical #6: Do you have a duty to disclose?

1. The case is set for a plea and you learn that your Victim/Witness
    a. Is Dead
    b. Has left the country
    c. Has a terrible criminal history
    d. Can't be located

    What is your obligation as far as notifying the defense attorney? The court?

    See Rule 3.03, 3.04 and 3.09.

Hypothetical #7: What do you do when you find out that your Victim/Witness has been "messed with?

1. By the defense attorney:
    a. The attorney told the Victim/Witness he was appointed by the court to "investigate" the offense. He just didn't tell him he represented the juvenile. See Rule 4.01 and 4.03

b. The attorney told the Victim/Witness not to come because the juvenile was going to plead guilty and then he announces "ready" for trial. See Rule 4.01

2. By the juvenile defendant.
3. By the juvenile defendant's friends. What if the friends are gang members?

Hypothetical #8: Dealing with the nightmare case:

1. The juvenile defendant is Mentally Retarded, Mentally Ill, and Dangerous! (He's also 11 years old and pitiful)
2. The juvenile defendant is someone you REALLY feel sorry for
3. The necessary witness – a police officer -
    a. Has been fired for professional misconduct unrelated to this case
    b. Has been killed in the line of duty.

C. *Ethical Problems for Judges*

1. *Independence of the Judiciary*

Cannon 1 of the Code of Judicial Conduct requires that the Judiciary be independent. "A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective."

Additionally, a Judge should avoid any appearance of impropriety. "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Cannon 2, Code of Judicial Conduct.

Cannon 3 of the Code of Judicial Conduct requires that the judge perform judicial duties without bias or prejudice. Cannon 3 further requires that the judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Cannon 4 requires that the judge shall not engage in extra-judicial activities that cast reasonable doubt on the judge's capacity to act impartially as a judge.

Cannon 6 provides for the application of the Code of Judicial Conduct to part-Time commissioners, masters, magistrates, or referees of a court. Cannon 6 provides that those persons shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

2. ***Special Ethical Problems for Judges***

Hypothetical One

You were the DA on a Juvenile Case last year and have been elected Juvenile Court Judge. Can you hear the Petition to Modify Disposition on the juvenile you prosecuted originally?

Hypothetical Two

You are a substitute Juvenile Court Judge and while you were sitting as a Juvenile Court Judge you heard a juvenile case. Now you are appointed as the attorney for the juvenile on the Petition to Modify Disposition. Can you represent the juvenile?

Hypothetical Three

You were the Juvenile Court Judge and you heard a juvenile case. You have since retired and are now doing juvenile cases. While you were on the bench you heard a juvenile case. Now you are appointed to represent the same juvenile on a subsequent referral. Can you represent the juvenile?

D. ***Ethical Problems for Juvenile Probation Officers***

1. *Proposed Juvenile Justice Professionals Code of Ethics and Conduct*

There are proposed Juvenile Justice Professionals Code of Ethics and Conduct with an anticipated effective date of September 1, 2009. The Code of Ethics sets forth the guidelines for the conduct of Juvenile Probation Officers in Texas.

Section 345.300 of the Code of Ethics requires that Juvenile justice professionals employed by in a public or private Juvenile Justice Program hold his or her their positions for the benefit of the citizenry of the State of Texas and is are obligated to act with responsibility and in the public interest. (a) As such, department employees Juvenile justice professionals are expected to shall strive at all times to perform their duties efficiently, faithfully and loyally and in accordance with federal, state, and local laws, the department's employee personnel manual and in accordance with the administrative rules adopted by the Texas Juvenile Probation Commission Compliance standards.

Further, pursuant to section (g) of section 345.300 of the code Juvenile justice professionals shall demonstrate empathy toward the juveniles and families they serve. Additionally, Section 345.400 requires that Juvenile justice professionals shall adhere to the code of conduct set forth in this chapter, in order to contribute to the welfare of the juveniles and families served by the juvenile justice profession.

Section 345.410 requires that Juvenile justice professionals shall abide by all federal, state, and local laws and administrative rules adopted by the Commission standards respect and protect the civil and legal rights constitutional rights of all children juveniles and the parents and guardians of the juveniles to liberty, equality and justice.

2. *Special Ethical Problems for Probation Officers*

Hypothetical One

You are the probation officer for a juvenile in detention. You are aware that an attorney has been appointed to represent the juvenile and has appeared at the first detention hearing. You are contacted by law enforcement about speaking with the juvenile about another case. The law enforcement officer tells you that he wants to speak with the juvenile without his lawyer being present. What should you do?

Hypothetical Two

Your Chief Juvenile Probation Officer instructs you that any juveniles who are Hispanic are not to be released at intake regardless of the level of charge, be it misdemeanor of felony, and regardless of the level of supervision at home. What do you do?

Hypothetical Three

You are working intake and a child whose father is the pastor at the same church where you are a church elder. He is charged with 5 aggravated robberies and murder and all offenses occurred after 2:00 p.m. The father is pressuring you to release his son but you are concerned about the supervision at home. He tells you that if you do not release his son he will terminate you as a church elder. What do you do?

3. CONCLUSION

The ultimate responsibility of the participant, in juvenile cases, whether the practitioner is a defense attorney, prosecutor, juvenile probation officer or judge is to insure that the justice is served, that the respondent receives competent representation within the parameters of the ethical guidelines for the attorney, that the prosecutor engages in ethical prosecution of the case, that the probation officer adheres to the ethical standards and that the judge follows the Code of Judicial Conduct. Although there are many different sub-issues in juvenile law, those are better left to other speakers and writers at this seminar.

I have attached the Code of Judicial Conduct to this paper as Appendix "A", the Texas Rules of Disciplinary Conduct as Appendix "B" and the proposed Juvenile Justice Professionals Code of Ethics and Conduct to this paper for your reference.

Good luck and be careful.

APPENDIX "A"
CODE OF JUDICIAL CONDUCT

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1
Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2
Avoiding Impropriety and the Appearance of Impropriety In All of the Judge's Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

CANON 3
Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

CANON 4
Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and

benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

CANON 5
Refraining From Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

CANON 6
Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court,

(b) the Court of Criminal Appeals,

(c) courts of appeals,

(d) district courts,

(e) criminal district courts, and

(f) statutory county courts.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

(1) when engaged in duties which relate to the judge's role in the administration of the county;

(2) with Canons 4D(2), 4D(3), or 4H;

(3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(4) with Canon 5(3).

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canons 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the

merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters,

(b) uncontested procedural matters,

(c) magistrate duties and functions,

(d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or

(g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in 6A(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and

(2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F,4G or 4H, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. A Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2),4E, 4F,4G, or 4H, but

(2) should refrain from judicial service during the period of an extra-judicial appointment not permitted by Canon 4H.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

CANON 7
Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

CANON 8
Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

B. Terminology.

(1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.

(2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

(5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(12) "Third degree of relationship. "The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

(13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system.(Secs. 831.001 and 836.001,V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)]

(14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 1601(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution.(Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 1601(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

APPENDIX "B"

Texas Disciplinary Rules of Professional Conduct

INTRODUCTION

Preamble: A Lawyer's Responsibilities

1. A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by the lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

2. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously

asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

3. In all professional functions, a lawyer should zealously pursue clients' interests within the bounds of the law. In doing so, a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Texas Disciplinary Rules of Professional Conduct or other law.

4. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

5. As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

6. A lawyer should render public interest legal service. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally. A lawyer may discharge this basic responsibility by providing public interest legal services without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, the administration of justice, and by financial support for organizations that provide legal services to persons of limited means.

7. In the nature of law practice conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of these Rules many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment. In applying these rules, lawyers may find interpretive guidance in the principles developed in the Comments.

8. The legal profession has a responsibility to assure that its regulation is undertaken in the public interest rather than in furtherance of parochial or self-interested concerns of the bar, and to insist that every lawyer both comply with its minimum disciplinary standards and aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Preamble: Scope

10. The Texas Disciplinary Rules of Professional Conduct are rules of reason. The Texas Disciplinary Rules of Professional Conduct define proper conduct for purposes of professional discipline. They are imperatives, cast in the terms "shall" or "shall not." The Comments are cast often in the terms of "may" or "should" and are permissive, defining areas in which the lawyer has professional discretion. When a lawyer exercises such discretion, whether by acting or not acting, no disciplinary action may be taken. The Comments also frequently illustrate or explain applications of the rules, in order to provide guidance for interpreting the rules and for practicing in compliance with the spirit of the rules. The Comments do not, however, add obligations to the rules and no disciplinary action may be taken for failure to conform to the Comments.

11. The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedure law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and

finally, when necessary, upon enforcement through disciplinary proceedings. The Rules and Comments do not, however, exhaust the moral and ethical considerations that should guide a lawyer, for no worthwhile human activity can be completely defined by legal rules.

12. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. For purposes of determining the lawyer's authority and responsibility, individual circumstances and principles of substantive law external to these rules determine whether a client-lawyer relationship may be found to exist. But there are some duties, such as that of confidentiality, that may attach before a client-lawyer relationship has been established.

13. The responsibilities of government lawyers, under various legal provisions, including constitutional, statutory and common law, may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

14. These rules make no attempt to prescribe either disciplinary procedures or penalties for violation of a rule.

15. These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a Rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

16. Moreover, these rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a

reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

Terminology

"Adjudicatory Official" denotes a person who serves on a Tribunal.

"Adjudicatory Proceeding" denotes the consideration of a matter by a Tribunal.

"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.

"Competent" or "Competence" denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

"Consult" or "Consultation" denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Firm" or "Law firm" denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

"Fitness" denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer's responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

"Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law firm": see "Firm."

"Partner" denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.

"Person" includes a legal entity as well as an individual.

"Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "Reasonably believes" when used in reference to a lawyer

denotes that the lawyer believes the matter in question and the circumstances are such that the belief is reasonable.

"Should know" when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

"Substantial" when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

"Tribunal" denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. "Tribunal" includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

I. CLIENT-LAWYER RELATIONSHIP

Rule 1.01 Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or

(2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

(1) neglect a legal matter entrusted to the lawyer; or

(2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

(c) As used in this Rule "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Rule 1.02 Scope and Objectives of Representation

(a) Subject to paragraphs (b), (c), (d), and (e), (f), and (g), a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

(3) In a criminal case, 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 may limit the scope, objectives and general methods of the representation if the client consents after consultation.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.

Rule 1.03 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.04 Fees (Amended March 1, 2005)

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

(b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, 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 on results obtained or uncertainty of collection before the legal services have been rendered.

(c) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(d) 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 (e) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(e) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

(f) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is:

(i) in proportion to the professional services performed by each lawyer; or

(ii) made between lawyers who assume joint responsibility for the representation; and

(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including

(i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and

(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and

(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and

(3) the aggregate fee does not violate paragraph (a).

(g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (g). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:

(1) the reasonable value of legal services provided to that person; and
(2) the reasonable and necessary expenses actually incurred on behalf of that person.

(h) Paragraph (f) of this rule does not apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof.

Rule 1.05 Confidentiality of Information

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

(1) When the lawyer has been expressly authorized to do so in order to carry out the representation.

(2) When the client consents after consultation.

(3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.

(4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law.

(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.

(6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.

(8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.

(d) A lawyer also may reveal unprivileged client information.

(1) When impliedly authorized to do so in order to carry out the representation.

(2) When the lawyer has reason to believe it is necessary to do so in order to:

(i) carry out the representation effectively;

(ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;

(iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.

(e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

(f) A lawyer shall reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b).

Rule 1.06 Conflict of Interest: General Rule

(a) A lawyer shall not represent opposing parties to the same litigation.

(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

(1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or

(2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or laws firm's own interests.

(c) A lawyer may represent a client in the circumstances described in (b) if:

(1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

(d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior

consent is obtained from all such parties to the dispute.

(e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

Rule 1.07 Conflict of Interest: Intermediary

(a) A lawyer shall not act as intermediary between clients unless:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.

(e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct.

Rule 1.08 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with 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 in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as a parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(c) Prior to the conclusion of all aspects of the matter giving rise to the lawyer's employment, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(d) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation or administrative proceedings, except that:

(1) a lawyer may advance or guarantee court costs, expenses of litigation or administrative proceedings, and reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(e) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.05.

(f) 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 has consented after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the nature and extent of the participation of each person in the settlement.

(g) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or

former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(h) 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 granted by law to secure the lawyer's fee or expenses; and

(2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.

(i) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct.

(j) As used in this Rule, "business transactions" does not include standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others.

Rule 1.09 Conflict of Interest: Former Client

(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

(1) in which such other person questions the validity of the lawyer's services or work product for the former client;

(2) if the representation in reasonable probability will involve a violation of Rule 1.05.

(3) if it is the same or a substantially related matter.

(b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a).

(c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(l) or if the representation in reasonable probability will involve a violation of Rule 1.05.

Rule 1.10 Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private 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 consents after consultation.

(b) No lawyer in a firm with which a lawyer subject to paragraph (a) is associated may knowingly undertake or continue representation in such a matter unless:

(1) the lawyer subject to paragraph (a) is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is given with reasonable promptness to the appropriate government agency.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows or should know is confidential government information about a person or other legal entity acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person or legal entity.

(d) After learning that a lawyer in the firm is subject to paragraph (c) with respect to a particular matter, a firm may undertake or continue representation in that matter only if that disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) Participate in a matter involving a private client when the lawyer had represented that client in the same matter while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(f) As used in this rule, the term "matter" does not include regulation-making or rule-making proceedings or assignments, but includes:

(1) Any adjudicatory proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other similar, particular transaction involving a specific party or parties; and

(2) any other action or transaction covered by the conflict of interest rules of the appropriate government agency.

(g) As used in this Rule, the term "confidential government information" means information which 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.

(h) As used in this Rule, "Private Client" includes not only a private party but also a governmental agency if the lawyer is not a public officer or employee of that agency.

(i) A lawyer who serves as a public officer or employee of one body politic after having served as a public officer of another body politic shall comply with paragraphs (a) and (c) as if the second body politic were a private client and with paragraph (e) as if the first body politic were a private client.

Rule 1.11 Adjudicatory Official or Law Clerk

(a) A lawyer shall not represent anyone in connection with a matter in which the lawyer has passed upon the merits or otherwise participated personally and substantially as an adjudicatory official or law clerk to an adjudicatory official, unless all parties to the proceeding consent after disclosure.

(b) A lawyer who is an adjudicatory official shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a pending matter in which that official is participating personally and substantially. A lawyer serving as a law clerk to an adjudicatory official may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the clerk has notified the adjudicatory official.

(c) If paragraph (a) is applicable to a lawyer, no other lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the lawyer who is subject to paragraph (a) is 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 other parties to the proceeding.

Rule 1.12 Organization as a Client

(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:

(1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;

(2) the violation is likely to result in substantial injury to the organization; and

(3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:

(1) asking reconsideration of the matter

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(d) Upon a lawyer's resignation or termination of the relationship in compliance with Rule 1.15, a lawyer is excused from further proceeding as required by paragraphs (a), (b) and (c), and any further obligations of the lawyer are determined by Rule 1.05.

(e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

Rule 1.13 Conflicts: Public Interests Activities

A lawyer serving as a director, officer or member of a legal services, civic, charitable or law reform organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or

(b) where the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

Rule 1.14 Safekeeping Property

(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client 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) 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. 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.

(c) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.

Rule 1.15 Declining or Terminating Representation

(a) A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw, except as stated in paragraph (c), from the representation of a client, if:

(1) the representation will result in violation of Rule 3.08, other applicable rules of professional conduct or other law;

(2) the lawyer's physical, mental, or psychological condition materially impairs the lawyer's fitness to represent the client; or

(3) the lawyer is discharged, with or without good cause.

(b) Except as required by paragraph (a), a lawyer shall not withdraw from representing a client unless:

(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 may be criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, 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) 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 payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

II. COUNSELOR

Rule 2.01 Advisor

In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

Rule 2.02 Evaluation for Use by Third Persons

A lawyer shall not undertake an evaluation of a matter affecting a client for the use of someone other than the client unless:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(b) the client consents after consultation.

III. ADVOCATE

Rule 3.01 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

Rule 3.02 Minimizing the Burdens and Delays of Litigation

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Rule 3.03 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

(4) fail to disclose to the tribunal 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

(5) offer or use evidence that the lawyer knows to be false.

(b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.

(c) The duties stated in paragraph (a) and (b) continue until remedial legal measures are no longer reasonably possible.

Rule 3.04 Fairness in Adjudicatory Proceedings

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act.

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for his loss of time in attending or testifying;

(3) a reasonable fee for the professional services of an expert witness.

(c) except as stated in paragraph (d), in representing a client before a tribunal:

(1) habitually violate an established rule of procedure or of evidence;

(2) state or allude to any matter that the lawyer does not reasonably believe is relevant

to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;

(3) 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, except that a lawyer may argue on his analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein;

(4) ask any question intended to degrade a witness or other person except where the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or

(5) engage in conduct intended to disrupt the proceedings.

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.

(e) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.05 Maintaining Impartiality of Tribunal

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

(2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;

(3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(c) For purposes of this rule:

(1) "Matter" has the meanings ascribed by it in Rule 1.10(f) of these Rules;

(2) A matter is "pending" before a particular tribunal either when that entity has been selected to determine the matter or when it is reasonably foreseeable that that entity will be so selected.

Rule 3.06 Maintaining Integrity of Jury System

(a) A lawyer shall not:

(l) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or

(2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

(g) As used in this Rule, the terms "matter" and "pending" have the meanings specified in Rule 3.05(c).

Rule 3.07 Trial Publicity

(a) In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.

(b) A lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness; or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense; the existence or contents of any confession, admission, or statement given by a defendant or suspect; or that person's refusal or failure to make a statement;

(3) the performance, refusal to perform, or results of any examination or test; the refusal or failure of a person to allow or submit to an examination or test; or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(c) A lawyer ordinarily will not violate paragraph (a) by making an extrajudicial statement of the type referred to in that paragraph when the lawyer merely states:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved;

(4) except when prohibited by law, the identity of the persons involved in the matter;

(5) the scheduling or result of any step in litigation;

(6) a request for assistance in obtaining evidence, and information necessary thereto;

(7) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(8) if a criminal case:

(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 3.08 Lawyer as Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case;

(4) the lawyer is a party to the action and is appearing pro se; or

(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client consents after full disclosure.

(c) Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Rule 3.09 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;

(b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial or post-trial rights.

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that 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; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Rule 3.10 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative body in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.04(a) through (d),

IV. NON-CLIENT RELATIONSHIPS

Rule 4.01 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 to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

Rule 4.02 Communication with One Represented by Counsel

(a) in representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(c) For the purpose of this rule, "organization or entity of government" includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.

(d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent

of the first lawyer.

Rule 4.03 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 the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 4.04 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 shall not present, participate in presenting, or threaten to present:

(1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or

(2) civil, criminal or disciplinary charges against a complainant, a witness, or a potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness or potential witness therein.

V. LAW FIRMS AND ASSOCIATIONS

Rule 5.01 Responsibilities of a Partner or Supervisory Lawyer

A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:

(a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or

(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

Rule 5.02 Responsibilities of a Supervised Lawyer

A lawyer is bound by these rules notwithstanding that the lawyer acted under the supervision of another person, except that a supervised lawyer does not violate these rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional conduct.

Rule 5.03 Responsibilities Regarding Nonlawyer Assistants

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

(a) 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

(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if:

(1) the lawyer orders, encourages, or permits the conduct involved; or

(2) the lawyer:

(i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and

(ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

Rule 5.04 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order.

(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; and

(3) a lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a non-lawyer 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 a 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

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 5.05 Unauthorized Practice of Law

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Rule 5.06 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership or employment 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 suit or controversy, except that as part of the settlement of a disciplinary proceedings against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice.

Rule 5.07 [Blank]

Rule 5.08 Prohibited Discriminatory Activities

(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias, or prejudice based on race, color, national origin, religion, disability, age. sex, or sexual orientation towards any person involved in that proceeding in any capacity.

(b) Paragraph (a) does not apply to a lawyer's decision whether to represent a particular person in connection with an adjudicatory proceeding, nor to the process of jury selection, nor to communications protected as "confidential information" under these Rules. See Rule 1.05(a), (b). It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in paragraph (a) if that advocacy:

(i) is necessary in order to address any substantive or procedural issues raised by the proceeding; and

(ii) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice and procedure.

VI. PUBLIC SERVICE

Rule 6.01 Accepting Appointments by a Tribunal

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 law or rules of professional conduct;

(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.

VII. INFORMATION ABOUT LEGAL SERVICES

Rule 7.01 Firm Names and Letterheads

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "P.A.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A 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 the jurisdiction where the office is located.

(c) The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by written communication under a trade or fictitious name, except that a lawyer who practices under a trade name as authorized by paragraph (a) of this Rule may use that name in such

advertisement or such written communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Rule 7.02 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(4) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or

(5) designates one or more specific areas of practice in an advertisement in the public media or in a written solicitation unless the advertising lawyer is competent to handle legal matters in each such area of practice.

(b) Rule 7.02(a)(5) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(5) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or writing with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Rule 7.03 Prohibited Solicitations and Payments

(a) A lawyer shall not by in-person or telephone contact seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or

present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment:

(2) the communication contains information prohibited by Rule 7.02(a); or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Article 320d, Revised Statutes.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Article 320d, Revised Statutes.

Rule 7.04 Advertisements in the Public Media

(a) A lawyer shall not advertise in the public media that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Article 320d, Revised Statutes, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind or information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement.

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, [area of specialization]--Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified [area of specialization] [name of certifying organization]," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied ant that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall state with respect to each area advertised in which the lawyer has not been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, "Not Certified by the Texas Board of Legal Specialization," however, if an area of law so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area."

(c) Separate and apart from any other statements, the statements referred to in paragraph

(b) shall be displayed conspicuously with no abbreviations, changes, or additions in the quoted language set forth in paragraph (b) so as to be easily seen or understood by an ordinary consumer.

(d) Subject to the requirements of Rule 7.02 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, or television.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements utilizing video or comparable visual images, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised. In advertisements utilizing audio recordings, any person who narrates an advertisement as if he or she were a lawyer whose services or whose firm's services are being advertised, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three (3) days a week; or

(2) the advertisement discloses the days and times during which a lawyer will be present

at that other office.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan, or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Article 320d, Revised Statutes.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

Rule 7.05 Prohibited Written Solicitations

(a) A lawyer shall not send or deliver, or knowingly permit or cause another person to send or deliver on the lawyer's behalf, a written communication to a prospective client for the purpose of obtaining professional employment if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation,

undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (h) through (o) that would be applicable to the communication if it were an advertisement in the public media; or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (e) of this Rule, a written solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) shall conform to the provisions of Rule 7.04(a) through (c);

(2) shall be plainly marked "ADVERTISEMENT" on the first page of the written communication, and the face of the envelope also shall be plainly marked "ADVERTISEMENT," however, if the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:

(i) in a color that contrasts sharply with the background color; and

(ii) in a size of at least 3/8 vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger.

(3) shall not be made to resemble legal pleadings or other legal documents;

(4) shall not contain a statement or implication that the written communication has received any kind of authorization or approval from the State Bar of Texas or from the Law Advertisement and Solicitation Review Committee;

(5) shall not be sent in a manner, such as by registered mail, that requires personal delivery to a particular individual;

(6) shall not reveal on the envelope used for the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or nonclient; and

(7) shall disclose how the lawyer obtained the information prompting such written communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) All written communications to a prospective client for the purpose of obtaining professional employment must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(d) A copy of each written solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name and address to which each such communication was sent; and the means by which each such communication was

sent shall be kept by the lawyer or firm for four years after its dissemination.

(e) The provisions of paragraph (b) of this Rule do not apply to a written solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney-client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(4) that is requested by the prospective client.

Rule 7.06 Prohibited Employment

A lawyer shall not accept or continue employment when the lawyer knows or reasonably should know that the person who seeks the lawyer's services does so as a result of conduct prohibited by these rules.

Rule 7.07 Filing Requirements For Public Advertisements And Written Solicitations

(a) Except as provided in paragraph (d) of this Rule, a lawyer shall file with the Lawyer Advertisement and Solicitation Review Committee of the State Bar of Texas, either before or concurrently with the mailing or sending of a written solicitation communication:

(1) a copy of the written solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes in which the communications are enclosed; and

(2) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (d) of this Rule, a lawyer shall file with the Lawyer Advertisement and Solicitation Review Committee of the State Bar of Texas, either before or concurrently with the first dissemination of an advertisement in the public media, a copy of that advertisement. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or is or will be disseminated, such as a videotape, an audiotape, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used; and

(4) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) A lawyer who desires to secure an advance advisory opinion concerning compliance of a contemplated written solicitation communication or advertisement may submit to the Lawyer Advertisement and Solicitation Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) of this Rule, including the required fee; provided however, it shall not be necessary to submit a videotape it the videotape has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. An advisory opinion of the Lawyer Advertisement and Solicitation Review Committee of noncompliance is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding constitutes admissible evidence if offered by a party.

(d) The filing requirements of paragraphs (a) and (b) do not extend to any of the following materials:

(1) an advertisement in the public media that contains only part or all of the following information, provided the information is not false or misleading:

(i) the name of a lawyer or firm and lawyers associated with the firm, with office addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";

(ii) the fields of law in which the lawyer or firm advertises specialization and the statements required by Rule 7.04(a) through (c);

(iii) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(iv) technical and professional licenses granted by this state and other recognized licensing authorities;

(v) foreign language ability;

(vi) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(vii) identification of prepaid or group legal service plans in which the lawyer participates;

(viii) the acceptance or nonacceptance of credit cards;

(ix) any fee for initial consultation and fee schedule;

(x) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xi) any disclosure or statement required by these rules; and

(xii) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than name of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) a newsletter mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; and

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;

(6) a written solicitation communication that is not motivated by or concerned with a

particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is award;

(7) a written solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a written solicitation communication that is requested by the prospective client.

(e) If requested by the Lawyer Advertisement and Solicitation Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written solicitation.

VIII. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.01 Bar Admission, Reinstatement, and Disciplinary Matters

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

(a) knowingly make a false statement of material fact; or

(b) fail 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 admission, reinstatement, or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.05.

Rule 8.02 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 official 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 Texas Code of Judicial Conduct.

(c) A lawyer who is a candidate for an elective public office shall comply with the applicable provisions of the Texas Election Code.

Rule 8.03 Reporting Professional Misconduct

(a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

(b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer's report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).

(d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information

(1) by rule 1.05 or

(2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

Rule 8.04 Misconduct

(a) A lawyer shall not:

(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

(2) commit a serious crime, or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(7) violate any disciplinary or disability order or judgment;

(8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;

(9) engage in conduct that constitutes barratry as defined by the law of this state;

(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure

relating to notification of an attorney's cessation of practice;

(11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated including but not limited to situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in subsection (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing.

Rule 8.05 Jurisdiction

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined here for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

IX. SEVERABILITY OF RULES

Rule 9.01 Severability

If any provision of these rules or any application of these rules to any person or circumstances if held invalid, such invalidity shall not affect any other provision or application of these rules that can be given effect without the invalid provision or application and, to this end, the provisions of these rules are severable.

APPENDIX "C"

Proposed Texas Juvenile Probation Commission
Title 37 Texas Administrative Code

Chapter 345. Ethics

Juvenile Justice Professionals Code of Ethics and Code of Conduct
Anticipated Effective Date 9/1/2009

Subchapter A. Definitions and Applicability

§345.100 Definitions. Terms used in this Chapter shall have the following meanings unless otherwise expressly
defined within the Chapter.

(a) Juvenile Justice Program
(a) Commission - Texas Juvenile Probation Commission
(b) Juvenile – A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility,
or participating in a juvenile justice program.
(c) Juvenile Justice Facility ("facility") – A facility, including its premises and all affiliated sites, whether
contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile
board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that
serves juveniles under juvenile court jurisdiction. The term includes:
(1) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention
facility (i.e., holdover) required to be certified in accordance with Texas Family Code Section 51.12;
(2) A public or private juvenile post-adjudication secure correctional facility required to be certified in
accordance with Texas Family Code Section 51.125, except for a facility operated solely for children
committed to the Texas Youth Commission; and
(3) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles
under juvenile court jurisdiction.

(d) Juvenile Justice Professional – A person who is certified or a person who is seeking certification as a
juvenile probation officer or juvenile supervision officer and who is employed by a juvenile justice department,
juvenile justice program or juvenile justice facility
(e) Juvenile Justice Program ("program") – A program or department operated wholly or partly by the
governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile
board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a
juvenile justice alternative education program and a non-residential program that serves juvenile offenders
under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.
(f) Juvenile Probation Department ("department") – All physical offices and premises utilized by a county or
district level governmental unit established under the authority of a juvenile board(s) to facilitate the execution of
the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and
Chapter 141 of the Texas Human Resources Code.

New Chapter 345 Working Draft

Juvenile Justice Professionals Code of Ethics and Code of Conduct
Drafted on 6/17/2008– Page 2 of 5

Subchapter B. Ethics Standards Code of Conduct for Juvenile Justice Programs Professionals

§345.200 110. Applicability.

(a) An employee Unless otherwise noted, this code of ethics and code of conduct apply equally to persons
certified and to persons seeking certification as juvenile probation officers or juvenile supervision officers
(hereafter referred to as "juvenile justice professionals") employed by a juvenile justice department, juvenile
justice program or juvenile justice facility. Juvenile justice professional employed by in a public or private
Juvenile Justice Program holds his or her the position for the benefit of the citizenry of the State of Texas and is

obligated to act with responsibility and in the public interest. As such, department employees certified juvenile
justice professionals are expected to strive at all times to perform their duties efficiently, faithfully, loyally, and in
accordance with federal, state, and local laws, the department's employee personnel manual and in accordance
with the administrative rules adopted by the Texas Juvenile Probation Commission (Commission) Compliance
standards. Any employee certified juvenile justice professional who violates the provisions of this chapter shall
be subject to immediate disciplinary action that may include criminal charges and decertification by under the
department's Commission's administrative authority of the Commission. To this end the Commission
subscribes to the following principles. (Florida & Penn)
(b) The intent of the code of ethics and code of conduct is not to preclude disciplinary action at the employment
level for violations of local policies and procedures, but rather to maintain an appropriate level of accountability
with respect to the Commission as the entity that issues the credentialing to certified juvenile probation officers
or juvenile supervision officers.
§345.202. Access and Adherence. All employees shall receive a copy of, or have access to the Department's
Employee Code of Ethics and Personal Responsibility. To facilitate an employee of the Department's
expectations, it is the responsibility of supervisors/managers to ensure that each employee is provided a copy of
this Code to read and that a copy is available at all times in the facility or office and on the Department's Internet
Website. Supervisors/managers must also ensure that employees sign and submit a Statement of Personal
Responsibility acknowledging receipt of a copy of the jurisdiction's code of ethics.
Subchapter B. Policy and Procedure.
§345.200. Policy and Procedure. Departments, programs and facilities shall have written policies and
procedures for reporting violations of the code of conduct to the administration of the department, program or
facility and the Commission.
§345.210. Adherence. employed by in a public or private Juvenile Justice Program hold his or her position for
the benefit of the citizenry of the State of Texas and is obligated to act with responsibility and in the public
interest. As such, department employees are expected to strive at all times to perform their duties efficiently,

faithfully, loyally, and in accordance with federal, state, and local laws, the department's employee personnel
manual and in accordance with the administrative rules adopted by the Texas Juvenile Probation Commission
Compliance standards. Any employee who Juvenile justice professionals found to be in violation of the
provisions of this chapter shall be subject to immediate disciplinary action that may include criminal charges and
decertification by under the department's Commission's administrative authority of the Commission. To this end
the Commission subscribes to the following principles. (Florida & Penn)

Subchapter C. Code of Ethics.

§345.300. Code of Ethics. Juvenile justice professionals employed by in a public or private Juvenile Justice
Program hold his or her their positions for the benefit of the citizenry of the State of Texas and is are obligated to
act with responsibility and in the public interest.
(a) As such, department employees Juvenile justice professionals are expected to shall strive at all times to
perform their duties efficiently, faithfully and loyally. and in accordance with federal, state, and local laws, the
department's employee personnel manual and in accordance with the administrative rules adopted by the Texas
Juvenile Probation Commission Compliance standards

(b) Officers Juvenile justice professionals shall respect the significance of all elements of the justice and human
services systems and cultivate a professional cooperation with each segment.
(c) Officers Juvenile justice professionals shall encourage relationships with colleagues of such character to
promote mutual respect within the profession and improve quality of service.
(d) Juvenile justice professionals shall treat others with courtesy at all times and refrain from making statements
critical of other juvenile justice professionals unless, these are verifiable and constructive in purpose.
(e) Juvenile justice professionals shall maintain a standard of professional performance and take every

reasonable opportunity to enhance and improve their professional knowledge and competence.
(f) Juvenile justice professionals shall accept responsibility for their actions, as well as inactions, on or off duty,
when those actions bring disrepute on the public image of the juvenile justice profession.
(g) Juvenile justice professionals shall demonstrate empathy toward the juveniles and families they serve.
(h) Juvenile justice professionals shall perform all duties in a professional and competent manner.
(i) Juvenile justice professionals shall not allow the actions or failings of others to be an excuse for not
performing duties in a responsible, professional and expected manner.
(j) Officers Juvenile justice professionals shall respect and consider the right of the public to be safeguarded
against juvenile delinquency.
(k) Juvenile justice professionals shall conduct themselves in appearance and deportment in such a manner as
to inspire confidence and respect for the position of public trust they hold.
(l) Officers Juvenile justice professionals shall not make statements critical of colleagues or their the juvenile
justice program system unless these are verifiable and constructive in purpose.

Subchapter D. Code of Conduct.

§345.400. Adherence and Reporting Violations.
(a) Juvenile justice professionals shall adhere to the code of conduct set forth in this chapter, in order to
contribute to the welfare of the juveniles and families served by the juvenile justice profession.
(b) Officers Juvenile justice professionals shall report to the appropriate authorities any corrupt behavior or
violations of the code of conduct. unethical behaviors which could affect either a child or the integrity of the
facility or department. (Idaho & First H)

§345.410. Code of Conduct. Juvenile justice professionals found to be in violation of the provisions of this
subsection shall be subject to disciplinary action that may include criminal charges and also may include
removal or denial of the professional certification issued under the administrative authority of the Commission.
(a) Officers Juvenile justice professionals shall abide by all federal, state, and local laws and administrative rules
adopted by the Commission standards.
(b) Officers Juvenile justice professionals shall respect the authority and follow the lawful directives of the
juvenile court and the local governing juvenile board.

(c) Officers Juvenile justice professionals shall respect and protect the civil and legal rights constitutional rights
of all children juveniles and the parents and guardians of the juveniles to liberty, equality and justice;

(d) A juvenile justice professional's character and conduct while off duty must always be exemplary, thus
maintaining a position of respect in the community in which he or she lives and serves. The professional's
personal behavior must be beyond reproach.
(e) Officers shall not discriminate against any employee, prospective employee, child, child care provider, or
parent on the basis of age, race, sex, creed, disability, or national origin. Juvenile justice professionals shall
perform all duties impartially, without favor, affection, ill will or discrimination and without regard to status, sex
gender, race, religion, political belief or aspiration. All juveniles and the families of juveniles shall be treated
equally with courtesy, consideration and dignity.
(f) Juvenile justice professionals shall avoid the appearance of impropriety, conflict of interest, and/or undue
influence in the selection and assignment of juvenile community service worksites and placements.
(g) Officers Juvenile justice professionals shall not accept any gifts, presents, favors, subscriptions, gratuities or
promises that imply an obligation or could be interpreted as seeking to cause the juvenile justice professional to
refrain from the free and objective exercise of professional responsibilities.
(h) Officers Juvenile justice professionals shall not use official position to secure privileges or advantage, or
engage in corruption or bribery, nor condone such acts by other juvenile justice professionals.
(i) Officers Juvenile justice professionals shall serve each child juvenile with concern for the child's juvenile's
welfare and with no purpose of personal gain. Juvenile justice professionals shall never allow personal feelings,
interests, animosities or friendships to influence official conduct or impair their objectivity.
(j) Officers Juvenile justice professionals shall not engage in or maintain an inappropriate relationship, or the
appearance of an inappropriate relationship with a juvenile or member of a juvenile's family. in a

juvenile justice
program or under the jurisdiction of the juvenile board. An inappropriate relationship can include but is not
limited to: bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families.
(k) Juvenile justice professionals shall never employ unnecessary force or violence and shall only such force
with the greatest restraint and only after discussion, negotiation and persuasion have been found to be
inappropriate or ineffective. The use of force shall never engage in cruel, degrading or inhumane treatment of
any person.
(l) Officers Juvenile justice professionals shall not interfere with or hinder an abuse, exploitation and neglect
internal investigation conducted under §343.3(c) Chapter 358 of this title, a Commission abuse, exploitation and
neglect investigation conducted under the authority of Texas Family Code Chapter 261 and Chapter 349 350 of
this title, any criminal investigation or any other investigation conducted by a legally authorized entity. conducted
by a law enforcement agency.
(m) Officers Juvenile justice professionals shall not be designated as a perpetrator in an investigation of
Commission abuse, neglect or exploitation investigation conducted by the Commission under the authority of
Texas Family Code Chapter 261 and Chapter 349 350 of this title.
(n) Officers Juvenile justice professionals shall maintain the integrity of private information and not seek
personal data beyond that needed to perform their responsibilities, nor reveal case information to anyone not
having proper professional use for such.
(o) Officers Juvenile justice professionals shall not falsify or make material omissions or intentionally erroneous
entries on Department and/or state official documents governmental records including employment forms, time
records, travel records, certification and training records and any other forms, documents or records used in the
course of official business. Any alterations to such documents must reflect the person making the alteration
and the date it was made.
(p) Officers Juvenile justice professionals shall be diligent in their responsibility to record and make available for
review any and all information which could contribute to sound decisions affecting a juvenile or the public safety.

New Chapter 345 Working Draft

Juvenile Justice Professionals Code of Ethics and Code of Conduct

(q) Officers Juvenile justice professionals shall not deliver into nor remove from the grounds of a juvenile detention justice department, program or facility any item of contraband and shall not exercise possession or control of any item of contraband while on the grounds of a juvenile detention justice department, program or facility grounds.

(r) Officers Juvenile justice professionals shall not engage in behaviors which misuse state funds or fiscal or business office practices or materials belonging to a department, program or facility including but not limited to: falsifying time sheets, theft or misuse of office supplies, use of facility or department property for personal use, and which use the personal affects or funds belonging to a juvenile. resident of a facility or child under the jurisdiction of the juvenile court.

(s) Officers Juvenile justice professionals shall not make statements critical of colleagues or their the juvenile justice program system unless these are verifiable and constructive in purpose.

We can link the following excerpts from the Penal Code to several of these:

- § 36.08 Penal Code--Gift to Public Servant by Person Subject to His Jurisdiction
- § 39.02 Penal Code - Abuse of Official Capacity
- § 39.03 Penal Code - Official Oppression
- § 39.04 Penal Code - Violations of the Civil Rights of Persons in Custody; Improper Sexual Activity with Person in Custody
- § 37.10 Penal Code – Tampering with Governmental Record