

of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(b) *Law firm* includes, but is not limited to, a professional legal corporation, the legal department of a corporation or other organization and a legal services organization.

(c) *Person* includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(d) *Professional legal corporation* means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(e) *State* includes the District of Columbia, Puerto Rico, and other Federal territories and possessions.

(f) *Tribunal* includes all courts and all other adjudicatory bodies. A tribunal shall be deemed "available" when it would have jurisdiction to hear a complaint, if timely brought.

(g) *Bar association* includes a bar association of specialists as referred to in section 1200.10(b) of this Part.

(h) *Qualified legal assistance organization* means an office or organization of one of the four types listed in section 1200.8(d)(1) through (4), inclusive, that meets all the requirements thereof.

(i) *Fraud* does not include conduct, although characterized as fraudulent by statute or administrative rule, which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

\* "Confidence" and "Secret" are defined in section 1200.19(a) of this Part.

#### § 1200.2 [DR 1-101] Maintaining Integrity and Competence of the Legal Profession

(a) A lawyer is subject to discipline if the lawyer has made a materially false statement in, or has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

(b) A lawyer shall not further the application for admission to the bar of another person that the lawyer knows to be unqualified in respect to character, education, or other relevant attribute.

#### § 1200.3 [DR 1-102] Misconduct

(a)<sup>1</sup> 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 involving moral turpitude.

(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 available a tribunal of competent jurisdiction, other than a Departmental Disciplinary Committee, a complaint of professional misconduct 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) In domestic relations matters, begin a sexual relationship with a client during the course of the lawyer's representation of the client.

(8) Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

1. So in original. No par. (b) has been enacted.

#### § 1200.4 [DR 1-103] 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 section 1200.3 of this Part that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) 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.

#### § 1200.5 [DR 1-104] Responsibilities of a Partner or Supervisory Lawyer

(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 the conduct of a nonlawyer 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 nonlawyer is employed, or has supervisory authority over the other lawyer or the nonlawyer, and knows of such conduct, or in the exercise or 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.

#### § 1200.6 [DR 2-101] Publicity and Advertising

(a) A lawyer on behalf of himself or herself or partners or associates, shall not use or disseminate or participate in the preparation or dissemination of any public communication containing statements or claims that are false, deceptive, misleading or cast reflection on the legal profession as a whole.

(b) Advertising or other publicity by lawyers, including participation in public functions, shall not contain puffery, self-laudation, claims regarding the quality of the lawyers' legal services, or claims that cannot be measured or verified.

(c) It is proper to include information, provided its dissemination does not violate the provisions of subdivisions (a) and (b) of this section, as to:

(1) education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by the code of professional responsibility; public offices and teaching positions held; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency;

(2) names of clients regularly represented, provided that the client has given prior written consent;

(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the attorney or firm participates; and

(4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by subdivision (1) of this section; range of fees for services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal services.

(d) Advertising and publicity shall be designed to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel. Information other than that specifically authorized in subdivision (C) of this section that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this Rule.

(e) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be delivered to the client at the time of retainer for any such service. Such legal services shall include all those services which are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

(f) If the advertisement is broadcast, it shall be prerecorded or taped and approved for broadcast by the lawyer, and a recording or videotape of the actual transmission shall be retained by the lawyer for a period of not less than one year following such transmission. All advertisements of legal services that are mailed, or are distributed other than by radio, television, directory, newspaper, magazine or other periodical, by a lawyer or law firm with an office for the practice of law in this state, shall also be subject to the following provisions:

(1) A copy of each advertisement shall at the time of its initial mailing or distribution be filed with the Departmental Disciplinary Committee of the appropriate judicial department.

(2) Such advertisement shall contain no reference to the fact of filing.

(3) If such advertisement is directed to a predetermined addressee, a list, containing the names and addresses of all persons to whom the advertisement is being or will thereafter be mailed or distributed, shall be retained by the lawyer or law firm for a period of not less than one year following the last date of mailing or distribution.

(4) The advertisements filed pursuant to this subdivision shall be open to public inspection.

(5) The requirements of this subdivision shall not apply to such professional cards or other announcements the distribution of which is authorized by section 1200.7 of this Part.

EXB

### § 1200.28 [DR 5-109] Conflict of Interest—Organization as Client

(a)<sup>1</sup> When a lawyer employed or retained by an organization is dealing with the organization's directors, officers, employees, members, shareholders or other constituents, and it appears that the organization's interests may differ from those of the constituents with whom the lawyer is dealing, the lawyer shall explain that the lawyer is the lawyer for the organization and not for any of the constituents.

1. So in original. No par. (b) has been enacted.

### § 1200.29 [DR 5-110] Membership in Legal Services Organization

(a)<sup>1</sup> A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests that differ from those of a client of the lawyer or the lawyer's firm, provided that the lawyer shall not knowingly participate in a decision or action of the organization.

(1) if participating in the decision or action would be incompatible with the lawyer's duty of loyalty to a client under Canon 5; or

(2) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests differ from those of a client of the lawyer or the lawyer's firm.

1. So in original. No par. (b) has been enacted.

### § 1200.30 [DR 6-101] Failing to Act Competently

(a)<sup>1</sup> 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.

1. So in original. No par. (b) has been enacted.

### § 1200.31 [DR 6-102] Limiting Liability to Client

(a)<sup>1</sup> A lawyer shall not seek, by contract or other means, to limit prospectively the lawyer's individual liability to a client for malpractice, or, without first advising that person that independent representation is appropriate in connection therewith, to settle a claim for such liability with an unrepresented client or former client.

1. So in original. No par. (b) has been enacted.

### § 1200.32 [DR 7-101] 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.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under sections 1200.15, 1200.21 and 1200.24 of this Part.

(3) Prejudice or damage the client during the course of the professional relationship, except as required under section 1200.33 of this Part.

(b) In the representation of a client, a lawyer may:

(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

(2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

### § 1200.33 [DR 7-102] Representing a Client Within the Bounds of the Law

(a) In the representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.

(7) Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule.

(b) A lawyer who receives information clearly establishing that:

(1) The client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a confidence or secret.

(2) A person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

### § 1200.34 [DR 7-103] Performing the Duty of Public Prosecutor or Other Government Lawyer

(a) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause.

(b) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to a defendant who has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment.

### § 1200.35 [DR 7-104] Communicating With One of Adverse Interest

(a)<sup>1</sup> During the course of the representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by a lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

1. So in original. No par. (b) has been enacted.

### § 1200.36 [DR 7-105] Threatening Criminal Prosecution

(a)<sup>1</sup> A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

1. So in original. No par. (b) has been enacted.

### § 1200.37 [DR 7-106] Trial Conduct

(a) A lawyer shall not disregard or advise the client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(b) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Controlling legal authority known to the lawyer to be directly adverse to the position of the client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

(c) In appearing as a lawyer before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

### § 1200.38 [DR 7-107] Trial Publicity

(a) A lawyer participating in or associated with a criminal or civil matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement ordinarily is likely to prejudice materially an adjudicative proceeding 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

Penal Law, see McKinney's Book 39.

Vehicle and Traffic Law, see McKinney's Book 62A.

### § 129.3 Standards

(a) When a court has contact with a crime victim or witness, the court shall take steps to ensure:

(1) that the victim had been provided with information concerning:

(i) the victim's role in the criminal justice process, including what the victim can expect from the system as well as what the system expects from the victim;

(ii) the stages of the criminal justice process of significance to the victim and the manner in which information about such stages can be obtained; and

(iii) how the court can address the needs of the victim at sentencing or disposition.

(2) that the victim or witness has been notified as to steps the court can take to protect him or her from intimidation, including the issuance of orders of protection and temporary orders of protection.

(3) that a victim or witness who has provided the appropriate court official or criminal justice agency with a current address and telephone number has been notified, if possible, of judicial proceedings relating to his or her case, including:

(i) the initial appearance of an accused before a judicial officer;

(ii) the release of an accused pending further judicial proceedings;

(iii) proceedings in the prosecution of the accused, including entry of a plea of guilty, trial, sentencing or disposition, and, where a term of imprisonment or confinement is imposed, specific information regarding maximum and minimum terms of such imprisonment or confinement; and

(iv) the reversal or modification of the judgment by an appellate court.

(b) The court shall consider the views of victims of the following felonies regarding disposition of the case by dismissal, plea agreement, trial, or sentence:

(1) a violent felony offense;

(2) a felony involving physical injury to the victim;

(3) a felony involving property loss or damage in excess of \$250;

(4) a felony involving attempted or threatened physical injury or property loss or damage in excess of \$250; and

(5) a felony involving larceny against the person.

(c) The court shall consider the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim's case pending judicial proceedings upon an indictment or petition, and concerning the availability of sentencing or dispositional alternatives such as community supervision and restitution from the defendant.

(d) The court shall take steps to ensure that, whenever possible, victims and other prosecution witnesses awaiting court appearances have been provided with a secure waiting area separate from all other witnesses.

(e) The court shall assist in and expedite the return of property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining it relating to proof at trial.

(f) Any judicial or nonjudicial personnel of the unified court system having contact with a crime victim or witness, whether for the prosecution or the defense, shall treat such crime victim or witness with dignity, courtesy and respect.

(g) The court may direct the district attorney or a criminal justice agency to take such steps as may be necessary and appropriate to ensure compliance with these standards.

### § 129.4 Education and Training

Victim assistance education and training shall be given to judicial and nonjudicial personnel of the unified court system so that victims may be promptly, properly and completely assisted.

### § 129.5 Liability

Nothing in this Part shall be construed as creating a cause of action for damages or injunctive relief against the State or any of its political subdivisions or officers or any agency thereof.

## PART 130. COSTS AND SANCTIONS

### SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION

#### § 130-1.1 Costs; Sanctions

(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding

before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's

fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part. This Part shall not apply to town or village courts, to proceedings in a small claims part of any court, or to proceedings in the Family Court commenced under Article 3, 7 or 8 of the Family Court Act.

(b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both. Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm, corporation, government agency, prosecutor's office, legal aid society or public defender's office with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm or corporation with which the attorney is associated.

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

(d) An award of costs or the imposition of sanctions may be made either upon motion in compliance with CPLR 2214 or 2215 or upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

#### § 130-1.1-a Signing of Papers

(a) Signature. Every pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney,

or by a party if the party is not represented by an attorney, with the name of the attorney or party clearly printed or typed directly below the signature. Absent good cause shown, the court shall strike any unsigned paper if the omission of the signature is not corrected promptly after being called to the attention of the attorney or party.

(b) Certification. By signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1.

#### § 130-1.2 Order Awarding Costs or Imposing Sanctions

The court may award costs or impose sanctions or both only upon a written decision setting forth the conduct on which the award or imposition is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount awarded or imposed to be appropriate. An award of costs or the imposition of sanctions or both shall be entered as a judgment of the court. In no event shall the amount of sanctions imposed exceed \$10,000 for any single occurrence of frivolous conduct.

#### § 130-1.3 Payment of Sanctions

Payments of sanctions by an attorney shall be deposited with the Lawyers' Fund for Client Protection established pursuant to section 97-t of the State Finance Law. Payments of sanctions by a party who is not an attorney shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance.

#### § 130-1.4 Application to Officers Other Than Judges of the Courts of the Unified Court System

The powers of a court set forth in this Part shall apply to judges of the Housing Part of the New York City Civil Court and to hearing examiners appointed pursuant to section 439 of the Family Court Act, except that the powers of Family Court hearing examiners shall be limited to a determination that a party or attorney has engaged in frivolous conduct, which shall be subject to confirmation by a judge of the Family Court who may impose any costs or sanctions authorized by this Part.

#### § 130-1.5 Exception

This rule shall not apply to requests for costs or attorneys' fees subject to the provisions of CPLR 8303-a.