
APPENDIX Z

DISCIPLINARY RULES, ETHICAL CONSIDERATIONS AND ETHICS OPINIONS RELATING TO LAW PRACTICE CONTINUITY

New York State Disciplinary Rules

DR 1-102 [22 NYCRR § 1200.3] Misconduct.

DR 1-103 [22 NYCRR § 1200.4] Disclosure of information to authorities.

DR 1-104 [22 NYCRR § 1200.5] Responsibilities of a partner or supervisory lawyer and subordinate lawyers.

DR 2-102 [22 NYCRR § 1200.7] Professional notices, letterheads, and signs.

DR 2-103 [22 NYCRR § 1200.8] Solicitation and recommendation of professional employment.

DR 2-106 [22 NYCRR § 1200.11] Fee for legal services.

DR 2-107 [22 NYCRR § 1200.12] Division of fees among lawyers.

DR 2-108 [22 NYCRR § 1200.13] Agreements restricting the practice of a lawyer.

DR 2-110 [22 NYCRR § 1200.15] Withdrawal from employment.

DR 2-111 [22 NYCRR § 1200.15-a] Sale of law practice.

DR 3-101 [22 NYCRR § 1200.16] Aiding unauthorized practice of law.

DR 3-102 [22 NYCRR § 1200.17] Dividing legal fees with a non-lawyer.

DR 4-101 [22 NYCRR § 1200.19] Preservation of confidences and secrets of a client.

DR 5-101 [22 NYCRR § 1200.20] Conflict of interest; lawyer's own interests.

DR 5-104 [22 NYCRR § 1200.23] Transactions between lawyer and client.

DR 5-105 [22 NYCRR § 1200.24] Conflict of interest; simultaneous representation

DR 5-107 [22 NYCRR § 1200.26] Avoiding influence by others than the client.

DR 5-108 [22 NYCRR § 1200.27] Conflict of interest; former client.

DR 6-101 [22 NYCRR § 1200.30] Failing to act competently.

DR 7-101 [22 NYCRR § 1200.32] Representing a client zealously.

DR 9-102 [22 NYCRR § 1200.46] Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property; maintenance of bank accounts; record keeping; examination of records.

New York State Bar Association Committee on Professional Ethics

- Opinion #48 Fee settlement by deceased lawyer's estate.
- Opinion #178 Withdrawal from employment.
- Opinion #275 Duty of lawyer to disclose failure to act.
- Opinion #281 Payment to retired partner or estate of deceased partner.
- Opinion #295 Duty of lawyer to client for professional liability.
- Opinion #341 Notice to clients whose wills lawyer holds when he retires.
- Opinion #396 Duty to respond to client communications.
- Opinion #460 Preservation of closed files.
- Opinion #480 Duty to report violation of Disciplinary Rule; former client.
- Opinion #521 Wills; contact with executor, beneficiaries.
- Opinion #531 Duty to report violation of Disciplinary Rule; communication to member of rehabilitative committee.
- Opinion #545 Employment, withdrawal from, due to client's unlawful conduct.
- Opinion #622 Firm name; deceased partner; successor firm.
- Opinion #623 Closed files; disposition procedures; dissolution of law firm.
- Opinion #635 Conflict of interest; adverse interests of lawyer.
- Opinion #674 Conflict of interest; multiple representation of corporation and corporate officer.
- Opinion #680 Record retention by electronic means digest: lawyers may retain some records in the form of computer images, but certain records must be retained in original form.
- Opinion #699 Sale of practice by newly elected judge.
- Opinion #707 Sale of portion of law practice.
- Opinion #715 Conflict of interest; sub-contractor to multiple law firms.
- Opinion #724 Wills; obligations of law firm in regard to wills in its custody.
- Opinion #734 Attorney's obligation to report to a client a significant error or omission that may give rise to a possible malpractice claim.

The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics

- Opinion #1993-1 Assignment by retired attorney of accounts receivable to another attorney.
- Opinion #1999-04 Law firm mergers.
- Opinion #1999-05 Lawyer's obligations regarding disposition of original wills held for safekeeping where the testator cannot be located and the lawyer is retiring or the firm is dissolving.

New York County Lawyers' Association Committee on Professional Ethics

- Opinion #709 Partners and legal representatives of deceased attorney; duty to notify clients; lawyer as fiduciary in will.
- Opinion #725 Retention of closed client files/papers.
- Opinion #728 Publicity; Partner withdrawal from firm partnership.

Nassau County Bar Association Ethics Opinions

- Opinion #81-10 Recommended procedure for attorneys, for the management of files on closed matters.
- Opinion #49/88 Payment of referral fees to estate of deceased employer and to attorney who referred cases to that attorney before his death.
- Opinion #89-23 Maintenance by "guardian" attorney of deceased attorney's files on closed matters.
- Opinion #89-43 Custodian attorney's release of files to client of deceased attorney.
- Opinion #90-14 Sharing fee with attorney who has resigned.
- Opinion #91-35 Disclosure of amount charged to clients and other information about clients.
- Opinion #92-27 Maintenance by "guardian" attorney of deceased attorney's files on closed matters.

**American Bar Association Standing Committee on Ethics
and Professional Responsibility**

- Opinion #327 A law firm may, in accordance with a pre-existing retirement plan, pay to a retired partner, or for a fixed period to the estate of a deceased partner, an amount measured by earnings accrued after the retirement or death of the partner.
- Opinion #92-369 Disposition of deceased sole practitioner's client files and property.

Ethical Considerations

- EC 2-34 Sale of law practice – protection of clients.
- EC 2-35 Sale of law practice – notice to clients.
- EC 2-36 Sale of law practice – client confidences.

NEW YORK STATE DISCIPLINARY RULES

DR 1-102 [22 NYCRR § 1200.3] Misconduct.

- A. A lawyer or law firm shall not:
1. Violate a Disciplinary Rule.
 2. Circumvent a Disciplinary Rule through actions of another.
 3. Engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer.
 4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
 5. Engage in conduct that is prejudicial to the administration of justice.
 6. Unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable, and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding.
 7. Engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

DR 1-103 [22 NYCRR § 1200.4] Disclosure of Information to Authorities.

- A. A lawyer possessing knowledge, (1) not protected as a confidence or secret, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of DR 1-102 [1200.3] that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

DR 1-104 [22 NYCRR § 1200.5] Responsibilities of a Partner or Supervisory Lawyer and Subordinate Lawyers.

- A. A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules.
- B. A lawyer with management responsibility in the law firm or direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the disciplinary rules.
- C. A law firm shall adequately supervise, as appropriate, the work of partners, associates and non-lawyers who work at the firm. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

- D. A lawyer shall be responsible for a violation of the Disciplinary Rules by another lawyer or for conduct of a non-lawyer employed or retained by or associated with the lawyer that would be a violation of the Disciplinary Rules if engaged in by a lawyer if:
1. The lawyer orders, or directs the specific conduct, or, with knowledge of the specific conduct, ratifies it; or
 2. The lawyer is a partner in the law firm in which the other lawyer practices or the non-lawyer is employed, or has supervisory authority over the other lawyer or the non-lawyer, and knows of such conduct, or in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could be or could have been taken at a time when its consequences could be or could have been avoided or mitigated.
- E. A lawyer shall comply with these Disciplinary Rules notwithstanding that the lawyer acted at the direction of another person.
- F. A subordinate lawyer does not violate these Disciplinary Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

DR 2-102 [22 NYCRR § 1200.7] Professional Notices, Letterheads, and Signs.

- C. A lawyer shall not hold himself or herself out as having a partnership with one or more other lawyers unless they are in fact partners.

DR 2-103 [22 NYCRR §1200.8] Solicitation and Recommendation of Professional Employment.

- A. A lawyer shall not solicit professional employment from a prospective client:
1. By in-person or telephone contact, except that a lawyer may solicit professional employment from a close friend, relative, former client or current client;
 2. By written or recorded communication if:
 - a. The communication or contact violates DR 2-101 [1200.6] (A);
 - b. The prospective client has made known to the lawyer a desire not to be solicited by the lawyer;
 - c. The solicitation involves coercion, duress or harassment;
 - d. The lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient make it unlikely that the recipient will be able to exercise reasonable judgment in retaining an attorney; or
 - e. The lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.
- B. A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:
1. A lawyer or law firm may refer clients to a non-legal professional or non-legal professional service firm pursuant to a contractual relationship with such non-legal professional or non-legal professional service firm to provide legal and other professional services on a systematic

and continuing basis as permitted by DR 1-107, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; or

2. A lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by DR 2-107.
- C. No written solicitation shall be sent by a method that requires the recipient to travel to a location other than that at which the recipient ordinarily receives business or personal mail.
- D. A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations which promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:
1. A legal aid office or public defender office:
 - a. Operated or sponsored by a duly accredited law school;
 - b. Operated or sponsored by a bona fide, non-profit community organization;
 - c. Operated or sponsored by a governmental agency; or
 - d. 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 or authorized by law or court rule;
 4. Any bona fide organization which recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
 - a. Neither the lawyer, not the lawyer's partner, nor associate, nor any other affiliated lawyer nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.
 - b. 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.
 - c. 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.
 - d. The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief.
 - e. The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations.
-

- f. Such organization has filed with the appropriate disciplinary authority, to the extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.
- E. A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks services does so as a result of conduct prohibited under this Disciplinary Rule.
- F. Advertising not proscribed under DR 2-101 [1200.6] shall not be deemed in violation of any provision of this Disciplinary Rule.

DR 2-106 [22 NYCRR § 1200.11] Fee for Legal Services.

- A. A lawyer shall not enter into an agreement for, charge or collect an illegal or excessive fee.
- C. A lawyer shall not enter into an arrangement for, charge or collect:
 - 1. A contingent fee for representing a defendant in a criminal case.
 - 2. Any fee in a domestic relations matter:
 - b. Unless a written retainer agreement is signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement. A lawyer shall not include in the written retainer agreement a nonrefundable fee clause; or
- E. In domestic relations matters, a lawyer shall resolve fee disputes by arbitration at the election of the client.
- F. In domestic relations matters, a lawyer shall provide a prospective client with a statement of client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement.

DR 2-107 [22 NYCRR § 1200.12] Division of Fees among Lawyers.

- A. A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm, unless:
 - 1. The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
 - 2. The division is in proportion to the services performed by each lawyer or, by a writing given the client, each lawyer assumes joint responsibility for the representation.
 - 3. The total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered the client.
- B. This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 [22 NYCRR § 1200.13] Agreements Restricting the Practice of a Lawyer.

- A. A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.
- B. In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts the right of a lawyer to practice law.

DR 2-110 [22 NYCRR § 1200.15] Withdrawal from Employment.

A. In general.

1. If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
2. Even when withdrawal is otherwise permitted or required under DR 2-110 [1200.15] (A)(1), (B) or (C), a lawyer shall not withdraw from employment until the lawyer has taken steps to the extent reasonably practicable to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.
3. A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

B. Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

1. The lawyer knows or it is obvious that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.
2. The lawyer knows or it is obvious that continued employment will result in violation of a Disciplinary Rule.
3. The lawyer's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.
4. The lawyer is discharged by his or her client.

C. Permissive withdrawal.

Except as stated in DR 2-110 [1200.15] (A), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

1. The client:
 - a. Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.
 - b. Persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent.
 - c. Insists that the lawyer pursue a course of conduct which is illegal or prohibited under the Disciplinary Rules.
 - d. By other conduct renders it unreasonably difficult for the lawyer to carry out employment effectively.
 - e. Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct which is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.
-

- f. Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.
 - g. Has used the lawyer's services to perpetrate a crime or fraud.
2. The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.
 3. The lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.
 4. The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.
 5. The lawyer's client knowingly and freely assents to termination of the employment.
 6. The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 2-111 [22 NYCRR § 1200.15-a] Sale of Law Practice.

- A. A lawyer retiring from a private practice of law, a law firm one or more members of which are retiring from the private practice of law with the firm, or the personal representative of a deceased, disabled or missing lawyer, may sell a law practice, including good will, to one or more lawyers or law firms, who may purchase the practice. The seller and the buyer may agree on reasonable restrictions on the seller's private practice of law, notwithstanding any other provision of this Code. Retirement shall include the cessation of the private practice of law in the geographic area, that is, the county and city and any county or city contiguous thereto, in which the practice to be sold has been conducted.
- B. Confidences and secrets.
1. With respect to each matter subject to the contemplated sale, the seller may provide prospective buyers with any information not protected as a confidence or secret under DR 4-101 [1200.19].
 2. Notwithstanding DR 4-101 [1200.19], the seller may provide the prospective buyer with information as to individual clients:
 - a. concerning the identity of the client, except as provided in DR 2-111 [1200.15-a] (B)(6);
 - b. concerning the status and general nature of the matter;
 - c. available in public court files; and
 - d. concerning the financial terms of the attorney-client relationship and the payment status of the client's account.
 3. Prior to making any disclosure of confidences or secrets that may be permitted under DR 2-111 [1200.15-a] (B)(2) the seller shall provide the prospective buyer with information regarding the matters involved in the proposed sale sufficient to enable the prospective buyer to determine whether any conflicts of interest exist. Where sufficient information cannot be disclosed without revealing client confidences or secrets, the seller may make the disclosures necessary for the prospective buyer to determine whether any conflict of interest exists, subject to DR 2-111 [1200.15-a] (B)(6). If the prospective buyer determines that conflicts of interest exist prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the prospective buyer shall not review or continue to review the information unless seller shall have obtained the consent of the client in accordance with DR 4-101 [1200.19] (C)(1).

4. Prospective buyers shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the prospective buyers represented the client.
 5. Absent the consent of the client after full disclosure, a seller shall not provide a prospective buyer with information if doing so would cause a violation of the attorney-client privilege.
 6. If the seller has reason to believe that the identity of the client or the fact of the representation itself constitutes a confidence or secret in the circumstances, the seller may not provide such information to a prospective buyer without first advising the client of the identity of the prospective buyer and obtaining the client's consent to the proposed disclosure.
- C. Written notice of the sale shall be given jointly by the seller and the buyer to each of the seller's clients and shall include information regarding:
1. The client's right to retain other counsel or to take possession of the file;
 2. The fact that the client's consent to the transfer of the client's file or matter to the buyer will be presumed if the client does not take any action or otherwise object within 90 days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;
 3. The fact that agreements between the seller and the seller's clients as to fees will be honored by the buyer;
 4. Proposed fee increases, if any, permitted under DR 2-111 [1200.15-a] (E); and
 5. The identity and background of the buyer or buyers, including principal office address, bar admissions, number of years in practice in the state, whether the buyer has ever been disciplined for professional misconduct or convicted of a crime, and whether the buyer currently intends to re-sell the practice.
- D. When the buyer's representation of a client of the seller would give rise to a waivable conflict of interest, the buyer shall not undertake such representation unless the necessary waiver or waivers have been obtained in writing.
- E. The fee charged a client by the buyer shall not be increased by reason of the sale, unless permitted by a retainer agreement with the client or otherwise specifically agreed to by the client.

DR 3-101 [22 NYCRR § 1200.16] Aiding Unauthorized Practice of Law.

- A. A lawyer shall not aid a non-lawyer in the unauthorized practice of law.
- B. A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 [22 NYCRR § 1200.17] Dividing Legal Fees with a Non-lawyer.

- A. A lawyer or law firm shall not share legal fees with a non-lawyer, except that:
 1. An agreement by a lawyer with his or her 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 which fairly represents the services rendered by the deceased lawyer.

3. A lawyer or law firm may compensate a non-lawyer employee, or include a non-lawyer employee in a retirement plan, based in whole or in part on a profit-sharing arrangement.

DR 4-101 [22 NYCRR § 1200.19] Preservation of Confidences and Secrets of a Client.

- A. “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- B. Except when permitted under DR 4-101 [1200.19] (C), a lawyer shall not knowingly:
 1. Reveal a confidence or secret of a client.
 2. Use a confidence or secret of a client to the disadvantage of the client.
 3. Use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.
- C. A lawyer may reveal:
 1. Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
 2. Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.
 3. The intention of a client to commit a crime and the information necessary to prevent the crime.
 4. Confidences or secrets necessary to establish or collect the lawyer’s fee or to defend the lawyer or his or her employees or associates against an accusation of wrongful conduct.
 5. Confidences or secrets to the extent implicit in withdrawing a written or oral opinion or representation previously given by the lawyer and believed by the lawyer still to be relied upon by a third person where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud.
- D. A lawyer shall exercise reasonable care to prevent his or her employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 [1200.19] (C) through an employee.

DR 5-101 [22 NYCRR § 1200.20] Conflicts of Interest – Lawyer’s Own Interests.

- A. A lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer’s own financial, business, property, or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer’s interest.

DR 5-104 [22 NYCRR § 1200.23] Transactions Between Lawyer and Client.

- A. A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

1. The transaction and terms on 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 reasonably understood by the client;
 2. The lawyer advises the client to seek the advice of independent counsel in the transaction; and
 3. The client consents in writing, after full disclosure, to the terms of the transaction and to the lawyer's inherent conflict of interest in the transaction.
- B. Prior to conclusion of all aspects of the matter giving rise to employment, a lawyer shall not negotiate or enter into any arrangement or understanding:
1. With a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the employment or proposed employment.
 2. With any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of employment by a client or prospective client.

DR 5-105 [22 NYCRR § 1200.24] Conflict of Interest; Simultaneous Representation.

- A. A lawyer shall decline proffered employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the lawyer in representing differing interests, except to the extent permitted under DR 5-105 [1200.24] (C).
- B. A lawyer shall not continue multiple employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests, except to the extent permitted under DR 5-105 [1200.24] (C).
- C. In the situations covered by DR 5-105 [1200.24] (A and (B)), a lawyer may represent multiple clients if a disinterested lawyer would believe that the lawyer can competently represent the interest of each and if each consents to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved.
- D. While lawyers are associated in a law firm, none of them shall knowingly accept or continue employment when any one of them practicing alone would be prohibited from doing so under DR 5-101 [1200.20] (A), DR 5-105 [1200.24] (C), DR 5-108 [1200.27] (A) or (B), or DR 9-101 [1200.45] (B) except as otherwise provided therein.
- E. A law firm shall keep records of prior engagements, which records shall be made at or near the time of such engagements and shall have a policy implementing a system by which proposed engagements are checked against current and previous engagements, so as to render effective assistance to lawyers within the firm in complying with DR 5-105 [1200.24] (D). Failure to keep records or to have a policy which complies with this subdivision, whether or not a violation of DR 5-101 [1200.24] (D) occurs, shall be a violation by the firm. In cases in which a violation of this subdivision by the firm is a substantial factor in causing a violation of DR 5-105 [1200.24] (D) by a lawyer, the firm, as well as the individual lawyer, shall also be responsible for the violation of DR 5-105 [1200.24] (D).

DR 5-107 [22 NYCRR § 1200.26] Avoiding Influence by Others than the Client.

- A. Except with the consent of the client after full disclosure a lawyer shall not:
1. Accept compensation for legal services from one other than the client.

2. Accept from one other than the client anything of value related to his or her representation of or employment by the client.
- B. Unless authorized by law, a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal service for another to direct or regulate his or her professional judgment in rendering such legal services, or to cause the lawyer to compromise the lawyer's duty to maintain the confidences and secrets of the client under DR 4-101 [1200.19] (B).

DR 5-108 [22 NYCRR § 1200.27] Conflict of Interest; Former Client.

- A. Except as provided in DR 9-101 [1200.45] (B) with respect to current or former government lawyers, a lawyer who has represented a client in a matter shall not, without the consent of the former client after full disclosure:
1. Thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client.
 2. Use any confidences or secrets of the former client except as permitted by DR 4-101 [1200.19] (C) or when the confidence or secret has become generally known.
- B. Except with the consent of the affected client after full disclosure, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:
1. Whose interests are materially adverse to that person; and
 2. About whom the lawyer had acquired information protected by DR 4-101 [1200.19] (B) that is material to the matter.
- C. Notwithstanding the provisions of DR 5-105 [1200.24] (D), when a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm only if the law firm or any lawyer remaining in the firm has information protected by DR 4-101 [1200.19] (B) that is material to the matter, unless the affected client consents after full disclosure.

DR 6-101 [22 NYCRR § 1200.30] Failing to Act Competently.

- A. A lawyer shall not:
1. Handle a legal matter which the lawyer knows or should know that he or she is not competent to handle, without associating with a lawyer who is competent to handle it.
 2. Handle a legal matter without preparation adequate in the circumstances.
 3. Neglect a legal matter entrusted to the lawyer.

DR 7-101 [22 NYCRR § 1200.32] Representing a Client Zealously.

- A. A lawyer shall not intentionally:
1. Fail to seek the lawful objectives of the client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by subdivision (b) of this section. A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

DR 9-102 [22 NYCRR § 1200.46] Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property; maintenance of bank accounts; record keeping; examination of records.

A. Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

B. Separate Accounts.

1. A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law, shall maintain such funds in a banking institution within the State of New York which agrees to provide dishonored check reports in accordance with the provisions of Part 1300 of the joint rules of the Appellate Divisions. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which he or she is a member, or in the name of the lawyer or firm of lawyers by whom he or she is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts which the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity, into which special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside the State of New York if such banking institution complies with such Part 1300, and the lawyer has obtained the prior written approval of the person to whom such funds belong which specifies the name and address of the office or branch of the banking institution where such funds are to be maintained.
2. A lawyer or the lawyer's firm shall identify the special bank account or accounts required by section 1200.46 (b)(1) of this Part as an "Attorney Special Account," or "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or lawyer's firm.
3. Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.
4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

C. Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

1. Promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest.

2. Identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
3. Maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.
4. Promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

D. Required Bookkeeping Records.

A lawyer shall maintain for seven years after the events which they record:

1. The records of all deposits in and withdrawals from the accounts specified in section 1200.46(b) of this Part and of any other bank account which concerns or affects the lawyer's practice of law. These records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement.
2. A record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed.
3. Copies of all retainer and compensation agreements with clients.
4. Copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf.
5. Copies of all bills rendered to clients.
6. Copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed.
7. Copies of all retainer and closing statements filed with the Office of Court Administration.
8. All checkbooks and check stubs, bank statements, pre-numbered canceled checks and duplicate deposit slips.
9. Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.
10. For purposes of section 1200.46(d) of this Part, a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

E. Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only an attorney admitted to practice law in New York State shall be an authorized signatory of a special account.

F. Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

G. Designation of Successor Signatories.

1. Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account who shall be a member of the bar in good standing and admitted to the practice of law in New York State.
2. An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this rule.
3. The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

H. Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in section 1200.46 (d) of this Part.

I. Availability of Bookkeeping Records; Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this Disciplinary Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto and any such records shall be produced in response to a notice or subpoena *duces tecum* issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this subdivision shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the lawyer-client privilege.

J. Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Disciplinary Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

ETHICAL CONSIDERATIONS

Sale of Law Practice

EC 2-34 Lawyers and law firms, particularly sole practitioners, should have the ability to sell law practices, including good will, provided certain conditions, designed primarily to protect clients, are satisfied. Where a lawyer is deceased, disabled, or missing, the sale may be effected by the lawyer's personal representative. Although the sale of a law practice should ideally result in the entire practice being transferred to a single buyer, there is no single-buyer requirement.

EC 2-35 Notice to clients of the sale of the practice should be timely provided, preferably as soon as possible after an agreement has been reached by the seller and the buyer, and in any event no later than as soon as practicable after the day of closing. The sale of litigated matters does not relieve the seller of his or her obligations under DR 2-110 regarding withdrawal. To the extent that conflicts of interest preclude the buyer from undertaking the representation of any particular clients of the seller, the seller shall, to the extent reasonably practicable, assist such clients in securing successor counsel. If the client declines to engage successor counsel, and if the seller cannot properly withdraw from the representation under DR 2-110, the seller shall retain responsibility for the representation.

EC 2-36 Information concerning client confidences and secrets should not be disclosed to prospective buyers except to the extent permitted by DR 2-111. To the extent disclosures are made, extreme care should be taken to ensure that client confidences and secrets are protected by all lawyers who become privy to such information in the course of examining the seller's practice for possible purchase. Sellers should consider requiring prospective buyers to execute written confidentiality agreements prior to affording them access to any information concerning client matters.

