

PREAMBLE AND SCOPE

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0.1 PREAMBLE: A LAWYER'S RESPONSIBILITIES

- [1] A lawyer, as a member of the legal profession, is a representative of **clients**, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.
- [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 evaluator, a lawyer acts by examining a **client's** legal affairs and reporting about them to the **client** or to others.
- [3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 8.4.
- [4] In all professional functions 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 Rules of Professional Conduct or other law.
- [5] 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 the legal process.
- [6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, 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. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. 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. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.
- [7] A lawyer should render public interest legal service and provide civic leadership. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.
- [8] The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay, and as leaders of their communities, states, and nation, lawyers use their education and experience to improve society. It is the basic responsibility of each lawyer to provide community service, community leadership, and public interest legal services **without** fee, or at a substantially reduced fee, in such areas as poverty law, civil rights, public rights law, charitable organization representation, and the administration of justice.
- [9] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. 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 continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need.

Thus, the profession and government instituted additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs were developed, and programs will be developed by the profession and the government. Every lawyer should support all proper efforts to meet this need for legal services.

[10] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[11] A lawyer's responsibilities as a representative of **clients**, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a **client** and, at the same time, assume that justice is being done. So also, a lawyer can be sure that preserving **client** confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[12] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to **clients**, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. **Within** the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a **client's** legitimate interests, **within** the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[13] Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel **with** courtesy and respect. The legal dispute of the **client** must never become the lawyer's personal dispute **with** opposing counsel. A lawyer, moreover, should provide zealous but honorable representation **without** resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves behave **with** dignity. A lawyer's word to another lawyer should be the lawyer's bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster civility among members of the bar by acceding to reasonable requests that do not prejudice the interests of the **client**; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties.

[14] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[15] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for the abuse of legal authority is more readily challenged by a self-regulated profession.

[16] The legal profession's relative autonomy carries **with** it a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also 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.

[17] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003; November 16, 2006

Ethics Opinion Notes

2008 Formal Ethics Opinion 2 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-2/>).

Opinion holds that a lawyer is not prohibited from advising a school board sitting in an adjudicative capacity in a disciplinary or employment proceeding while another lawyer from the same firm represents the administration; however, such dual representation is harmful to the public's perception of the fairness of the proceeding and should be avoided.

2008 Formal Ethics Opinion 3 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-3/>).

Opinion rules a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.

CLIENT-LAWYER RELATIONSHIP

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RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a **client's** decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the **client** as to the means by which they are to be pursued. A lawyer may take such action on behalf of the **client** as is impliedly authorized to carry out the representation.

(1) A lawyer shall abide by a **client's** decision whether to settle a matter. In a criminal case, the lawyer shall abide by the **client's** decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the **client** will testify.

(2) A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a **client**, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(3) In the representation of a **client**, a lawyer may exercise his or her professional judgment to waive or fail to assert a right or position of the **client**.

(b) A lawyer's representation of a **client**, including representation by appointment, does not constitute an endorsement of the **client's** political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances.

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

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the **client** the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the **client**. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the **client** about such decisions. With respect to the means by which the **client's** objectives are to be pursued, the lawyer shall consult with the **client** as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. Lawyers are encouraged to treat opposing counsel with courtesy and to cooperate with opposing counsel when it will not prevent or unduly hinder the pursuit of the objective of the representation. To this end, a lawyer may waive a right or fail to assert a position of a **client** without first obtaining the **client's** consent. For example, a lawyer may consent to an extension of time for the opposing party to file pleadings or discovery without obtaining the **client's** consent.

[2] On occasion, however, a lawyer and a **client** may disagree about the means to be used to accomplish the **client's** objectives. **Clients** normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the **client** regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and **client** might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the **client** and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the **client**, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the **client** may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the **client** may authorize the lawyer to take specific action on the **client's** behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The **client** may, however, revoke such authority at any time.

[4] In a case in which the **client** appears to be suffering diminished capacity, the lawyer's duty to abide by the **client's** decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a **client** does not constitute approval of the **client's** views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the **client** or by the terms under which the lawyer's services are made available to the **client**. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the **client** has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the **client's** objectives. Such limitations may exclude actions that the **client** thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and **client** substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a **client's** objective is limited to securing general information about the law the **client** needs in order to handle a common and typically uncomplicated legal problem, the lawyer and **client** may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the **client** could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Although paragraph (c) does not require that the **client's** informed consent to a limited representation be in writing, a specification of the scope of representation will normally be a necessary part of any written communication of the rate or basis of the lawyer's fee. See Rule 1.0(f) for the definition of "informed consent."

[9] All agreements concerning a lawyer's representation of a **client** must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a **client** to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a **client's** conduct. Nor does the fact that a **client** uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. There is also a distinction between giving a **client** legitimate advice about asset protection and assisting in the illegal or fraudulent conveyance of assets.

[11] When the **client's** course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the **client**, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a **client** in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the **client** in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the **client's** crime or fraud. See Rule 4.1.

[12] Where the **client** is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[14] If a lawyer comes to know or reasonably should know that a **client** expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the **client's** instructions, the lawyer must consult with the **client** regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

Ethics Opinion Notes

- RPC 44** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-44/>). Opinion rules that a closing attorney must follow the lender's closing instruction that closing documents be recorded prior to disbursement.
- RPC 103** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-103/>). Opinion rules that a lawyer for the insured and the insurer may not enter voluntary dismissal of the insured's counterclaim without the insured's consent.
- RPC 114** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-114/>). Opinion rules that attorneys may give legal advice and drafting assistance to persons wishing to proceed pro se without appearing as counsel of record.
- RPC 118** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-118/>). Opinion rules that an attorney should not waive the statute of limitations without the client's consent.
- RPC 129** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-129/>). Opinion rules that prosecutors and defense attorneys may negotiate plea agreements in which appellate and postconviction rights are waived, except in regard to allegations of ineffective assistance of counsel or prosecutorial misconduct.
- RPC 145** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-145/>). Opinion rules that a lawyer may not include language in an employment agreement that divests the client of her exclusive authority to settle a civil case.
- RPC 172** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-172/>). Opinion rules that an attorney retained by an insurance carrier to defend an insured has no ethical obligation to represent the insured on a compulsory counterclaim provided the attorney appraises the insured of the counterclaim in sufficient time for the insured to retain separate counsel.
- RPC 208** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-208/>). Opinion rules that a lawyer should avoid offensive trial tactics and treat others with courtesy by attempting to ascertain the reason for the opposing party's failure to respond to a notice of hearing where there has been no prior lack of diligence or responsiveness on the part of opposing counsel.
- RPC 212** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-212/>). Opinion rules that a lawyer may contact an opposing lawyer who failed to file an answer on time in order to remind the other lawyer of the error and to give the other lawyer a last opportunity to file the pleading.
- RPC 220** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-220/>). Opinion rules that a lawyer should seek the court's permission to listen to a tape recording of a telephone conversation of his or her client made by a third party if listening to the tape recording would otherwise be a violation of the law.
- RPC 223** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-223/>). Opinion rules that when a lawyer's reasonable attempts to locate a client are unsuccessful, the client's disappearance constitutes a constructive discharge of the lawyer requiring the lawyer's withdrawal from the representation.
- RPC 240** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-240/>). Opinion rules that a lawyer may decline to represent a client on the property damage claim while agreeing to represent the client on the personal injury claim arising out of a motor vehicle accident provided that the limited representation will not adversely affect the client's representation on the personal injury claim and the client consents after full disclosure.
- RPC 252** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-252/>). Opinion rules that a lawyer in receipt of materials that appear on their face to be subject to the attorney-client privilege or otherwise confidential, which were inadvertently sent to the lawyer by the opposing party or opposing counsel, should refrain from examining the materials and return them to the sender.
- 98 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-2/>). Opinion rules that a lawyer may explain the effect of service of process to a client but may not advise a client to evade service of process.
- 99 Formal Ethics Opinion 12** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/99-formal-ethics-opinion-12/>). Opinion rules that when a lawyer appears with a debtor at a meeting of creditors in a bankruptcy proceeding as a favor to the debtor's lawyer, the lawyer is representing the debtor and all of the ethical obligations attendant to legal representation apply.

- 2002 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2002-formal-ethics-opinion-1/>). Opinion rules that a lawyer may participate in a non-profit organization that promotes a cooperative method for resolving family law disputes although the client is required to make full disclosure and the lawyer is required to withdraw before court proceedings commence.
- 2003 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-2/>). Opinion rules that a lawyer must report a violation of the Rules of Professional Conduct as required by Rule 8.3(a) even if the lawyer's unethical conduct stems from mental impairment (including substance abuse).
- 2003 Formal Ethics Opinion 7** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-7/>). Opinion rules that a lawyer may not prepare a power of attorney for the benefit of the principal at the request of another individual or third-party payer without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal.
- 2003 Formal Ethics Opinion 16** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-16/>). Opinion rules that a lawyer who is appointed to represent a parent in a proceeding to determine whether the parent's child is abused, neglected, or dependent, must seek to withdraw if the client disappears without communicating her objectives for the representation, and, if the motion is denied, must refrain from advocating for a particular outcome.
- 2005 Formal Ethics Opinion 10** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-10/>). Opinion addresses ethical concerns raised by an internet-based or virtual law practice and the provision of unbundled legal services.
- 2008 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-3/>). Opinion rules a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.
- 2008 Formal Ethics Opinion 7** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-7/>). Opinion rules that a closing lawyer shall not record and disburse when a seller has delivered the deed to the lawyer but the buyer instructs the lawyer to take no further action to close the transaction.
- 2010 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-1/>). Opinion rules that a lawyer retained by an insurance carrier to represent an insured whose whereabouts are unknown and with whom the lawyer has no contact may not appear as the lawyer for the insured absent authorization by law or court order.
- 2011 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-3/>). Opinion rules that a criminal defense lawyer may advise an undocumented alien that deportation may result in avoidance of a criminal conviction and may file a notice of appeal to superior court although there is a possibility that the client will be deported.
- 2012 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-5/>). Opinion rules that a lawyer representing an employer must evaluate whether email messages an employee sent to and received from the employee's lawyer using the employer's business email system are protected by the attorney-client privilege and, if so, decline to review or use the messages unless a court determines that the messages are not privileged.
- 2012 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-9/>). Opinion holds that a lawyer asked to represent a child in a contested custody or visitation case should decline the appointment unless the order of appointment identifies the lawyer's role and specifies the responsibilities of the lawyer.
- 2012 Formal Ethics Opinion 10** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-10/>). Opinion rules a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied.
- 2013 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-2/>). Opinion rules that if, after providing an incarcerated criminal client with a summary/explanation of the discovery materials in the client's file, the client requests access to any of the discovery materials, the lawyer must afford the client the opportunity to meaningfully review relevant discovery materials unless certain conditions exist.
- 2014 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-5/>). Opinion rules a lawyer must advise a civil litigation client about the legal ramifications of the client's postings on social media as necessary to represent the client competently. The lawyer may advise the client to remove postings on social media if the removal is done in compliance with the rules and law on preservation and spoliation of evidence.
- 2016 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2016-formal-ethics-opinion-2/>). Opinion rules that, when advancing claims on behalf of a criminal defendant who filed a pro se Motion for Appropriate Relief, subsequently appointed defense counsel must correct erroneous claims and statements of law or facts set out in the previous pro se filing.
- 2019 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2019-formal-ethics-opinion-2/>). Opinion rules that a lawyer may not agree to terms in an ERISA plan agreement that usurp client's authority as to the representation.

CLIENT-LAWYER RELATIONSHIP

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RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information acquired during the professional relationship with 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 protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:
- (1) to comply with the Rules of Professional Conduct, the law or court order;
 - (2) to prevent the commission of a crime by the **client**;
 - (3) to prevent reasonably certain death or bodily harm;
 - (4) to prevent, mitigate, or rectify the consequences of a **client's** criminal or fraudulent act in the commission of which the lawyer's services were used;
 - (5) to secure legal advice about the lawyer's compliance with these Rules;
 - (6) 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**;
 - (7) to comply with the rules of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court; or
 - (8) 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**.
- (d) The duty of confidentiality described in this Rule encompasses information received by a lawyer then acting as an agent of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court regarding another lawyer or judge seeking assistance or to whom assistance is being offered. For the purposes of this Rule, "**client**" refers to lawyers seeking assistance from lawyers' or judges' assistance programs approved by the North Carolina State Bar or the North Carolina Supreme Court.

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a **client** acquired during the lawyer's representation of the **client**. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective **client**, Rule 1.9(c)(2) for the lawyer's duty not to reveal information acquired during a lawyer's prior representation of a former **client**, and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of **clients** and former **clients** and Rule 8.6 for a lawyer's duty to disclose information to rectify a wrongful conviction.

[2] A fundamental principle in the **client**-lawyer relationship is that, in the absence of the **client's** informed consent, the lawyer must not reveal information acquired during the representation. See Rule 1.0(f) for the definition of informed consent. This contributes to the trust that is the hallmark of the **client**-lawyer relationship. The **client** is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the **client** effectively and, if necessary, to advise the **client** to refrain from wrongful conduct. Almost without exception, **clients** come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all **clients** follow the advice given, and the law is upheld.

[3] The principle of **client**-lawyer confidentiality is given effect by related bodies of law: the **attorney-client** privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The **attorney-client** privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence

concerning a **client**. The rule of **client**-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the **client** but also to all information acquired during the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information acquired during the representation of a **client**. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the **client** or the situation involved.

Authorized Disclosure

[5] Except to the extent that the **client**'s instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a **client** when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a **client** of the firm, unless the **client** has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information acquired during the representation of their **clients**, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a **client**, a lawyer may foresee that the **client** intends to commit a crime. Paragraph (b)(2) recognizes that a lawyer should be allowed to make a disclosure to avoid sacrificing the interests of the potential victim in favor of preserving the **client**'s confidences when the **client**'s purpose is wrongful. Similarly, paragraph (b)(3) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a **client** has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] A lawyer may have been innocently involved in past conduct by a **client** that was criminal or fraudulent. Even if the involvement was innocent, however, the fact remains that the lawyer's professional services were made the instrument of the **client**'s crime or fraud. The lawyer, therefore, has a legitimate interest in being able to rectify the consequences of such conduct, and has the professional right, although not a professional duty, to rectify the situation. Exercising that right may require revealing information acquired during the representation. Paragraph (b)(4) gives the lawyer professional discretion to reveal such information to the extent necessary to accomplish rectification.

[8] Although paragraph (b)(2) does not require the lawyer to reveal the **client**'s anticipated misconduct, the lawyer may not counsel or assist the **client** in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the **client** in such circumstances. Where the **client** is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

[9] Paragraph (b)(4) addresses the situation in which the lawyer does not learn of the **client**'s crime or fraud until after it has been consummated. Although the **client** no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information acquired during the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(4) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[10] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[11] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a **client**'s conduct or other misconduct of the lawyer involving representation of the **client**, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former **client**. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the **client** or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and **client** acting together. The

lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[12] A lawyer entitled to a fee is permitted by paragraph (b)(6) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[13] Other law may require that a lawyer disclose information about a **client**. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information acquired during the representation appears to be required by other law, the lawyer must discuss the matter with the **client** to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(1) permits the lawyer to make such disclosures as are necessary to comply with the law.

[14] Paragraph (b)(1) also permits compliance with a court order requiring a lawyer to disclose information relating to a **client's** representation. If a lawyer is called as a witness to give testimony concerning a **client** or is otherwise ordered to reveal information relating to the **client's** representation, however, the lawyer must, absent informed consent of the **client** to do otherwise, assert on behalf of the **client** all nonfrivolous claims that the information sought is protected against disclosure by the **attorney-client** privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the **client** about the possibility of appeal. See Rule 1.4. Unless review is sought, however, paragraph (b)(1) permits the lawyer to comply with the court's order.

[15] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the **client** to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the **client's** interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[16] Paragraph (b) permits but does not require the disclosure of information acquired during a **client's** representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(7). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the **client** and with those who might be injured by the **client**, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. When practical, the lawyer should first seek to persuade the **client** to take suitable action, making it unnecessary for the lawyer to make any disclosure. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Detection of Conflicts of Interest

[17] Paragraph (b)(8) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [8]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the **attorney-client** privilege or otherwise prejudice the **client** (e.g., the fact that a corporate **client** is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the **client** or former **client** gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[18] Any information disclosed pursuant to paragraph (b)(8) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(8) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(8). Paragraph (b)(8) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation. See Comment [5].

Acting Competently to Preserve Confidentiality

[19] Paragraph (c) requires a lawyer to act competently to safeguard information acquired during the representation of a **client** against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the **client** or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information acquired during the professional relationship with a **client** does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent **clients** (e.g., by making a device or important piece of software excessively difficult to use). A **client** may require the lawyer to implement special security measures not required by this Rule, or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a **client's** information to comply with other law—such as state and federal laws that govern data privacy, or that impose notification requirements upon the loss of, or unauthorized access to, electronic information—is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[20] When transmitting a communication that includes information acquired during the representation of a **client**, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the **client's** expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A **client** may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[21] The duty of confidentiality continues after the **client**-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former **client**.

Lawyer's Assistance Program

[22] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek help through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in harm to their professional careers and injury to their **clients** and the public. The rule, therefore, requires that any information received by a lawyer on behalf of an approved lawyers' or judges' assistance program be regarded as confidential and protected from disclosure to the same extent as information received by a lawyer in any conventional **client**-lawyer relationship.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003; October 2, 2014; March 16, 2017

Ethics Opinion Notes

CPR 284. An attorney who, in the course of representing one spouse, obtains confidential information bearing upon the criminal conduct of the other spouse must not disclose such information.

CPR 300. An attorney, after being discharged, cannot discuss the client's case with the client's new attorney without the client's consent.

CPR 313. An attorney may not voluntarily disclose confidential information concerning a client's criminal record.

CPR 362. An attorney may not disclose the perjury of his partner's client.

CPR 374. Information concerning apparent tax fraud obtained by an attorney employed by a fire insurer to depose insureds concerning claims is confidential and may not be disclosed without the insurer's consent.

RPC 12 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-12/>). Opinion rules that a lawyer may reveal confidential information to correct a mistake if disclosure is impliedly authorized by the client.

RPC 21 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-21/>). Opinion rules that a lawyer may send a demand letter to the adverse party without identifying the client by name.

- RPC 23** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-23/>). Opinion rules that a lawyer may disclose information to the IRS concerning a real estate transaction which would otherwise be protected if required to do so by law, and further that notice of such required disclosure, should be given to the client and other affected parties.
- RPC 33** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-33/>). Opinion rules that an attorney who learns through a privileged communication of his client's alias and prior criminal record may not permit his client to testify under a false name or deny his prior record under oath. If the client does so, the attorney would be required to request the client to disclose the true name or record and, if the client refused, to withdraw pursuant to the rules of the tribunal.
- RPC 62** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-62/>). Opinion rules that an attorney may disclose client confidences necessary to protect her reputation where a claim alleging malpractice is brought by a former client against the insurance company which employed the attorney to represent the former client.
- RPC 77** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-77/>). Opinion rules that a lawyer may disclose confidential information to his or her liability insurer to defend against a claim but not for the sole purpose of assuring coverage.
- RPC 113** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-113/>). Opinion rules that a lawyer may disclose information concerning advice given to a client at a closing in regard to the significance of the client's lien affidavit.
- RPC 117** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-117/>). Opinion rules that a lawyer may not reveal confidential information concerning his client's contagious disease.
- RPC 120** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-120/>). Opinion rules that, for the purpose of the Rules of Professional Conduct, a lawyer may, but need not necessarily, disclose confidential information concerning child abuse pursuant to a statutory requirement.
- RPC 133** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-133/>). Opinion rules that a law firm may make its waste paper available for recycling.
- RPC 157** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-157/>). Opinion rules that a lawyer may seek the appointment of a guardian for a client the lawyer believes to be incompetent over the client's objection.
- RPC 175** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-175/>). Opinion rules that a lawyer may ethically exercise his or her discretion to decide whether to reveal confidential information concerning child abuse or neglect pursuant to a statutory requirement.
- RPC 179** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-179/>). Opinion rules that a lawyer may not offer or enter into a settlement agreement that contains a provision barring the lawyer who represents the settling party from representing other claimants against the opposing party.
- RPC 195** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-195/>). Opinion rules that the attorney who formerly represented an estate may divulge confidential information relating to the representation of the estate to the substitute personal representative of the estate.
- RPC 206** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-206/>). Opinion rules that a lawyer may disclose the confidential information of a deceased client to the personal representative of the client's estate but not to the heirs of the estate.
- RPC 209** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-209/>). Opinion provides guidelines for the disposal of closed client files.
- RPC 215** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-215/>). Opinion rules that when using a cellular or cordless telephone or any other unsecure method of communication, a lawyer must take steps to minimize the risk that confidential information may be disclosed.
- RPC 230** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-230/>). Opinion rules that a lawyer representing a client on a good faith claim for social security disability benefits may withhold evidence of an adverse medical report in a hearing before an administrative law judge if not required by law or court order to produce such evidence.
- RPC 244** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-244/>). Opinion rules that although a lawyer asks a prospective client to sign a form stating that no client-lawyer relationship will be created by reason of a free consultation with the lawyer, the lawyer may not subsequently disclaim the creation of a client-lawyer relationship and represent the opposing party.
- RPC 246** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-246/>). Opinion rules that, under certain circumstances, a lawyer may not represent a party whose interests are opposed to the interests of a prospective client if confidential information of the prospective client must be used in the representation.

- RPC 252** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-252/>). Opinion rules that a lawyer in receipt of materials that appear on their face to be subject to the attorney-client privilege or otherwise confidential, which were inadvertently sent to the lawyer by the opposing party or opposing counsel, should refrain from examining the materials and return them to the sender.
- 98 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-5/>). Opinion rules that a defense lawyer may remain silent while the prosecutor presents an inaccurate driving record to the court provided the lawyer and client did not criminally or fraudulently misrepresent the driving record to the prosecutor or the court and, further provided, that on application for a limited driving privilege, there is no misrepresentation to the court about the prior driving record.
- 98 Formal Ethics Opinion 10** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-10/>). Opinion rules that an insurance defense lawyer may not disclose confidential information about an insured's representation in bills submitted to an independent audit company at the insurance carrier's request unless the insured consents.
- 98 Formal Ethics Opinion 16** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-16/>). Opinion rules that a lawyer may represent a person who is resisting an incompetency petition although the person may suffer from a mental disability, provided the lawyer determines that resisting the incompetency petition is not frivolous.
- 98 Formal Ethics Opinion 18** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-18/>). Opinion rules that a lawyer representing a minor owes the duty of confidentiality to the minor and may only disclose confidential information to the minor's parent, without the minor's consent, if the parent is the legal guardian of the minor and the disclosure of the information is necessary to make a binding legal decision about the subject matter of the representation.
- 98 Formal Ethics Opinion 20** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-20/>). Opinion rules that, subject to a statute prohibiting the withholding of the information, a lawyer's duty to disclose confidential client information to a bankruptcy court ends when the case is closed although the debtor's duty to report new property continues for 180 days after the date of filing the petition.
- 99 Formal Ethics Opinion 11** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/99-formal-ethics-opinion-11/>). Opinion rules that an insurance defense lawyer may not submit billing information to an independent audit company at the insurance carrier's request unless the insured's consent to the disclosure, obtained by the insurance carrier, was informed.
- 99 Formal Ethics Opinion 15** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/99-formal-ethics-opinion-15/>). Opinion rules that a lawyer with knowledge that a former client is defrauding a bankruptcy court may reveal the confidences of the former client to rectify the fraud if required by law or if necessary to rectify the fraud.
- 2000 Formal Ethics Opinion 11** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2000-formal-ethics-opinion-11/>). Opinion rules that a lawyer who was formerly in-house legal counsel for a corporation must obtain the permission of a court prior to disclosing confidential information of the corporation to support a personal claim for wrongful termination.
- 2002 Formal Ethics Opinion 7** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2002-formal-ethics-opinion-7/>). Opinion clarifies RPC 206 by ruling that a lawyer may reveal the relevant confidential information of a deceased client in a will contest proceeding if the attorney/client privilege does not apply to the lawyer's testimony.
- 2003 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-9/>). Opinion rules that a lawyer may participate in a settlement agreement that contains a provision limiting or prohibiting disclosure of information obtained during the representation even though the provision will effectively limit the lawyer's ability to represent future claimants.
- 2003 Formal Ethics Opinion 15** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-15/>). Opinion rules that an attorney may provide an accounting of disbursements of sums recovered for a personal injury claimant as required by N.C.G.S. § 44-50.1.
- 2004 Formal Ethics Opinion 6** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2004-formal-ethics-opinion-6/>). Opinion rules that a lawyer may disclose confidential client information to collect a fee, including information necessary to support a claim that the corporate veil should be pierced, provided the claim is advanced in good faith.
- 2005 Formal Ethics Opinion 4** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-4/>). Opinion rules that absent consent to disclose from the parent, a lawyer may not reveal confidences received from a parent seeking representation of a minor.
- 2005 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-9/>). Opinion rules that a lawyer for a publicly traded company does not violate the Rules of Professional Conduct if the lawyer "reports out" confidential information as permitted by SEC regulations.

- 2006 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-1/>). Opinion rules that a lawyer who represents the employer and its workers' compensation carrier must share the case evaluation, litigation plan, and other information with both clients unless the clients give informed consent to withhold such information.
- 2007 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-2/>). Opinion rules that a lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband.
- 2007 Formal Ethics Opinion 12** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-12/>). Opinion rules that a lawyer may outsource limited legal support services to a foreign lawyer or a nonlawyer (collectively "foreign assistants") provided the lawyer properly selects and supervises the foreign assistants, ensures the preservation of client confidences, avoids conflicts of interests, discloses the outsourcing, and obtains the client's advanced informed consent.
- 2008 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-1/>). Opinion rules that lawyer representing an undocumented worker in a workers' compensation action has a duty to correct court documents containing false statements of material fact and is prohibited from introducing evidence in support of the proposition that an alias is the client's legal name.
- 2008 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-3/>). Opinion rules a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.
- 2008 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-5/>). Opinion rules that client files may be stored on a website accessible by clients via the internet provided the confidentiality of all client information on the website is protected.
- 2008 Formal Ethics Opinion 13** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-13/>). Opinion rules that, unless affected clients expressly consent to the disclosure of their confidential information, a lawyer may allow a title insurer to audit the lawyer's real estate trust account and reconciliation reports only if certain written assurances to protect client confidences are obtained from the title insurer, the audited account is only used for real estate closings, and the audit is limited to certain records and to real estate transactions insured by the title insurer.
- 2009 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-1/>). Opinion rules that a lawyer must use reasonable care to prevent the disclosure of confidential client information hidden in metadata when transmitting an electronic communication and a lawyer who receives an electronic communication from another party or another party's lawyer must refrain from searching for and using confidential information found in the metadata embedded in the document.
- 2009 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-3/>). Opinion rules that a lawyer has a professional obligation not to encourage or allow a nonlawyer employee to disclose confidences of a previous employer's clients for purposes of solicitation.
- 2009 Formal Ethics Opinion 8** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-8/>). Opinion provides guidelines for a lawyer for a party to a partition proceeding and rules that the lawyer may subsequently serve as a commissioner for the sale but not as one of the commissioners for the partitioning of the property.
- 2009 Formal Ethics Opinion 14** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-14/>). Opinion rules that a lawyer participating in a real estate transaction may not in such transaction place his client's title insurance in a title insurance agency in which the lawyer's spouse has any ownership interest.
- 2011 Formal Ethics Opinion 6** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-6/>). Opinion rules that a lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.
- 2011 Formal Ethics Opinion 14** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-14/>). Opinion rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.
- 2011 Formal Ethics Opinion 16** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-16/>). Opinion rules that a criminal defense lawyer accused of ineffective assistance of counsel by a former client may share confidential client information with prosecutors to help establish a defense to the claim so long as the lawyer reasonably believes a response is necessary and the response is narrowly tailored to respond to the allegations.

- 2012 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-5/>). Opinion rules that a lawyer representing an employer must evaluate whether email messages an employee sent to and received from the employee's lawyer using the employer's business email system are protected by the attorney-client privilege and, if so, decline to review or use the messages unless a court determines that the messages are not privileged.
- 2012 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-9/>). Opinion holds that a lawyer asked to represent a child in a contested custody or visitation case should decline the appointment unless the order of appointment identifies the lawyer's role and specifies the responsibilities of the lawyer.
- 2012 Formal Ethics Opinion 10** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-10/>). Opinion rules a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied.
- 2013 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-5/>). Opinion rules that a lawyer/trustee must explain his role in a foreclosure proceeding to any unrepresented party that is an unsophisticated consumer of legal services; if he fails to do so and that party discloses material confidential information, the lawyer may not represent the other party in a subsequent, related adversarial proceeding unless there is informed consent.
- 2013 Formal Ethics Opinion 12** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-12/>). Opinion rules that, in a worker's compensation case, when a client terminates representation, the subsequently hired lawyer may disclose the settlement terms to the former lawyer to resolve a pre-litigation claim for fee division pursuant to an applicable exception to the duty of confidentiality.
- 2014 Formal Ethics Opinion 1** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-1/>). Opinion encourages lawyers to become mentors to law students and new lawyers ("protégés") who are not employees of the mentor's firm, and examines the application of the duty of confidentiality to client communications to which a protégé may be privy.
- 2015 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2015-formal-ethics-opinion-5/>). Opinion provides that in post-conviction or appellate proceedings, a discharged lawyer may discuss a former client's case and turn over the former client's file to successor counsel if the former client consents or the disclosure is impliedly authorized.
- 2016 Formal Ethics Opinion 4** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2016-formal-ethics-opinion-4/>). Opinion rules that lawyer may not disclose financial information obtained during the representation of a former client to assist the sheriff with the execution on a judgment for unpaid legal fees.

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.3 DILIGENCE

A lawyer shall act **with** reasonable diligence and promptness in representing a **client**.

Comment

[1] A lawyer should pursue a matter on behalf of a **client** despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a **client's** cause or endeavor. A lawyer must also act **with** commitment and dedication to the interests of the **client** and **with** zeal in advocacy upon the **client's** behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a **client**. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act **with** reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process **with** courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A **client's** interests often can be adversely affected by the passage of time or the change of conditions. In extreme instances, as when a lawyer overlooks a statute of limitations, the **client's** legal position may be destroyed. Even when the **client's** interests are not affected in substance, however, unreasonable delay can cause a **client** needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act **with** reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's **client**.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a **client**. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a **client** over a substantial period in a variety of matters, the **client** sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of **withdrawal**. Doubt about whether a **client**-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the **client** will not mistakenly suppose the lawyer is looking after the **client's** affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the **client** and the lawyer and the **client** have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult **with** the **client** about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the **client** depends on the scope of the representation the lawyer has agreed to provide to the **client**. See Rule 1.2.

[5] To prevent neglect of **client** matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity **with** applicable rules, that designates another competent lawyer to review **client** files, notify each **client** of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. 27 N.C.A.C. 1B, .0122 (providing for court appointment of a lawyer to inventory files and take other protective action to protect the interests of the **clients** of a lawyer who has disappeared or is deceased or disabled).

Distinguishing Professional Negligence

[6] Conduct that may constitute professional malpractice does not necessarily constitute a violation of the ethical duty to represent a **client** diligently. Generally speaking, a single instance of unaggravated negligence does not warrant discipline. For example, missing a statute of limitations may form the basis for a claim of professional malpractice. However, where the failure to file the complaint in a timely manner is due to inadvertence or a simple mistake such as mislaying the papers or miscalculating the date upon which the statute of limitations will run, absent some other aggravating factor, such an incident will not generally constitute a violation of this rule.

[7] Conduct warranting the imposition of professional discipline under the rule is characterized by the element of intent manifested when a lawyer knowingly or recklessly disregards his or her obligations. Breach of the duty of diligence sufficient to warrant professional discipline occurs when a lawyer consistently fails to carry out the obligations that the lawyer has assumed for his or her **clients**. A pattern of delay, procrastination, carelessness, and forgetfulness regarding **client** matters indicates a knowing or reckless disregard for

the lawyer's professional duties. For example, a lawyer who habitually misses filing deadlines and court dates is not taking his or her professional responsibilities seriously. A pattern of negligent conduct is not excused by a burdensome case load or inadequate office procedures.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003; September 28, 2017

Ethics Opinion Notes

RPC 48 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-48/>). Opinion outlines professional responsibilities of lawyers involved in a law firm dissolution.

99 Formal Ethics Opinion 5 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/99-formal-ethics-opinion-5/>). Opinion rules that whether the lawyer for a residential real estate closing must obtain the cancellation of record of a prior deed of trust depends upon the agreement of the parties.

2013 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-8/>). Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

2014 Formal Ethics Opinion 5 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-5/>). Opinion rules a lawyer must advise a civil litigation client about the legal ramifications of the client's postings on social media as necessary to represent the client competently. The lawyer may advise the client to remove postings on social media if the removal is done in compliance with the rules and law on preservation and spoliation of evidence.

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a **client** in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former **client** unless the former **client** gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm **with** which the lawyer formerly was associated had previously represented a **client**

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former **client** gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a **client** in a matter or whose present or former firm has formerly represented a **client** in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former **client** except as these Rules would permit or require **with** respect to a **client**, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require **with** respect to a **client**.

Comment

[1] After termination of a **client**-lawyer relationship, a lawyer has certain continuing duties **with** respect to confidentiality and conflicts of interest and thus may not represent another **client** except in conformity **with** this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new **client** a contract drafted on behalf of the former **client**. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple **clients** in a matter represent one or more of the **clients** in the same or a substantially related matter after a dispute arose among the **clients** in that matter, unless all affected **clients** give informed consent or the continued representation of the **client**(s) is not materially adverse to the interests of the former **clients**. See Comment [9]. Current and former government lawyers must comply **with** this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other **clients** **with** materially adverse interests in that transaction clearly is prohibited. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that information as would normally have been obtained in the prior representation would materially advance the **client**'s position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a **client** in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former **client** ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational **client**, general knowledge of the **client**'s policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former **client** is not required to reveal the information learned by the lawyer to establish a substantial risk that the

lawyer has information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former **client** and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated **within** a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the **client** previously represented by the former firm must be reasonably assured that the principle of loyalty to the **client** is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new **clients** after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied **with** unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of **clients** to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while **with** one firm acquired no knowledge or information relating to a particular **client** of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another **client** in the same or a related matter even though the interests of the two **clients** conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association **with** the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all **clients** of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's **clients**. In contrast, another lawyer may have access to the files of only a limited number of **clients** and participate in discussions of the affairs of no other **clients**; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the **clients** actually served but not those of other **clients**. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a **client** formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a **client** may not subsequently be used or revealed by the lawyer to the disadvantage of the **client**. However, the fact that a lawyer has once served a **client** does not preclude the lawyer from using generally known information about that **client** when later representing another **client**. Whether information is "generally known" depends in part upon how the information was obtained and in part upon the former **client**'s reasonable expectations. The mere fact that information is accessible through the public record or has become known to some other persons, does not necessarily deprive the information of its confidential nature. If the information is known or readily available to a relevant sector of the public, such as the parties involved in the matter, then the information is probably considered "generally known." See Restatement (Third) of The Law of Governing Lawyers, 111 cmt. d.

[9] The provisions of this Rule are for the protection of former **clients** and can be waived if the **client** gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(f). **With** regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. **With** regard to disqualification of a firm **with** which a lawyer is or was formerly associated, see Rule 1.10.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

Ethics Opinion Notes

CPR 140. It is improper for an attorney who formerly represented a creditor to later represent the debtor in the same action.

CPR 147. An attorney cannot defend an action brought by a former client when confidential information obtained during the prior representation would be relevant to the defense of the current action.

CPR 159. It is proper for an attorney to prepare a will for a woman and later represent her husband in a domestic action so long as the prior representation is not substantially related to the present action.

CPR 195. An attorney may not act as a private prosecutor against a former client who sought his advice concerning the domestic problems which culminated in the subject homicide.

CPR 243. An attorney may certify title to the State for purposes of condemnation and later represent the landowner against the State in a suit for damages if all consent.

CPR 273. An attorney may not represent a neighborhood group in opposition to another group he previously represented concerning the same or substantially related subject matter.

RPC 32 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-32/>). Opinion rules that an attorney who represented a husband and wife in certain matters may not represent the husband against the wife in a domestic action involving alimony and equitable distribution. Opinion further rules that an attorney associated with the firm which represented the husband and wife during marriage, but who did not himself represent the husband and wife during that time, may represent the wife in an action involving equitable distribution and alimony if he did not gain any confidential information from or on behalf of the husband.

RPC 137 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-137/>). Opinion rules that a lawyer who formerly represented an estate may not subsequently defend the former personal representative against a claim brought by the estate.

RPC 144 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-144/>). Opinion rules that a lawyer, having undertaken to represent two clients in the same matter, may not thereafter represent one against the other in the event their interests become adverse without the consent of the other.

RPC 168 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-168/>). Opinion rules that a lawyer may ask her client for a waiver of objection to a possible future representation presenting a conflict of interest if certain conditions are met.

RPC 229 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-229/>). Opinion rules that a lawyer who jointly represented a husband and wife in the preparation and execution of estate planning documents may not prepare a codicil to the will of one spouse without the knowledge of the other spouse if the codicil will affect adversely the interests of the other spouse or each spouse agreed not to change the estate plan without informing the other spouse.

RPC 244 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-244/>). Opinion rules that although a lawyer asks a prospective client to sign a form stating that no client-lawyer relationship will be created by reason of a free consultation with the lawyer, the lawyer may not subsequently disclaim the creation of a client-lawyer relationship and represent the opposing party.

RPC 246 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-246/>). Opinion rules that, under certain circumstances, a lawyer may not represent a party whose interests are opposed to the interests of a prospective client if confidential information of the prospective client must be used in the representation.

2000 Formal Ethics Opinion 2 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2000-formal-ethics-opinion-2/>). Opinion rules that a lawyer who represented a husband and wife in a joint Chapter 13 bankruptcy case may continue to represent one of the spouses after the other spouse disappears or becomes unresponsive, unless the attorney is aware of any fact or circumstance which would make the continued representation of the remaining spouse an actual conflict of interest with the prior representation of the other spouse.

2003 Formal Ethics Opinion 9 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-9/>). Opinion rules that a lawyer may participate in a settlement agreement that contains a provision limiting or prohibiting disclosure of information obtained during the representation even though the provision will effectively limit the lawyer's ability to represent future claimants.

2003 Formal Ethics Opinion 14 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-14/>). Opinion rules that if a current representation requires cross-examination of a former client using confidential information gained in the prior representation, then a lawyer has a disqualifying conflict of interest.

2009 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-8/>). Opinion provides guidelines for a lawyer for a party to a partition proceeding and rules that the lawyer may subsequently serve as a commissioner for the sale but not as one of the commissioners for the partitioning of the property.

2010 Formal Ethics Opinion 3 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-3/>). Opinion provides guidance on the cross-examination of current and former clients.

2011 Formal Ethics Opinion 2 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-2/>). Opinion sets forth the factors to be taken into consideration when determining whether a former client's delay in objecting to a conflict constitutes a waiver.

2012 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-4/>). Opinion rules that a lawyer who represented an organization while employed with another firm must be screened from participation in any matter, or any matter substantially related thereto, in which she previously represented the organization, and from any matter against

the organization if she acquired confidential information of the organization that is relevant to the matter and which has not become generally known.

2012 Formal Ethics Opinion 10 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-10/>). Opinion rules a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied.

2015 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2015-formal-ethics-opinion-8/>). Opinion rules that a lawyer who previously represented a husband and wife in several matters may not represent one spouse in a subsequent domestic action against the other spouse without the consent of the other spouse unless, after thoughtful and thorough analysis of a number of factors relevant to the prior representations, the lawyer determines that there is no substantial relationship between the prior representations and the domestic matter.

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a **client**'s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal **client-lawyer** relationship with the **client**.

(b) When the lawyer reasonably believes that the **client** has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the **client**'s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the **client** and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian.

(c) Information relating to the representation of a **client** with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the **client**, but only to the extent reasonably necessary to protect the **client**'s interests.

Comment

[1] The normal **client-lawyer** relationship is based on the assumption that the **client**, when properly advised and assisted, is capable of making decisions about important matters. When the **client** is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary **client-lawyer** relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a **client** with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the **client**'s own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a **client** suffers a disability does not diminish the lawyer's obligation to treat the **client** with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of **client**, particularly in maintaining communication.

[3] The **client** may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the **attorney-client** evidentiary privilege. Nevertheless, the lawyer must keep the **client**'s interests foremost and, except for protective action authorized under paragraph (b), must look to the **client**, and not family members, to make decisions on the **client**'s behalf.

[4] If a legal representative has already been appointed for the **client**, the lawyer should ordinarily look to the representative for decisions on behalf of the **client**. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a **client** is at risk of substantial physical, financial or other harm unless action is taken, and that a normal **client-lawyer** relationship cannot be maintained as provided in paragraph (a) because the **client** lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of **attorney** or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the **client**. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the **client** to the extent known, the **client**'s best interests and the goals of intruding into the **client**'s decision-making autonomy to the least extent feasible, maximizing **client** capacities and respecting the **client**'s family and social connections.

[6] In determining the extent of the **client's** diminished capacity, the lawyer should consider and balance such factors as: the **client's** ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the **client**. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem or guardian is necessary to protect the **client's** interests. Thus, if a **client** with diminished capacity has substantial property that should be sold for the **client's** benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the **client** than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the **client**.

Disclosure of the Client's Condition

[8] Disclosure of the **client's** diminished capacity could adversely affect the **client's** interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the **client** directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the **client's** interests before discussing matters related to the **client**. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a **client-lawyer** relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a **client**.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a **client**, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

Ethics Opinion Notes

CPR 314. An attorney who believes his or her client is not competent to make a will may not prepare or preside over the execution of a will for that client.

RPC 157 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-157/>). Opinion rules that a lawyer may seek the appointment of a guardian for a client the lawyer believes to be incompetent over the client's objection.

RPC 163 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-163/>). Opinion rules that an attorney may seek the appointment of an independent guardian ad litem for a child whose guardian has an obvious conflict of interest in fulfilling his fiduciary duties to the child.

98 Formal Ethics Opinion 16 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-16/>). Opinion rules that a lawyer may represent a person who is resisting an incompetency petition although the person may suffer from a mental disability, provided the lawyer determines that resisting the incompetency petition is not frivolous.

98 Formal Ethics Opinion 18 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-18/>). Opinion rules that a lawyer representing a minor owes the duty of confidentiality to the minor and may only disclose confidential information to the minor's parent, without the minor's consent, if the parent is the legal guardian of the minor and the disclosure of the information is necessary to make a binding legal decision about the subject matter of the representation.

2003 Formal Ethics Opinion 7 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-7/>). Opinion rules that a lawyer may not prepare a power of attorney for the benefit of the principal at the request of another individual or third-party payer without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal.

2006 Formal Ethics Opinion 11 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-11/>). Opinion rules that, outside of the commercial or business context, a lawyer may not, at the request of a third party, prepare documents, such as a will or trust instrument, that purport to speak solely for principal without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal.

CLIENT-LAWYER RELATIONSHIP

Search Rules

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 law or the Rules of Professional Conduct;
- (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**; or
- (2) the **client** knowingly and freely assents to the termination of the representation; or
- (3) the **client** persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or
- (4) the **client** insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or **with** which the lawyer has a fundamental disagreement; or
- (5) the **client** has used the lawyer's services to perpetrate a crime or fraud; or
- (6) 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; or
- (7) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the **client**; or
- (8) the **client** insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or
- (9) 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.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, **without** improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

*Mandatory **Withdrawal***

[2] A lawyer ordinarily must decline or **withdraw** from representation if the **client** demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or **withdraw** simply because the **client** suggests such a course of conduct; a **client** may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a **client**, **withdrawal** ordinarily requires approval of the appointing authority. Similarly, court approval or notice to the court is often required by applicable law before a lawyer **withdraws** from pending litigation. Difficulty may be encountered if **withdrawal** is based on the **client's** demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the **withdrawal**, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both **clients** and the court under Rules 1.6 and 3.3.

Discharge

[4] A **client** has a right to discharge a lawyer at any time, **with** or **without** cause, subject to liability for payment for the lawyer's services. Where future dispute about the **withdrawal** may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a **client** can discharge appointed counsel may depend on applicable law. A **client** seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the **client**.

[6] If the **client** has severely diminished capacity, the **client** may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the **client's** interests. The lawyer should make special effort to help the **client** consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may **withdraw** from representation in some circumstances. The lawyer has the option to **withdraw** if it can be accomplished **without** material adverse effect on the **client's** interests. Forfeiture by the **client** of a substantial financial investment in the representation may have such effect on the **client's** interests. **Withdrawal** is also justified if the **client** persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated **with** such conduct even if the lawyer does not further it. **Withdrawal** is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the **client**. The lawyer may also **withdraw** where the **client** insists on taking action that the lawyer considers repugnant or imprudent or **with** which the lawyer has a fundamental disagreement.

[8] A lawyer may **withdraw** if the **client** refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the **client**, a lawyer must take all reasonable steps to mitigate the consequences to the **client**.

[10] The lawyer may never retain papers to secure a fee. Generally, anything in the file that would be helpful to successor counsel should be turned over. This includes papers and other things delivered to the discharged lawyer by the **client** such as original instruments, correspondence, and canceled checks. Copies of all correspondence received and generated by the **withdrawing** or discharged lawyer should be released as well as legal instruments, pleadings, and briefs submitted by either side or prepared and ready for submission. The lawyer's personal notes and incomplete work product need not be released.

[11] A lawyer who represented an indigent on an appeal which has been concluded and who obtained a trial transcript furnished by the state for use in preparing the appeal, must turn over the transcript to the former **client** upon request, the transcript being property to which the former **client** is entitled.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

Ethics Opinion Notes

CPR 3 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/cpr-3/>).

CPR 24. Withdrawing partners and remaining partners should send clients a common announcement of the firm's dissolution so that the client may elect whom he wishes to handle his legal business.

CPR 61. It is improper for a senior member of a law firm who is employed to represent a client to refer a case to a junior partner or associate without the client's consent.

CPR 269. An attorney whose motion to withdraw from representation of a corporation is denied must continue to represent the corporation.

CPR 315 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/cpr-315/>).

CPR 322 (Revised) (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/cpr-322/>).

RPC 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-8/>). Opinion rules that a lawyer employed by an insurer to represent an uninsured motorist must not withdraw after settlement until he obtains permission of the tribunal and takes steps to minimize prejudice to his client [Originally published as RPC 8 (Revised)]

RPC 48 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-48/>). Opinion outlines professional responsibilities of lawyers involved in a law firm dissolution.

RPC 58 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-58/>). Opinion rules that another member of a lawyer's firm may substitute for the lawyer in defending a criminal case if there is no prejudice to the client and the client and the court consent.

RPC 79 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-79/>). Opinion rules that a lawyer who advances the cost of obtaining medical records before deciding whether to accept a case may not condition the release of the records to the client upon reimbursement of the cost.

RPC 106 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-106/>). Opinion discusses circumstances under which a refund of a prepaid fee is required.

RPC 153 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-153/>). Opinion rules that in cases of multiple representation a lawyer who has been discharged by one client must deliver to that client as part of that client's file information entrusted to the lawyer by the other client.

RPC 157 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-157/>). Opinion rules that a lawyer may seek the appointment of a guardian for a client the lawyer believes to be incompetent over the client's objection.

RPC 158 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-158/>). Opinion rules that a sum of money paid to a lawyer in advance to secure payment of a fee which is yet to be earned and to which the lawyer is not entitled must be deposited in the lawyer's trust account.

RPC 169 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-169/>). Opinion rules that a lawyer is not required to provide a former client with copies of title notes and may charge a former client for copies of documents from the client's file under certain circumstances.

RPC 178 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-178/>). Opinion examines a lawyer's obligation to deliver the file to the client upon the termination of the representation when the lawyer represents multiple clients in a single matter.

RPC 223 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-223/>). Opinion rules that when a lawyer's reasonable attempts to locate a client are unsuccessful, the client's disappearance constitutes a constructive discharge of the lawyer requiring the lawyer's withdrawal from the representation.

RPC 227 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-227/>). Opinion rules that a former residential real estate client is not entitled to the lawyer's title notes or abstracts regardless of whether such information is stored in the client's file. However, a lawyer formerly associated with a firm may be entitled to examine the title notes made by the lawyer to provide further representation to the same client.

RPC 234 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-234/>). Opinion rules that an inactive client file may be stored in an electronic format provided original documents with legal significance are preserved and the documents in the electronic file can be reproduced on paper.

RPC 245 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-245/>). Opinion rules that a lawyer in possession of the legal file relating to the prior representation of co-parties in an action must provide the co-party the lawyer does not represent with access to the file and a reasonable opportunity to copy the contents of the file.

98 Formal Ethics Opinion 9 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-9/>). Opinion rules that a lawyer may charge a client the actual cost of retrieving a closed client file from storage, subject to certain conditions, provided the lawyer does not withhold the file to extract payment.

2002 Formal Ethics Opinion 5 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2002-formal-ethics-opinion-5/>). Opinion rules that whether electronic mail should be retained as a part of a client's file is a legal decision to be made by the lawyer.

2005 Formal Ethics Opinion 13 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-13/>).

Opinion rules that a minimum fee that will be billed against at an hourly rate and is collected at the beginning of representation belongs to the client and must be deposited into the trust account until earned and, upon termination of representation, the unearned portion of the fee must be returned to the client.

2006 Formal Ethics Opinion 18 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2006-formal-ethics-opinion-18/>).

Opinion rules that, when representation is terminated by a client, a lawyer who advances the cost of a deposition and transcript may not condition release of the transcript to the client upon reimbursement of the cost.

2007 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-8/>).

Opinion rules that a lawyer may not charge a client for filing and presenting a motion to withdraw unless withdrawal advances the client's objectives for the representation or the charge is approved by the court when ruling on a petition for legal fees from a court-appointed lawyer.

2009 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2009-formal-ethics-opinion-8/>).

Opinion provides guidelines for a lawyer for a party to a partition proceeding and rules that the lawyer may subsequently serve as a commissioner for the sale but not as one of the commissioners for the partitioning of the property.

2010 Formal Ethics Opinion 1 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-1/>). Opinion

rules that a lawyer retained by an insurance carrier to represent an insured whose whereabouts are unknown and with whom the lawyer has no contact may not appear as the lawyer for the insured absent authorization by law or court order.

2013 Formal Ethics Opinion 8 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-8/>). Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

2013 Formal Ethics Opinion 9 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-9/>). Opinion provides guidance to lawyers who work for a public interest law organization that provides legal and non-legal services to its clientele and that has an executive director who is not a lawyer.

2013 Formal Ethics Opinion 15 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-15/>).

Opinion rules that records relative to a client's matter that would be helpful to subsequent legal counsel must be provided to the client upon the termination of the representation, and may be provided in an electronic format if readily accessible to the client without undue expense.

2015 Formal Ethics Opinion 5 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2015-formal-ethics-opinion-5/>). Opinion

provides that in post-conviction or appellate proceedings, a discharged lawyer may discuss a former client's case and turn over the former client's file to successor counsel if the former client consents or the disclosure is impliedly authorized.

CLIENT-LAWYER RELATIONSHIP

Search Rules

RULE 1.19 SEXUAL RELATIONS WITH CLIENTS PROHIBITED

- (a) A lawyer shall not have **sexual** relations **with** a current **client** of the lawyer.
- (b) Paragraph (a) shall not apply if a consensual **sexual** relationship existed between the lawyer and the **client** before the legal representation commenced.
- (c) A lawyer shall not require or demand **sexual** relations **with** a **client** incident to or as a condition of any professional representation.
- (d) For purposes of this rule, "**sexual** relations" means:
- (1) **Sexual** intercourse; or
 - (2) Any touching of the **sexual** or other intimate parts of a person or causing such person to touch the **sexual** or other intimate parts of the lawyer for the purpose of arousing or gratifying the **sexual** desire of either party.
- (e) For purposes of this rule, "lawyer" means any lawyer who assists in the representation of the **client** but does not include other lawyers in a firm who provide no such assistance.

Comment

[1] Rule 1.7, the general rule on conflict of interest, has always prohibited a lawyer from representing a **client** when the lawyer's ability competently to represent the **client** may be impaired by the lawyer's other personal or professional commitments. Under the general rule on conflicts and the rule on prohibited transactions (Rule 1.8), relationships **with clients**, whether personal or financial, that affect a lawyer's ability to exercise his or her independent professional judgment on behalf of a **client** are closely scrutinized. The rules on conflict of interest have always prohibited the representation of a **client** if a **sexual** relationship **with** the **client** presents a significant danger to the lawyer's ability to represent the **client** adequately. The present rule clarifies that a **sexual** relationship **with** a **client** is damaging to the **client**-lawyer relationship and creates an impermissible conflict of interest that cannot be ameliorated by the consent of the **client**.

Exploitation of the Lawyer's Fiduciary Position

[2] The relationship between a lawyer and **client** is a fiduciary relationship in which the lawyer occupies the highest position of trust and confidence. The relationship is also inherently unequal. The **client** comes to a lawyer **with** a problem and puts his or her faith in the lawyer's special knowledge, skills, and ability to solve the **client's** problem. The same factors that led the **client** to place his or her trust and reliance in the lawyer also have the potential to place the lawyer in a position of dominance and the **client** in a position of vulnerability.

[3] A **sexual** relationship between a lawyer and a **client** may involve unfair exploitation of the lawyer's fiduciary position. Because of the dependence that so often characterizes the attorney-**client** relationship, there is a significant possibility that a **sexual** relationship **with** a **client** resulted from the exploitation of the lawyer's dominant position and influence. Moreover, if a lawyer permits the otherwise benign and even recommended **client** reliance and trust to become the catalyst for a **sexual** relationship **with** a **client**, the lawyer violates one of the most basic ethical obligations; i.e., not to use the trust of the **client** to the **client's** disadvantage. This same principle underlies the rules prohibiting the use of **client** confidences to the disadvantage of the **client** and the rules that seek to ensure that lawyers do not take financial advantage of their **clients**. See Rules 1.6 and 1.8.

Impairment of the Ability to Represent the Client Competently

[4] A lawyer must maintain his or her ability to represent a **client** dispassionately and **without** impairment to the exercise of independent professional judgment on behalf of the **client**. The existence of a **sexual** relationship between lawyer and **client**, under the circumstances proscribed by this rule, presents a significant danger that the lawyer's ability to represent the **client** competently may be adversely affected because of the lawyer's emotional involvement. This emotional involvement has the potential to undercut the objective detachment that is demanded for adequate representation. A **sexual** relationship also creates the risk that the lawyer will be subject to a conflict of interest. For example, a lawyer who is **sexually** involved **with** his or her **client** risks becoming an adverse witness to his or

her own **client** in a divorce action where there are issues of adultery and child custody to resolve. Finally, a blurred line between the professional and personal relationship may make it difficult to predict to what extent **client** confidences will be protected by the attorney-**client** privilege in the law of evidence since **client** confidences are protected by privilege only when they are imparted in the context of the **client**-lawyer relationship.

No Prejudice to Client

[5] The prohibition upon representing a **client with** whom a **sexual** relationship develops applies regardless of the absence of a showing of prejudice to the **client** and regardless of whether the relationship is consensual.

Prior Consensual Relationship

[6] **Sexual** relationships that predate the **client**-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and **client** dependency are not present when the **sexual** relationship exists prior to the commencement of the **client**-lawyer relationship. However, before proceeding **with** the representation in these circumstances, the lawyer should be confident that his or her ability to represent the **client** competently will not be impaired.

No Imputed Disqualification

[7] The other lawyers in a firm are not disqualified from representing a **client with** whom the lawyer has become intimate. The potential impairment of the lawyer's ability to exercise independent professional judgment on behalf of the **client with** whom he or she is having a **sexual** relationship is specific to that lawyer's representation of the **client** and is unlikely to affect the ability of other members of the firm to competently and dispassionately represent the **client**.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

COUNSELOR

Search Rules

RULE 2.1 ADVISOR

In representing a **client**, a lawyer shall exercise independent, professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law, but also to other considerations such as moral, economic, social, and political factors that may be relevant to the **client's** situation.

Comment

Scope of Advice

[1] A **client** is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a **client** may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the **client's** morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the **client**.

[2] Advice couched in narrow legal terms may be of little value to a **client**, especially where practical considerations such as cost or effects on other people are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A **client** may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a **client** experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a **client** inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems **within** the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems **within** the competence of the accounting profession or of financial specialists. Where consultation **with** a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the **client**. However, when a lawyer knows that a **client** proposes a course of action that is likely to result in substantial adverse legal consequences to the **client**, the lawyer's duty to the **client** under Rule 1.4 may require that the lawyer offer advice if the **client's** course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the **client** of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a **client's** affairs or to give advice that the **client** has indicated is unwanted, but a lawyer may initiate advice to a **client** when doing so appears to be in the **client's** interest.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003

Ethics Opinion Notes

2011 Formal Ethics Opinion 4 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-4/>). Opinion rules that a lawyer may not agree to procure title insurance exclusively from a particular title insurance agency on every transaction referred to the lawyer by a person associated with the agency.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Search Rules

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 that reflects adversely on the lawyer's fitness as a lawyer;
- (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;
- (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) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Comment

[1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client or, in the case of a government lawyer, investigatory personnel, of action the client, or such investigatory personnel, is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on a lawyer's fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. A lawyer's dishonesty, fraud, deceit, or misrepresentation is not mitigated by virtue of the fact that the victim may be the lawyer's partner or law firm. A lawyer who steals funds, for instance, is guilty of a serious disciplinary violation regardless of whether the victim is the lawyer's employer, partner, law firm, client, or a third party.

[3] The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession. Lawyer discipline affects only the lawyer's license to practice law. It does not result in incarceration. For this reason, to establish a violation of paragraph (b), the burden of proof is the same as for any other violation of the Rules of Professional Conduct: it must be shown by clear, cogent, and convincing evidence that the lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Conviction of a crime is conclusive evidence that the lawyer committed a criminal act although, to establish a violation of paragraph (b), it must be shown that the criminal act reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. If it is established by clear, cogent, and convincing evidence that a lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the lawyer may be disciplined for a violation of paragraph (b) although the lawyer is never prosecuted or is acquitted or pardoned for the underlying criminal act.

[4] A showing of actual prejudice to the administration of justice is not required to establish a violation of paragraph (d). Rather, it must only be shown that the act had a reasonable likelihood of prejudicing the administration of justice. For example, in *State Bar v. DuMont*,

52 N.C. App. 1, 277 S.E.2d 827 (1981), modified on other grounds, 304 N.C. 627, 286 S.E.2d 89 (1982), the defendant was disciplined for advising a witness to give false testimony in a deposition even though the witness corrected his statement prior to trial. Conduct warranting the imposition of professional discipline under paragraph (d) is characterized by the element of intent or some other aggravating circumstance. The phrase “conduct prejudicial to the administration of justice” in paragraph (d) should be read broadly to proscribe a wide variety of conduct, including conduct that occurs outside the scope of judicial proceedings. In *State Bar v. Jerry Wilson*, 82 DHC 1, for example, a lawyer was disciplined for conduct prejudicial to the administration of justice after forging another individual’s name to a guarantee agreement, inducing his wife to notarize the forged agreement, and using the agreement to obtain funds.

[5] Threats, bullying, harassment, and other conduct serving no substantial purpose other than to intimidate, humiliate, or embarrass anyone associated with the judicial process including judges, opposing counsel, litigants, witnesses, or court personnel violate the prohibition on conduct prejudicial to the administration of justice. When directed to opposing counsel, such conduct tends to impede opposing counsel’s ability to represent his or her client effectively. Comments “by one lawyer tending to disparage the personality or performance of another...tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth-finding function by distracting judges and juries from the serious business at hand.” *State v. Rivera*, 350 N.C. 285, 291, 514 S.E.2d 720, 723 (1999). See Rule 3.5, cmt. [10] and Rule 4.4, cmt. [2].

[6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court: July 24, 1997

Amendments Approved by the Supreme Court: March 1, 2003; March 5, 2015; September 28, 2017

Ethics Opinion Notes

CPR 110. An attorney may not advise a client to seek Dominican divorce knowing that the client will return immediately to North Carolina and continue residence.

CPR 168. An attorney may file personal bankruptcy.

CPR 188. An attorney may not draw deeds or other legal instruments based on land surveys made by unregistered land surveyors.

CPR 342. An attorney should not close a loan where the transaction is conditioned by the lender upon the placement of title insurance with a particular company.

CPR 369. An attorney may close a loan if the lender merely suggests rather than requires the placement of title insurance with a particular company.

RPC 127 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-127/>). Opinion rules that deliberate release of settlement proceeds without satisfying conditions precedent is dishonest and unethical.

RPC 136 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-136/>). Opinion rules that a lawyer may notarize documents which are to be used in legal proceedings in which the lawyer appears.

RPC 143 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-143/>). Opinion rules that a lawyer who represents or has represented a member of the city council may represent another client before the council.

RPC 152 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-152/>). Opinion rules that the prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions concerning such matters when pleas are entered in open court.

RPC 159 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-159/>). Opinion rules that an attorney may not participate in the resolution of a civil dispute involving allegations against a psychotherapist of sexual involvement with a patient if the settlement is conditioned upon the agreement of the complaining party not to report the misconduct to the appropriate licensing authority.

RPC 162 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-162/>). Opinion rules that an attorney may not communicate with the opposing party’s nonparty treating physician about the physician’s treatment of the opposing party unless the opposing party consents.

- RPC 171** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-171/>). Opinion rules that it is not a violation of the Rules of Professional Conduct for a lawyer to tape record a conversation with an opposing lawyer without disclosure to the opposing lawyer.
- RPC 180** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-180/>). Opinion rules that a lawyer may not passively listen while the opposing party's nonparty treating physician comments on his or her treatment of the opposing party unless the opposing party consents.
- RPC 192** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-192/>). Opinion rules that a lawyer may not listen to an illegal tape recording made by his client nor may he use the information on the illegal tape recording to advance his client's case.
- RPC 197** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-197/>). Opinion rules that a prosecutor must notify defense counsel, jail officials, or other appropriate persons to avoid the unnecessary detention of a criminal defendant after the charges against the defendant have been dismissed by the prosecutor.
- RPC 204** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-204/>). Opinion rules that it is prejudicial to the administration of justice for a prosecutor to offer special treatment to individuals charged with traffic offenses or minor crimes in exchange for a direct charitable contribution to the local school system.
- RPC 221** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-221/>). Opinion rules that absent a court order or law requiring delivery of physical evidence of a crime to the authorities, a lawyer for a criminal defendant may take possession of evidence that is not contraband in order to examine, test, or inspect the evidence. The lawyer must return inculpatory physical evidence that is not contraband to the source and advise the source of the legal consequences pertaining to the possession or destruction of the evidence.
- RPC 236** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-236/>). Opinion rules that a lawyer may not issue a subpoena containing misrepresentations as to the pendency of an action, the date or location of a hearing, or a lawyer's authority to obtain documentary evidence.
- RPC 243** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-243/>). Opinion rules that it is prejudicial to the administration of justice for a prosecutor to threaten to use his discretion to schedule a criminal trial to coerce a plea agreement from a criminal defendant.
- 98 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-2/>). Opinion rules that a lawyer may explain the effect of service of process to a client but may not advise a client to evade service of process.
- 98 Formal Ethics Opinion 19** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-19/>). Opinion provides guidelines for a lawyer representing a client with a civil claim that also constitutes a crime.
- 99 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/99-formal-ethics-opinion-2/>). Opinion rules that a defense lawyer may suggest that the records custodian of plaintiff's medical record deliver the medical record to the lawyer's office in lieu of an appearance at a noticed deposition provided the plaintiff's lawyer consents.
- 2000 Formal Ethics Opinion 8** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2000-formal-ethics-opinion-8/>). Opinion rules that a lawyer acting as a notary must follow the law when acknowledging a signature on a document.
- 2001 Formal Ethics Opinion 12** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2001-formal-ethics-opinion-12/>). Opinion rules that a closing lawyer may not counsel or assist a client to affix excess excise tax stamps on an instrument for registration with the register of deeds.
- 2003 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-5/>). Opinion rules that neither a defense lawyer nor a prosecutor may participate in the misrepresentation of a criminal defendant's prior record level in a sentencing proceeding even if the judge is advised of the misrepresentation and does not object.
- 2003 Formal Ethics Opinion 11** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2003-formal-ethics-opinion-11/>). Opinion rules that a lawyer must deal honestly with the members of her former firm when dividing a legal fee.
- 2005 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2005-formal-ethics-opinion-3/>). Opinion rules that a lawyer may not threaten to report an opposing party or a witness to immigration officials to gain an advantage in civil settlement negotiations.
- 2007 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-2/>). Opinion rules that a lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband.
- 2008 Formal Ethics Opinion 3** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-3/>). Opinion rules a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.

- 2008 Formal Ethics Opinion 4** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-4/>). Opinion rules that a lawyer may issue a subpoena in compliance with Rule 45 of the Rules of Civil Procedure which authorizes a subpoena for the production of documents to the lawyer's office without the need to schedule a hearing, deposition or trial.
- 2008 Formal Ethics Opinion 14** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-14/>). Opinion rules that it is not an ethical violation when a lawyer fails to attribute or obtain consent when incorporating into his own brief, contract, or pleading excerpts from a legal brief, contract, or pleading written by another lawyer. .
- 2008 Formal Ethics Opinion 15** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-15/>). Opinion rules that, provided the agreement does not constitute the criminal offense of compounding a crime and is not otherwise illegal, and does not contemplate the fabrication, concealment, or destruction of evidence, a lawyer may participate in a settlement agreement of a civil claim that includes a non-reporting provision prohibiting the plaintiff from reporting the defendant's conduct to law enforcement authorities.
- 2010 Formal Ethics Opinion 2** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-2/>). Opinion rules that a lawyer may not serve an out of state health care provider with an unenforceable North Carolina subpoena and may not use documents produced pursuant to such a subpoena.
- 2010 Formal Ethics Opinion 14** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2010-formal-ethics-opinion-14/>). Opinion rules that it is a violation of the Rules of Professional Conduct for a lawyer to select another lawyer's name as a keyword for use in an Internet search engine company's search-based advertising program.
- 2011 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-9/>). Opinion rules that a lawyer may not allow a person who is not employed by or affiliated with the lawyer's firm to use firm letterhead.
- 2011 Formal Ethics Opinion 12** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-12/>). Opinion rules that a lawyer must notify the court when a clerk of court mistakenly dismisses a client's charges.
- 2012 Formal Ethics Opinion 5** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-5/>). Opinion rules that a lawyer representing an employer must evaluate whether email messages an employee sent to and received from the employee's lawyer using the employer's business email system are protected by the attorney-client privilege and, if so, decline to review or use the messages unless a court determines that the messages are not privileged.
- 2012 Formal Ethics Opinion 10** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-10/>). Opinion rules a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied.
- 2014 Formal Ethics Opinion 7** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-7/>). Opinion rules that a lawyer may provide a foreign entity or individual with a North Carolina subpoena accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction, the recipient is not required to comply with the subpoena, and the subpoena is being provided solely for the recipient's records.
- 2014 Formal Ethics Opinion 8** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-8/>). Opinion rules that a lawyer may accept an invitation from a judge to be a "connection" on a professional networking website, and may endorse a judge. However, a lawyer may not accept a legal skill or expertise endorsement or a recommendation from a judge.
- 2014 Formal Ethics Opinion 9** (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-9/>). Opinion rules that a private lawyer may supervise an investigation involving misrepresentation if done in pursuit of a public interest and certain conditions are satisfied.