

ISSUE CHECKLIST - PROFESSIONAL RESPONSIBILITY

DUTIES TO THE CLIENT

- **Duty of confidentiality**
 - Rule
 - When attaches
 - Prospective clients
 - When ends
 - Requirements for attorney
 - Exceptions – disclosure if appropriate
 - Consent
 - Fraud/financial crimes
 - ABA and CA rule (different)
 - Crimes causing death or bodily harm
 - CA additional requirement
 - Lawyer's interest
 - Disciplinary actions
 - Malpractice suit
 - Refusal to pay attorney fees
 - Seeking ethics opinion
 - Compelled by law/court order
 - Lawyer-client privilege
 - Exceptions: as above
 - Work product
- **Duty of loyalty – conflict of interest**
 - **Conflicts between attorney and client**
 - When lawyer can continue to represent
 - Competent and diligent representation
 - Not prohibited by law
 - Informed, written consent
 - Opposing lawyers related
 - ABA and CA rules
 - Sexual relations
 - CA exception
 - Lawyer as a witness
 - Exceptions
 - Uncontested issue
 - Legal services
 - Model rules: hardship on client
 - CA rules: informed written consent
 - Acquiring proprietary interest in litigation
 - Exceptions
 - Lien for payment of fee
 - Reasonable contingency fee
 - Financial assistance to a client
 - Model rules
 - CA rules
 - Entering into a business transaction with a client
 - Agreement to limit malpractice recovery
 - Model rules
 - CA rules
 - Previous government employees
 - Imputed disqualification
 - Ethical wall
 - Gifts
 - Relatives
 - Board service
 - **Conflicts between current clients**
 - Potential conflict
 - Actual conflict
 - Representing both sides
 - Representing two co-De in criminal case
 - **Conflicts between current and former clients**
 - Substantially related matter
 - ABA rule
 - CA rule
 - Prospective clients
 - ABA and CA rule
 - Imputed disqualification
 - **Conflicts due to third party interference**
 - Payments from a third party
 - **Conflicts where client is an organization**
 - ABA rule
 - CA rule
 - Sarbanes-Oxley Act
 - Representing both an organization and its constituents
- **Duty of financial integrity – attorney fees**
 - ABA rule
 - CA rule
 - Writing requirement
 - CA rule
 - Contingent fees
 - Divorce cases – ABA and CA rule
 - Fee splitting
 - Lawyers in the same firm
 - Lawyers in different firm
 - Referral fees
 - ABA rule
 - CA rule
 - Client trust accounts
 - Pooled client trust accounts
 - Advanced fee deposits
 - CA rule
 - Exception – flat fee for service
 - Retainer fees
- **Duty of competency**
 - ABA rule
 - CA rule
- **Duty of diligence**
 - ABA rule
 - CA rule
- **Duty to communicate**
- **Fiduciary duties to client**
- **Duty not to partner with nonlawyers in providing legal services**
- **Accepting/declining cases**
- **Scope of representation**
- **Duty to withdraw**
 - Mandatory duty to withdraw
 - ABA rules
 - CA rules
 - Permissive withdrawal
 - ABA rules
 - CA rules
 - Procedure for withdrawal
 - Duties upon termination
- **Duty to keep good records**

DUTIES TO THE COURT

- **Duty of candor**
 - Presenting false evidence
 - Closing argument
 - Duty to state law truthfully
- Client perjury
 - Civil cases
 - Criminal cases
 - Client advises of perjury at end of proceeding
 - Closing argument
- Witness perjury
- **Duty to avoid frivolous claims**
- **Duty to uphold the law**
- **Duty to preserve impartiality: talking to jurors**
- Duty to preserve decorum of tribunal
- Chicanery at trial
- **Duty to expediate cases**
 - ABA law
 - CA law

DUTIES TO ADVERSARIES

- **Duty of fairness**
- **Duty to produce evidence**
 - Interference with evidence
- Communication with adversarial party
 - Persons unrepresented by counsel
 - Lawyer contacted by represented adversarial party

- Organizations represented by counsel
- Relations with the press
- Special duties of prosecutors
 - New evidence

DUTIES TO THE PROFESSION

- **Duty to promote public confidence**
- Unlicensed practice of law
- Out of state lawyers
 - ABA law
 - CA law
- Assisting nonlawyers in unauthorized practice of law
- Reporting misconduct
 - ABA rules
 - CA rules
- **Duties of subordinate lawyers**
 - Clear ethics violation
 - Debatable ethics question
 - Managing partners

DUTIES TO THE PUBLIC

- State regulation
- Advertising
- Claims of legal specialties
- Targeted mail directing
- Presumptions – false and misleading communication
- Solicitations