

**OUTLINE¹ OF THE SUBSTANCE OF
THE RULES OF PROFESSIONAL CONDUCT (RPCs)**

a. CLIENT-LAWYER RELATIONSHIP

1.0 Terminology

1.1 Competence

- (a) Gross negligence
- (b) Pattern of neglect (at least 3 instances of gross or simple neglect, usually in a minimum of 3 different client matters)

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

- (a) Abiding by client's decision on objectives
- (b) Representation does not constitute endorsement of client's position
- (c) Limiting objectives with client consent
- (d) Prohibition on counseling illegal, criminal, or fraudulent conduct

1.3 Diligence

1.4 Communication

- (a) Inform client how to communicate with the lawyer
- (b) Keep client reasonably informed about status
- (c) Make reasonable explanations so client can make informed decisions
- (d) Advise the client of the relevant ethical limitations on the lawyer's conduct

1.5 Fees

- (a) Must be reasonable. The list of 8 factors to determine reasonableness.
- (b) Writing required setting forth the basis or rate of the fee
- (c) Contingent fee agreements -- writing required
- (d) Contingent fee limitations
- (e) Limitations on division of fees between lawyers not in the same firm

1.6 Confidentiality of Information

- (a) Duty not to reveal
- (b) When disclosure is required to the proper authorities
- (c) Permissive disclosure

¹ This Outline is intended as a research tool. The reader is urged to read and refer to the full text of the RPCs, since only portions of the full rules are summarized or referenced here.

- (d) Further permissive disclosure
- (e) Reasonable belief defined
- (f) Lawyer shall make reasonable efforts to prevent inadvertent or unauthorized disclosure of client information

1.7 Conflict of Interest: General Rule

- (a) Representation barred if it involves a “concurrent conflict of interest”
 - (1) the representation of one client is directly adverse to another client, or
 - (2) material limitation by lawyer’s responsibilities to another client, former client, third person, or the lawyer’s personal interest
- (b) Waiver (strictly applied):
 - (1) written consent of each affected client after full disclosure and consultation. Public entity cannot consent; and
 - (2) reasonable belief of lawyer that will be able to provide competent, diligent representation to each affected client; and
 - (3) no legal prohibition; and
 - (4) representation does not involve assertion of a claim by client against client.

1.8 Conflict of Interest: Current Clients; Specific Rules

[Prohibitions, (a)-(i)]

- (a) Business transactions with client
- (b) Using information to client’s disadvantage
- (c) Gifts from client
- (d) Literary or media agreements with clients
- (e) Financial assistance to clients
- (f) Compensation from other than client
- (g) Multiple representation - civil and criminal
- (h) Limiting malpractice liability
- (i) Acquiring interest in litigation
- (j) Application to other lawyers in firm
- (k) Limitations on lawyers employed by public entities
- (l) A public entity cannot consent

1.9 Duties to Former Clients

- (a) Subsequent representation of another client in “same or substantially related matter”
- (b) Where change of firm by lawyer is an issue
- (c) Representation of client when prior firm was adverse
- (d) A public entity cannot consent

1.10 Imputation of Conflicts of Interest: General Rule

- (a) All firm members prohibited if one prohibited
- (b) After lawyer leaves firm
- (c) When new lawyer joins firm
- (d) Waiver (referencing RPC 1.7)
- (e) Government lawyers (referencing RPC 1.11)
- (f) Screening arrangement - establish appropriate written procedures

1.11 Successive Government and Private Employment

- (a) Limitations on subsequent private practice representation
- (b) Further limitations
- (c) When a firm with which that lawyer is associated may undertake or continue representation
- (d) Limitations on subsequent government practice
- (e) "Matter" and "confidential government information" defined

1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral or Law Clerk

- (a) Prohibition where lawyer participated "personally and substantially"
- (b) Limitations on other lawyers in firm
- (c) Negotiating for employment
- (d) Partisan arbitrator

1.13 Organization as the Client

- (a) Organization is the client
- (b) Seeking internal remedial action to avoid illegal actions or inaction
- (c) Remedial action when client insists on illegal action
- (d) Explanation to directors, officers, employees, members, shareholders, or other constituents that lawyer represents organization
- (e) Dual representation
- (f) "Organization" defined

1.14 Client Under a Disability

- (a) Maintaining normal client-lawyer relationship
- (b) Protective action
- (c) Authorization to reveal information (referencing RPC 1.6)

1.15 Safekeeping Property

- (a) Segregating client funds

- (b) Promptly notifying and delivering to client
- (c) Disputes concerning funds
- (d) Recordkeeping: lawyer must comply with R. 1:21-6 ("Recordkeeping")

1.16 Declining or Terminating Representation

- (a) Mandatory withdrawal
- (b) Permissive withdrawal
- (c) Continuing representation when ordered
- (d) Steps upon termination to protect client's interest

1.17 Sale of Law Practice

Specified conditions must occur:

- (a) Lawyer must cease the private practice of law
- (b) Sale to one or more lawyers or law firms of the entire practice
- (c) Written notice of transfer
- (d) Fees charged to clients
- (e) Substitution in a pending matter
- (f) What does not constitute a sale or purchase

1.18 Prospective Client

- (a) Lawyer shall not reveal information acquired in consultation
- (b) Restrictions on representation of client with interests materially adverse to a former client
- (c) Disqualification of other lawyers in firm
- (d) "Prospective client" and "former prospective client" defined

b. COUNSELOR

2.1 Advisor

Duties regarding advice

2.2 (Reserved)

2.3 Evaluation for Use by Third Persons

- (a) If compatible with client's interests
- (b) Restrictions if evaluation will be adverse
- (c) RPC 1.6 confidentiality applies
- (d) Lawyer shall indicate any material limitations

2.4 Lawyer Serving as Third-Party Neutral

- (a) Service as third-party neutral
- (b) Inform parties that third-party neutral is not representing them

c. ADVOCATE

3.1 Meritorious Claims and Contentions

Must be a basis in law and not frivolous

3.2 Expediting Litigation

Reasonable efforts required

Courtesy and consideration required (note that this RPC is entitled “expediting litigation” and the “courtesy and consideration” provision is included in a compound sentence that starts with a mandate to “expedite litigation”)

3.3 Candor Toward the Tribunal (“tribunal” defined at RPC 1.0(n))

- (a) Not knowingly
 - (1) Make false statements of material fact or law to a tribunal
 - (2) Fail to disclose material fact to a tribunal avoid illegal, criminal or fraudulent client act
 - (3) Fail to disclose controlling legal authority to the tribunal
 - (4) Offer false evidence
 - (5) Fail to disclose material fact reasonably certain to mislead the tribunal
- (b) Duties apply even though disclosure violates RPC 1.6
- (c) Refusal to offer false evidence.
- (d) Duties in *ex parte* proceeding

3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) Obstruct access to, or destroy, evidence
- (b) Falsify evidence or counsel or assist in false testimony
- (c) Knowingly disobey an obligation under the rules of a tribunal
- (d) In pretrial, make frivolous discovery requests or fail to diligently comply with reasonable discovery requests
- (e) In trial, allude to irrelevant matter or inadmissible evidence, assert personal knowledge of facts, state personal opinions of justness of a cause, credibility of witness, or guilt or innocence of accused or culpability of civil litigant
- (f) Advise a non-client witness not to give evidence
- (g) Threaten criminal charges to gain improper advantage in civil case

3.5 Impartiality and Decorum of the Tribunal

Prohibition on:

- (a) Influencing judge, juror or official
- (b) *Ex parte* communication with same
- (c) Conduct intended to disrupt a tribunal
- (d) Contact with judge or adjudicative officer about post-retirement employment

3.6 Trial Publicity

- (a) Extrajudicial statements substantially likely to materially prejudice an adjudicative proceeding
- (b) Permissive statements
- (c) Protection of client from undue prejudicial effect

3.7 Lawyer as Witness

- (a) Lawyer may not be witness, except as to
 - (1) uncontested issues
 - (2) value of legal services
 - (3) disqualification would work substantial hardship
- (b) Associated lawyers may be advocate

3.8 Special Responsibilities of a Prosecutor

- (a) Charges must be supported by probable cause
- (b) Observe defendant's right to counsel
- (c) Not seek from an unrepresented accused a waiver of post indictment pretrial rights
- (d) Make timely and full discovery
- (e) Limitations on subpoenaing a lawyer to present evidence about client
- (f) Limitations on making extrajudicial comments

3.9 Advocate in Nonadjudicative Proceedings

Duty to disclose representative capacity

d. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

4.1 Truthfulness in Statements to Others

- (a) In representing a client a lawyer shall not knowingly:
 - (1) make false statements of material fact
 - (2) fail to disclose material fact when necessary to avoid assisting in criminal or fraudulent act
- (b) Disclosure of information otherwise protected by RPC 1.6

4.2 Communication with Person Represented by Counsel

Communications must be through known counsel

4.3 Dealing with Unrepresented Person; Employee of Organization

A lawyer should make clear the lawyer's role and not state or imply that the lawyer is disinterested.

4.4 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use tactics to embarrass, delay or burden a third person, or obtain evidence by violating rights
- (b) Documents inadvertently sent [see Official Comment about "metadata"]

e. LAW FIRMS AND ASSOCIATIONS

5.1 Responsibilities of Partners, Supervisory Lawyers and Law Firms

- (a) Law firm must take reasonable action to insure compliance with RPCs
- (b) Supervising lawyer must take reasonable action to insure subordinate's compliance with RPCs
- (c) A lawyer has imputed responsibility if the lawyer ratifies conduct or supervises another and has the opportunity to act
- (d) Prohibition on law firm or lawyer political contributions while a municipal court judge is associated with the firm

5.2 Responsibilities of a Subordinate Lawyer

- (a) Subordinates are bound by the RPCs
- (b) Subordinates can rely on supervisor's reasonable resolution of an arguable ethics question

5.3 Responsibilities Regarding Non-Lawyer Assistants

- (a) Every lawyer authorized to practice in New Jersey must adopt and maintain reasonable efforts to ensure that the conduct of non-lawyers is compatible with professional obligations of the lawyer
- (b) A lawyer having direct supervisory authority must make reasonable efforts to ensure non-lawyer's compliance with professional obligations of the lawyer
- (c) Lawyer (vicariously) responsible for non-lawyer's conduct that would be a violation of RPCs if:
 - (1) the lawyer ordered or ratified the conduct involved

- (2) the lawyer has direct supervisory authority over non-lawyer and knows of conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action; or
- (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of unethical conduct by the non-lawyer, which evidence a propensity for such conduct.

5.4 Professional Independence of a Lawyer

- (a) Not share fee with non-lawyer, except
 - (1) Law firm may pay lawyer's estate
 - (2) May pay fees earned by deceased lawyer
 - (3) Purchase practice of deceased or disabled lawyer
 - (4) Non-lawyers may be included in profit-sharing retirement plan
 - (5) Share court-awarded fees with a nonprofit organization
- (b) Not form partnership with non-lawyer
- (c) Not permit another to regulate lawyer's professional judgment
- (d) Not practice as a professional corporation, association, or LLC if
 - (1) Non-lawyer owns any interest
 - (2) Non-lawyer is director or officer
 - (3) Non-lawyer directs or controls lawyer's judgment

5.5 Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

- (a) A lawyer shall not:
 - (1) practice in jurisdiction where not authorized [unauthorized practice prohibition]
 - (2) assist another to do so
- (b) Conditions for non-admitted lawyer to practice in this State
 - (1) *pro hac vice*
 - (2) in-house counsel and compliant with R. 1:27-2, or
 - (3) itemized circumstances (subsections i to iv), including where transaction originates in State where admitted; arbitration; discovery; lawyer substantially represents client in State where admitted.
- (c) Lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to paragraph (b) shall be licensed and in good standing in all jurisdictions of admission and comply with the 6 specified subsections

5.6 Restrictions on Right to Practice

- (a) Employment agreements restricting right to practice prohibited
- (b) Lawsuit settlements restricting right to practice prohibited

f. PUBLIC SERVICE

6.1 Voluntary Public Interest Legal Service

Lawyers should render public interest legal service

6.2 Accepting Appointments

Lawyers should accept appointments unless:

- (a) Representing the client is likely to result in violation of the RPCs; or
- (b) Representing the client is likely to result in an unreasonable financial burden on the attorney; or
- (c) It will impair an existing client-lawyer relationship or the lawyer's ability to represent another client

6.3 Membership in Legal Services organization

A lawyer may serve in a legal services organization even if it represents interests adverse to an existing client provided:

- (a) the organization complies with RPC 5.4 (professional independence of an attorney) and
- (b) the organization complies with RPC 1.7 (conflicts of interest).

6.4 Law Reform Activities Affecting Client Interest

A lawyer may serve in any capacity with an organization involved in law reform activities, but the lawyer must disclose when a client may be materially benefited by the organization's actions.

6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to RPC 1.7 and 1.9 only if the lawyer knows that the representation involves a conflict of interest. See rule for its additional subsections.

g. INFORMATION ABOUT LEGAL SERVICES

7.1 Communications Concerning a Lawyer's Service

- (a) A lawyer shall not make false or misleading communications about the lawyer's services.
- (b) It is unethical to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising.

7.2 Advertising

- (a) A lawyer may advertise through public media, but the advertisements shall be predominantly informational.
- (b) A copy or recording of all advertisements and communications shall be kept for three years after dissemination.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services.

7.3 Personal Contact with Prospective Clients

- (a) A lawyer may contact prospective clients subject to the requirements of paragraph (b);
- (b) A lawyer shall not contact a prospective client if the lawyer reasonably knows:
 - (1) that the client cannot exercise reasonable judgment in employing an attorney; or
 - (2) the person has made known a desire not to receive such communication; or
 - (3) the communication involves coercion, duress or harassment; or
 - (4) the communication involves unsolicited direct contact with a mass disaster victim within 30 days of the event; or
 - (5) the communication involves unsolicited direct contact with a prospective client in other circumstances except that the lawyer may send a letter by regular mail provided that the letter:
 - (i) states "ADVERTISEMENT" in the prescribed manner on the first page and on the envelope; and
 - (ii) contains the party's name in the salutation and additional language; and
 - (iii) contains a required notice at the bottom of the last page; and
 - (iv) contains an additional required notice at the bottom of the last page.
- (c) A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or anyone affiliated with the lawyer in the specified circumstances.
- (d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment.
- (e) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services except as allowed by law. See the rule for its subsections.
- (f) A lawyer shall not accept employment if the prospective client does so as a result of conduct prohibited under this Rule.

7.4 Communication of Fields of Practice and Certification

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not state or imply that the lawyer has been recognized or certified as a specialist except as provided in this Rule.
- (b) Patent Attorney designation.
- (c) Admiralty practice designation.
- (d) A lawyer may state that the lawyer has been certified as a specialist if the statement is not false or misleading.

7.5 Firm Names and Letterheads

- (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction.
- (c) A firm name shall not contain the name of any person not active with the firm, except formerly active persons who have died or retired.
- (d) Lawyers may state that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's legal services.
- (e) A law firm name may include additional identifying language only when it is accurate and not misleading.
- (f) For attorneys who practice under a trade name, the names of one or more principally responsible attorneys, licensed in this State, shall be displayed on all letterheads, signs, advertisements, and cards, or other places where the trade name is used.

h. MAINTAINING THE INTEGRITY OF THE PROFESSION

8.1 Bar Admission and Disciplinary Matters

Bar applicants and lawyers in disciplinary cases shall not:

- (a) Make false statements of material fact; or
- (b) Fail to respond to a lawful demand for information in a disciplinary proceeding.

8.2 Judicial and Legal Officials

- (a) Lawyers shall not make false statements about the qualifications of a judge or candidate.
- (b) Confirmed judicial officers must comply with the Code of Judicial Conduct.

8.3 Reporting Professional Misconduct

- (a) Lawyers must report violations or the RPCs that raise substantial questions about a lawyer's honesty, trustworthiness or fitness as a lawyer.
- (b) Lawyers must report violations by judges that raise substantial questions about the judge's fitness to act as a judge
- (c) This rule does not apply to protected information under RPC 1.6.
- (d) This rule does not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program, except as specified.

8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate, or assist another in violating, the RPCs;
- (b) Commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official;
- (f) Knowingly to assist a judicial officer to violate Code of Judicial Conduct;
- (g) Engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or handicap, where the conduct is intended or likely to cause harm.

8.5 Disciplinary Authority; Choice of Law

- (a) A lawyer admitted in New Jersey is accountable in New Jersey although the misconduct was committed in another jurisdiction. A lawyer not admitted in New Jersey may be subject to the disciplinary authority of this State.
- (b) The rules of professional conduct to be applied shall be:
 - (1) for misconduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
 - (2) for any other misconduct, the rules of the jurisdiction in which the misconduct occurred, and see the other specifications of this subsection.

ATTORNEY ADVERTISING GUIDELINES

There are three, and they follow immediately after the RPCs in the Appendix to Part I of the Court Rules.