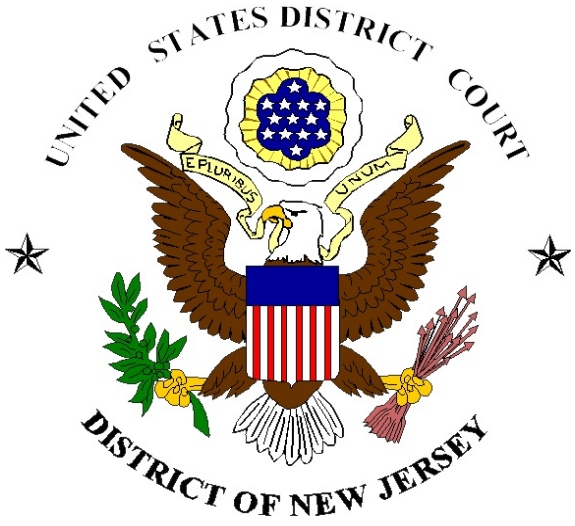
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY



PROFESSIONALISM AND ETHICS

October 16, 2012
Camden, New Jersey

Professionalism Day
United States District Court
Camden, New Jersey
October 16, 2012
4:00 - 6:00 p.m.

PROGRAM

Moderator

Senior U.S. District Judge Joseph E. Irenas

Panelists

Hon. Joel Schneider - Pre-Trial Proceedings

Carl D. Popler, Esquire - Trial

Arthur J. Abramowitz, Esquire - Bankruptcy

Christopher D. Adams, Esquire - Electronic Discovery

INDEX OF ATTACHED MATERIALS

1. New Jersey Rules of Professional Conduct

2. Guidelines for Litigation Conduct -- Appendix R to the Local Rules for the District of New Jersey

3. Principles of Professionalism for Lawyers and Judges- New Jersey Commission on Professionalism ("NJCOP")

4. L. Civ. R. 5.3, 16.1, 26.1, 37.1 and 56.1

5. Professionalism: The Bridge Between Ethics and Advocacy

6. Electronic Discovery

   a. The Sedona Conference Cooperation Proclamation

   b. Ethics Advisory Committee Opinion 701

   c. Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (Feb. 2012)

7. Camden County Bar Association - Code of Professionalism

8. NJCOP - Background Materials and Articles of Interest

BIOGRAPHIES OF PANELISTS

Moderator

Honorable Joseph E. Irenas, SUSDJ

Speakers

Hon. Joel Schneider, USMJ

Arthur J. Abramowitz, Esquire

Christopher D. Adams, Esquire

Carl D. Popler, Esquire

ATTACHMENT 1

Rules Of Professional Conduct

Adopted Effective September 10, 1984.

Table of Rules

- 5.5 Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law.
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- 6.1 Voluntary Public Interest Legal Service.
- 6.2 Accepting Appointments.
- 6.3 Membership in Legal Services Organization.
- 6.4 Law Reform Activities Affecting Client Interests.
- 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs.
- 7.1 Communications Concerning a Lawyer's Service.
- 7.2 Advertising.
- 7.3 Personal Contact With Prospective Clients.
- 7.4 Communication of Fields of Practice and Certification.
- 7.5 Firm Names and Letterheads.
- 8.1 Bar Admission and Disciplinary Matters.
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- 8.5 Disciplinary Authority; Choice of Law.

NOTE: These rules shall be referred to as the Rules of Professional Conduct and shall be abbreviated as "RPC".

RPC 1.0 Terminology

- **(a)** "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- **(b)** "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent."
- **(c)** "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- **(d)** "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- **(e)** "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- **(f)** "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- **(g)** "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- **(h)** "Primary responsibility" denotes actual participation in the management and direction of the matter at the policy-making level or responsibility at the operational level as

manifested by the continuous day-to-day responsibility for litigation or transaction decisions

- **(i)** "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- **(j)** "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- **(k)** "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- **(l)** "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely adoption and enforcement by a law firm of a written procedure pursuant to RPC 1.10(f) which is reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
- **(m)** "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- **(n)** "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- **(o)** "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Note: Adopted November 17, 2003 to be effective January 1, 2004. RPC 1.1 Competence

1.1 Competence

A lawyer shall not:

- **(a)** Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- **(b)** Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

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

- **(a)** A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall

abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

- **(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 and the client gives informed consent.
- **(d)** A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (c) amended, and paragraph (e) deleted and redesignated as RPC 1.4(d) November 17, 2003 to be effective January 1, 2004.

RPC 1.3. Diligence

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

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.4. Communication

- **(a)** A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- **(b)** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- **(c)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- **(d)** When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new paragraphs (a) and (d) adopted and former paragraphs (a) and (b) redesignated as paragraphs (b) and (c) November 17, 2003 to be effective January 1, 2004.

RPC 1.5. Fees

- **(a)** A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
    - **(1)** the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
    - **(2)** the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
    - **(3)** the fee customarily charged in the locality for similar legal services;
    - **(4)** the amount involved and the results obtained;

    - **(5)** the time limitations imposed by the client or by the circumstances;
    - **(6)** the nature and length of the professional relationship with the client;
    - **(7)** the experience, reputation, and ability of the lawyer or lawyers performing the services;
    - **(8)** whether the fee is fixed or contingent.
- **(b)** When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.
- **(c)** A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
    - **(1)** any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
    - **(2)** a contingent fee for representing a defendant in a criminal case.
- **(e)** Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:
    - **(1)** the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and
    - **(2)** the client is notified of the fee division; and
    - **(3)** the client consents to the participation of all the lawyers involved; and
    - **(4)** the total fee is reasonable.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new subparagraph (e)(2) added and former subparagraphs (e)(2) and (e)(3) redesignated as subparagraphs (e)(3) and (e)(4) November 17, 2003 to be effective January 1, 2004.

RPC 1.6. Confidentiality of Information

- **(a)** A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).
- **(b)** A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:
    - **(1)** from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;
    - **(2)** from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

- **(c)** If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.
- **(d)** A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
    - **(1)** to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;
    - **(2)** to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; or
    - **(3)** to comply with other law.
- **(e)** Reasonable belief for purposes of RPC 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended, new paragraph (c) added, former paragraph (c) redesignated as paragraph (d), and former paragraph (d) amended and redesignated as paragraph (e) November 17, 2003 to be effective January 1, 2004.

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
    - **(1)** the representation of one client will be directly adverse to another client; or
    - **(2)** there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
    - **(1)** each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
    - **(2)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
    - **(3)** the representation is not prohibited by law; and
    - **(4)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Note: Adopted July 12, 1984 to be effective September 10, 1984; text deleted and new text adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.8. Conflict of Interest: Current Clients; Specific Rules

- **(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
    - **(1)** the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
    - **(2)** the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
    - **(3)** the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- **(b)** Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.
- **(c)** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- **(d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- **(e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
    - **(1)** a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
    - **(2)** a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and
    - **(3)** a non-profit organization authorized under R. 1:21-1(e) may provide financial assistance to indigent clients whom it is representing without fee.
- **(f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:
    - **(1)** the client gives informed consent;
    - **(2)** there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
    - **(3)** information relating to representation of a client is protected as required by RPC 1.6.
- **(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- **(h)** A lawyer shall not:

- **(1)** make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or
- **(2)** settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advise of independent legal counsel in connection therewith.

- **(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.
- **(j)** While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.
- **(k)** A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.
- **(l)** A public entity cannot consent to a representation otherwise prohibited by this Rule.

Note: Adopted September 10, 1984 to be effective immediately; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; caption amended, paragraphs (a), (b), (c), (f), (g), (h) amended, former paragraph (i) deleted, former paragraph (j) redesignated as paragraph (i), former paragraph (k) deleted, and new paragraphs (j) , (k) and (l) added November 17, 2003 to be effective January 1, 2004.

RPC 1.9 Duties to Former Clients

- **(a)** A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client'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, while at the former firm, had personally acquired information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing.

  Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to RPC 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

- **(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.

- **(d)** A public entity cannot consent to a representation otherwise prohibited by this Rule.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (b) amended, and new paragraphs (c) and (d) added November 17, 2003 to be effective January 1, 2004.

RPC 1.10. Imputation of Conflicts of Interest: General Rule

- **(a)** When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- **(b)** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - **(1)** the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - **(2)** any lawyer remaining in the firm has information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter.
- **(c)** When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under RPC 1.9 unless:
  - **(1)** the matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;
  - **(2)** the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - **(3)** written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
- **(d)** A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in RPC 1.7.
- **(e)** The disqualification of lawyers associated in a firm with former or current government lawyers is governed by RPC 1.11.
- **(f)** Any law firm that enters a screening arrangement, as provided by this Rule,shall establish appropriate written procedures to insure that: (1) all attorneys and other personnel in the law firm screen the personally disqualified attorney from any participation in the matter, (2) the screened attorney acknowledges the obligation to remain screened and takes action to insure the same, and (3) the screened attorney is apportioned no part of the fee therefrom.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (b) corrected in *Dewey v. R.J. Reynolds Tobacco Co.*, 109 *N.J.* 201, 217-18 (1988); caption and paragraphs (a), (b), and (c) amended, paragraph (d) deleted, former paragraph (e) amended and redesignated as paragraph (d), new paragraphs (e) and (f) adopted November 17, 2003

RPC 1.11. Successive Government and Private Employment

- **(a)** Except as law may otherwise expressly permit, and subject to RPC 1.9, a lawyer who formerly has served as a government lawyer or public officer or employee of the government shall not represent a private client in connection with a matter:
    - **(1)** in which the lawyer participated personally and substantially as a public officer or employee, or
    - **(2)** for which the lawyer had substantial responsibility as a public officer or employee; or
    - **(3)** when the interests of the private party are materially adverse to the appropriate government agency, provided, however, that the application of this provision shall be limited to a period of six months immediately following the termination of the attorney's service as a government lawyer or public officer.
- **(b)** Except as law may otherwise expressly permit, a lawyer who formerly has served as a government lawyer or public officer or employee of the government:
    - **(1)** shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party or information that the lawyer knows is confidential government information about a person acquired by the lawyer while serving as a government lawyer or public officer or employee of the government, and
    - **(2)** shall not represent a private person whose interests are adverse to that private party in a matter in which the information could be used to the material disadvantage of that party.
- **(c)** In the event a lawyer is disqualified under (a) or (b), the lawyer may not represent a private client, but absent contrary law a firm with which that lawyer is associated may undertake or continue representation if:
    - **(1)** the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom, and
    - **(2)** written notice is given promptly to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.
- **(d)** Except as law may otherwise expressly permit, a lawyer serving as a government lawyer or public officer or employee of the government:
    - **(1)** shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party acquired by the lawyer while in private practice or nongovernmental employment,
    - **(2)** shall not participate in a matter (i) in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, or (ii) for which the lawyer had substantial responsibility while in private practice or nongovernmental employment, or (iii) with respect to which the interests of the appropriate government agency are materially adverse to the interests of a private party represented by the lawyer while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter or unless the private party gives its informed consent, confirmed in writing, and
    - **(3)** shall not negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating

personally and substantially or for which the lawyer has substantial responsibility, except that a lawyer serving as a law clerk shall be subject to RPC 1.12(c).

- **(e)** As used in this Rule, the term:
  - **(1)** "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of the appropriate government agency;
  - **(2)** "confidential government information" means information that has been obtained under governmental authority and that, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended, text of paragraph (b) deleted and new text adopted, new paragraph (c) adopted, former paragraphs (c) and (d) amended and redesignated as paragraphs (d) and (e), and former paragraph (e) merged into redesignated paragraph (e) November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008.

Comment by Court (Regarding 2008 Amendment). In In re ACPE Opinion 705, 192 N.J. 46 (2007), the Court deferred to the Legislature in the spirit of comity and held that the post-government employment restrictions imposed by the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-17, apply in the context of former State attorneys. The 2008 amendment to paragraph (c) implements that decision.

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

- **(a)** Except as stated in paragraph (c), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, mediator or other third-party neutral, or law clerk to such a person, unless all parties to the proceeding have given consent, confirmed in writing.
- **(b)** If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
  - **(1)** the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - **(2)** written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.
- **(c)** A lawyer shall not negotiate for employment with any person who is involved as a party or as an attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral. A lawyer serving as law clerk to such a person may negotiate for employment with a party or attorney involved in a matter in which the law clerk is participating personally and substantially, but only after the lawyer has notified the person to whom the lawyer is serving as law clerk.
- **(d)** An arbitrator selected by a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b) and (c) amended and redesignated as paragraphs (c) and (d) November 17, 2003 to be effective January 1, 2004.

RPC 1.13. Organization as the Client

- **(a)** A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents. For the purposes of RPC 4.2 and 4.3, however, the organization's lawyer shall be deemed to represent not only the organizational entity but also the members of its litigation control group. Members of the litigation control group shall be deemed to include current agents and employees responsible for, or significantly involved in, the determination of the organization's legal position in the matter whether or not in litigation, provided, however, that "significant involvement" requires involvement greater, and other than, the supplying of factual information or data respecting the matter. Former agents and employees who were members of the litigation control group shall presumptively be deemed to be represented in the matter by the organization's lawyer but may at any time disavow said representation.
- **(b)** If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:
    - **(1)** asking reconsideration of the matter;
    - **(2)** advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
    - **(3)** referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.
- **(c)** When the organization's highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization. Such action may include revealing information otherwise protected by RPC 1.6 only if the lawyer reasonably believes that:
    - **(1)** the highest authority in the organization has acted to further the personal or financial interests of members of that authority which are in conflict with the interests of the organization; and
    - **(2)** revealing the information is necessary in the best interest of the organization.

- **(d)** In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part.
- **(e)** A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of RPC 1.7. If the organization's consent to the dual representation is required by RPC 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented or by the shareholders.
- **(f)** For purposes of this rule "organization" includes any corporation, partnership, association, joint stock company, union, trust, pension fund, unincorporated association, proprietorship or other business entity, state or local government or political subdivision thereof, or non-profit organization.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 1.14. Client Under a Disability

- **(a)** When a client's capacity to make adequately considered decisions in connection with the 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, conservator, or guardian.
- **(c)** Information relating to the representation of a client with diminished capacity is protected by RPC 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under RPC 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.15. Safekeeping Property

- **(a)** A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.
- **(b)** Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this

Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

- **(c)** When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- **(d)** A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.16. Declining or Terminating Representation

- **(a)** Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - **(1)** the representation will result in violation of the Rules of Professional Conduct or other law;
  - **(2)** the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - **(3)** the lawyer is discharged.
- **(b)** Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
  - **(1)** withdrawal can be accomplished without material adverse effect on the interests of the client;
  - **(2)** the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - **(3)** the client has used the lawyer's services to perpetrate a crime or fraud;
  - **(4)** the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - **(5)** the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - **(6)** the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - **(7)** other good cause for withdrawal exists.
- **(c)** A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- **(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (b), (c), and (d) amended November 17, 2003 to be effective January 1, 2004.

RPC 1.17. Sale of Law Practice

A lawyer or law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

- **(a)** The seller ceases to engage in the private practice of law in this jurisdiction.
- **(b)** The entire practice is sold to one or more lawyers or law firms.
- **(c)** Written notice is given to each of the seller's clients stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of the client's file and property; and that if no response to the notice is received within sixty days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client.
    - **(1)** If the seller is the estate of a deceased lawyer, the purchaser shall cause the notice to be given to the client and the purchaser shall obtain the written consent of the client provided that such consent shall be presumed if no response to the notice is received within sixty days of the date the notice was sent to the client's last known address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such sixty-day period.
    - **(2)** In all other circumstances, not less than sixty days prior to the transfer the seller shall cause the notice to be given to the client and the seller shall obtain the written consent of the client prior to the transfer, provided that such consent shall be presumed if no response to the notice is received within sixty days of the date of the sending of such notice to the client's last known address as shown on the records of the seller.
    - **(3)** The purchaser shall cause an announcement or notice of the purchase and transfer of the practice to be published in the *New Jersey Law Journal* and the *New Jersey Lawyer* at least thirty days in advance of the effective date of the transfer.
- **(d)** The fees charged to clients shall not be increased by reason of the sale of the practice.
- **(e)** If substitution in a pending matter is required by the tribunal or these Rules, the purchasing lawyer or law firm shall provide for same promptly.
- **(f)** Admission to or withdrawal from a partnership, professional corporation, or limited liability entity, retirement plans and similar arrangements, or sale limited to the tangible assets of a law practice shall not be deemed a sale or purchase for purposes of this Rule.

Note: Adopted October 16, 1992, to be effective immediately; paragraph (f) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended November 17, 2003 to be effective January 1, 2004.

RPC 1.18. Prospective Client

- **(a)** A lawyer who has had discussions in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues, except as RPC 1.9 would permit in respect of information of a former client.

- **(b)** A lawyer subject to paragraph (a) shall not represent a client with interests materially adverse to those of a former prospective client in the same or a substantially related matter if the lawyer received information from the former prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (c).
- **(c)** If a lawyer is disqualified from representation under (b), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except that representation is permissible if (1) both the affected client and the former prospective client have given informed consent, confirmed in writing, or (2) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom and written notice is promptly given to the former prospective client.
- **(d)** A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client," and if no client-lawyer relationship is formed, is a "former prospective client."

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 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 to other considerations, such as moral, economic, social and political facts, that may be relevant to the client's situation.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 2.2. (Reserved)

Note: RPC 2.2 ("Intermediary") adopted July 12, 1984 to be effective September 10, 1984; caption and rule deleted November 17, 2003 effective January 1, 2004.

RPC 2.3. Evaluation for Use by Third Persons

- **(a)** A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- **(b)** When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless:
    - **(1)** the lawyer describes the conditions of the evaluation to the client, in writing, including disclosure of information otherwise protected by RPC 1.6;
    - **(2)** the lawyer consults with the client; and
    - **(3)** the client gives informed consent.
- **(c)** Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by RPC 1.6.
- **(d)** In reporting an evaluation, the lawyer shall indicate any material limitations that were imposed on the scope of the inquiry or on the disclosure of information.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended and redesignated as paragraphs (a) and (b), former paragraph (b) redesignated as paragraph (d), and paragraph (c) amended November 17, 2003 to be effective January 1, 2004.

RPC 2.4. Lawyer Serving as Third-Party Neutral

- **(a)** A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- **(b)** A lawyer serving as a third-party neutral shall inform the parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 3.3. Candor Toward the Tribunal

- **(a)** A lawyer shall not knowingly:
    - **(1)** make a false statement of material fact or law to a tribunal;
    - **(2)** fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
    - **(3)** fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
    - **(4)** offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or

    - **(5)** fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.
- **(b)** The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.
- **(c)** A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- **(d)** In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

- **(a)** unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;
- **(b)** falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- **(c)** knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- **(d)** in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;
- **(e)** in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- **(f)** request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
    - **(1)** the person is a relative or an employee or other agent of a client; and
    - **(2)** the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- **(g)** present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990.

RPC 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- **(a)** seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- **(b)** communicate ex parte with such a person except as permitted by law; or
- **(c)** engage in conduct intended to disrupt a tribunal.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 3.6. Trial Publicity

- **(a)** A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
- **(b)** Notwithstanding paragraph (a), a lawyer may state:
    - **(1)** the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;
    - **(2)** the information contained in a public record;
    - **(3)** that an investigation of the matter is in progress;
    - **(4)** the scheduling or result of any step in litigation;
    - **(5)** a request for assistance in obtaining evidence and information necessary thereto;
    - **(6)** a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
    - **(7)** in a criminal case, in addition to subparagraphs (1) through (6):
        - **(i)** the identity, residence, occupation and family status of the accused;
        - **(ii)** if the accused has not been apprehended, information necessary to aid in apprehension of that person;
        - **(iii)** the fact, time and place of arrest; and
        - **(iv)** the identity of investigating and arresting officers or agencies and the length of the investigation.
- **(c)** Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(1) amended October 1, 1992, to be effective immediately; paragraph (a) amended, paragraph (b) deleted and restated in Official Comment, paragraph (c) amended and redesignated as paragraph (b), and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.

Official Comment by Supreme Court (November 17, 2003)

A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

- **(1)** the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness other than the victim of a crime, or the expected testimony of a party or witness;
- **(2)** in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- **(3)** the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- **(4)** any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- **(5)** information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- **(6)** the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

RPC 3.7. Lawyer as Witness

- **(a)** A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - **(1)** the testimony relates to an uncontested issue;
  - **(2)** the testimony relates to the nature and value of legal services rendered in the case; or
  - **(3)** disqualification of the lawyer would work substantial hardship on the client.
- **(b)** A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- **(a)** refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

- **(b)** make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- **(c)** not seek to obtain from an unrepresented accused a waiver of important post-indictment pretrial rights, such as the right to a preliminary hearing;
- **(d)** make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- **(e)** not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
    - **(1)** either the information sought is not protected from disclosure by any applicable privilege or the evidence sought is essential to an ongoing investigation or prosecution; and
    - **(2)** there is no other feasible alternative to obtain the information;
    - **(f)** except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (c) and (d) amended and new paragraphs (e) and (f) adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of RPC 3.3(a) through (d), RPC 3.4(a) through (g), and RPC 3.5(a) through (c).

Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 4.1. Truthfulness in Statements to Others

- **(a)** In representing a client a lawyer shall not knowingly:
    - **(1)** make a false statement of material fact or law to a third person; or
    - **(2)** fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.
- **(b)** The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter, including members of an organization's litigation control group as defined by RPC 1.13, unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented. Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel. Nothing in this rule shall, however, preclude a lawyer from counseling or representing a member or former member of an organization's litigation control group who seeks independent legal advice.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996; amended November 17, 2003 to be effective January 1, 2004.

Official Comment by Supreme Court (November 17, 2003)

Concerning organizations, RPC 4.2 addresses the issue of who is represented under the rule by precluding a lawyer from communicating with members of the organization's litigation control group. The term "litigation control group" is not intended to limit application of the rule to matters in litigation. As the Report of the Special Committee on RPC 4.2 states, "... the 'matter' has been defined as a 'matter whether or not in litigation.'" The primary determinant of membership in the litigation control group is the person's role in determining the organization's legal position. *See Michaels v. Woodland*, 988 *F.Supp.* 468, 472 (D.N.J. 1997).

In the criminal context, the rule ordinarily applies only after adversarial proceedings have begun by arrest, complaint, or indictment on the charges that are the subject of the communication. *See State v. Bisaccia*, 319 *N.J. Super.* 1, 22-23 (App. Div. 1999).

Concerning communication with governmental officials, the New Jersey Supreme Court Commission on the Rules of Professional Conduct agrees with the American Bar Association's Commission comments, which state:

Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with a governmental official. For example, the constitutional right to petition and the public policy of ensuring a citizen's right of access to government decision makers, may permit a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have authority to take or recommend action in the matter.

RPC 4.3. Dealing with Unrepresented Person; Employee of Organization

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the person is a director, officer,

employee, member, shareholder or other constituent of an organization concerned with the subject of the lawyer's representation but not a person defined by RPC 1.13(a), the lawyer shall also ascertain by reasonable diligence whether the person is actually represented by the organization's attorney pursuant to RPC 1.13(e) or who has a right to such representation on request, and, if the person is not so represented or entitled to representation, the lawyer shall make known to the person that insofar as the lawyer understands, the person is not being represented by the organization's attorney.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 4.4. Respect for Rights of Third Persons

- **(a)** In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- **(b)** A lawyer who receives a document and has reasonable cause to believe that the document was inadvertently sent shall not read the document or, if he or she has begun to do so, shall stop reading the document, promptly notify the sender, and return the document to the sender.

Note: Adopted July 12, 1984 to be effective September 10, 1984; text redesignated as paragraph (a) and new paragraph (b) adopted November 17, 2003 to be effective January 1, 2004.

RPC 5.1. Responsibilities of Partners, Supervisory Lawyers, and Law Firms

- **(a)** Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.
- **(b)** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- **(c)** A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
    - **(1)** the lawyer orders or ratifies the conduct involved; or
    - **(2)** the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 5.2. Responsibilities of a Subordinate Lawyer

- **(a)** A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

- **(b)** A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 5.3. Responsibilities Regarding Nonlawyer Assistants

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

- **(a)** every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
- **(b)** a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- **(c)** a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

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

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 5.4. Professional Independence of a Lawyer

Except as otherwise provided by the Rules of Court:

- **(a)** A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
    - **(1)** an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
    - **(2)** a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;
    - **(3)** lawyers or law firms who purchase a practice from the estate of a deceased lawyer, or from any person acting in a representative capacity for a disabled or disappeared lawyer, may, pursuant to the provisions of RPC 1.17, pay to the estate or other representative of that lawyer the agreed upon price;

- **(4)** a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- **(5)** a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

- **(b)** A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- **(c)** A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- **(d)** A lawyer shall not practice with or in the form of a professional corporation, association, or limited liability entity authorized to practice law for profit, if:
  - **(1)** a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - **(2)** a nonlawyer is a corporate director or officer thereof; or
  - **(3)** a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a)(2) amended and paragraph (a)(3) adopted October 16, 1992, to be effective immediately; paragraph (d) amended July 10, 1998, to be effective September 1, 1998; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

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

- **(a)** A lawyer shall not:
  - **(1)** practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
  - **(2)** assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- **(b)** (b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:
  - **(1)** the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or
  - **(2)** the lawyer is an in-house counsel and complies with R. 1:27-2; or
  - **(3)** under any of the following circumstances:
    - **(i)** the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

- **(ii)** the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required;
- **(iii)** the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;
- **(iv)** the lawyer associates in a matter with a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter; or
- **(v)** the lawyer practices under circumstances other than (i) through (iv) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

- **(c)** A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to paragraph (b) above shall:
  - **(1)** be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;
  - **(2)** be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;
  - **(3)** consent in writing on a form approved by the Supreme Court to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction, except that a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above shall be deemed to have consented to such appointment without completing the form;
  - **(4)** not hold himself or herself out as being admitted to practice in this jurisdiction;
  - **(5)** maintain a bona fide office in conformance with R. 1:21-1(a), except that, when admitted pro hac vice, the lawyer may maintain the bona fide office within the bona fide law office of the associated New Jersey attorney pursuant to R. 1:21-2(a)(1)(B); and
  - **(6)** except for a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above, annually register with the New Jersey Lawyers'

Fund for Client Protection and comply with R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, former text designated as paragraph (a), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(3)(ii) and (b)(3)(iii) amended, former subparagraph (b)(3)(iv) redesignated as subparagraph (b)(3)(v) and amended, new subparagraph (b)(3)(iv) adopted, and paragraph (c) and subparagraphs (c)(3) and (c)(6) amended July 23, 2010 to be effective September 1, 2010.

Official Comment by Supreme Court (November 17, 2003)

Three years from the January 1, 2004 effective date of the amendments to RPC 5.5, the Supreme Court will have its Professional Responsibility Rules Committee undertake a comprehensive evaluation of the experience gained in multijurisdictional practice to determine whether any modifications to the RPC 5.5 amendments as adopted are necessary or desirable.

RPC 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

- **(a)** a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- **(b)** an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.1. Voluntary Public Interest Legal Service

Every lawyer has a professional responsibility to render public interest legal service. 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, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and text amended November 17, 2003 to be effective January 1, 2004.

RPC 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- **(a)** representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- **(b)** representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- **(c)** the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, other than the law firm with which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer if:

- **(a)** the organization complies with RPC 5.4 concerning the professional independence of its legal staff; and
- **(b)** when the interests of a client of the lawyer could be affected, participation is consistent with the lawyer's obligations under RPC 1.7 and the lawyer takes no part in any decision by the organization that could have a material adverse effect on the interest of a client or class of clients of the organization or upon the independence of professional judgment of a lawyer representing such a client.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client, except that when the organization is also a legal services organization, RPC 6.3 shall apply.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs

- **(a)** A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
    - **(1)** is subject to RPC 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
    - **(2)** is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.
- **(b)** Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this RPC.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 7.1. Communications Concerning a Lawyer's Service

- **(a)** A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:
    - **(1)** contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
    - **(2)** is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
    - **(3)** compares the lawyer's services with other lawyers' services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: "No aspect of this advertisement has been approved by the Supreme Court of New Jersey"; or
    - **(4)** relates to legal fees other than:
        - **(i)** a statement of the fee for an initial consultation;
        - **(ii)** a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;
        - **(iii)** a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;
        - **(iv)** a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;
        - **(v)** the availability of credit arrangements; and
        - **(vi)** a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive
- (b) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the Advertising Committee or as provided by Rule 1:19A-3(d).

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (b) added June 26, 1987, to be effective July 1, 1987; paragraph (a) amended June 29, 1990, to be effective September 4, 1990; paragraph (b) amended January 5, 2009 to be effective immediately; paragraph (a)(3) amended and Official Comment adopted November 2, 2009 to be effective immediately.

RPC 7.2. Advertising

- **(a)** Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No

drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

- **(b)** A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used.
- **(c)** A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; (2) a lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a) amended December 10, 1986, to be effective December 10, 1986; paragraph (c) amended October 16, 1992, to be effective immediately; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 7.3. Personal Contact with Prospective Clients

- **(a)** A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).
- **(b)** A lawyer shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:
    - **(1)** the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or
    - **(2)** the person has made known to the lawyer a desire not to receive communications from the lawyer; or
    - **(3)** the communication involves coercion, duress or harassment; or
    - **(4)** the communication involves unsolicited direct contact with a prospective client within thirty days after a specific mass-disaster event, when such contact concerns potential compensation arising from the event; or
    - **(5)** the communication involves unsolicited direct contact with a prospective client concerning a specific event not covered by section (4) of this Rule when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by mail to a prospective client in such circumstances provided the letter:
        - **(i)** bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text and on the outside envelope, unless the lawyer has a family, close personal, or prior professional relationship with the recipient; and
        - **(ii)** contains the following notice at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and

        - **(iii)** contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, New Jersey 08625.
- **(c)** A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner, or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, if:
    - **(1)** the promotional activity involves use of a statement or claim that is false or misleading within the meaning of RPC 7.1; or
    - **(2)** the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overreaching, or vexatious or harassing conduct.
- **(d)** A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.
- **(e)** A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted by RPC 7.1. However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed or paid by or cooperating with one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment in behalf of the lawyer's client:
    - **(1)** a legal aid office or public defender office:
        - **(i)** operated or sponsored by a duly accredited law school.
        - **(ii)** operated or sponsored by a bona fide nonprofit community organization.
        - **(iii)** operated or sponsored by a governmental agency.
        - **(iv)** operated, sponsored, or approved by a bar association.
    - **(2)** a military legal assistance office.
    - **(3)** a lawyer referral service operated, sponsored, or approved by a bar association.
    - **(4)** any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
        - **(i)** such organization, including any affiliate, is so organized and operated that no profit is derived by it from the furnishing, recommending or rendition of legal services by lawyers and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with

matters when such organization bears ultimate liability of its member or beneficiary.

- **(ii)** neither the lawyer, nor the lawyer's partner or associate or any other lawyer or nonlawyer affiliated with the lawyer or the lawyer's firm directly or indirectly who have initiated or promoted such organization shall have received any financial or other benefit from such initiation or promotion.
- **(iii)** such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.
- **(iv)** the member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.
- **(v)** any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, and at the member or beneficiary's own expense except where the organization's plan provides for assuming such expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved. Nothing contained herein, or in the plan of any organization that furnishes or pays for legal services pursuant to this section, shall be construed to abrogate the obligations and responsibilities of a lawyer to the lawyer's client as set forth in these Rules.
- **(vi)** the lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.
- **(vii)** such organization has first filed with the Supreme Court and at least annually thereafter on the appropriate form prescribed by the Court a report with respect to its legal service plan. Upon such filing, a registration number will be issued and should be used by the operators of the plan on all correspondence and publications pertaining to the plan thereafter. Such organization shall furnish any additional information requested by the Supreme Court.

- (f) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks the lawyer's services does so as a result of conduct prohibited under this Rule.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(4) amended June 29, 1990, to be effective September 4, 1990; new paragraph (b)(4) adopted and former paragraph (b)(4) redesignated and amended as paragraph (b)(5) April 28, 1997, to be effective May 5, 1997; paragraph (b)(5) amended November 17, 2003 to be effective January 1, 2004; subparagraph (b)(5)(i) amended July 23, 2010 to be effective September 1, 2010.

RPC 7.4. Communication of Fields of Practice and Certification

- **(a)** A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as provided in paragraphs (b), (c), and (d) of this Rule.

- **(b)** A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- **(c)** A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a substantially similar designation.
- **(d)** A lawyer may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been approved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; former rule amended and designated paragraph (a) and new paragraph (b) adopted July 15, 1993, to be effective September 1, 1993; paragraph (a) amended, paragraph (b) redesignated as paragraph (d), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004.

RPC 7.5. Firm Names and Letterheads

- **(a)** A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1. Except for organizations referred to in R. 1:21-1(e), the name under which a lawyer or law firm practices shall include the full or last names of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or retirement.
- **(b)** A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction. In New Jersey, identification of all lawyers of the firm, in advertisements, on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licensed to practice in New Jersey. Where the name of an attorney not licensed to practice in this State is used in a firm name, any advertisement, letterhead or other communication containing the firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.
- **(c)** A firm name shall not contain the name of any person not actively associated with the firm as an attorney, other than that of a person or persons who have ceased to be associated with the firm through death or retirement.
- **(d)** Lawyers may state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services.
- **(e)** A law firm name may include additional identifying language such as "& Associates" only when such language is accurate and descriptive of the firm. Any firm name including additional identifying language such as "Legal Services" or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization. However, no firm shall use the phrase "legal aid" in its name or in any additional identifying language.

- **(f)** In any case in which an organization practices under a trade name as permitted by paragraph (a) above, the name or names of one or more of its principally responsible attorneys, licensed to practice in this State, shall be displayed on all letterheads, signs, advertisements and cards or other places where the trade name is used.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraphs (a) and (d) amended, paragraph (e) amended and redesignated as paragraph (f) and new paragraph (e) added June 29, 1990, to be effective September 4, 1990; paragraph (a) amended January 5, 2009 to be effective immediately.

RPC 8.1. Bar Admission and Disciplinary Matters

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

- **(a)** knowingly make a false statement of material fact; or
- **(b)** fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 8.2. Judicial and Legal Officials

- **(a)** A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.
- **(b)** A lawyer who has been confirmed for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 8.3. Reporting Professional Misconduct

- **(a)** A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- **(b)** A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- **(c)** This Rule does not require disclosure of information otherwise protected by RPC 1.6.
- **(d)** Paragraph (a) of this Rule shall not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program established by the Supreme Court and administered by the New Jersey State Bar Association, except as follows:

- **(i)** if the effect of discovered ethics infractions on the practice of an impaired attorney is irremediable or poses a substantial and imminent threat to the interests of clients, then attorney volunteers, peer counselors, or program staff have a duty to disclose the infractions to the disciplinary authorities, and attorney volunteers have the obligation to apply immediately for the appointment of a conservator, who also has the obligation to report ethics infractions to disciplinary authorities; and
- **(ii)** attorney volunteers or peer counselors assisting the impaired attorney in conjunction with his or her practice have the same responsibility as any other lawyer to deal candidly with clients, but that responsibility does not include the duty to disclose voluntarily, without inquiry by the client, information of past violations or present violations that did not or do not pose a serious danger to clients.

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (d) adopted October 5, 1993, to be effective immediately; paragraphs (a) and (b) amended November 17, 2003 to be effective January 1, 2004.

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- **(b)** commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- **(c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- **(d)** engage in conduct that is prejudicial to the administration of justice;
- **(e)** state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- **(f)** knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;
- **(g)** engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990; paragraph (g) amended May 3, 1994, to be effective September 1, 1994; paragraph (e) amended November 17, 2003 to be effective January 1, 2004.

Official Comment by Supreme Court (May 3, 1994)

This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the court house, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice outside of the court house, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private activities are not intended to

be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Case law has already suggested both the area covered by this amendment and the possible direction of future cases. *In re Vincenti*, 114 *N.J.* 275 (554 *A.2d* 470) (1989). The Court believes the administration of justice would be better served, however, by the adoption of this general rule than by a case by case development of the scope of the professional obligation.

While the origin of this rule was a recommendation of the Supreme Court's Task Force on Women in the Courts, the Court concluded that the protection, limited to women and minorities in that recommendation, should be expanded. The groups covered in the initial proposed amendment to the rule are the same as those named in Canon 3A(4) of the Code of Judicial Conduct.

Following the initial publication of this proposed subsection (g) and receipt of various comments and suggestions, the Court revised the proposed amendment by making explicit its intent to limit the rule to conduct by attorneys in a professional capacity, to exclude employment discrimination unless adjudicated, to restrict the scope to conduct intended or likely to cause harm, and to include discrimination because of sexual orientation or socioeconomic status, these categories having been proposed by the ABA's Standing Committee on Ethics and Professional Responsibility as additions to the groups now covered in Canon 3A(4) of the New Jersey Code of Judicial Conduct. That Committee has also proposed that judges require attorneys, in proceedings before a judge, refrain from manifesting by words or conduct any bias or prejudice based on any of these categories. See proposed Canon 3A(6). This revision to the RPC further reflects the Court's intent to cover all discrimination where the attorney intends to cause harm such as inflicting emotional distress or obtaining a tactical advantage and not to cover instances when no harm is intended unless its occurrence is likely regardless of intent, e.g., where discriminatory comments or behavior is repetitive. While obviously the language of the rule cannot explicitly cover every instance of possible discriminatory conduct, the Court believes that, along with existing case law, it sufficiently narrows the breadth of the rule to avoid any suggestion that it is overly broad. See, e.g., *In re Vincenti*, 114 *N.J.* 275 (554 *A.2d* 470) (1989).

RPC 8.5. Disciplinary Authority; Choice of Law

- **(a) Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct

occurs. A lawyer not admitted in this jurisdiction is subject also to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

- **(b) Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be:
    - **(1)** for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
    - **(2)** for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, text amended and redesignated as paragraph (a) with caption added, new paragraph (b) with caption adopted November 17, 2003 to be effective January 1, 2004.

Attorney Advertising Guidelines (As approved by the Supreme Court of New Jersey)

Attorney Advertising Guideline 1

In any advertisement by an attorney or law firm, the advertisement shall include the bona fide street address of the attorney or law firm.

Note: Adopted June 29, 1990, to be effective September 4, 1990.

Attorney Advertising Guideline 2

- **(a)** The word "ADVERTISEMENT" required by RPC 7.3(b)(5)(i) must be at least two font sizes larger than the largest size used in the advertising text.
- **(b)** The font size of notices required by RPC 7.3(b)(5)(ii and iii) must be no smaller than the font size generally used in the advertisement.
- **(c)** When envelopes or self-contained mailers used for sending direct mail solicitations are imprinted or stamped with any message relating to the subject matter of the solicitation, the envelopes or self-contained mailers must also bear the word ADVERTISEMENT" as required by RPC 7.3 (b)(5)(i).

Note: Adopted March 2, 2005, to be effective immediately.

Commentary: The language in (c) is derived, in part, from CAA Opinion 20, published June 10, 1996. Section (c) excludes the Opinion 20 requirement that the notices under RPC 7.3(b)(5)(ii and iii) be printed on the envelope.

ATTACHMENT 2

APPENDIX R. Guidelines for Litigation Conduct

Introduction

The widely-perceived, accelerating decline in professionalism - often denominated "civility" - has been the subject of increasing concern to the profession for many, years. Twice since 1988, the American Bar Association has urged adoption of, and adherence to, civility codes. What has been lacking, however, is an ABA-endorsed model code. The GUIDELINES FOR LITIGATION CONDUCT fill that void.

These GUIDELINES are consensus-driven and state nothing novel or revolutionary. They are purely aspirational and are not to be used as a basis for litigation, liability, discipline, sanctions or penalties of any type. The GUIDELINES are designed not to promote punishment but rather to elevate the tenor of practice - to set a voluntary, higher standard, "in the hope that," in the words of former ABA President John J. Curtin, 46some progress might be made towards greater professional satisfaction."

The GUIDELINES FOR LITIGATION CONDUCT are modeled on the Standards for Professional Conduct adopted by the United States Court of Appeals for the Seventh Circuit, a set of proven aspirational standards. Chief United States District Judge Marvin E. Aspen of Chicago, architect of the Seventh Circuit Standards, has accurately observed that civility in the legal profession is inextricably linked to the manner in which lawyers are perceived by the public - and, therefore, to the deteriorating public confidence that our system of justice enjoys.

Deteriorating civility, in former ABA President Lee Cooper's words, "interrupts the administration of justice. It makes the practice of law less rewarding. It robs a lawyer of the sense of dignity and self-worth that should come from a learned profession. Not least of all, it ... brings with it all the problems ... that accompany low public regard for lawyers and lack of confidence in the justice system."

The problem of incivility is more pervasive, and insidious, than its impact on the legal profession alone. As Justice Anthony M. Kennedy has stressed:

Civility is the mark of an accomplished and superb professional, but it is more even than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.

The decline in civility is not limited to the legal profession, but this profession has been in the forefront of those addressing this problem. These GUIDELINES are offered in this spirit.

Gregory P. Joseph
Chair, 1997-1998
Section of Litigation
American Bar Association

Guidelines for Litigation Conduct

August 1998

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following Guidelines are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which, are hallmarks of a learned profession dedicated to public service.

We encourage judges, lawyers and clients to make a mutual and firm commitment to these Guidelines.

We support the principles espoused in the following Guidelines, but under no circumstances should these Guidelines be used as a basis for litigation or for sanctions or penalties.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to zealously advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications. We will refrain from acting upon or manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status toward any participant in the legal process.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel.

5. We will not lightly seek court sanctions.

6. We will in good faith adhere to all express promises and to agreements with other counsel, whether oral or in writing, and to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide other counsel the opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to other counsel's attention. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement to obtain unfair advantage.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. Whenever circumstances allow, we will make good faith efforts to resolve by agreement objections before presenting them to the court.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain unfair advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel.

16. We will promptly notify other counsel and, if appropriate, the court or other persons, when hearings, depositions, meetings, or conferences are to be canceled or postponed.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity, unless the rules provide otherwise.

19. We will take depositions only when actually needed. We will not take depositions for the purposes of harassment or other improper purpose.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless permitted under applicable law.

22. During depositions we will ask only those questions we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party, or for any other improper purpose.

24. We will respond to document requests reasonably and not strain to interpret requests in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents, or to accomplish any other improper purpose.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party, or for any other improper purpose.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information, or for any other improper purpose.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information, or for any other improper purpose.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken.

30. Unless permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

31. Nothing contained in these Guidelines is intended or shall be construed to inhibit vigorous advocacy, including vigorous cross-examination.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mis-characterize, misquote, or mis-cite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly* to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

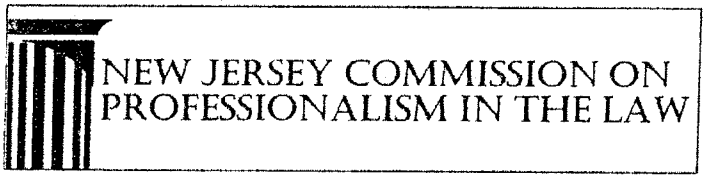
1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

ATTACHMENT 3

Principles of Professionalism for Lawyers and Judges



Preamble

Adherence to standards of professional responsibility, along with a broad respect for the law, is a hallmark of an enlightened and effective system of justice. The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Both are indispensable ingredients in the practice of law, and in the orderly administration of justice by our courts.

The following Principles, which focus on the goals of professionalism and civility, are aspirational in nature and are designed to assist and encourage judges and lawyers to meet their professional obligations. We encourage all judges and lawyers to make a commitment to these Principles, and to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession.

Principles

Lawyers' Relations With Clients

1. To a client, a lawyer owes diligence, competence, faithfulness and good judgment, in the pursuit of client objectives.

2. Clients must be treated with respect. A lawyer should provide objective advice and strive to represent the client's interests as expeditiously and efficiently as possible. Lines of communication must be kept open and explanations provided for actions taken in the course of representation. Billing practices should be fully explained to a client at the time representation is undertaken.

3. Clients should be advised against pursuing a course of action that is without merit, and should avoid tactics that are intended to harass, or drain the financial resources of the opposing party.

4. Clients should be advised that professional courtesy, fair tactics, civility, and adherence to the rules and law are compatible with vigorous advocacy and zealous representation.

Lawyers' Relations With Other Counsel

1. To opposing counsel, a lawyer owes a duty of respect, courtesy and fair dealing, candor in the pursuit of the truth, cooperation in all respects not inconsistent with the client's interests, and scrupulous observance of all agreements and mutual understandings.

2. A lawyer should respect a colleague's schedule. Agreement should be sought on dates for meetings, conferences, depositions, hearings, trials and other events. A reasonable request for a scheduling accommodation, extension of time, or waiver of procedural formalities should not be refused if the interests of a client will not be adversely affected.

3. Forms of pleading, discovery, motions, or other papers, should not be used as a means of harassment, or for gaining an unfair advantage. The filing or service of motions, pleadings or other papers should not be timed so as to unfairly limit another party's opportunity to respond, or harass counsel.

4. In the conduct of negotiations, or litigation, a lawyer should conduct himself or herself with dignity and fairness and refrain from conduct meant to harass the opposing party. A lawyer should not advance groundless claims, defenses and objections.

Lawyers' Relations With the Court

1. To the court, a lawyer owes honesty, respect, diligence, candor and punctuality. A lawyer has a duty to act in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice.

2. A lawyer must avoid frivolous litigation and non-essential pleading in litigation. Settlement possibilities should be explored at the earliest reasonable date, and agreement should be sought on procedural and discovery matters. Delays not dictated by a competent and justified presentation of a client's claims or defenses should be avoided.

3. As an officer of the court, a lawyer should act with complete honesty; show respect for the court by proper demeanor; and act and speak civilly to the judge, court staff and adversaries, with an awareness that all involved are integral parts of the justice system.

4. A lawyer should strive to protect the dignity and independence of the judiciary, particularly from unjust criticism and attack.

Judges' Relations With Lawyers and Others

1. To lawyers, parties, and all participants in the legal process, a judge owes courtesy, patience, respect, diligence, punctuality and fairness.

2. A judge must maintain control of proceedings, and has an obligation to ensure that proceedings are conducted in a civil manner. Judges should establish a climate of professionalism that upholds the dignity of the bench and bar. A judge should show respect for the bar by treating lawyers with civility and personal courtesy.

3. A judge should ensure that disputes are resolved in a prompt and efficient manner. However, hearings, meetings, conferences and trials should be scheduled with appropriate consideration to the schedules of lawyers, parties and witnesses.

4. A judge should remain knowledgeable of the law, rules and procedure, and apply them in a fair and consistent manner that enables all parties an adequate opportunity to present their cases.

Adopted 1997

THE LAWYER'S PLEDGE

In accepting the honor and responsibility of life in the profession of law, I will strive, as best I can:

- To work always with care, and with a whole heart and with good faith;
- To weigh conflicting loyalties and guide my work with an eye to what is good, acting less for myself than for justice and the people;
- To be at all times, even at personal sacrifice, a champion of due process, in court or not, for all persons, whether they be powerful or envied, or are my neighbors, or be among the helpless, hated, or oppressed; and,
- To serve, protect, foster and promote the fair and impartial administration of justice.

The Lawyers Pledge is intended to complement the very brief statutory oath administered to New Jersey lawyers upon entry to the bar. It was adapted by the Commission from a Pledge devised by Professor Karl Llewellyn of the University of Chicago. The Pledge focuses on the core responsibilities and values that have long marked the legal profession - fairness, commitment, loyalty, and integrity. It serves as a reminder to newly admitted lawyers that admission to practice is an honor and privilege that carries with it significant responsibilities not only to clients, but to the public and the justice system.

As the lawyer and writer Scott Turow has noted, a lawyer's job is not always an easy one:

"The lawyer's job in practice is to be on one hand the impassioned representative of his client to the world, and on the other the wise representative to his client of the legal system and the society, explaining and upholding the demands and restrictions the system places on them both."

Lawyers must be able to recognize and deal appropriately with such conflicting demands. The advice contained in the Pledge provides a compass that will help young lawyers maintain an appropriate course during their professional careers. The Pledge has been used by judges at the swearing-in of new lawyers, and each year is administered to the first year class at Rutgers University School of Law-Newark.

ATTACHMENT 4

Civ. RULE 5.3 PROTECTIVE ORDERS AND PUBLIC ACCESS UNDER CM/ECF

(a) Scope of Rule

(1) This rule shall govern any request by a party to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. This rule shall also govern any request by a party or parties to seal, or otherwise restrict public access to, any judicial proceedings.

(2) As used in this rule, "materials" include pleadings as well as documents of any nature and in any medium. "Judicial proceedings" include hearings and trials but do not include conferences in chambers.

(3) This rule shall not apply to any materials or judicial proceedings which must be sealed pursuant to statute or other law.

(4) Subject to this rule and to statute or other law, all materials and judicial proceedings are matters of public record and shall not be sealed.

(b) Discovery Materials

(1) Notwithstanding this rule, parties may enter into written agreements to keep materials produced in discovery confidential and to return or destroy such materials as agreed by parties and as allowed by law.

(2) Parties may submit to a Judge or Magistrate Judge an agreed-on form of order which embodies a written agreement as described above. Any such form of order must be accompanied by an affidavit or attorney certification filed electronically under the designation "affidavit/certification in support of discovery confidentiality order." The affidavit or attorney certification shall describe (a) the nature of the materials to be kept confidential, (b) the legitimate private or public interests which warrant confidentiality and (c) the clearly defined and serious injury that would result should the order not be entered. The affidavit or attorney certification shall be available for public review.

(3) No form of order submitted by parties shall supersede the provisions of this rule with regard to the filing of materials or judicial proceedings. The form of order may, however, provide for the return or destruction of discovery materials as agreed by parties. The form of order shall be subject to modification by a judge or magistrate judge at any time.

(4) Any order under this section shall be filed electronically under the designation "discovery confidentiality order."

(5) Any dispute regarding the entry of, or the confidentiality of discovery materials under, any order under this section shall be brought before a Magistrate Judge pursuant to L. Civ. R.37.1(a)(1).

(c) Motion to Seal or Otherwise Restrict Public Access

(1) Any request by a party or parties to seal, or otherwise restrict public access to, any materials or judicial proceedings shall be made by formal motion pursuant to L. Civ. R. 7.1. Any such motion shall be filed electronically under the designation "motion to seal materials" or "motion to seal judicial proceedings," and shall be returnable on the next available return date.

(2) Any motion to seal or otherwise restrict public access shall be available for review by the public. The motion papers shall describe (a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that

would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available. Proposed Findings of Fact and Conclusions of Law shall be submitted with the motion papers in the proposed order required by (c)(5) below. If the information required in this section is not within the knowledge of the movant, supplemental motion papers in support of the motion may be filed by a party, individual or entity having such knowledge not later than fourteen (14) days after the filing of the motion.

(3) Any materials deemed confidential by a party or parties and submitted with regard to a motion to seal or otherwise restrict public access shall be filed electronically under the designation "confidential materials" and shall remain sealed until such time as the motion is decided, subject to Local Civil Rule 72.1(c)(1)(c). When a document filed under seal contains both confidential and non-confidential information, an unredacted version shall be filed under seal, and a version with only the confidential portions redacted shall be filed publicly.

(4) Any interested person may move to intervene pursuant to Fed. R. Civ. P. 24 (b) before the return date of any motion to seal or otherwise restrict public access.

(5) Any order or opinion on any motion to seal or otherwise restrict public access shall include findings on the factors set forth in (c)(2) above as well as other findings required by law and shall be filed electronically under the designation "order or opinion to seal." Such orders and opinions may be redacted. Unredacted orders and opinions may be filed under seal, either electronically or in other medium.

(6) Notwithstanding the above, on emergent application of a party or parties or sua sponte, a Judge or Magistrate Judge may seal or otherwise restrict public access to materials or judicial proceedings on a temporary basis. The Judge or Magistrate Judge shall do so by order which sets forth the basis for the temporary relief and which shall be filed electronically under the designation "temporary order to seal." Any interested person may move pursuant to L. Civ. R. 7.1 and Fed. R. Civ. P. 24 (b) to intervene, which motion shall be made returnable on the next available return date.

(d) Settlement Agreements

(1) No party or parties shall submit a proposed settlement agreement for approval by a Judge or Magistrate Judge unless required to do so by statute or other law or for the purpose of retaining jurisdiction.

(2) Any settlement agreement filed with the Court or incorporated into an order shall, absent an appropriate showing under federal law, be deemed a public record and available for public review.

(e) Dockets

No docket shall be sealed. However, entries on a docket may be sealed pursuant to the provisions of this rule.

(f) Web Site

The Clerk shall maintain for public review on the official Court PACER Site a consolidated report which reflects all motions, orders, and opinions described in this rule.

(g) Effective Date

This Rule shall be effective as of the date of adoption and shall apply to all motions to seal or otherwise restrict public access made after that date.

Civ. RULE 16.1 PRETRIAL CONFERENCES; SCHEDULING; CASE MANAGEMENT

(a) Scheduling Conferences -- Generally

(1) Conferences pursuant to Fed. R. Civ. P. 16 shall be conducted, in the first instance, by the Magistrate Judge, unless the Judge otherwise directs. The initial conference shall be scheduled within 60 days of filing of an initial answer, unless deferred by the Magistrate Judge due to the pendency of a dispositive or other motion.

(2) The Magistrate Judge may conduct such other conferences as are consistent with the circumstances of the particular case and this Rule and may revise any prior scheduling order for good cause.

(3) At each conference each party not appearing *pro se* shall be represented by an attorney who shall have full authority to bind that party in all pretrial matters.

(4) The Magistrate Judge may, at any time he or she deems appropriate or at the request of a party, conduct a settlement conference. At each such conference attorneys shall ensure that parties are available, either in person or by telephone, and as the Magistrate Judge directs, except that a governmental party may be represented by a knowledgeable delegate.

(5) Conferences shall not be conducted in those civil cases described in L.Civ.R. 72.1(a)(3)(C) unless the Magistrate Judge so directs.

(b) Scheduling and Case Management Orders

(1) At or after the initial conference, the Magistrate Judge shall, after consultation with counsel, enter a scheduling order which may include, but need not be limited to, the following: (A) dates by which parties must move to amend pleadings or add new parties; (B) dates for submission of experts' reports; (C) dates for completion of fact and expert discovery; (D) dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports); (E) a pretrial conference date; and (F) any designation of the case for arbitration, mediation, appointment of a special master or other special procedure.

The scheduling order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

(2) (deleted by order of 9/23/97)

(3) The Magistrate Judge shall advise each party of the provisions of L.Civ.R. 73.1(a).

(4) In a civil action arising under 18 U.S.C. §§1961-1968, the Judge or Magistrate Judge may require a RICO case statement to be filed and served in the form set forth in Appendix O.

(c) Initial Conferences -- L.Civ.R. 201.1 Arbitration Cases

At the initial conference in cases assigned to arbitration pursuant to L.Civ.R. 201.1(c) the Magistrate Judge shall enter a scheduling order as contemplated by L.Civ.R. 16.1(b) except that no pretrial date shall be set. Only an initial conference shall be conducted prior to a demand for trial *de novo* pursuant to L.Civ.R. 201.1(g), except that the Magistrate Judge may conduct one or more additional conferences if a new party or claim

is added, or an unanticipated event occurs affecting the schedule set at the initial conference.

(d) (deleted by order of 9/23/97)

(e) Trial Briefs

Trial briefs shall be served upon counsel and delivered to the Court as directed in the pretrial order or otherwise.

(f) Conference to Resolve Case Management Disputes

(1) Counsel shall confer to resolve any case management dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate Judge. This presentation shall precede any formal motion.

(2) Cases in which a party appears *pro se* shall not be subject to L.Civ.R. 16.1(f)(1) unless the Magistrate Judge so directs. In such cases case management disputes shall be presented by formal motion consistent with L.Civ.R. 16.1(g).

(g) Case Management -- Motions

(1) Case management motions must be accompanied by an affidavit certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement.

(2) L.Civ.R. 7.1 shall apply to case management motions, except that no reply papers shall be allowed except with the permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R.16.1(g)(3), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting the opposition has expired.

(3) No oral argument shall be heard except as permitted expressly by the Magistrate Judge assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open court or by telephone conference, at the discretion of the Magistrate Judge. Any party who believes that a case management motion requires oral argument shall request it in the notice of motion or in response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

Civ. RULE 26.1 DISCOVERY

(a) Discovery - Generally

All parties shall conduct discovery expeditiously and diligently.

(b) Meeting of Parties, Discovery Plans, and Initial Disclosures

(1) The requirements currently codified in Fed. R. Civ. P. 26(a) and (f) pertaining to required disclosures, meetings of parties, and submission of discovery plans, shall apply to all civil cases filed after December 1, 1993 and to all civil cases pending on December 1, 1993 that have not had their initial scheduling conference prior to January 20, 1994; except that these requirements shall not apply to those civil cases described in L.Civ.R. 72.1(a)(3)(C) in which scheduling conferences are not normally held, unless the judicial officer otherwise directs. The judicial officer may modify or suspend these requirements in a case for good cause.

(2) The initial meeting of parties as required in Fed. R. Civ. P. 26(f) shall be convened at least 21 days before the initial scheduling conference, and the proposed discovery plan under Fed. R. Civ. P. 26(f)(3) shall be generated at that meeting and delivered to the Magistrate Judge within 14 days after the meeting of parties. The parties shall submit their Fed. R. Civ. P. 26(f) discovery plan containing the parties' views and proposals regarding the following: (a) Any changes in timing, form, or requirements of mandatory disclosures under Fed. R. Civ. P. 26(a); (b) The date on which mandatory disclosures were or will be made; (c) The anticipated substantive scope of discovery, including both discovery relevant to the claims and defenses and discovery relevant to the subject matter of the dispute; (d) Whether any party will likely request or produce computer-based or other digital information, and if so, the parties' discussions of the issues listed under the Duty to Meet and Confer in L. Civ. R. 26.1(d)(3) below; (e) The date by which discovery should be completed; (f) Any needed changes in limitations imposed by the Federal Rules of Civil Procedure, local rule, or standing order; (g) Any orders, such as data preservation orders, protective orders, etc., which should be entered; (h) Proposed deadline for joining other parties and amending the pleadings; (i) Proposed dates for filing motions and for trial; (j) Whether the case is one which might be resolved in whole or in part by voluntary arbitration (pursuant to L. Civ. R. 201.1 or otherwise), mediation (pursuant to L. Civ. R. 301.1 or otherwise), appointment of a special master or other special procedure. The parties shall make their initial disclosures under Fed. R. Civ. P. 26(a)(1) within 14 days after the initial meeting of the parties, unless otherwise stipulated or directed by the Court. Such discovery plans and disclosures shall not be filed with the Clerk.

(c) Discovery Materials

(1) Initial and expert disclosure materials under Fed.R.Civ.P.26(a)(1) and 26(a)(2), transcripts of depositions, interrogatories and answers thereto, requests for production of documents or to permit entry onto land and responses thereto, and requests for admissions and answers thereto shall not be filed until used in a proceeding or upon order of the Court. However, all such papers must be served on other counsel or parties entitled thereto under Fed.R.Civ.P.5 and 26(a)(4).

(2) Pretrial disclosure materials under Fed.R.Civ.P.26(a)(3) shall be incorporated by reference into the order entered after any final pretrial conference under Fed.R.Civ.P.16(d).

(3) In those instances when such discovery materials are properly filed, the Clerk shall place them in the open case file unless otherwise ordered.

(4) The party obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or ordered. It shall be the duty of the party taking a deposition to make certain that the officer before whom it was taken has delivered it to that party for preservation and to the Court as required by Fed. R. Civ. P. 30(f)(1) if needed or so ordered.

(d) Discovery of Digital Information Including Computer-Based Information

(1) Duty to Investigate and Disclose. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall review with the client the client's information management systems including computer-based and other digital systems, in order to understand how

information is stored and how it can be retrieved. To determine what must be disclosed pursuant to Fed. R. Civ. P. 26(a) (1), counsel shall further review with the client the client's information files, including currently maintained computer files as well as historical, archival, back-up, and legacy computer files, whether in current or historic media or formats, such as digital evidence which may be used to support claims or defenses. Counsel shall also identify a person or persons with knowledge about the client's information management systems, including computer-based and other digital systems, with the ability to facilitate, through counsel, reasonably anticipated discovery.

(2) Duty to Notify. A party seeking discovery of computer-based or other digital information shall notify the opposing party as soon as possible, but no later than the Fed. R. Civ. P. 26(f) conference, and identify as clearly as possible the categories of information which may be sought. A party may supplement its request for computer-based and other digital information as soon as possible upon receipt of new information relating to digital evidence.

(3) Duty to Meet and Confer. During the Fed. R. Civ. P. 26(f) conference, the parties shall confer and attempt to agree on computer-based and other digital discovery matters, including the following: (a) Preservation and production of digital information; procedures to deal with inadvertent production of privileged information; whether restoration of deleted digital information may be necessary; whether back up or historic legacy data is within the scope of discovery; and the media, format, and procedures for producing digital information; (b) Who will bear the costs of preservation, production, and restoration (if necessary) of any digital discovery.

Civ. RULE 37.1 DISCOVERY MOTIONS

(a) Conference to Resolve Disputes

(1) Counsel shall confer to resolve any discovery dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate Judge. This presentation shall precede any formal motion.

(2) Cases in which a party appears *pro se* shall not be subject to L.Civ.R. 37.1(a)(1) unless the Magistrate Judge so directs. In such cases discovery disputes shall be presented by formal motion consistent with L.Civ.R. 37.1(b).

(3) L.Civ.R.7.1 shall apply to discovery motions, except that no reply papers shall be allowed except with the permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R.37.1(b)(4), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting opposition has expired.

(b) Discovery Motions

(1) Discovery motions must be accompanied by an affidavit certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement.

(2) Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

(3) L.Civ.R. 7.1 shall apply to discovery motions, except that the following schedule shall be followed. No such motion shall be heard unless the appropriate papers are received at the Clerk's office, at the place of allocation of the case, at least 24 days prior to the date noticed for argument. No opposition shall be considered unless appropriate answering papers are received at the Clerk's office, at the place of allocation of the case, and a copy thereof delivered to the Magistrate Judge to whom the motion is assigned, at least 14 days prior to the date originally noticed for argument, unless the Magistrate Judge otherwise directs. No reply papers shall be allowed except with the permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R. 37.1(b)(4), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting opposition has expired.

(4) No oral argument shall be heard except as permitted expressly by the Magistrate Judge assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open court or by telephone conference, at the discretion of the Magistrate Judge. Any party who believes that a discovery motion requires oral argument shall request it in the notice of motion or in response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

Civ. RULE 56.1 SUMMARY JUDGMENT MOTIONS

(a) Statement of Material Facts Not in Dispute

On motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion. A motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed. The opponent of summary judgment shall furnish, with its opposition papers, a responsive statement of material facts, addressing each paragraph of the movant's statement, indicating agreement or disagreement and, if not agreed, stating each material fact in dispute and citing to the affidavits and other documents submitted in connection with the motion; any material fact not disputed shall be deemed undisputed for purposes of the summary judgment motion. In addition, the opponent may also furnish a supplemental statement of disputed material facts, in separately numbered paragraphs citing to the affidavits and other documents submitted in connection with the motion, if necessary to substantiate the factual basis for opposition. The movant shall respond to any such supplemental statement of disputed material facts as above, with its reply papers. Each statement of material facts shall be a separate document (not part of a brief) and shall not contain legal argument or conclusions of law.

(b) Social Security Matters

In review of Social Security matters, briefs and administrative record submissions shall be governed by L. Civ. R. 9.1.

ATTACHMENT 5

Professionalism: The bridge between ethics and advocacy.

By Arthur J. Abramowitz

1. Perspective:

   A. Bankruptcy Client: A debtor's desperation:

   B. Maximus, where are you?

2. Life as a bankruptcy lawyer:

   A. Gladiator vs. Advocate:

      1. Perspective: the lawyer as gladiator

      2. Ethics undergirds everything.

      3. Proceedings are based in large part upon good faith dealings and settlements:

3. Initial retention:

   A. Why me?

      1. Reason client retained you

      2. Source of the Referral

      3. Who is your client and what interests do you represent?

         a) Company

         b) Guarantors

         c) Closely held corporations: Fiduciary responsibilities to third parties

      4. Expectations of the client

         a) What is your client's goal in the case?

            (1) Reorganization?

            (2) Liquidation or sale of business?

            (3) Release from guarantys?

            (4) Are the expectation reasonable

b) Your honest evaluation of the case

B. Court expectations of good faith dealing and settlement

C. Every issue is not a life or death issue.

D. In bankruptcy cases:

1. Life is not for everyone

2. Debtor's euphoria:

a) Candor: you can ignore the facts but they are still the facts.

b) Would your client invest in this case?

E. Setting yourself up for failure

1. Overselling the case

2. Explaining the reality of the case to a client including pitfalls

3. Retention Letter

a) Scope of representation

b) Terms

c) No guarantee of success

F. No case is better than a bad case

G. Within context of Chapter 11 filings:

1. What can and cannot be done

2. Explanation of Risks and style of practice

H. Avoid comments about judges and and/or adversaries

4. Who's the boss ?

A. The care and feeding of clients:

B. Reaching an understanding of what your client should expect in a case

C. Communication with client and adversary

D. Pressures exerted by clients

E. Conduct in settlement discussions:

1. Settlement is not weakness

2. Parameters of settlement

3. Involvement of Court in settlement proceedings

a) Candor with the Court

b) Concerns about settlement discussions with ultimate trier of fact

5. Dealing with your adversary and the Court:

A. Civility is not weakness

B. Demeanor

1. Discovery

2. Conferences

3. Court

C. Dealing with Armageddon cases

D. Scheduling issues

E. Duty to confer in good faith

F. Focus

1. Materiality

2. Discovery

3. Mediation and arbitration

4. Courtroom

ATTACHMENT 6a

THE SEDONA CONFERENCE® WORKING GROUP SERIES

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THE SEDONA CONFERENCE® COOPERATION PROCLAMATION

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The Sedona Conference® Cooperation Proclamation

The Sedona Conference® launches a coordinated effort to promote cooperation by all parties to the discovery process to achieve the goal of a "just, speedy, and inexpensive determination of every action."

The costs associated with adversarial conduct in pre-trial discovery have become a serious burden to the American judicial system. This burden rises significantly in discovery of electronically stored information ("ESI"). In addition to rising monetary costs, courts have seen escalating motion practice, overreaching, obstruction, and extensive, but unproductive discovery disputes – in some cases precluding adjudication on the merits altogether – when parties treat the discovery process in an adversarial manner. Neither law nor logic compels these outcomes.

With this Proclamation, The Sedona Conference® launches a national drive to promote open and forthright information sharing, dialogue (internal and external), training, and the development of practical tools to facilitate cooperative, collaborative, transparent discovery. This Proclamation challenges the bar to achieve these goals and refocus litigation toward the substantive resolution of legal disputes.

Cooperation in Discovery is Consistent with Zealous Advocacy

Lawyers have twin duties of loyalty: While they are retained to be zealous advocates for their clients, they bear a professional obligation to conduct discovery in a diligent and candid manner. Their combined duty is to strive in the best interests of their clients to achieve the best results at a reasonable cost, with integrity and candor as officers of the court. Cooperation does not conflict with the advancement of their clients' interests - it enhances it. Only when lawyers confuse *advocacy* with *adversarial conduct* are these twin duties in conflict.

Lawyers preparing cases for trial need to focus on the full cost of their efforts – temporal, monetary, and human. Indeed, all stakeholders in the system – judges, lawyers, clients, and the general public – have an interest in establishing a culture of cooperation in the discovery process. Over-contentious discovery is a cost that has outstripped any advantage in the face of ESI and the data deluge. It is not in anyone's interest to waste resources on unnecessary disputes, and the legal system is strained by "gamesmanship" or "hiding the ball," to no practical effect.

The effort to change the culture of discovery from adversarial conduct to cooperation is not utopian.[1] It is, instead, an exercise in economy and logic. Establishing a culture of cooperation will channel valuable advocacy skills toward interpreting the facts and arguing the appropriate application of law.

[1] Gartner RAS Core Research Note G00148170, *Cost of eDiscovery Threatens to Skew Justice System,* 1D# G00148170, (April 20, 2007), at http://www.h5technologies.com/pdf/gartner0607.pdf. (While noting that "several . . . disagreed with the suggestion [to collaborate in the discovery process] . . . calling it 'utopian'", one of the "take-away's" from the program identified in the Gartner Report was to "[s]trive for a collaborative environment when it comes to eDiscovery, seeking to cooperate with adversaries as effectively as possible to share the value and reduce costs.").

Cooperative Discovery is Required by the Rules of Civil Procedure

When the first uniform civil procedure rules allowing discovery were adopted in the late 1930s, "discovery" was understood as an essentially cooperative, rule-based, party-driven process, designed to exchange relevant information. The goal was to avoid gamesmanship and surprise at trial. Over time, discovery has evolved into a complicated, lengthy procedure requiring tremendous expenditures of client funds, along with legal and judicial resources. These costs often overshadow efforts to resolve the matter itself. The 2006 amendments to the Federal Rules specifically focused on discovery of "electronically stored information" and emphasized early communication and cooperation in an effort to streamline information exchange, and avoid costly unproductive disputes.

Discovery rules frequently compel parties to meet and confer regarding data preservation, form of production, and assertions of privilege. Beyond this, parties wishing to litigate discovery disputes must certify their efforts to resolve their difficulties in good faith.

Courts see these rules as a mandate for counsel to act cooperatively.[2] Methods to accomplish this cooperation may include:

1. Utilizing internal ESI discovery "point persons" to assist counsel in preparing requests and responses;
2. Exchanging information on relevant data sources, including those not being searched, or scheduling early disclosures on the topic of Electronically Stored Information;
3. Jointly developing automated search and retrieval methodologies to cull relevant information;
4. Promoting early identification of form or forms of production;
5. Developing case-long discovery budgets based on proportionality principles; and
6. Considering court-appointed experts, volunteer mediators, or formal ADR programs to resolve discovery disputes.

The Road to Cooperation

It is unrealistic to expect a *sua sponte* outbreak of pre-trial discovery cooperation. Lawyers frequently treat discovery conferences as perfunctory obligations. They may fail to recognize or act on opportunities to make discovery easier, less costly, and more productive. New lawyers may not yet have developed cooperative advocacy skills, and senior lawyers may cling to a long-held "hide the ball" mentality. Lawyers who recognize the value of resources such as ADR and special masters may nevertheless overlook their application to discovery. And, there remain obstreperous counsel with no interest in cooperation, leaving even the best-intentioned to wonder if "playing fair" is worth it.

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[2] See, *e.g., Board of Regents of University of Nebraska v BASF Corp.* No. 4:04-CV-3356, 2007 WL 3342423, at *5 (D. Neb. Nov. 5, 2007) ("The overriding theme of recent amendments to the discovery rules has been open and forthright sharing of information by all parties to a case with the aim of expediting case progress, minimizing burden and expense, and removing contentiousness as much as practicable. [citations omitted]. If counsel fail in this responsibility—willfully or not—these principles of an open discovery process are undermined, coextensively inhibiting the courts' ability to objectively resolve their clients' disputes and the credibility of its resolution.").

This "Cooperation Proclamation" calls for a paradigm shift for the discovery process; success will not be instant. The Sedona Conference® views this as a three-part process to be undertaken by The Sedona Conference® Working Group on Electronic Document Retention and Production (WG1):

> Part I: Awareness - Promoting awareness of the need and advantages of cooperation, coupled with a call to action. This process has been initiated by The Sedona Conference® Cooperation Proclamation.
>
> Part II: Commitment - Developing a detailed understanding and full articulation of the issues and changes needed to obtain cooperative fact-finding. This will take the form of a "Case for Cooperation" which will reflect viewpoints of all legal system stakeholders. It will incorporate disciplines outside the law, aiming to understand the separate and sometimes conflicting interests and motivations of judges, mediators and arbitrators, plaintiff and defense counsel, individual and corporate clients, technical consultants and litigation support providers, and the public at large.
>
> Part III: Tools - Developing and distributing practical "toolkits" to train and support lawyers, judges, other professionals, and students in techniques of discovery cooperation, collaboration, and transparency. Components will include training programs tailored to each stakeholder; a clearinghouse of practical resources, including form agreements, case management orders, discovery protocols, etc.; court-annexed e-discovery ADR with qualified counselors and mediators, available to assist parties of limited means; guides for judges faced with motions for sanctions; law school programs to train students in the technical, legal, and cooperative aspects of e-discovery; and programs to assist individuals and businesses with basic e-record management, in an effort to avoid discovery problems altogether.

Conclusion

It is time to build upon modern Rules amendments, state and federal, which address e-discovery. Using this springboard, the legal profession can engage in a comprehensive effort to promote pre-trial discovery cooperation. Our "officer of the court" duties demand no less. This project is not utopian; rather, it is a tailored effort to effectuate the mandate of court rules calling for a "just, speedy, and inexpensive determination of every action" and the fundamental ethical principles governing our profession.

ATTACHMENT 6b

April 10, 2006

15 N.J.L. 897

April 24, 2006

Advisory Committee on Professional Ethics

Appointed by the Supreme Court of New Jersey

Opinion 701

Advisory Committee on Professional Ethics

Electronic Storage And Access of Client Files

The inquirer asks whether the Rules of Professional Conduct permit him to make use of an electronic filing system whereby all documents received in his office are scanned into a digitized format such as Portable Data Format ("PDF"). These documents can then be sent by email, and as the inquirer notes, "can be retrieved by me at any time from any location in the world." The inquirer notes that certain documents that by their nature require retention of original hardcopy, such as wills, and deeds, would be physically maintained in a separate file.

In Opinion 692, we set forth our interpretation of the term "property of the client" for purposes of *RPC* 1.15, which then triggers the obligation of a lawyer to safeguard that property for the client. "Original wills, trusts, deeds, executed contracts, corporate bylaws and minutes are but a few examples of documents which constitute client property." 163 *N.J.L.J.* 220, 221 (January 15, 2001) and 10 *N.J.L.* 154 (January 22, 2001). Such documents cannot be preserved within the meaning of *RPC* 1.15 merely by digitizing them in electronic form, and we do not understand the inquirer to suggest otherwise, since he acknowledges his obligation to maintain the originals of such documents in a separate file.

On the other hand, we also noted in Opinion 692 that a client file will likely contain other documents, such as correspondence, pleadings, memoranda, and briefs, that are not "property of the client" within the meaning of *RPC* 1.15, but that a lawyer is nevertheless required to maintain at least for some period of time in order to discharge the duties contained in *RPC* 1.1 (Competence) and *RPC* 1.4 (Communication), among others. While traditionally a client file has been maintained through paper records, there is nothing in the RPCs that mandates a particular medium of archiving such documents. The paramount consideration is the ability to represent the client competently, and given the advances of technology, a lawyer's ability to discharge those duties may very well be enhanced by having client documents available in an electronic form that can be transmitted to him instantaneously through the Internet. We also note the recent phenomenon of making client documents available to the client through a secure website. This also has the potential of enhancing communications between lawyer and client, and promotes the values embraced in *RPC* 1.4.

With the exception of "property of the client" within the meaning of *RPC* 1.15, therefore, and with the important caveat we express below regarding confidentiality, we believe that nothing in the RPCs prevents a lawyer from archiving a client's file through use of an electronic medium such as PDF files or similar formats. The polestar is the obligation of the lawyer to engage in the representation competently, and to communicate adequately with the client and others. To the extent that new technology now enhances the ability to fulfill those obligations, it is a welcome development.

This inquiry, however, raises another ethical issue that we must address. As the inquirer notes, the benefit of digitizing documents in electronic form is that they "can be retrieved by me at any time from any location in the world." This raises the possibility, however, that they could also be retrieved by other persons as well, and the

ATTACHMENT 6c

"Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases"

Department of Justice (DOJ) and Administrative Office of the U.S. Courts (AO)
Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG)

February 2012

Introduction to Recommendations for ESI Discovery in Federal Criminal Cases

Today, most information is created and stored electronically. The advent of electronically stored information (ESI) presents an opportunity for greater efficiency and cost savings for the entire criminal justice system, which is especially important for the representation of indigent defendants. To realize those benefits and to avoid undue cost, disruption and delay, criminal practitioners must educate themselves and employ best practices for managing ESI discovery.

The Joint Electronic Technology Working Group (JETWG) was created to address best practices for the efficient and cost-effective management of post-indictment ESI discovery between the Government and defendants charged in federal criminal cases. JETWG was established in 1998 by the Director of the Administrative Office of the U.S. Courts (AOUSC) and the Attorney General of the United States. It consists of representatives of the Administrative Office of U.S. Courts' (AOUSC) Office of Defender Services (ODS), the Department of Justice (DOJ), Federal Defender Organizations (FDO), private attorneys who accept Criminal Justice Act (CJA) appointments, and liaisons from the United States Judiciary and other AOUSC offices.

JETWG has prepared recommendations for managing ESI discovery in federal criminal cases, which are contained in the following three documents:

1. **Recommendations for ESI Discovery in Federal Criminal Cases.** The Recommendations provide the general framework for managing ESI, including planning, production, transmission, dispute resolution, and security.

2. **Strategies and Commentary on ESI Discovery in Federal Criminal Cases.** The Strategies provide technical and more particularized guidance for implementing the recommendations, including definitions of terms. The Strategies will evolve in light of changing technology and experience.

3. **ESI Discovery Checklist.** A one-page Checklist for addressing ESI production issues.

The Recommendations, Strategies, and Checklist are intended for cases where the volume and/or nature of the ESI produced as discovery significantly increases the complexity of the case. They are not intended for all cases. The Recommendations, Strategies, and Checklist build upon the following basic principles:

Principle 1: Lawyers have a responsibility to have an adequate understanding of electronic discovery. (See #4 of the Recommendations.)

Principle 2: In the process of planning, producing, and resolving disputes about ESI discovery, the parties should include individuals with sufficient technical knowledge and experience regarding ESI. (See #4 of the Recommendations.)

Principle 3: At the outset of a case, the parties should meet and confer about the nature, volume, and mechanics of producing ESI discovery. Where the ESI discovery is particularly complex or produced on a rolling basis, an on-going dialogue may be helpful. (See #5 of the Recommendations and Strategies.)

Principle 4: The parties should discuss what formats of production are possible and appropriate, and what formats can be generated. Any format selected for producing discovery should maintain the ESI's

integrity, allow for reasonable usability, reasonably limit costs, and, if possible, conform to industry standards for the format. (See #6 of the Recommendations and Strategies.)

Principle 5: When producing ESI discovery, a party should not be required to take on substantial additional processing or format conversion costs and burdens beyond what the party has already done or would do for its own case preparation or discovery production. (See #6 of the Recommendations and Strategies.)

Principle 6: Following the meet and confer, the parties should notify the court of ESI discovery production issues or problems that they reasonably anticipate will significantly affect the handling of the case. (See #5(s) of the Strategies.)

Principle 7: The parties should discuss ESI discovery transmission methods and media that promote efficiency, security, and reduced costs. The producing party should provide a general description and maintain a record of what was transmitted. (See #7 of the Recommendations and Strategies.)

Principle 8: In multi-defendant cases, the defendants should authorize one or more counsel to act as the discovery coordinator(s) or seek appointment of a Coordinating Discovery Attorney. (See #8 of the Recommendations and Strategies.)

Principle 9: The parties should make good faith efforts to discuss and resolve disputes over ESI discovery, involving those with the requisite technical knowledge when necessary, and they should consult with a supervisor, or obtain supervisory authorization, before seeking judicial resolution of an ESI discovery dispute or alleging misconduct, abuse, or neglect concerning the production of ESI. (See #9 of the Recommendations.)

Principle 10: All parties should limit dissemination of ESI discovery to members of their litigation team who need and are approved for access, and they should also take reasonable and appropriate measures to secure ESI discovery against unauthorized access or disclosure. (See #10 of the Recommendations.)

The Recommendations, Strategies, and Checklist set forth a collaborative approach to ESI discovery involving mutual and interdependent responsibilities. The goal is to benefit all parties by making ESI discovery more efficient, secure, and less costly.

Recommendations for ESI Discovery Production in Federal Criminal Cases

1. Purpose

These Recommendations are intended to promote the efficient and cost-effective post-indictment production of electronically stored information (ESI) in discovery[1] between the Government and defendants charged in federal criminal cases, and to reduce unnecessary conflict and litigation over ESI discovery by encouraging the parties to communicate about ESI discovery issues, by creating a predictable framework for ESI discovery, and by establishing methods for resolving ESI discovery disputes without the need for court intervention.

ESI discovery production involves the balancing of several goals:

a) the parties must comply with their legal discovery obligations;

b) the volume of ESI in many cases may make it impossible for counsel to personally review every potentially discoverable item, and, as a consequence, the parties increasingly will employ software tools for discovery review, so ESI discovery should be done in a manner to facilitate electronic search, retrieval, sorting, and management of discovery information;

c) the parties should look for ways to avoid unnecessary duplication of time and expense for both parties in the handling and use of ESI;

d) subject to subparagraph (e), below, the producing party should produce its ESI discovery materials in industry standard formats;

e) the producing party is not obligated to undertake additional processing desired by the receiving party that is not part of the producing party's own case preparation or discovery production[2]; and

f) the parties must protect their work product, privileged, and other protected information.

The following Recommendations are a general framework for informed discussions between the parties about ESI discovery issues. The efficient and cost-effective production of ESI discovery materials is enhanced when the parties communicate early and regularly about any ESI discovery issues in their

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[1] The Recommendations and Strategies are intended to apply only to disclosure of ESI under Federal Rules of Criminal Procedure 16 and 26.2, *Brady*, *Giglio*, and the Jencks Act, and they do not apply to, nor do they create any rights, privileges, or benefits during, the gathering of ESI as part of the parties' criminal or civil investigations. The legal principles, standards, and practices applicable to the discovery phase of criminal cases serve different purposes than those applicable to criminal and civil investigations.

[2] One example of the producing party undertaking additional processing for its discovery production is a load file that enables the receiving party to load discovery materials into its software.

case, and when they give the court notice of ESI discovery issues that will significantly affect the handling of the case.

2. Scope: Cases Involving Significant ESI

No single approach to ESI discovery is suited to all cases. These Recommendations are intended for cases where the volume and/or nature of the ESI produced as discovery significantly increases the complexity of the case.[3] In simple or routine cases, the parties should provide discovery in the manner they deem most efficient in accordance with the Federal Rules of Criminal Procedure, local rules, and custom and practice within their district.

Due to the evolving role of ESI in criminal cases, these Recommendations and the parties' practices will change with technology and experience. As managing ESI discovery becomes more routine, it is anticipated that the parties will develop standard processes for ESI discovery that become the accepted norm.

3. Limitations

These Recommendations and the accompanying Strategies do not alter the parties' discovery obligations or protections under the U.S. Constitution, the Federal Rules of Criminal Procedure, the Jencks Act, or other federal statutes, case law, or local rules. They may not serve as a basis for allegations of misconduct or claims for relief and they do not create any rights or privileges for any party.

4. Technical Knowledge and Experience

For complex ESI productions, each party should involve individuals with sufficient technical knowledge and experience to understand, communicate about, and plan for the orderly exchange of ESI discovery. Lawyers have a responsibility to have an adequate understanding of electronic discovery.

5. Planning for ESI Discovery Production - The Meet and Confer Process

At the outset of a case involving substantial or complex ESI discovery, the parties should meet and confer about the nature, volume, and mechanics of producing ESI discovery. The parties should determine how to ensure that any "meet and confer" process does not run afoul of speedy trial deadlines. Where the ESI discovery is particularly complex or produced on a rolling basis, an on-going dialogue during the discovery phase may be helpful. In cases where it is authorized, providing ESI discovery to an incarcerated defendant presents challenges that should be discussed early. Also, cases involving classified information will not fit within the Recommendations and Strategies due to the unique legal procedures applicable to those cases. ESI that is contraband (*e.g.,* child pornography) requires special discovery procedures. The Strategies and Checklist provide detailed recommendations on planning for ESI discovery.

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[3] Courts and litigants will continue to seek ways to identify cases deserving special consideration. While the facts and circumstances of cases will vary, some factors may include: (1) a large volume of ESI; (2) unique ESI issues, including native file formats, voluminous third-party records, non-standard and proprietary software formats; and/or (3) multiple defendant cases accompanied by a significant volume of ESI.

6. Production of ESI Discovery

Production of ESI discovery involves varied considerations depending upon the ESI's source, nature, and format. Unlike certain civil cases, in criminal cases the parties generally are not the original custodian or source of the ESI they produce in discovery. The ESI gathered by the parties during their investigations may be affected or limited by many factors, including the original custodian's or source's information technology systems, data management practices, and resources; the party's understanding of the case at the time of collection; and other factors. Likewise, the electronic formats used by the parties for producing ESI discovery may be affected or limited by several factors, including the source of the ESI; the format(s) in which the ESI was originally obtained; and the party's legal discovery obligations, which may vary with the nature of the material. The Strategies and Checklist provide detailed recommendations on production of ESI discovery.

General recommendations for the production of ESI discovery are:

a. The parties should discuss what formats of production are possible and appropriate, and what formats can be generated. Any format selected for producing discovery should, if possible, conform to industry standards for the format.[4]

b. ESI received from third parties should be produced in the format(s) it was received or in a reasonably usable format(s). ESI from the government's or defendant's business records should be produced in the format(s) in which it was maintained or in a reasonably usable format(s).

c. Discoverable ESI generated by the government or defense during the course of their investigations (*e.g.,* investigative reports, witness interviews, demonstrative exhibits, etc.) may be handled differently than in 6(a) and (b) above because the parties' legal discovery obligations and practices vary according to the nature of the material, the applicable law, evolving legal standards, the parties' policies, and the parties' evolving technological capabilities.

d. When producing ESI discovery, a party should not be required to take on substantial additional processing or format conversion costs and burdens beyond what the party has already done or would do for its own case preparation or discovery production. For example, the producing party need not convert ESI from one format to another or undertake additional processing of ESI beyond what is required to satisfy its legal disclosure obligations. If the receiving party desires ESI in a condition different from what the producing party intends to produce, the parties should discuss what is reasonable in terms of expense and mechanics, who will bear the burden of any additional cost or work, and how to protect the producing party's work product or privileged information. Nonetheless, with the understanding that in certain instances the results of processing ESI may constitute work product not subject to discovery, these

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[4] An example of "format of production" might be TIFF images, OCR text files, and load files created for a specific software application. Another "format of production" would be native file production, which would accommodate files with unique issues, such as spreadsheets with formulas and databases. ESI in a particular case might warrant more than one format of production depending upon the nature of the ESI.

recommendations operate on the general principle that where a producing party elects to engage in processing of ESI, the results of that processing should, unless they constitute work product, be produced in discovery along with the underlying ESI so as to save the receiving party the expense of replicating the work.

7. Transmitting ESI Discovery

The parties should discuss transmission methods and media that promote efficiency, security, and reduce costs. In conjunction with ESI transmission, the producing party should provide a general description and maintain a record of what was transmitted. Any media should be clearly labeled. The Strategies and Checklist contain detailed recommendations on transmission of ESI discovery, including the potential use of email to transmit ESI.

8. Coordinating Discovery Attorney

In cases involving multiple defendants, the defendants should authorize one or more counsel to act as the discovery coordinator(s) or seek the appointment of a Coordinating Discovery Attorney[5] and authorize that person to accept, on behalf of all defense counsel, the ESI discovery produced by the government. Generally, the format of production should be the same for all defendants, but the parties should be sensitive to different needs and interests in multiple defendant cases.

9. Informal Resolution of ESI Discovery Matters

a. Before filing any motion addressing an ESI discovery issue, the moving party should confer with opposing counsel in a good-faith effort to resolve the dispute. If resolution of the dispute requires technical knowledge, the parties should involve individuals with sufficient knowledge to understand the technical issues, clearly communicate the problem(s) leading to the dispute, and either implement a proposed resolution or explain why a proposed resolution will not solve the dispute.

b. The Discovery Coordinator within each U.S. Attorney's Office should be consulted in cases presenting substantial issues or disputes.

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[5] Coordinating Discovery Attorneys (CDA) are AOUSC contracted attorneys who have technological knowledge and experience, resources, and staff to effectively manage complex ESI in multiple defendant cases. The CDAs may be appointed by the court to provide in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in selected multiple-defendant cases that require technology and document management assistance. They can serve as a primary point of contact for the U.S. Attorneys Office to discuss ESI production issues for all defendants, resulting in lower overall case costs for the parties. If a panel attorney or FDO is interested in utilizing the services of the CDA, they should contact the National Litigation Support Administrator or Assistant National Litigation Support Administrator for the Office of Defender Services at 510-637-3500.

c. To avoid unnecessary litigation, prosecutors and Federal Defender Offices[6] should institute procedures that require line prosecutors and defenders (1) to consult with a supervisory attorney before filing a motion seeking judicial resolution of an ESI discovery dispute, and (2) to obtain authorization from a supervisory attorney before suggesting in a pleading that opposing counsel has engaged in any misconduct, abuse, or neglect concerning production of ESI.

d. Any motion addressing a discovery dispute concerning ESI production should include a statement of counsel for the moving party relating that after consultation with the attorney for the opposing party the parties have been unable to resolve the dispute without court action.

10. Security: Protecting Sensitive ESI Discovery from Unauthorized Access or Disclosure

Criminal case discovery entails certain responsibilities for all parties in the careful handling of a variety of sensitive information, for example, grand jury material, the defendant's records, witness identifying information, information about informants, information subject to court protective orders, confidential personal or business information, and privileged information. With ESI discovery, those responsibilities are increased because ESI is easily reproduced and disseminated, and unauthorized access or disclosure could, in certain circumstances, endanger witness safety; adversely affect national security or homeland security; leak information to adverse parties in civil suits; compromise privacy, trade secrets, or classified, tax return, or proprietary information; or prejudice the fair administration of justice. The parties' willingness to produce early, accessible, and usable ESI discovery will be enhanced by safeguards that protect sensitive information from unauthorized access or disclosure.

All parties should limit dissemination of ESI discovery to members of their litigation team who need and are approved for access. They should also take reasonable and appropriate measures to secure ESI discovery against unauthorized access or disclosure.

During the initial meet and confer and before ESI discovery is produced, the parties should discuss whether there is confidential, private or sensitive information in any ESI discovery they will be providing. If such information will be disclosed, then the parties should discuss how the recipients will prevent unauthorized access to, or disclosure of, that ESI discovery, and, absent agreement on appropriate security, the producing party should seek a protective order from the court addressing management of the particular ESI at issue. The producing party has the burden to raise the issue anew if it has concerns about any ESI discovery it will provide in subsequent productions. The parties may choose to have standing agreements so that their practices for managing ESI discovery are not discussed in each case. The Strategies contains additional guidance in sections 5(f), 5(p), and 7(e).

[6] For private attorneys appointed under the Criminal Justice Act (CJA), this subsection (c) is not applicable.

Strategies and Commentary on ESI Discovery in Federal Criminal Cases

1. Purpose

This commentary contains strategies for implementing the ESI discovery Recommendations and specific technical guidance. Over time it will be modified in light of experience and changing technology. Definitions of common ESI terms are provided in paragraph 11, below.

2. Scope of ESI Gathered

In order to promote efficiency and avoid unnecessary costs, when gathering ESI the parties should take into consideration the nature, volume, and mechanics of managing ESI.

3. Limitations

Nothing contained herein creates any rights or privileges for any party.

4. Technical Knowledge and Experience

No additional commentary.

5. Planning for ESI Discovery Production - The Meet and Confer Process

To promote efficient ESI discovery, the parties may find it useful to discuss the following:

a. **ESI discovery produced.** The parties should discuss the ESI being produced according to the following general categories:

i. **Investigative materials** (investigative reports, surveillance records, criminal histories, etc.)

ii. **Witness statements** (interview reports, transcripts of prior testimony, Jencks statements, etc.)

iii. **Documentation of tangible objects** (*e.g.,* records of seized items or forensic samples, search warrant returns, etc.)

iv. **Third parties' ESI digital devices** (computers, phones, hard drives, thumb drives, CDs, DVDs, cloud computing, etc., including forensic images)

v. **Photographs and video/audio recordings** (crime scene photos; photos of contraband, guns, money; surveillance recordings; surreptitious monitoring recordings; etc.)

vi. **Third party records and materials** (including those seized, subpoenaed, and voluntarily disclosed)

vii. **Title III wire tap information** (audio recordings, transcripts, line sheets, call reports, court documents, etc.)

viii. **Court records** (affidavits, applications, and related documentation for search and arrest warrants, etc.)

ix. **Tests and examinations**

x. **Experts** (reports and related information)

xi. **Immunity agreements, plea agreements, and similar materials**

xii. **Discovery materials with special production considerations** (such as child pornography; trade secrets; tax return information; etc.)

xiii. **Related matters** (state or local investigative materials, parallel proceedings materials, etc.)

xiv. **Discovery materials available for inspection but not produced digitally**

xv. **Other information**

b. **Table of contents.** If the producing party has not created a table of contents prior to commencing ESI discovery production, it should consider creating one describing the general categories of information available as ESI discovery. In complex discovery cases, a table of contents to the available discovery materials can help expedite the opposing party's review of discovery, promote early settlement, and avoid discovery disputes, unnecessary expense, and undue delay.[1] Because no single table of contents is appropriate for every case, the producing party may devise a table of contents that is suited to the materials it provides in discovery, its resources, and other considerations.[2]

c. **Forms of production.** The producing party should consider how discoverable materials were provided to it or maintained by the source (*e.g.,* paper or electronic), whether it has converted any materials to a digital format that can be used by the opposing party without disclosing the producing party's work product, and how those factors may affect the production of discovery materials in electronic formats. For particularized guidance *see* paragraph 6, below. The parties should be flexible in their application of the concept

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[1] *See, e.g., U.S. v. Skilling*, 554 F.3d 529, 577 (5th Cir. 2009) (no *Brady* violation where government disclosed several hundred million page database with searchable files and produced set of hot documents and indices).

[2] A table of contents is intended to be a general, high-level guide to the categories of ESI discovery. Because a table of contents may not be detailed, complete, or free of errors, the parties still have the responsibility to review the ESI discovery produced. With ESI, particular content usually can be located using available electronic search tools. There are many ways to construct a general table of contents. For example, a table of contents could be a folder structure as set forth above in paragraph 2(a)(i-xv), where like items are placed into folders.

of "maintained by the source." The goals are to retain the ESI's integrity, to allow for reasonable usability, and to reasonably limit costs.[3]

d. **Proprietary or legacy data.** Special consideration should be given to data stored in proprietary or legacy systems, for example, video surveillance recordings in an uncommon format, proprietary databases, or software that is no longer supported by the vendor. The parties should discuss whether a suitable generic output format or report is available. If a generic output is not available, the parties should discuss the specific requirements necessary to access the data in its original format.

e. **Attorney-client, work product, and protected information issues.**[4] The parties should discuss whether there is privileged, work product, or other protected information in third-party ESI or their own discoverable ESI and proposed methods and procedures for segregating such information and resolving any disputes.[5]

f. **Confidential and personal information**. The parties should identify and discuss the types of confidential or personal information present in the ESI discovery, appropriate security for that information, and the need for any protective orders or redactions. *See also,* section 5(p) below.

g. **Incarcerated defendant.** If the defendant is incarcerated and the court or correctional institution has authorized discovery access in the custodial setting, the parties should consider what institutional requirements or limitations may affect the defendant's access to ESI discovery, such as limitations on hardware or software use.[6]

h. **ESI discovery volume.** To assist in estimating the receiving party's discovery costs and to the extent that the producing party knows the volume of discovery materials it intends to produce immediately or in the future, the producing party may provide such information if such disclosure would not compromise the producing party's interests.

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[3] For example, when the producing party processes ESI to apply Bates numbers, load it into litigation software, create TIFF images, etc., the ESI is slightly modified and no longer in its original state. Similarly, some modification of the ESI may be necessary and proper in order to allow the parties to protect privileged information, and the processing and production of ESI in certain formats may result in the loss or alteration of some metadata that is not significant in the circumstances of the particular case.

[4] Attorney-client and work product (*see, e.g.,* F.R.Crim.P. 16(a)(2) and (b)(2)) issues arising from the parties' own case preparation are beyond the scope of these Recommendations, and they need not be part of the meet and confer discussion.

[5] If third party records are subject to an agreement or court order involving a selective waiver of attorney-client or work product privileges (*see* F.R.E. 502), then the parties should discuss how to handle those materials.

[6] Because pretrial detainees often are held in local jails (for space, protective custody, cost, or other reasons) that have varying resources and security needs, there are no uniform practices or rules for pretrial detainees' access to ESI discovery. Resolution of the issues associated with such access is beyond the scope of the Recommendations and Strategies.

Examples of volume include the number of pages of electronic images of paper-based discovery, the volume (*e.g.,* gigabytes) of ESI, the number and aggregate length of any audio or video recordings, and the number and volume of digital devices. Disclosures concerning expected volume are not intended to be so detailed as to require a party to disclose what they intend to produce as discovery before they have a legal obligation to produce the particular discovery material (*e.g.,* Jencks material). Similarly, the parties' estimates are not binding and may not serve as the basis for allegations of misconduct or claims for relief.

i. **Naming conventions and logistics.** The parties should, from the outset of a case, employ naming conventions that would make the production of discovery more efficient. For example, in a Title III wire tap case generally it is preferable that the naming conventions for the audio files, the monitoring logs, and the call transcripts be consistent so that it is easy to cross-reference the audio calls with the corresponding monitoring logs and transcripts. If at the outset of discovery production a naming convention has not yet been established, the parties should discuss a naming convention before the discovery is produced. The parties should discuss logistics and the sharing of costs or tasks that will enhance ESI production.

j. **Paper materials.** For options and particularized guidance on paper materials *see* paragraphs 6(a) and(e), below.

k. **Any software and hardware limitations.** As technology continues to evolve, the parties may have software and hardware constraints on how they can review ESI. Any limitations should be addressed during the meet and confer.

l. **ESI from seized or searched third-party ESI digital devices.** When a party produces ESI from a seized or searched third-party digital device (*e.g.,* computer, cell phone, hard drive, thumb drive, CD, DVD, cloud computing, or file share), the producing party should identify the digital device that held the ESI, and, to the extent that the producing party already knows, provide some indication of the device's probable owner or custodian and the location where the device was seized or searched. Where the producing party only has limited authority to search the digital device (*e.g.,* limits set by a search warrant's terms), the parties should discuss the need for protective orders or other mechanisms to regulate the receiving party's access to or inspection of the device.

m. **Inspection of hard drives and/or forensic (mirror) images.** Any forensic examination of a hard drive, whether it is an examination of a hard drive itself or an examination of a forensic image of a hard drive, requires specialized software and expertise. A simple copy of the forensic image may not be sufficient to access the information stored, as specialized software may be needed. The parties should consider how to manage inspection of a hard drive and/or production of a forensic image of a hard drive and what software and expertise will be needed to access the information.

n. **Metadata in third party ESI.** If a producing party has already extracted metadata from third party ESI, the parties should discuss whether the producing party should produce the extracted metadata together with an industry-standard load file, or, alternatively,

produce the files as received by the producing party from the third party.[7] Neither party need undertake additional processing beyond its own case preparation, and both parties are entitled to protect their work product and privileged or other protected information. Because the term "metadata" can encompass different categories of information, the parties should clearly describe what categories of metadata are being discussed, what the producing party has agreed to produce, and any known problems or gaps in the metadata received from third parties.

o. **A reasonable schedule for producing and reviewing ESI.** Because ESI involves complex technical issues, two stages should be addressed. First, the producing party should transmit its ESI in sufficient time to permit reasonable management and review. Second, the receiving party should be pro-active about testing the accessibility of the ESI production when it is received. Thus, a schedule should include a date for the receiving party to notify the producing party of any production issues or problems that are impeding use of the ESI discovery.

p. **ESI security.** During the first meet and confer, the parties should discuss ESI discovery security and, if necessary, the need for protective orders to prevent unauthorized access to or disclosure of ESI discovery that any party intends to share with team members via the internet or similar system, including:

i. what discovery material will be produced that is confidential, private, or sensitive, including, but not limited to, grand jury material, witness identifying information, information about informants, a defendant's or co-defendant's personal or business information, information subject to court protective orders, confidential personal or business information, or privileged information;

ii. whether encryption or other security measures during transmission of ESI discovery are warranted;[8]

iii. what steps will be taken to ensure that only authorized persons have access to the electronically stored or disseminated discovery materials;

iv. what steps will be taken to ensure the security of any website or other electronic repository against unauthorized access;

v. what steps will be taken at the conclusion of the case to remove discovery materials from the a website or similar repository; and

vi. what steps will be taken at the conclusion of the case to remove or return ESI discovery materials from the recipient's information system(s), or to securely archive them to prevent unauthorized access.

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[7] The producing party is, of course, limited to what it received from the third party. The third party's processing of the information can affect or limit what metadata is available.

[8] The parties should consult their litigation support personnel concerning encryption or other security options.

Note: Because all parties want to ensure that ESI discovery is secure, the Department of Justice, Federal Defender Offices, and CJA counsel are compiling an evolving list of security concerns and recommended best practices for appropriately securing discovery. Prosecutors and defense counsel with security concerns should direct inquiries to their respective ESI liaisons[9] who, in turn, will work with their counterparts to develop best practice guidance.

q. **Other issues.** The parties should address other issues they can anticipate, such as protective orders, "claw-back" agreements[10] between the government and criminal defendant(s), or any issues related to the preservation or collection of ESI discovery.

r. **Memorializing agreements.** The parties should memorialize any agreements reached to help forestall later disputes.

s. **Notice to court.**

i. *Preparing for the meet and confer:* A defendant who anticipates the need for technical assistance to conduct the meet and confer should give the court adequate advance notice if it will be filing an *ex parte* funds request for technical assistance.

ii. *Following the meet and confer:* The parties should notify the court of ESI discovery production issues or problems that they anticipate will significantly affect when ESI discovery will be produced to the receiving party, when the receiving party will complete its accessibility assessment of the ESI discovery received,[11] whether the receiving party will need to make a request for supplemental funds to manage ESI discovery, or the scheduling of pretrial motions or trial.

6. **Production of ESI Discovery**

a. **Paper Materials.** Materials received in paper form may be produced in that form,[12] made available for inspection, or, if they have already been converted to digital format,

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[9] Federal Defender Organizations and CJA panel attorneys should contact Sean Broderick (National Litigation Support Administrator) or Kelly Scribner (Assistant National Litigation Support Administrator) at 510-637-3500, or by email: sean_broderick@fd.org, kelly_scribner@fd.org. Prosecutors should contact Andrew Goldsmith (National Criminal Discovery Coordinator) at Andrew.Goldsmith@usdoj.gov or John Haried (Assistant National Criminal Discovery Coordinator) at John.Haried@usdoj.gov.

[10] A "claw back" agreement outlines procedures to be followed to protect against waiver of privilege or work product protection due to inadvertent production of documents or data.

[11] *See* paragraph 5(o) of the Strategies, above.

[12] The decision whether to scan paper documents requires striking a balance between resources (including personnel and cost) and efficiency. The parties should make that determination on a case-by-case basis.

produced as electronic files that can be viewed and searched. Methods are described below in paragraph 6(b).

b. **Electronic production of paper documents.** Three possible methodologies:

i. *Single-page TIFFs.* Production in TIFF and OCR format consists of the following three elements:

(1) Paper documents are scanned to a picture or image that produces one file per page. Documents should be unitized. Each electronic image should be stamped with a unique page label or Bates number.

(2) Text from that original document is generated by OCR and stored in separate text files without formatting in a generic format using the same file naming convention and organization as image file.

(3) Load files that tie together the images and text.

ii. *Multi-page TIFFS.* Production in TIFF and OCR format consists of the following two elements:

(1) Paper documents are scanned to a picture or image that produces one file per document. Each file may have multiple pages. Each page of the electronic image should be stamped with a unique page label or Bates number.

(2) Text from that original document is generated by OCR and stored in separate text files without formatting in a generic format using the same file naming convention and organization as the image file.

iii. *PDF.* Production in multi-page, searchable PDF format consists of the following one element:

(1) Paper documents scanned to a PDF file with text generated by OCR included in the same file. This produces one file per document. Documents should be unitized. Each page of the PDF should be stamped with a unique Bates number.

iv. *Note re: color documents.* Paper documents should not be scanned in color unless the color content of an individual document is particularly significant to the case.[13]

c. **ESI production.** Three possible methodologies:

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[13] Color scanning substantially slows the scanning process and creates huge electronic files which consume storage space, making the storage and transmission of information difficult. An original signature, handwritten marginalia in blue or red ink, and colored text highlights are examples of color content that may be particularly significant to the case.

i. *Native files as received.* Production in a native file format without any processing consists of a copy of ESI files in the same condition as they were received.

ii. *ESI converted to electronic image.* Production of ESI in a TIFF or PDF and extracted text format consists of the following four elements:

(1) Electronic documents converted from their native format into a picture / image. The electronic image files should be computer generated, as opposed to printed and then imaged. Each electronic image should be stamped with a unique Bates number.

(2) Text from that original document is extracted or pulled out and stored without formatting in a generic format.

(3) Metadata (*i.e.,* information about that electronic document), depending upon the type of file converted and the tools or methodology used, that has been extracted and stored in an industry standard format. The metadata must include information about structural relationships between documents, *e.g.,* parent-child relationships.

(4) Load files that tie together the images, text, and metadata.

iii. *Native files with metadata.* Production of ESI in a processed native file format consists of the following four elements:

(1) The native files.

(2) Text from that original document is extracted or pulled out and stored without formatting in a generic format.

(3) Metadata (*i.e.,* information about that electronic document), depending upon the type of file converted and the tools or methodology used, that has been extracted and stored in an industry standard format. The metadata must include information about structural relationships between documents, *e.g.,* parent-child relationships.

(4) Load files that tie together the native file, text, and metadata.

d. **Forensic images of digital media.** Forensic images of digital media should be produced in an industry-standard forensic format, accompanied by notice of the format used.

e. **Printing ESI to paper.** The producing party should not print ESI (including TIFF images or PDF files) to paper as a substitute for production of the ESI unless agreed to by the parties.

f. **Preservation of ESI materials received from third parties.** A party receiving potentially discoverable ESI from a third party should, to the extent practicable, retain a copy of the

ESI as it was originally produced in case it is subsequently needed to perform quality control or verification of what was produced.

g. **Production of ESI from third parties.** ESI from third parties may have been received in a variety of formats, for example, in its original format (native, such as Excel or Word), as an image (TIFF or PDF), as an image with searchable text (TIFF or PDF with OCR text), or as a combination of any of these. The third party's format can affect or limit the available options for production as well as what associated information (metadata) might be available. ESI received from third parties should be produced in the format(s) it was received or in a reasonably usable format(s). ESI received from a party's own business records should be produced in the format(s) in which it was maintained or in a reasonably usable form(s). The parties should explore what formats of production[14] are possible and appropriate, and discuss what formats can be generated. Any format selected for producing discovery should, if possible and appropriate, conform to industry standards for the format.

h. **ESI generated by the government or defense.** Paragraphs 6(f) and 6(g) do not apply to discoverable materials generated by the government or defense during the course of their investigations (*e.g.*, demonstrative exhibits, investigative reports and witness interviews - *see* subparagraph i, below, etc.) because the parties' legal discovery obligations and practices vary according to the nature of the material, the applicable law, evolving legal standards, and the parties' evolving technological capabilities. Thus, such materials may be produced differently from third party ESI. However, to the extent practicable, this material should be produced in a searchable and reasonably usable format. Parties should consult with their investigators in advance of preparing discovery to ascertain the investigators' ESI capabilities and limitations.

i. **Investigative reports and witness interviews.** Investigative reports and witness interviews may be produced in paper form if they were received in paper form or if the final version is in paper form. Alternatively, they may be produced as electronic images (TIFF images or PDF files), particularly when needed to accommodate any necessary redactions. Absent particular issues such as redactions or substantial costs or burdens of additional processing, electronic versions of investigative reports and witness interviews should be produced in a searchable text format (such as ASCII text, OCR text, or plain text (.txt)) in order to avoid the expense of reprocessing the files. To the extent possible, the electronic image files of investigative reports and witness interviews should be computer-generated (as opposed to printed to paper and then imaged) in order to produce a higher-quality searchable text which will enable the files to be more easily searched and cost-effectively utilized.[15]

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[14] An example of "format of production" might be TIFF images, OCR text files, and load files created for a specific software application. Another "format of production" would be native file production, which would accommodate files with unique issues, such as spreadsheets with formulas and databases.

[15] For guidance on making computer generated version of investigative reports and witness interview reports, *see* the description of production of TIFF, PDF, and extracted text format in paragraphs 6(b)(ii)(1) and (ii).

j. **Redactions.** ESI and/or images produced should identify the extent of redacted material and its location within the document.

k. **Photographs and video and audio recordings.** A party producing photographs or video or audio recordings that either were originally created using digital devices or have previously been digitized should disclose the digital copies of the images or recordings if they are in the producing party's possession, custody or control. When technically feasible and cost-efficient, photographs and video and audio recordings that are not already in a digital format should be digitized into an industry standard format if and when they are duplicated. The producing party is not required to convert materials obtained in analog format to digital format for discovery.

l. **Test runs.** Before producing ESI discovery a party should consider providing samples of the production format for a test run, and once a format is agreed upon, produce all ESI discovery in that format.

m. **Access to originals.** If the producing party has converted paper materials to digital files, converted materials with color content to black and white images, or processed audio, video, or other materials for investigation or discovery, it should provide reasonable access to the originals for inspection and/or reprocessing.

7. Transmitting ESI Discovery

a. ESI discovery should be transmitted on electronic media of sufficient size to hold the entire production, for example, a CD, DVD, or thumb drive.[16] If the size of the production warrants a large capacity hard drive, then the producing party may require the receiving party to bear the cost of the hard drive and to satisfy requirements for the hard drive that are necessary to protect the producing party's IT system from viruses or other harm.

b. The media should be clearly labeled with the case name and number, the producing party, a unique identifier for the media, and a production date.

c. A cover letter should accompany each transmission of ESI discovery providing basic information including the number of media, the unique identifiers of the media, a brief description of the contents including a table of contents if created, any applicable bates ranges or other unique production identifers, and any necessary passwords to access the content. Passwords should not be in the cover letter accompanying the data, but in a separate communication.

d. The producing party should retain a write-protected copy of all transmitted ESI as a preserved record to resolve any subsequent disputes.

e. **Email Transmission.** When considering transmission of ESI discovery by email, the parties' obligation varies according to the sensitivity of the material, the risk of harm

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[16] Rolling productions may, of course, use multiple media. The producing party should avoid using multiple media when a single media will facilitate the receiving party's use of the material.

from unauthorized disclosure, and the relative security of email versus alternative transmission. The parties should consider three categories of security:

i. Not appropriate for email transmission: Certain categories of ESI discovery are never appropriate for email transmission, including, but not limited to, certain grand jury materials; materials affecting witness safety; materials containing classified, national security, homeland security, tax return, or trade secret information; or similar items.

ii. Encrypted email transmission: Certain categories of ESI discovery warrant encryption or other secure transmission due to their sensitive nature. The parties should discuss and identify those categories in their case. This would ordinarily include, but not be limited to, information about informants, confidential business or personal information, and information subject to court protective orders.

iii. Unencrypted email transmission: Other categories of ESI discovery not addressed above may be appropriate for email transmission, but the parties always need to be mindful of their ethical obligations.[17]

8. Coordinating Discovery Attorney

Coordinating Discovery Attorneys (CDA) are AOUSC contracted attorneys who have technological knowledge and experience, resources, and staff to effectively manage complex ESI in multiple defendant cases. The CDAs may be appointed by the court to provide additional in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in selected multiple-defendant cases that require technology and document management assistance. They can serve as a primary point of contact for the US Attorneys Office to discuss ESI production issues for all defendants, resulting in lower overall case costs for the parties. If you have any questions regarding the services of a CDA, please contact either Sean Broderick (National Litigation Support Administrator) or Kelly Scribner (Assistant National Litigation Support Administrator) at 510-637-3500, or by email: sean_broderick@fd.org, kelly_scribner@fd.org.

9. Informal Resolution of ESI Discovery Matters

No additional commentary.

10. Security: Protecting Sensitive ESI Discovery from Unauthorized Access or Disclosure

See sections 5(f) - Confidential and personal information, 5(p) - ESI security, and 7(e) - Email Transmission of the Strategies for additional guidance.

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[17] Illustrative of the security issues in the attorney-client context are ABA Op. 11-459 (Duty to Protect the Confidentiality of E-mail Communications with One's Client) and ABA Op. 99-413 (Protecting the Confidentiality of Unencrypted E-Mail).

11. Definitions

To clearly communicate about ESI, it is important that the parties use ESI terms in the same way. Below are common ESI terms used when discussing ESI discovery:

a. **Cloud computing.** With cloud computing, the user accesses a remote computer hosted by a cloud service provider over the Internet or an intranet to access software programs or create, save, or retrieve data, for example, to send messages or create documents, spreadsheets, or databases. Examples of cloud computing include Gmail, Hotmail, Yahoo! Mail, Facebook, and on-line banking.

b. **Coordinating Discovery Attorney (CDA).** An AOUSC contracted attorney who has technological knowledge and experience, resources, and staff to effectively manage complex ESI in multiple-defendant cases, and who may be appointed by a court in selected multiple-defendant cases to assist CJA panel attorneys and/or FDO staff with discovery management.

c. **Document unitization.** Document unitization is the process of determining where a document begins (its first page) and ends (its last page), with the goal of accurately describing what was a "unit" as it was received by the party or was kept in the ordinary course of business by the document's custodian. A "unit" includes attachments, for example, an email with an attached spreadsheet. Physical unitization utilizes actual objects such as staples, paper clips and folders to determine pages that belong together as documents. Logical unitization is the process of human review of each individual page in an image collection using logical cues to determine pages that belong together as documents. Such cues can be consecutive page numbering, report titles, similar headers and footers, and other logical cues.

d. **ESI (Electronically Stored Information).** Any information created, stored, or utilized with digital technology. Examples include, but are not limited to, word-processing files, e-mail and text messages (including attachments); voicemail; information accessed via the Internet, including social networking sites; information stored on cell phones; information stored on computers, computer systems, thumb drives, flash drives, CDs, tapes, and other digital media.

e. **Extracted text.** The text of a native file extracted during ESI processing of the native file, most commonly when native files are converted to TIFF format. Extracted text is more accurate than text created by the OCR processing of document images that were created by scanning and will therefore provide higher quality search results.

f. **Forensic image (mirror image) of a hard drive or other storage device.** A process that preserves the entire contents of a hard drive or other storage device by creating a bit-by-bit copy of the original data without altering the original media. A forensic examination or analysis of an imaged hard drive requires specialized software and expertise to both create and read the image. User created files, such as email and other electronic documents, can be extracted, and a more complete analysis of the hard drive can be performed to find deleted files and/or access information. A forensic or mirror image is not a physical duplicate of the original drive or device; instead it is a file or set of files that contains all of the data bits from the source device. Thus a forensic or mirror

image cannot simply be opened and viewed as if you were looking at the original device. Indeed, forensic or mirror images of multiple hard drives or other storage devices can be stored on a single recipient hard drive of sufficient capacity.

g. **Image of a document or document image.** An electronic "picture" of how the document would look if printed. Images can be stored in various file formats, the most common of which are TIFF and PDF. Document images, such as TIFF and PDF, can be created directly from native files, or created by scanning hard copy.

h. **Load file.** A cross reference file used to import images or data into databases. A data load file may contain Bates numbers, metadata, path to native files, coded data, and extracted or OCR text. An image load file may contain document boundary, image type and path information. Load files must be obtained and provided in software-specific formats to ensure they can be used by the receiving party.

i. **Metadata.** Data that describes characteristics of ESI, for example, the author, date created, and date last accessed of a word processing document. Metadata is generally not reproduced in full form when a document is printed to paper or electronic image. Metadata can describe how, when and by whom ESI was created, accessed, modified, formatted, or collected. Metadata can be supplied by applications, users or the file system, and it can be altered intentionally or inadvertently. Certain metadata can be extracted when native files are processed for litigation. Metadata is found in different places and in different forms. Some metadata, such as file dates and sizes, can easily be accessed by users; other metadata can be hidden or embedded and unavailable to computer users who are not technically adept. Note that some metadata may be lost or changed when an electronic copy of a file is made using ordinary file copy methods.

j. **Native file.** A file as it was created in its native software, for example a Word, Excel, or PowerPoint file, or an email in Outlook or Lotus Notes.

k. **OCR (Optical Character Recognition).** A process that converts a picture of text into searchable text. The quality of the created text can vary greatly depending on the quality of the original document, the quality of the scanned image, the accuracy of the recognition software and the quality control process of the provider. Generally speaking, OCR does not handle handwritten text or text in graphics well. OCR conversion rates can range from 50 to 98% accuracy depending on the underlying document. A full page of text is estimated to contain 2,000 characters, so OCR software with even 90% accuracy would create a page of text with approximately 200 errors.

l. **Parent - child relationships.** Related documents are described as having a parent/child relationship, for example, where the email is the parent and an attached spreadsheet is the child.

m. **PDF.** "Portable Document Format." A file format created by Adobe that allows a range of options, including electronic transmission, viewing, and searching.

n. **TIFF.** "Tagged Image File Format." An industry-standard file format for storing scanned and other digital black-and-white, grey-scale, and full-color images.

ESI Discovery Production Checklist

- ☐ Is this a case where the volume or nature of ESI significantly increases the case's complexity?
- ☐ Does this case involve classified information?
- ☐ Does this case involve trade secrets, or national security or homeland security information?
- ☐ Do the parties have appropriate technical advisors to assist?
- ☐ Have the parties met and conferred about ESI issues?
- ☐ Have the parties addressed the format of ESI being produced? Categories may include:
    - ☐ Investigative reports and materials
    - ☐ Witness statements
    - ☐ Tangible objects
    - ☐ Third party ESI digital devices (computers, phones, etc.)
    - ☐ Photos, video and audio recordings
    - ☐ Third party records
    - ☐ Title III wire tap information
    - ☐ Court records
    - ☐ Tests and examinations
    - ☐ Experts
    - ☐ Immunity and plea agreements
    - ☐ Discovery materials with special production considerations
    - ☐ Related matters
    - ☐ Discovery materials available for inspection but not produced digitally
    - ☐ Other information
- ☐ Have the parties addressed ESI issues involving:
    - ☐ Table of contents?
    - ☐ Production of paper records as either paper or ESI?
    - ☐ Proprietary or legacy data?
    - ☐ Attorney-client, work product, or other privilege issues?
    - ☐ Sensitive confidential, personal, grand jury, classified, tax return, trade secret, or similar information?
    - ☐ Whether email transmission is inappropriate for any categories of ESI discovery?
    - ☐ Incarcerated defendant's access to discovery materials?
    - ☐ ESI discovery volume for receiving party's planning purposes?
    - ☐ Parties' software or hardware limitations?
    - ☐ Production of ESI from 3rd party digital devices?
    - ☐ Forensic images of ESI digital devices?
    - ☐ Metadata in 3rd party ESI?
    - ☐ Redactions?
    - ☐ Reasonable schedule for producing party?
    - ☐ Reasonable schedule for receiving party to give notice of issues?
    - ☐ Appropriate security measures during transmission of ESI discovery, *e.g.*, encryption?
    - ☐ Adequate security measures to protect sensitive ESI against unauthorized access or disclosure?
    - ☐ Need for protective orders, clawback agreements, or similar orders or agreements?
    - ☐ Collaboration on sharing costs or tasks?
    - ☐ Need for receiving party's access to original ESI?
    - ☐ Preserving a record of discovery produced?
- ☐ Have the parties memorialized their agreements and disagreements?
- ☐ Do the parties have a system for resolving disputes informally?
- ☐ Is there a need for a designated discovery coordinator for multiple defendants?
- ☐ Do the parties have a plan for managing/returning ESI at the conclusion of the case?

ATTACHMENT 7

Camden County Bar Association
Code of Professionalism

PREAMBLE

The Camden County Bar Association has a long and proud history of service to the public, to our system of justice and to its members. The lawyers who have the privilege of being accepted as Association members continue a tradition of treating fellow members and the judiciary before whom they practice in a professional and courteous manner. While this professionalism includes acting with integrity and complying with the ethical standards mandated by the Rules of Professional Conduct, it goes beyond those fundamental obligations and represents the higher standard of conduct that makes the profession of law more than a competitive service industry. As we approach the 21st century, however, the legal profession stands at the crossroads of becoming such a large, impersonal and technologically oriented business that some members lose sight of the traditional values and virtues to which lawyers of the past had always subscribed.

At a time when the complexities of the law and the fast-paced society which it mirrors make practicing our learned art increasingly difficult, the members of the Camden County Bar Association wish to restate their commitment to the standards of professional courtesy, which have guided us and our conduct towards each other for more than a century.

In furtherance of this goal, the members of the Camden County Bar Association do hereby adopt the following Code of Professionalism.

1. I will provide my client with objective advice and will endeavor to represent my client=s lawful interests as expeditiously and economically as possible.

2. I will advise my client against pursuing a course of action that is without merit and against tactics which are intended to delay resolution of the matter, or to harass or drain the financial resources of the opposing party.

3. I will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation, and the civility and courtesy to others during the course of representing the client are not to be equated with weakness, but rather are virtues upon which our system of justice is founded.

4. I will treat with civility and courtesy opposing counsel and other lawyers and their staffs, parties, witnesses and the courts and members of the court staff. Professional courtesy is a professional necessity and is entirely compatible with vigorous advocacy and zealous representation.

5. I will never knowingly misstate facts or law, and I shall always act so that other lawyers and judges can trust in and rely upon my oral or written word.

6. I will agree to reasonable extensions of time or for waiver of procedural formalities when the legitimate interest of my client will not be adversely affected.

7. I will endeavor to consult with opposing counsel before scheduling depositions or meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested. I will be punctual in honoring scheduled appearances and in providing notice of cancellation of appointments, depositions or hearings to all concerned parties at the earliest possible time.

8. In the conduct of litigation or negotiation, I will conduct myself with fairness and dignity, refraining from any course of conduct meant to harass the opposing party; from engaging in excessive or abusive discovery, and from advancing groundless objections or committing other acts of rudeness or disrespect.

9. I will be considerate in my communications with others, promptly returning telephone calls and responding to correspondence from clients and other lawyers.

10. While I will be a vigorous advocate on my client=s behalf, I always will be mindful that I am an officer of the court, and that I have an obligation to conduct myself with respect for the court and for my adversaries.

11. In civil proceedings, I will voluntarily withdraw claims or defenses if it becomes apparent that they lack merit, and I will stipulate to non-essential facts as to which there is not genuine dispute. I will cooperate with other lawyers towards the goal of having matters resolved in a prompt and fair fashion.

12. I will not quarrel needlessly over matters of form or style, but will concentrate on matters of substance and content.

13. I will strive to keep current in the areas in which I practice. I will familiarize myself with the Rules of Professional Conduct and adhere to these rules in the everyday practice of my profession.

14. I will be mindful of my obligation to enhance the image of the legal profession in all of my professional actions. I will be so guided in my comments about the judiciary, opposing counsel or the members of any other profession, and in the methods and contents of any advertising which I may pursue.

15. I recognize that the law is a learned profession and that among its desirable goals and devotion to public service, improvement of the administration of justice and the contribution of uncompensated time towards the administration of justice and on behalf of those persons who cannot afford legal assistance.

As a condition of membership in the Camden County Bar Association, I agree to abide by and conduct the practice of law in a manner consistent with this Code.

Adopted November, 1993

CAMDEN COUNTY BAR ASSOCIATION

ATTACHMENT 8

New Jersey State Bar Association

Resources

Pro Bono
NJ Lawyers Ass
NJ State Bar Fc
NJICLE
Government Af

NJ Commission on Professionalism

Note: The Commission does not regulate, investigate or discipline lawyers. For advice on filing a complaint against a lawyer please contact the Office of Attorney Ethics, PO Box 963, Trenton, NJ. You may call them at (609) 530-4010.

Background

The New Jersey Commission on Professionalism in the Law is a unique cooperative venture of the NJSBA, the state and federal judiciary, and New Jersey's three law schools. The Commission was formed in response to increasing displeasure within the bar about the future direction of the profession, and public criticism of lawyers and the legal system. We hope to contribute to a strengthening of the traditional values, and sense of responsibility and public purpose, that have made the practice of law a distinguished profession. Moreover, we hope our work helps to increase public respect for judges and the justice system.

Towards this end the Commission develops programs and initiatives for lawyers, judges, and law students. We sp take positions on professional responsibility issues, and serve as an information resource for bar associations. The Center in New Brunswick.

The Commission's Chair is Superior Court judge Linda R. Feinberg of Mercer County. Members include a member district court judge, representatives of the state trial and appellate courts, the Deans of New Jersey's law schools, from Rutgers College, and a public representative. The Commission's Executive Director is Charles J. Hollenbeck.

Chair

Hon. Linda R. Feinberg
Mercer County Civil Courthouse
175 South Broad Street
P.O. Box 8069
Trenton, NJ 08650

Executive Director

Charles J. Hollenbeck, Esq.

Members

Frank R. Allocca
Hon. Louis J. Belasco
Hon.. Garrett E. Brown Jr.
Hon. Wendel E. Daniels
Dean John J. Farmer Jr.
Susan A. Feeney
Alan I. Gould
Dean Patrick E. Hobbs
Joel A. Leyner
Hon. Joseph F. Lisa
Hon. Stuart Rabner
Dean Rayman L. Solomon
Karol Corbin Walker
James Youngleson

New Jersey State Bar Association

Resources

Pro Bono
NJ Lawyers Assistance
NJ State Bar Foundation
NJICLE
Government Affairs

Programs & Projects

Professionalism Counseling Program

Introduction

The primary mission of the Commission on Professionalism in the Law is to foster within the legal community a climate of appropriate professional behavior, respect for others, and commitment to the important values that have long shaped the legal profession. Certainly, the majority of lawyers conduct themselves in such a manner. However, there are other lawyers that show little respect for colleagues, clients, or the courts.

In 1997 the Commission developed a novel approach, the Professionalism Counseling Program, aimed at helping to curb unprofessional behavior and restoring public confidence in the bar. The Commission asked county bar associations across New Jersey to take the lead through the establishment of Professionalism Committees that would have the ability to identify and counsel lawyers whose conduct falls short of accepted levels of professional behavior or competence.

The Professional Counseling Program has been approved by the New Jersey Supreme Court and judges have been urged to cooperate to help ensure that the program's objectives are met. The program, however, is not court controlled nor is it an arm of the lawyer disciplinary system. It is a bar initiative aimed directly at improving the profession.

Objectives

The Professionalism Counseling Program addresses conduct by lawyers that does not rise to the level of a violation of the ethics rules (the Rules of Professional Conduct). Thus, it does not handle any matter that is within the jurisdiction of a District Ethics Committee. For instance, the program deals with such things as harassing conduct, abusive litigation tactics, incivility, inappropriate courtroom conduct, and repeated lack of respect for colleagues, judges, and court staff. The program is educational in nature. No discipline or sanctions are imposed, and all matters are confidential. The only records kept are those relating to the type of complaint addressed.

Operation

The program is operated through Professionalism Committees appointed by county bar associations. The precise composition, structure and operation of a committee is left to the bar association to establish, and different approaches have been taken. Some committees operate under formal operational rules; others deal with complaints on a more ad hoc basis. Another committee has established a mediation program to deal with disputes between lawyers. The commission encourages such experimentation and leaves it to bar associations to determine what type of program best fits the needs of the bench and bar of that county.

The Commission has, however, set some basic guidelines for Professionalism Committees:

Each committee, and a committee chair, should be appointed by the county bar president.

Lawyer members of committees should be highly regarded and experienced members of the bar with reputations for competence, integrity and civility. Judges, both sitting and retired, are encouraged to participate and should exhibit the same qualities.

The program should offer assistance in the following circumstances:

A lawyer requests assistance in dealing with another lawyer, or in addressing specific conduct of another lawyer

A lawyer requests assistance in dealing with a professionalism issue

A judge requests assistance in dealing with a lawyer, or in addressing specific conduct of a lawyer

The Appellate Division encounters unprofessional behavior and refers an opinion to the Commission, for referral to the appropriate county bar committee.

The program shall not handle complaints from clients, or members of the public.

Generally, complaints are directed to the chair of the Professionalism Committee. Lawyers and judges seeking advice about where to bring a complaint should contact either the president, or executive director, of the bar association where the lawyer in question practices, or where the incident took place. The evaluation of complaints is done pursuant to committee rules and guidelines. Most committees will ask a member to look into a complaint by talking with the lawyers involved. If further action is deemed necessary, committee members will be assigned to counsel the lawyer in question, or the lawyer will be asked to appear before the committee. If a lawyer is reluctant to cooperate, the assignment judge (pursuant to Court Directive #1-97) may be asked to intercede and assist in ensuring the lawyer's cooperation.

Currently, sixteen of New Jersey's twenty-one county bar associations have adopted some form of professionalism counseling. Committees may also refer lawyers to other programs, if the circumstances so warrant. For instance, such referrals have been made in cases where substance abuse problems have been uncovered.

New Jersey State Bar Association

Agenda & Accomplishments

In 1998 the Commission received the American Bar Association's Gambrell Award in recognition of outstanding achievement in the design and implementation of a professionalism program.

The Commission has developed or participated in the following initiatives and programs:

An Annual Symposium on Professionalism.

Presentation of professionalism awards to deserving lawyers from across the state.

Principles of Professionalism - guidelines for lawyers and judges.

Professionalism Counseling Program - for use by county bar associations to address situations of egregious or persistent unprofessional behavior.

Revisions to the Skills and Methods Course - Suggested changes so that required courses for new lawyers include professionalism themes.

Lawyers Pledge - a supplement to the traditional oath used to swear-in new lawyers, the Pledge stresses professional responsibility and positive values.

Judges Education - participation in the annual Judicial College for state court judges.

Educational efforts - participation in bar association, law firm, law school, and inns of court seminars.

Articles - periodically issue positions and articles on professionalism issues.

Outreach - continue to meet with individuals and groups from throughout New Jersey's legal community, including federal and state judges, and managing partners from major law firms.

Further information about the Commission and its work may be obtained from the Executive Director, New Jersey Law Center, One Constitution Square, New Brunswick, NJ 08901.

Resources
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PROFESSIONALISM AND INDEPENDENCE

New Jersey Commission on Professionalism in the Law

Just what is "professionalism" anyway? It is a valid and timely question, and one that has generated differing responses. For starters, the term "professionalism", when applied to lawyers, has much broader connotations than many realize. For instance, professionalism means more than smiling at your adversary, or standing politely at the counsel table when a judge takes the bench.

It is also important to recognize the distinction between professionalism and ethics, even though they go hand in hand. The ethics rules (codified in the Rules of Professional Conduct) are mandatory, black letter standards that establish a minimum level of conduct. Failure to abide by the rules may result in disciplinary sanction. Professionalism, however, is grounded in aspirational goals and traditions that seek to encourage the bar, and bench, towards conduct that preserves and strengthens the dignity, honor, and integrity of the profession. See *Between Law and Virtue*, Joseph P. Tomain and Barbara G. Watts, 71 U.Cin.L.Rev 585 (2003).

Often professionalism is equated with civility, but it is much more than that. A few years ago a New Jersey State Bar Association study committee attempted to come up with a definition, and concluded that professionalism means "not what you have the right to do, but rather to do what's right."

United States Supreme Court Justice Sandra Day O'Connor has said that "the essence of professionalism is a commitment to develop one's skills and to apply them responsibly to the problems at hand. Professionalism requires....a willingness to subordinate narrow self interest in pursuit of the more fundamental goal of public service....Lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all."

Implied in Justice O'Connor's definition is a key component in the fabric of a truly professional lawyer -- an understanding that the exercise of independent judgment is essential. Too many lawyers seem to have forgotten that they should not, indeed must not, slavishly do the bidding of a client without regard for the consequences. For instance, the lawyer who has an aggressive and "hands on" client must know better than to heed a client's advice to "litigate like a mad dog" or "make them not only sweat, but bleed cash."

RPC 2.1 requires lawyers to provide clients with independent judgment and candid advice. The Principles of Professionalism adopted by the Commission encourage lawyers to advise clients against pursuing a course of action that is without merit, or tactics that are intended to harass or drain the financial resources of an opposing party.

Lawyers must remember that they are counselors, not hired hands or legal technicians. The highly competitive nature of practice results naturally in a desire to please and retain clients. However, the truly professional lawyer knows that unrealistic client expectations must be addressed and effectively managed. In this way, the best interests of the client will be served, and lawyer independence and moral accountability preserved.

This article is one of a series intended by the Commission on Professionalism in the Law to encourage discussion about professionalism issues and problems facing the legal community.

New Jersey Commission on Professionalism in the Law

Recapturing Public Confidence

One of the most crucial problems facing us is the decline of public confidence in the legal profession and our justice system. Recapturing public support has proven to be an elusive goal, but is one of vital importance. Our legal system relies for its survival on public acceptance of its legitimacy. The courts, and the bar, can rely on neither the sword nor the power of the purse to advance the rule of law or obtain public respect for it. We instead must utilize moral suasion, reason, and principled discourse. When the public questions our conduct, practices, motives and abilities, we have a serious problem on our hands.

Public opinion about the bar and bench is linked directly to professionalism. We cannot expect to be popular all of the time, or with everyone; a role as an advocate or decision maker makes this impossible. But, at the same time we should not dismiss all criticism as being misinformed or irrelevant. Public perceptions are often accurate. I need not recount recent surveys that show declining public support for the bar, and the bench.

In an era when it appears that few want to take responsibility for anything, we should not join the crowd and look elsewhere for answers. Instead, we must shoulder some of the blame for our current condition. Despite the tenor of the times and its often negative impact on all segments of society, lawyers and judges should never forget that the public has the right to expect much from us---because each of us has been given much.

We must all begin to think about the kind of profession and justice system we wish to serve, the kind of professionals we wish to be. In short, it is time for us to make a difference. We like to speak of the "noble profession" of the law, but mere words will not do the trick. We must act like the professionals we want to be by never forgetting the core values that define us. We must hold others to the same standards.

Professionalism is not a bumper sticker that says "have you hugged your adversary today?" It is a commitment to the standards and values that have always well served the legal community, the values the public has come to expect lawyers to observe and judges to embody. The public is waiting to see if these standards and values still have meaning to us. Our response will determine the future legitimacy of the legal profession and the justice system it serves.

This article is one of a series authored by the commission and intended to promote professional responsibility and encourage discussion about issues and problems facing the legal community. The commission is a cooperative venture of the NJ State Bar Association, the state's three law schools, and the judiciary. The commission's goal is to improve the professionalism of lawyers and judges through education and other initiatives.

New Jersey Commission on Professionalism in the Law

Learning From Bill McElroy, the Quintessential Professional

Former Judge Bill McElroy died a few months ago. The Commission on Professionalism in the Law dedicates these remarks to him and the beauty of his life. We can all learn from his example.

The Commission recently surveyed judges and bar leaders regarding the state of professionalism in New Jersey's legal community. As might be expected the results were mixed, and the consensus view is that while the topic of professionalism is now on the radar screen, persistent problems still exist.

Senior federal court Judge Dickinson Debevoise brought to the Commission's attention a situation well known to us all, but little examined. It regretfully does not bode well for the future of the profession. The theme – the bottom line/ billable hour orientation of law firms is a familiar one, but with a new spotlight placed upon it. Judge Debevoise suggests that the real root cause of unprofessional conduct can be traced not just to the aberrant behavior of a few individuals but to the way law practice is sometimes conducted today. Simply put, the work demands placed on lawyers make it almost impossible for them to be professionals in the true sense. So, instead of participating in family activities, community affairs, pro bono representation, or religious and charitable causes, lawyers put in extra hours at the office because their professional advancement depends upon it. The judge warns that such intense concentration on the business of the law firm, to the exclusion of all else, is the most serious threat today to lawyer professionalism.

To back up his point he provided us with an important study by the Boston Bar Association entitled *Facing the Grail: Confronting the Cost of Work-Family Imbalance.* The Boston Bar's report catalogues the problems faced by lawyers in attempting to balance work demands with family obligations. The results are troubling. For instance, many law firm partners, associates, and law students believe that being successful in law practice is incompatible with daily involvement in family life. Further, the intense competition for clients has changed the culture of some law firms so that revenue production is the primary measure of success. There are no longer client "relationships" but instead transaction-by-transaction business arrangements.

The implications of the report are clear, but what can be done? The Boston Bar suggests that law firms need to examine their values, policies and culture in tandem with a parallel examination of economic assumptions and incentives. What is the real meaning of "success"? Is it slavish dedication to consistently long hours, or should it be something much broader, including an appropriate balance between work, family and community service? How can lawyers be true "professionals" when they have no time for the things that define that term? Moreover, are the economic assumptions and practices of law firms becoming counterproductive?

The accounting profession has been attempting to deal with similar problems. Its major firms were plagued by rapid turnover of employees, particularly women concerned with both career success and maintaining family commitments. Many firms have instituted a variety of workplace and management reforms that have resulted in lower attrition of employees, higher productivity and reduced recruiting and training costs. In short, some of the larger accounting firms have come to realize that accommodating employee needs has helped, not harmed, the bottom line.

There was a time, not so long ago, when the legal profession was known not only for the quality services it delivered, but also for the quality of the people it produced. When law firms were concerned more about service and less about the economics of the practice. This was Bill McElroy's era. At his memorial service attended by hundreds of judges, lawyers and friends Judge McElroy was rightfully praised for his many accomplishments in every aspect of life, not just the law. Of course, his contributions to the law were substantial. He was widely recognized as the quintessential professional. It was fitting that beside the judge's photo in the memorial service program appeared a quotation, written years ago by Ralph Waldo Emerson, that is compelling in its relevance to all of us today. Emerson's words respond to the many questions raised by the Boston Bar study, and are worth repeating:

"To laugh often and much; to win the respect of intelligent people and the affection of children; to earn the appreciation of honest critics and endure the betrayal of false friends; to appreciate beauty; to leave the world a bit better whether by a healthy child, a garden patch, or a redeemed social condition; to know even one life has breathed easier because you have lived. This is to have succeeded."

We need to remember that the legal profession is more than a business and life in the law is not an end in itself. Bill McElroy understood this and was a success in every way imaginable. For us, he is a person worth remembering and emulating. He understood how to balance priorities—especially the difference between true service to others and simply generating billable hours.

This article is intended to promote professional responsibility and encourage discussion about issues and problems facing the legal community. In the future the Commission will recognize other lawyers and judges whose careers stand as an examples for all of us, the focus on Judge McElroy is not intended to ignore the outstanding contributions of other departed colleagues.

BIOGRAPHIES

BIOGRAPHIES OF PANELISTS

HONORABLE JOSEPH E. IRENAS

The Honorable Joseph E. Irenas was appointed to the United States District Court for the District of New Jersey on April 13, 1992. He took senior status on July 1, 2002. Prior to his appointment to the Bench, Judge Irenas was a Partner at the law firm of McCarter & English, Newark, New Jersey.

Judge Irenas is a graduate of Princeton University (A.B., 1962) and Harvard Law School (J.D., 1965). Upon completion of law school, Judge Irenas served as Law Secretary to the Honorable Haydn Proctor, Justice of the New Jersey Supreme Court.

Judge Irenas served as a member of the New Jersey Board of Bar Examiners from 1986 to 1988. Prior thereto, he had served as a member, and then Vice Chairman, of the District V Ethics Committee of the New Jersey Supreme Court.

Judge Irenas has been a member of the Judicial Conference Committee on Judicial Resources, Chair of the Committee on Automation and Technology for the United States District Court District of New Jersey and Co-Chair of the Third Circuit Task Force on Libraries. He currently serves on the Committee on Model Criminal Jury Instructions for the Third Circuit.

Judge Irenas is a member of the American Bar Association, American Law Institute, New Jersey Bar Association and Camden County Bar Association. He is also a Fellow of the Chartered Institute of Arbitrators (London) and a Fellow of the American Bar Foundation.

Judge Irenas is a 2005 recipient of the Justice William J. Brennan, Jr. Award given each year by the Association of the Federal Bar of the State of New Jersey.

HONORABLE JOEL SCHNEIDER, USMJ

The Honorable Joel Schneider, USMJ, was appointed to the position of United States Magistrate Judge in the District of New Jersey in October of 2006 and sits in Camden, New Jersey. Prior to his appointment, Judge Schneider was in private practice for 26 years where he specialized in complex civil litigation. Judge Schneider was appointed by his District's Board of Judges as the Compliance Judge for Arbitration. Judge Schneider is an appointed member of the Committee on Federal-State Jurisdiction of the Judicial Conference of the United States. Judge Schneider is also an Adjunct Professor at Rutgers Law School-Camden.

ARTHUR J. ABRAMOWITZ, ESQUIRE

Arthur J. Abramowitz is a member of the firm's Bankruptcy, Insolvency and Restructuring Practice Group. He joined Cozen O'Connor in January 2000, having previously been shareholder at Davis, Reberkenny & Abramowitz, P.C., in Cherry Hill, NJ, where he was chairman of its bankruptcy department.

Mr. Abramowitz has substantial experience in various aspects of corporate reorganizations and workouts, as well as commercial litigation. He has successfully reorganized numerous debtors and has represented creditors committees, secured and unsecured creditors and trustees. Mr. Abramowitz has been involved in mass tort cases relating to asbestos, as well as diet supplements.

Mr. Abramowitz has received numerous professional distinctions for his work in the field. He is a fellow of both the American College of Bankruptcy and a Life Fellow of the American Bar Foundation. The Third Circuit Court of Appeals has chosen Mr. Abramowitz on numerous occasions as a member of the merit selection committee for the appointment of Bankruptcy Judges. Mr. Abramowitz has been named *The Best Lawyers in America* in the Bankruptcy practice for the past 25 years. He was named one of the Top 100 Super Lawyers in New Jersey for 2010 and was listed in the *International Who's Who of Insolvency & Restructuring Lawyers and Who's Who Legal USA: Insolvency and Restructuring.* In 2012, he was listed in Inside Jersey as a "Top Rated Lawyer" in the state, in the area of Bankruptcy. The list identified lawyers who have been recognized by their peers to have reached the highest level of ethical standards and professional excellence.

Mr. Abramowitz is currently chairman of the Bankruptcy Section of the New Jersey Bar Association. He has served as chairman of the Lawyer's Advisory Committee, president of the Federal Bar Association for the state of New Jersey and president of the Camden County Bar Association. Mr. Abramowitz was an elected delegate to the American Bar Association, and has previously served as a member of the board of directors for the American Judicature Society; chairman, Committee on Professional Responsibility for the New Jersey Bar Association; and the president of The Greater Cherry Hill Chamber of Commerce.

Mr. Abramowitz graduated from Rutgers University in 1969 and from Temple University School of Law in 1972, where is was executive editor of the *Law Review.* Following law school, he clerked for the Hon. Mitchell H. Cohen, Chief Judge, U.S. District Court, Camden, NJ.

CHRISTOPHER D. ADAMS, ESQUIRE

Mr. Adams received his B.A., cum laude, from West Virginia University in 1995 and his J.D. from Seton Hall University School of Law in 1998, where he served as President of the Student Bar Association and a tutor to first-year students. He concentrates his practice in the areas of state and federal criminal defense, attorney ethics matters and complex commercial litigation. Mr. Adams counsels and represents individuals, corporations, political candidates and political campaigns on criminal and election law issues. He appears frequently in both state and federal courts in New Jersey and has

argued before the New Jersey Supreme Court. Mr. Adams is admitted to practice in New Jersey, the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit.

Mr. Adams is the 2006 recipient of the New Jersey State Bar Association Young Lawyer Professional Achievement Award, and was named a "Top 40 Under 40" Attorney by the *New Jersey Law Journal* in its August 2007 issue. He has been recognized in *New Jersey Monthly* magazine's "Super Lawyers - Rising Stars" of the legal profession every year since 2006. Mr. Adams was selected by *New Jersey Super Lawyers* in the area of Criminal Defense in 2012.

Mr. Adams has served as a member of the New Jersey Supreme Court Committee on Model Criminal Jury Charges, and has been appointed by the New Jersey Supreme Court to the District VC Ethics Committee for a four year term beginning September 2008. He is an active member of the American Bar Association, National Association of Criminal Defense Lawyers, New Jersey State Bar Association, Association of Criminal Defense Lawyers of New Jersey, the Association of the Federal Bar and the Essex County Bar Association. He is an Executive Board Member and Trustee of the Association of Criminal Defense Lawyers of New Jersey, where he also serves as a member of the Amicus Committee.

CARL D. POPLAR, ESQUIRE

Carl D. Poplar graduated Rutgers School of Law-Camden, NJ and was admitted to the Bar in 1967. He is a member and involved in many organizations. More particularly he is a Fellow of the International Academy of Trial Lawyers and a Fellow of the American College of Trial Lawyers. He is a Fellow of the American Board of Criminal Lawyers. He is Past President of the Association of the Federal Bar of the State of New Jersey, as well as a founder and Past President of the Association of Criminal Defense Lawyers of NJ.

Mr. Poplar is a recipient of the Trial Bar Award for professional excellence by the Trial Attorneys of New Jersey, as well as a recipient of the Armitage Distinguished Alumni Award from Rutgers School of Law-Camden and the Hon. Lawrence A. Whipple Award for professional excellence from the Association of Criminal Defense Lawyers of NJ. He has also received The Distinguished Service Award from the New Jersey Institute for Continuing Legal Education.

Mr. Poplar presently serves on the Editorial Board of the New Jersey Law Journal.

He has been listed in the Best Lawyers in America since its initial publication in 1983. Currently he is listed in six separate specialty areas of practice. He is also listed in the top 100 New Jersey Super Lawyers in the New Jersey Monthly Magazine publication.

He has served on various New Jersey Supreme Court committees including service as Chairperson of the Trial Attorney Certification Board.

For over thirty years he has been a frequent lecturer and presenter at Continuing Legal Education programs.