

Recommended Reading

3.3 – Ethics and TS_Kenedy Article, New Normal and Covid 19 (Aug. 19, 2020).

Trade Secrets, Ethics and the “New Normal” of Covid-19

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Trade secrets disputes, by their very nature, are often mired in ethical considerations arising from our duty of technological competence and confidentiality to clients. But these duties evolve as lawyers must navigate a “new normal” of more telecommuting and reliance on remote conducting of trials, hearings, depositions and sensitive meetings. While there is certainly an unprecedented run of circumstances that have befallen many, they are not entirely unique. Past hurricanes and similar natural disasters have pressed upon the ethical obligations of some lawyers in the same way the instant pandemic now does for nearly all of us.

This paper accompanies a live presentation in which the questions below, and certain others not included here, will be posed to the audience and the responses polled. The questions and discussion that follow will be based on hypothetical factual scenarios. The intent of this exercise is to explore the potentially relevant ethical rules and considerations arising from the varying circumstances. The discussion in this paper following the hypotheticals and questions contains much of the material useful in providing answers to the polled questions.

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Base Hypothetical:

Stay at home orders are in place, essential-only travel is the norm, you and your staff have children stuck at home and sick parents and relatives need your help. Just a year ago that description would have sounded more like the plotline to another dystopian movie – but it is now your reality. And that reality includes continuing to represent your clients that are in a similar boat, clients that expect you to keep them updated on their matters, their confidential information confidential and their trade secrets protected from disclosure.

One such client is an upstart medical devices company that was about to release a new product when the pandemic hit. They have since attempted to retool and produce personal protective equipment (“PPE”). The PPE is made using a unique process they have developed which appears able to provide adequate protection while not fogging up a wearer’s glasses.

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Scenario One

The client has asked for a remote video call to discuss its new PPE process. As you have just started working from home you have not quite settled into a home office arrangement, but you send a calendar entry offering a call using a free web-based tool. The client accepts. When speaking with the client you are regularly interrupted by their teenage children that are not quite fully invested into their remote learning.

Do you:

- A. Attempt to move on with the call?
- B. Explain the less than ideal set-up you are both operating under and schedule a new time when you know the kids will be away?
- C. Suggest to the client you can coordinate over email instead?

Does your answer change if it is your children that are interrupting?

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Scenario Two

The client has asked for your review of their new process and related contractual agreements with vendors and manufacturers. The client sends electronic copies of these materials to your email. Your assistants, like you, are working remotely. Is it appropriate to talk through changes to the agreements you would like to make with your assistants and have them redline the materials while at their homes?

- A. Yes.
- B. No.

* * *

Scenario Three

The client, knowing from proactive correspondence from you that they would not be able to get in touch with you over a period of days while you established your remote presence, encounters an emergency issue for which they need immediate advice. Not able to reach a trade secret specialist, the client reaches out to a general practitioner. The lawyer gives advice to the client that turns out to be inappropriate. Has that lawyer committed an ethical violation?

- A. Yes.
- B. No.

Have you?

* * *

Scenario Four

You have agreed to hire a couple of new associates that have just graduated from law school. Unfortunately, they will not be able to take their bar exam as the test dates have all been pushed out on account of Covid 19. You need their assistance sooner than later and would like to use them as though they were first year associates.

Can you do so?

- A. Yes.
- B. No.

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Scenario Five

You have multiple lawyers in your firm who live in a state that is not the same state in which they are licensed to practice. As a result of the move to work from home arrangements, these lawyers are now practicing law in a state in which they are not licensed, but are also restricted from traveling to the state in which they are licensed. Can these lawyers continue to practice from their homes?

- A. Yes.
- B. No.

* * *

Scenario Six

Your client thinks a competitor is using the trade secret PPE process without your client's permission. You have only spoken with your client over Zoom, but they assure you they have adequate evidence to pursue a restraining order. You have them email you the evidence to your remotely working associate to review. The email is sent to the wrong associate by mistake, but the proper associate has separately received information involving a similar PPE matter for a different client. You ask the proper associate to review what was sent to her and she tells you it looks okay. You take the client and the associate's word for it and proceed. Are you at risk for an ethical violation?

- A. Yes.
- B. No.

* * *

Scenario One Comments:

This scenario is exploring the scope of your obligations under Model Rules 1.6 (Confidentiality) and 1.1 (Competence). Particularly as trade secret lawyers, where an otherwise innocent disclosure of the trade secret can destroy its status as a trade secret, the need to be mindful of people overhearing or eavesdropping on your work calls while you work remotely is heightened. Model Rule 1.6(c) provides, "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Model Rule 1.1 demands the lawyer "...shall provide competent

representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

To address these concerns and satisfy these ethical rules, the lawyer should ensure the video call is conducted over at least a password protected connection. And, if not already subject to non-disclosure agreement, those participating with the Client should likely execute an appropriate agreement before joining the call. Nonetheless, merely limiting who can join a call may not be enough if uncontrolled persons in the background can overhear your discussions. This danger of overhearing is nothing new as most lawyers know to be careful discussing matters on public transportation, but when working from home it is important to remain vigilant.

In the scenario where the individuals overhearing might be teenagers that are seemingly sharing every available minute of their lives over social media, there is a risk that an otherwise innocent disclosure of protected information is broadcast over social media. Depending on the nature of the media platform, such oversight could lead to the loss of trade secret protection in addition to a breach of your ethical obligations.

Finally, in all circumstances, the increased use of remote workers increases risk of trade secret exposures from the presence of voice activated systems and other similar smart devices that might be around the home. Smart speakers, systems such as Amazon Alexa and Echo, Siri, Google Assistant and Ring are widespread devices that have the potential for cyber security issues outside the control of the responsible lawyer.

Scenario Two Comments:

The answer to this question appears straightforward, and it is, decidedly, yes. However, the primary risk here relates to the strength of your coordination with your staff as to appropriate maintenance of client records outside the office. With the rapid uptick in the number of people working remotely that were not previously set up to do so, there is a risk that these people will not have access to the resources in a typical office, such as a shredder. If an assistant has to printout a lengthy document to work on while at home, what procedures have you put in place to ensure that document gets disposed of properly? Periodic trips back to the office to deposit such records may suffice or providing suitable shredders for home use might be satisfactory. But, the lawyer must ensure that the material is not inadvertently disposed or else risk breaches of the duty of confidentiality or safekeeping of a client’s property.

Of course, the risk for cyber threats is also increased by the rapid rise in the number of individuals working from home. These risks must be addressed by the supervisory lawyer. The ABA in its Formal Opinion 483 explained, “...based on lawyers’ obligations (i) to use technology competently to safeguard confidential information against unauthorized access or loss, and (ii) to supervise lawyers and staff, the Committee concludes that lawyers must employ reasonable efforts to monitor the technology and office resources connected to the internet, external data sources, and external vendors providing services relating to data and the use of data. Without such a requirement, a lawyer’s recognition of any data breach could be relegated to happenstance – and the lawyer might not identify whether a breach has occurred, whether further action is warranted [See, Model Rules 1.6 (Confidentiality) and 1.15 (Safekeeping Property)], whether employees are adhering to the law firm’s cybersecurity policies and procedures so that

the lawyers and the firm are in compliance with their ethical duties [See, Model Rules 5.1 (Partner or Supervisory Lawyer) and 5.3 (Nonlawyer Assistance)], and how and when the lawyer must take further action under other regulatory and legal provisions. Thus, just as lawyers must safeguard and monitor the security of paper files and actual client property, lawyers utilizing technology have the same obligation to safeguard and monitor the security of electronically stored client property and information.”

Relatedly, this question also gets at how well you have defined your availability to your client and whether they know how best to reach you. You have an obligation under Model Rule 1.4 (Communications) to communicate with clients, part of which includes defining for them how best to reach you in the event of a disaster and whether you will be able to continue to represent them under the circumstances. The ABA recently provided the comprehensive Formal Opinion 482 addressing Ethical Obligations Related to Disasters in September of 2018.¹ These disaster related obligations, while prompted by large-scale disasters such as hurricanes, floods and tornadoes, are directly applicable to the Covid 19 restrictions.

Scenario Three Comments:

Taking the second question first, you likely have not violated an ethical rule, as you have satisfied your duty to advise the client of your availability for communication under Rule 1.4. Nonetheless, this also raises the potential, depending on the degree of your unavailability and reasons for this unavailability, that you are no longer able to fulfill your responsibilities to your client. Instances of mental distress, depression and substance abuse have spiked since the prolonged stay at home orders were put in place. If the lawyer is suffering from such issues, Rule 1.16(a)(2) arguably requires withdrawal if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.” Even if the reason for your unavailability is not specific to you, if you are no longer available because of the impact of the pandemic generally or on others which are beyond your control, you still have to satisfy your obligation under Rule 1.4 to explain the circumstances to your client. If you then choose to withdraw you must ensure you are not adversely impacting the client and, if in litigation, will need to seek approval of the Court. See, e.g., Rule 1.16(b)(1) (“withdrawal can be accomplished without material adverse effect on the interests of the client;”); Rule 1.16(c) (“A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”)

As to the poor advice received from the non-trade secret lawyer, provided the lawyer was forthcoming with his limited understanding of the subject matter and he proscribed his advice as much as possible, he might rely on comment [3] to Rule 1.1, which allows: “In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill

¹ This Formal Opinion asserts that “[f]oremost among a lawyer’s ethical obligations are those to existing clients, particularly in maintaining communication. Lawyers must also protect documents, funds, and other property the lawyer is holding for clients or third parties. By proper advance preparation and taking advantage of available technology during recovery efforts, lawyers will reduce the risk of violating professional obligations after a disaster.” The ABA is, in short, telling lawyers to: Communicate (discuss with your clients the impact of a disaster on both them and you), Protect (confirm you can maintain confidentiality of evidence, records and funds), and Adapt (understand how to and use technology safely and responsibly).

ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances. Ill-considered action under emergency conditions can jeopardize the client's interest."

Scenario Four Comments:

Model Rules 5.1 and 5.3 address the general supervisory obligations that lawyers maintain for work assigned to subordinates and staff. These obligations do not abate. But, depending on the jurisdiction, a new graduate might have some additional flexibility to do similar work as is typical of a first year associate while awaiting a delayed bar exam.

For example, in Illinois, a May 2020 Professional Conduct Advisory Opinion, relying, in part, on rules 5.1 and 5.3 have confirmed that, "[a]n employing lawyer or law firm may allow a law school graduate awaiting the bar exam or admission to the bar to perform many of the services normally performed by licensed first year associates, other than appearing in a legal proceeding, provided that the graduate's work is reviewed by a supervising lawyer who takes responsibility for the work product and that the graduate and employing lawyer or law firm do not make false or misleading statements to clients or others regarding the graduate's status at the firm." The additional challenge of supervising remotely, however, remains an overarching consideration. California has indicated it will offer a provisional licensure program that will remain in effect, once instituted, until at least June 1, 2022, to permit 2020 graduates maximum flexibility to work under the supervision of licensed counsel until they can take the requisite bar exam. As of this writing, the State Bar of California has not yet released the details of its provision licensure program. See e.g., <<http://www.calbar.ca.gov/About-Us/News/COVID-19-Updates>>

Scenario Five Comments:

This questions raises the potential that there is an unauthorized practice of law under Model Rule 5.5. While certain subject matters that are focused on federal law are generally more open to nationwide practices, State specific trade secret laws can raise the potential that a lawyer is restricted to where and to whom they can provide advice. Your clients might also need to relocate and still require your services. Nonetheless, where a permanent or temporary relocation to another jurisdiction is prompted by a disaster such as the Covid 19 pandemic has arguably done for some, Model Rule 5.5(c) allows for temporary multijurisdictional practice so that a lawyer may provide services to clients.

However, it should be understood that comment [14] to Rule 5.5 provides, "... lawyers from the affected jurisdiction [by a major disaster] who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster." As noted in subdivision (c) of the foregoing, a lawyer who wishes to practice law in another jurisdiction still has to be authorized by that jurisdiction:

Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis if permitted by order of the highest court of the other jurisdiction. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

This ABA Model Court Rule additionally notes that the lawyer should be required to register with the Supreme Court in the temporary state, be subject to the disciplinary authority of the Supreme Court in the temporary state and cease practice in the temporary state 60 days after the Supreme Court in the temporary state determines the conditions justifying the temporary practice have ended. At least 16 states have adopted this model rule. See e.g., https://www.americanbar.org/content/dam/aba/images/disaster/state_implementation_major_disaster_rule_43012.pdf.

While the foregoing provides a fairly rigid means to establish a process that does not raise the specter of unauthorized practice of law, some states have adopted more lenient approaches. For example, in Florida, the bar has approved of a lawyer working from his home in Florida but who channels all communications through his law firm in another state in which he is licensed and who does not in any way hold himself out as practicing Florida law or having a presence in Florida. See, FAO #2019-4. Similar to Florida, Washington, D.C., issued its determination that “an attorney who is not a member of the District of Columbia bar may practice law from the attorney’s residence in the District of Columbia under the “incidental and temporary practice” exception of Rule 49(c)(13) if the attorney (1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a District of Columbia address in any business document or otherwise holding out as authorized to practice law in the District of Columbia, and (4) does not regularly conduct in-person meetings with clients or third parties in the District of Columbia.” Likewise, a nonresident New York-admitted lawyer that maintains a physical law office in New York is permitted to work remotely provided that the law office qualifies as an office for the transaction of law business under New York’s Judiciary Law. See, NYCLA, Formal Opinion 754-2020.

Scenario Six Comments:

This scenario definitely raises the risk of an ethical violation. It is possible you can establish the independent steps taken to confirm the client’s representation were reasonable and there was not an undue reliance on them. But, the mistake of communication with your associate remains your problem. The upshot, of course, is that a lawyer may well face Federal Rule of Civil Procedure 11 sanctions for presenting inaccurate information to the Court or for failing to reasonably investigate what the client has said is true. Such conduct may also trigger Model Rule 8.4 (Misconduct) as an attempt to violate the rules of professional conduct.

Model Rule 3.1 and 3.3 reflect this risk as well. Under Rule 3.1 “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an

extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.” And, Rule 3.3(a)(1) confirms that a lawyer shall not knowingly “make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer”.

As there appears to be an innocent misunderstanding with your associate in this example, but your supervisory obligations (Model Rules 5.1 and 5.3) are implicated, to avoid sanctions you may become at odds with your client and find you need to take positions that are no longer in your client’s best interest. In such instance, you may be forced to withdraw and terminate your representation under Model Rule 1.16.

* * *

Excerpts of Referenced Rules of Professional Responsibility

Noted in the preceding were a number of rules of professional responsibility. The text of these rules are provided below for reference:

ABA Model Rule of Professional Conduct

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.4 Communications

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

Rule 1.6 Confidentiality of Information

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

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

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

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best

interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

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

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

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

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

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

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

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 3.1 Meritorious Claims and Contentions

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

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

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

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistance

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

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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

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

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

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

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.