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Iowa-Nebraska Ethics Update 2012
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This CLE covers the Rules of Professional Conduct as adopted in Iowa and Nebraska. In most cases, the rules in most other states are identical. Therefore, this course also gives a good refresher for attorneys in other states.

In these materials, a reference to "Rule ___" is a reference to Chapter 32 of the Iowa Court Rules. In Nebraska, it is a reference to Neb. Ct. R. of Prof. Cond. § 3-50x.x, where x.x is the Rule number shown below. For example, Rule 5.2 would be Nebraska . § 3-505.2. The rules are available online, in a volume of the state statutes, and in the state rules of court pamphlet.

Since Iowa is in the process of amending its advertising rules, this portion of the program will cover everything other than the advertising rules. This year, the advertising rules will be covered in a separate session of the program.

The Rules of Professional Conduct begin with a Preamble which states, in general terms, the obligations of lawyers. It also contains some advice as to how the rules should be construed. Paragraph 9 concedes that in many cases, various requirements of the rules can be seemingly in conflict with one another:

> In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

In short, there are many situations where a lawyer needs to step back, and perhaps get outside legal advice as to how to proceed.

One relatively new resource that will be of interest is the e-book Minnesota Legal Ethics by William Wernz. This e-book, which is still in progress, is available for free download at http://minnesotalawyering.com/ethics/.

Rule 1.0: Terminology.
The first section of the rules contains definitions of many terms used elsewhere in the rules. Note that in some cases, a particular state has included additional definitions. For example, Wisconsin has included specific definitions of the terms "consult," "misrepresentation," and "prosecutor".

Rule 1.1: Competence
A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
ABA Comment: "Expertise in a particular field of law may be required in some circumstances", but a lawyer "may accept representation where the requisite level of competence can be achieved by reasonable preparation."

Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

A lawyer "shall abide by a client's decisions", and the representation "does not constitute an endorsement of the client's political, economic, social or moral views or activities." However, a lawyer may not assist in "conduct that the lawyer knows is criminal or fraudulent". However, a lawyer may discuss the legal

consequences of any proposed course of conduct and assist a client to make a good faith effort to determine the scope, meaning, or application of the law.

A lawyer may limit the scope of the representation if reasonable and if the client gives informed consent.

Note: Nebraska has a special rule for documents prepared by an attorney for filing by a pro se litigant. This rule specifically authorizes this practice, but the documents must clearly indicate that the are prepared by the lawyer, and contain the lawyer's name, address, and bar number. The Nebraska rule also contains specific provisions for limited representation.

Rule 1.3: Dilligence.

This rule states in its entirety, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

As the ABA Comment notes: “Perhaps no professional shortcoming is more widely resented than procrastination.”

Rule 1.4: Communication

A lawyer must communicate with his client in the following situations:

1. Any time the client needs to consent to some action under the rules.
2. Tell the client how his or her objectives are going to be carried out.
3. Keep the client informed about the status of the matter.
4. Comply with reasonable requests for information.
5. Let the client know of any relevant limitations on the lawyer's conduct.

ABA Comment: The client should have “sufficient information to participate intelligently in decisions. However, “not be expected to describe trial or negotiation strategy in detail.”

Rule 1.5: Fees.
Fees and expenses must not be "unreasonable". The following factors are relevant to determine whether the fee is reasonable: Time and labor required, novelty and difficulty, whether the representation will prevent the lawyer from taking other employment, customary charge in the locality, amount involved and results obtained, time limitations, nature and length of relationship with the client, the lawyer's experience and reputation, and whether fixed or contingent.

These factors are not exclusive.
Fee and scope of representation shall be communicated in writing. In Wisconsin, however, if the easonably forseeable cost will be less than $1000, this may be communicated orally.

Contingent fee agreements must be in writing and signed by the client, and the rule contains specific requirements for this written contract.

Contingency fees are not allowed in the following types of cases:

1. Family law cases
2. Criminal cases

Splitting fees between more than one attorney must be "in proportion to the services provided by each lawyer", or in cases in which each attorney has maintained responsibility for the case.

Note: Nebraska includes a specific provision requiring the lawyer to give a written accounting for fee and costs upon request.

Rule 1.6: Confidentiality:
"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated" elsewhere in the rule.

However, as the ABA comment states, “Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions.” Therefore, an Iowa lawyer **shall** reveal information if the lawyer believes it is necessary to prevent the client from commiting a criminal or fraudulent act that will result in death or serious bodily injury or substantial financial or property damage.

A Nebraska lawyer **may** reveal such information "to prevent the client from committing a crime or to prevent reasonably certain death or substantial bodily harm."

A lawyer may also reveal client confidences "to secure legal advice about the lawyer's conduct under these rules."and "to comply with other law or a court order". However, in the case of a court order, the ABA comment points out that even then, “the lawyer must consult with the client about the possibility of appeal”.

Rule 1.7: Conflicts of Interest with current clients.

A lawyer may not represent a client if the representation is directly adverse to another client, or if there is a "significant risk" that the representation of one or more clients may be "materially limited".

If the clients give informed consent, the lawyer may represent both parties unless the representation involves the assertion of a claim by one client against another client in the same litigation.

As might be expected, the seemingly simple rule prohibiting conflicts of interest can lead to many gray areas. The ABA comments regarding this rule are quite lengthy, and do discuss a number of specific situations that might arise.

Rule 1.8: More specific rules on conflicts of interest
A lawyer may not enter into a transaction with a client in which he acquires an interest adverse to the client (such as a security interest), unless the transaction is fair and reasonable, the client is advised in writing to obtain outside advice, and the client gives written consent.

Gifts from clients (including testamentary gifts)

In Iowa, a lawyer may not solicit a substantial gift, or prepare an instrument giving such a gift to the lawyer or a person related to the lawyer. There is an exception if the recipient "is related to the client." For the puposes of this rule, the relative to whom a gift is prohibited is defined as including a spouse, child, sibling, grandchild, parent, grandparent, or other relative with a close relationship.

Wisconsin has a much more specific rule. In Wisconsin, a lawyer may not "solicit any substantial gift" from a client, or prepare an instrument (such as a will) giving a gift to the lawyer unless all of these requirements are met:

1. The client is a relative and "natural object of the bounty of the client".
2. There is no reasonable ground to believe the instrument will be contested, or that the public will "lose confidence in the integrity of the bar".
3. The amount of the gift is reasonable and natural.

Until a case is concluded, a lawyer may not receive literary rights based upon the representation.
A lawyer may not provide financial assistance to a client, other than advancing certain costs and expenses.

If a lawyer's fee is paid by someone other than the client, all of the following requirements must be met:

1. The client must consent
2. It does not interfere with the lawyer's independence.
3. Confidential information is maintained properly.

If a lawyer is representing more than one party, then any aggregate settlement must be approved by all of the clients.

A lawyer may not ask a client to prospectively waive malpractice claims (unless the client is independently represented when making that waiver) or to agree not to report the lawyer's conduct to disciplinary authorities.

A lawyer may not acquire a proprietary interest in a cause of action, except for the following:

1. An attorney's lien for his or her fee, if authorized by law.
2. A reasonable contingent fee in a civil case.
A lawyer may not have sexual relations with a client (unless the relationship predated the legal representation). This includes the person(s) who supervise the lawyer, in the case of an institutional client.

With the exception of the last paragraph, these prohibitions also apply to all lawyers in the same firm.

Rule 1.9: Duties to former clients
A lawyer who has represented a former client may not represent another person in the same or substantially related matter without the informed written consent of the former client.

If the firm in which a lawyer had represented a person, then the lawyer may not represent a person materially adverse to that person about whom the lawyer had acquired certain confidential information.
Note: As the ABA comments state, with respect to the former client of a former firm, "the Rule should not be so broadly cast as to preclude other
persons from having reasonable choice of legal counsel."

A lawyer may not use information relating to the representation of a former client to the former client's disadvantage, unless as otherwise permitted by the rules (or when the information has become generally known).

A lawyer may not reveal information relating to a representation of a former client (other than would be permitted with respect to a current client).

Rule 1.10: Imputed Disqualification.

In general, if a lawyer in a firm is prohibited from representing a client under Rule 1.7 or 1.9, then the same prohibition extends to all lawyers in the firm.

There are two exceptions to this disqualification:

1. The other lawyers in the firm are not disqualified if the prohibition is based on a personal interest of the prohibited lawyer, and there is not a significant risk that the representation by the other lawyers would be materially limited.
2. If the lawyer is disqualified under Rule 1.9 (duties to former clients), then the other lawyers are not disqualfied if all three of the following conditons are met:
i. The personally disqualified lawyer performed only minor and isolated services in the earlier matter, and only with the former firm.
ii. That lawyer is screened from any participation in the new matter, and receives no fee from it.
iii. Written notice is given to the former client.

In general, if a lawyer is no longer part of a firm, then the firm is not disqualified because the former member's having represented a client. However, the former firm might be disqualified in one of the following four situations:

1. The matter is the same or substantially related to the matter in which the formerly associated lawyer represented the client.
2. One of the firm's remaining lawyers has certain confidential information.
3. The conflict has been waived, in the same manner as the waiver under Rule 1.7.
4. In the case of Government lawyers, a different rule (1.11) applies.

Rule 1.11: Special rules regarding former and current government officers and employees.

Rule 1.9(c) (use of information gained from a previous representation) does apply in the case of a former government attorney. Also, in general, such a lawyer may not represent a client in connection with a matter in which that lawyer participated personally, unless the government agency gives its written informed consent.

If one lawyer in a firm is disqualified under the previous paragraph, then the firm is also disqualified, unless both of the following conditions are met:

1. The disqualified lawyer is screened, and shares no portion of the fee.
2. Written notice is given to the government agency.

If a lawyer has gained confidential government information about a person during his government employment, then he may not represent a private client whose interests are adverse to that person, if the information could be used to that person's material disadvantage. In this case, the lawyer's firm may represent such a client, if the disqualified lawyer is screened and does not share in the fee.

Current government lawyers are bound by Rules 1.7 and 1.9. Such a lawyer may not participate in matters in which he participated outside of government, unless the agency gives its written informed consent.

Current government lawyers may not negotiate for employment with any person involved in a matter in which he is participating. (There is an exception for current judicial law clerks, subject to conditions.)

Wisconsin adds a provision making clear that the conflicts of a current government lawyer are NOT imputed to other lawyers in that agency. However, the lawyer must be screened from any participation in that matter. This explicit Wisconsin rule is based upon ABA comments to the rule, which states that it would be “prudent” to screen the
lawyer.

Rule 1.12: Former judges, arbitrators, mediators, and neutrals.

In general, a lawyer should not represent anyone in a matter in which he or she served as a judge, arbitrator, mediator, or neutral. A lawyer shall not negotiate for employment with such a person (with an exception for law clerks, subject to conditions). In many states, such a lawyer may participate in the matter, if the conflict is waived. However, in Wisconsin, this conflict cannot be waived.

If a lawyer is disqualified under this rule, then the rest of the lawyer's firm is also disqualified, unless the lawyer is screened and shares no part of the fee, and notice is given.In general, a partisan arbitrator in a multi-member arbitration panel may subsequently represent that party in the same matter. In Wisconsin, however, consent of all parties is required.

Rule 1.13: Organization as client.

A lawyer retained by an organization represents the organization. Therefore, if he becomes aware that some person within the organization is going to act in violation of a legal obligation to the organization, or

violate a law that is likely to result in substantial injury to the organization, then the lawyer must act in the best interest of the organization. In general, he must refer the matter to higher authorities within the organization.

If the highest authority within the organization fails to address this matter, and if the lawyer reasonably believes that this will cause substantial injury to the organization, then the lawyer may make limited disclosure, even if the disclosure would otherwise violate Rule 1.6. (This does not apply if the lawyer has been retained to investigate a possible violation of law or to defend a claim arising out of a violation.)

If the lawyer believes that he has been fired for being a "whistleblower", then he or she is required to bring this information to the attention of the organization's highest authority. When dealing with officers, directors, employees, etc., the lawyer should explain that the organization is the client, if it is apparent that the organization's interests are adverse to those persons.

In general, the organization's lawyer may also represent officers, employees, etc. But see Rule 1.13(g) regarding required consent.

Rule 1.14: Client with Diminished Capacity

In general, a lawyer should, to the extent reasonably possible, maintain a normal client-lawyer relationship. Diminished capacity may be the result of minority, mental impairment, or some other reason.

If the lawyer reasonably believes that a client with diminished capacity is at the risk of "substantial physical, financial, or other harm", then the lawyer **may** take reasonably necessary protective action. This can include consulting with others who have the ability to take action. If appropriate, the lawyer may seek to have appointed a guardian ad litem, conservator, or guardian.

The client's confidential information is still protected by Rule 1.6. However, the lawyer is impliedly authorized to reveal information, if necessary to take such protective action. However, note that the lawyer is not **required** to take action under this rule. He or she is merely **authorized** to take action. Therefore, care should be taken to ensure that confidential information is not released to the client's detriment. As the ABA comment notes, "at the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client."

Rule 1.15: Safekeeping a Client's property.

A lawyer is required to deposit funds belonging to clients or other third parties to be into a trust account if they are held in connection with a representation.

The only funds belonging to the lawyer which can be held in such accounts are reasonable amounts to cover service charges, and funds belonging jointly to the lawyer and client.

Fees belonging to the attorney must be withdrawn from the trust account within a reasonable time after being earned.

A written accounting must be made for any such withdrawals.

A lawyer must promptly notify a client or third person upon receiving such funds, securities, or other properties.

Securities and property must be identified and labeled promptly, and promptly placed in a "safe deposit box or other place of safekeeping". Complete records must be kept of all such property.

Property must be paid or delivered promptly if requested by the person entitled to receive it.

Generally, all advance fees must be deposited into the trust account and withdrawn as earned, unless subject to a written agreement under Rule 1.5.

If funds are held only for a short period of time, or are nominal in amount, then they should be deposited into a pooled IOLTA (Interest on Lawyer Trust Accout) account.

In other cases, separate accounts must be maintained for individual clients, with the client receiving any interest on those amounts.

In addition to rules governing trust accounts, the rule also governs the lawyer's office account. A lawyer engaged in the practice of law must maintain current books and records sufficient to demonstrate income and expenses. In general, these records must be maintained for six years, and the lawyer must certify compliance annually.

In Minnesota, the Lawyers Professional Responsibility Board annually pulbishes a list of the books and records that are required to be maintained. This list can be found at:
http://www.mncourts.gov/lprb/rulesapp1.html

The financial institution must meet certain requirements, which are outlined in the rules and supporting documents. And, the financial institution must agree to report any overdrafts, regardless of whether the overdraft is honored!

The specific Iowa requirements for client trust accounts are governed by chapters 39 and 45 of the Iowa Cout Rules. These are available online at:

http://www.legis.iowa.gov/DOCS/Rules/Current/court/courtrules.pdf

A summary of these rules is available at the following link:

http://www.iowacourtsonline.org/wfdata/frame11315-1608/TrustOutline.pdf

Both the Iowa and Minnesota documents linked above contain a good explanation of what records need to be maintained. And the Iowa document gives a number of good pointers as to how problems can be avoided. For example, it warns of the perils of "asking clients to ' wait until tomorrow' to cash a settlement check."

The Wisconsin rule contains a number of very specific rules about how long one must wait before concluding that a deposited check has "cleared".

Rule 1.16: Declining or terminating representation.

A lawyer **shall not** represent a client, and **shall** withdraw from representing a client in any of the following situations:
1. The representation will result in violation of the rules or of other law
2. The lawyer's physical or mental condition materially impairs the lawyer's ability
3. The lawyer is discharged.

A lawyer **may** withdraw from representing a client* in any of the following situations:

1. There will be no material adverse effect on the client's interests.
2. The client persists in a course of action involving the lawyer's services, and the lawyer reasonably believes this is criminal or fraudulent.
3. The client has used the lawyer's services to perpetrate a crime or fraud.
4. The client insists on taking some action that the lawyer finds repugnant or with which the lawyer fundamentally disagrees.

5. The client fails to substantially fulfill an obligation (e.g. pay) for the lawyer's services, and sufficient warning has been given.
6. Continued representation would be an unreasonable financial burden for the lawyer, or the client has made it unreasonably difficult.
7. "other good cause for withrawal exists".

*--Even though a lawyer may be permitted to withdraw under one of these circumstances, the lawyer must comply with any law requiring notice or permission by the court.

When ordered by the court, the lawyer must continue representing the client, notwithstanding good cause for terminating the representation.

If a lawyer does terminate a representation, the lawyer must take reasonable steps to protect the client's interests.

Iowa and Wisconsin both generally state that a client's papers must be returned at the end of the represenation, if the client is entitled to them. Minnesota goes into greater detail, and explains which papers the client must receive.

Rule 1.17: Sale of law practice.

A lawyer may sell or purchase a law practice, if the following conditions are met:

1. The seller ceases to practice law in that geographic area and/or that area of the practice of law.
2. The entire practice, or area of practice, is sold to one or more lawyers or law firms.
3. The seller gives a specific written notice to each client.
4. Client fees may not increase due to the sale.

Rule 1.18: Duties to a prospective client.

A "prospective client" is a person who discusses with a lawyer the possibility of forming an attorney-client relationship.

In general, information revealed in such discussions cannot be used or revealed. (There is an exception only if Rule 1.9 permits revealing it with respect to a former client.)

If the lawyer has learned information that "could be significantly harmful" in those discussions, then the lawyer shall not represent a client with interests that are materially adverse. This prohibition extends to other lawyers in the firm.

There are two exceptions to this rule:
1. The lawyer may represent the client if both the client and the prospective client have given written informed consent.
2. If the lawyer took reasonable measures to avoid exposure to the information, then other lawyers in his or her firm may represent the client. Notice must be given to the prospective client.

Rule 2.1: Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In giving advice, the lawyer **may** also look to considerations besides the law, such as moral, economic, social, and political factors.

Note: there is no “Rule 2.2" in Minnesota, Iowa, or Wisconsin.

Nebraska Rule 2.2/ Iowa Rule 2.3: Evaluation for use by 3rd persons.

A lawyer may evaluate a matter affecting a client for use by someone else, if the lawyer reasonably believes that doing so is otherwise compatible with the relationship with the client.
If the evaluation will adversely affect the client's interests, then the lawyer must first obtain the client's informed consent.

Except as autorized in connection with the evaluation, confidential information remains protected by Rule 1.6.

Nebraska Rule 2.3/Iowa Rule 2.4: Lawyer serving as 3rd-party neutral.

If a lawyer is serving as a third-party netural (for example, arbitrator or mediator), the lawyer must inform unrepresented parties that he or she is not representing them. If the party does not understand the lawyer's role, then the lawyer must explain the difference between a third-party neutral and a lawyer representing a client.

Ruel 3.1: Meritorious claims and contentions.

A lawyer shall not do any of the following in representing a client:

1. Knowingly advance a claim or defense that is unwarranted, unless it can be supported by a good faith argument for an extension, modification, or reversal of exisitng law.
2. Knowingly advance a factual position unless there is a non-frivolous basis.
3. File a suit, conduct a defense, or delay a trial if the lawyer knows (or it is obvious) that doing so would serve merely to harass or maliciously injure another person.

Exception: The lawyer for a defendant in a criminal case (or a case that could result in deprivation of liberty) may defend as to require that every element of the case be established.

Rule 3.2 Expediting litigation:

"A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

Rule 3.3: Candor toward the tribunal.

A lawyer shall not do any of the following:

1. Make a false statement of fact or law to a tribunal, or fail to correct a prior false statement.
2. Fail to disclose adverse legal authority if:
    a. it is from the controlling jurisdiction
    b. it is known to the lawyer
    c. it is directly adverse to the client's position
    d. it is not disclosed by opposing counsel.
3. Offer evidence known to be false. If a lawyer has offered material evidence and he or she comes to know of its falsity, the lawyer shall take reasonable remedial measures. This might include disclosure to the tribunal. (If a lawyer knows evidence to be false, then he or she may refuse to offer that evidence, except in the case of a criminal defendant's testimony.)

If a lawyer in an adjudicative proceeding knows that a person has engaged or will engage in criminal or fraudulent conduct, then the lawyer must take reasonable remedial measures. If necessary, this can include disclosure to the tribunal.

The Minnesota and Iowa rules state that these duties continue until "the conclusion of the proceeding". Wisconsin does not include this language. Therefore, presumably, the duty in Wisconsin is continuing, even after the case has been concluded. Wisconsin has specifically rejected the ABA comment that a "practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established."

The duties set forth in this rule take precedence over Rule 1.6. Therefore, under this rule, a lawyer might be **required** to disclose otherwise confidential information.

In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts necessary to make an informed decision, whether or not those facts are adverse.

Rule 3.4 Fairness to opposing party and counsel.

A lawyer shall not do any of the following:

1. Unlawfully obstruct another party's access to evidence, or unlawfully alter, destroy or conceal documents or other items having potential evidentiary value. A lawyer may not counsel or assist another person in doing so.
2. Falsify evidence, or counsel or assist a witness to testify falsely, or offer a witness an inducement that is prohibited by law.
3. Knowingly disobey obligations under court rules, except for an open refusal based upon an assertion that no such obligation exists.
4. Make frivolous discovery requests or fail to dilligently comply with proper discovery requests.
5. Allude at trial to matters that the lawyer does not believe are relevant or supported by evidence, or assert personal knowledge unless actually testifying, or state personal opinions.
6. Request that someone other than a client not voluntarily give information to another party. There is an exception to this rule if both of the following conditions are met:
    a. The person is a relative, employee, or agent of a client, and
    b. The lawyer believes that the person's interests will not be adversely affected.

Nebraska and Iowa Rule 3.5: Impartiality and decorum of the tribunal

A lawyer shall not do any of the following:
1. Seek to influence a judge, juror, prospective juror, or official by means prohibited by law.
2. Communicate ex parte with such a person during the proceeding, unless authorized by court order.
Note: Wisconsin makes a special provision for ex parte communications "for scheduling purposes if permitted by the court." In such a case, the lawyer must promptly notify the lawyer for the other party.
3. Communicate with a juror or prospective juror after discharge, in any of the following circumstances:
    a. The communication is prohibited by law or court order.
    b. The juror has made known a desire not to communicate.
    c. The communication involves misrepresentation, coercion, duress, or harassment.
4. Engage in conduct intended to disrupt a tribunal.

Rule 3.6 Trial publicity.

If a lawyer participates in the investigation or litigation of a matter, then he or she shall not make an extrajudicial statement if the lawyer knows or reasonably should know that it will be publicly disseminated, and there will be a substantial likelihood of prejudicing the matter.

In jury cases and criminal cases, the following kinds of statements are presumed to have such an effect:

1. Character, credibility, reputation, or criminal record of a party, suspect, or witness, or the identity of a witness, or the expected testimony.
2. In a criminal case, the possibility of a guilty plea, or the contents of any confession or statement, or the refusal to make a statement.
3. The performance or results of tests, or refusal or failure to take a test.
4. An opinion as to guilt or innocence
5. Evidence that is likely to be inadmissible.
6. The fact that the defendant has been charged, unless it is also stated that this is merely an accusation, and that the defendant is presumed innocent.

Wisconsin codifies a number of exceptions to items 1 through 5. (These are contained in the ABA comment to this rule, and this comment is included in the Iowa codification of the rule. Curiously, this comment is absent from the Minnesota codification.) Wisconsin permits lawyer may state the following:
1. The claim, offense, or defense involved. The lawyer may also identify the persons involved, unless prohibited by law.
2. Information contained in a public record.
3. That an investigation is in process.
4. The scheduling or result of any step in the litigation.
5. A request for obtaining evidence and information.
6. A warning or danger concerning the behavior of a person, if there is a likelihood of substantial harm.
7. In a criminal case, the following additional information:
a. identity, residence, occupation, and family status of the accused.
b. if the accused has not been apprehended, information necessary to aid apprehension
c. the fact, time, and place of arrest.
d. identity of officers and agencies involved, and the length of investigation.
There is also an exception if a lawyer needs to make a statement to protect the client from the prejudicial effect of recent publicity.

The prohibition under this rule applies to other lawyers associated in a firm or government agency.

Rule 3.7 Lawyer as witness.

If it is likely that a lawyer will be a necessary witness, then he or she shall not act as an adocate. There are the following exceptions:
1. The testimony relates to an uncontested issue.
2. The testimony relates to the nature and value of legal services rendered in the case.
3. There would be a substantial hardship to the client

It is permissible for a lawyer to be an advocate, even though an attorney in his or her firm will be a witness. However, he or she might be precluded because of confidential information, under Rules 1.7 or 1.9.

Rule 3.8 Special responsibilities of a prosecutor
A prosecutor may not prosecute a criminal case if he or she knows that the case is not supported by probable cause.

The prosecutor must make reasonable efforts to assure that the accused has been advised of his right to obtain counsel and the procedure for obtaining counsel.

The prosecutor shall "not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing".

In general, a prosecutor should not subpoena a lawyer in a grand jury proceeding regarding the lawyer's past or present client. However, there are limited exceptions.

There are also specific duties upon a prosecutor with regard to pretrial publicity.

Rule 3.9 Advocate in nonadjudicative proceedings

A lawyer representing a client before a legislative body or administrative agency shall disclose that the appearance is on behalf of a client. Most of rules 3.3, 3.4, and 3.5 apply to such a representation.

Rule 4.1 Truthfulness in statements to others

In the course of representing a client, a lawyer may not make a false statement of material fact or law to a third party.

In Wisconsin, Nebraska, and Iowa, a lawyer shall not fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act. The Minnesota rule does not contain this provision.

Wisconsin also provides an exception which makes clear that a lawyer may advise or supervise others with respect to "lawful investigative activities." For example, Wisconsin includes a comment approving of the use of testers to investigate unlawful discrimination, or undercover detectives to investigate theft in the workplace.

Rule 4.2 Communication with person represented by counsel

In representing a client, a lawyer shall not communicate about the subject with a person the lawyer knows to be represented by another lawyer. There is an exception if the other lawyer consents, or if authorized by law or court order.

Iowa adds a paragraph to deal with the situation of a person who is represented by an attorney, but the attorney is representing the person only to a limited extent, as permitted by Rule 1.2(c). In such a case, the person is considered to be unrepresented if the lawyer knows of the limitation.

Rule 4.3 Dealing with unrepresented person

In dealing on behalf of a client with a person who is not represented by counsel, Wisconsin includes the specific requirement that the lawyer shall inform the person of the lawyer's role. In all three states, if the person misunderstands that role, the lawyer has an affirmative duty to correct the misunderstanding. The lawyer shall not give legal advice (other than the advice to secure counsel, if the lawyer believes the interests are likely to be in conflict.)

Minnesota and Iowa includes the specific provision that the lawyer shall not state or imply that he or she is disinterested. Presumably, this duty is included in the provision in other states which requires the lawyer to explain his or her role in the matter.

Rule 4.4 Respect for rights of 3rd persons.

In representing a client, a lawyer shall not use means that have no purpose other than to embarass, delay, or burden third parties. A lawyer must not use methods of obtaining evidence that violate a third person's rights.

If a lawyer accidentally receives a document and reasonably knows that it was inadvertently sent, then the lawyer shall promptly notify the sender.

Wisconsin Rule 4.5: Guardians ad litem.

Minnesota and Iowa do not have a counterpart to this rule. In Wisconsin, a lawyer appointed to act as a guardian ad litem must act in that person's best interests, even if contrary to that individual's wishes. This rule is based upon Paige K.B. v. Molepske, 219 Wis. 2d 418, 580 N.W.2d 289 (1998); In re Steveon R.A., 196 Wis. 2d 171, 537 N.W.2d 142 (Ct. App. 1995). Minnesota and Iowa do not have a corresponding rule.

Rule 5.1: Responsibilities of partners, managers, and supervisory lawyers

A partner in a law firm, or another lawyer with comparable managerial authority, shall make reasonable efforts to ensure that there are measures reasonably assuring that all lawyers conform to the rules.

A lawyer with direct supervisory authority has a similar duty.

A lawyer is responsible for another lawyer's violation in either of the following two circumstances:

1. The lawyer orders or ratifies the conduct.

2. The lawyer has managerial or supervisory authority and knows of the conduct in time to mitigate it, but fails to do so.

Rule 5.2 Responsibilities of a subordinate lawyer

A lawyer is bound by the rules, even though he or she acted at the direction of another person. However, it is not a violation if the lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question.

Rule 5.3 Responsibilities regarding nonlawyer assistants

Lawyers with managerial authority, such as partners, shall make reasonable efforts to ensure that non-lawyers employed or retained are compatible with the lawyer's professional obligations.

This duty also applies to persons with direct supervisory authority.

Lawyers are responsible for violations by such persons in the following circumstances:

1. The lawyer orders or ratifies the conduct.
2. The lawyer is a partner or comparable manager, and knew of the conduct in time to mitigate it, but failed to do so.

Rule 5.4 Professional independence of a lawyer

A lawyer shall not share fees with a nonlawyer. There are, however, four exceptions to this rule:
1. Certain payments to a lawyer's estate after his or her death.
2. Purchase of the practice of a deceased, disabled, or disappeared lawyer.
3. Certain retirement or compensation plans for non-lawyer employees
4. Court-awarded legal fees may be shared with certain non-profit organizations.
A lawyer may not form a partnership with a non-lawyer if one of the activities of the partnership is the practice of law.
A lawyer may not have his services directed or regulated by a person who recommends, pays, or employs him or her.
There are restrictions upon the ownership and control of professional corporations or associations.

Rule 5.5: Unauthorized practice of law; multijurisdictional practice of law.

A lawyer shall not practice law in a jurisdiction if it violates the regulation of the legal profession in that jurisdiction. However, a lawyer admitted in his or her home state does not violate this rule by conduct in another state, if the same conduct would be permitted by an out-of state lawyer by the following rules:

A lawyer admitted in another U.S. jurisdiction (who is not disbarred or suspended in any jursidiction*) may provide any of the following types of services on a temporary basis:

1. Services in association with a lawyer who is admitted in the state, who actively participates in the matter.
2. Services that are reasonably related to a pending or potential proceeding (even if the proceeding is in this state), if the lawyer or the person the lawyer is assisting reasonably expects to be authorized by law or order to appear.
3. Reasonably related to a pending or potential arbitration, mediation, etc., (even if it is in this state), if both of the following conditions are met:
   a. The services must be reasonably related to the lawyer's practice where he is admitted.
   b. The services are not ones where the forum requires pro hac vice admission.

4. Arise out of or are reasonably related to the lawyer's practice where he is admitted. However, this provision applies only to matters that are not within the preceding paragraphs (2: proceedings before a tribunal, or 3: arbitration, mediation, etc.)

A lawyer from another jurisdiction (if not disbarred or suspended anywhere*) may provide legal services in the state if authorized by federal law, or some other law.

Even if one of these exceptions applies, a lawyer not admitted in a state shall not do either of the following:
1. Unless otherwise authorized, establish an office or systematic presence in the state to practice law.
2. Hold out to the public or represent that he is admitted to practice in the state.

Iowa also allows an out-of-state lawyer to provide legal services on behalf of his or her employer or its organizational affiliates, provided that these are not services that require pro hac vice admission. Nebraska has a special provision regarding registration of in-house counsel in that situation, **Neb. Ct. R. §§ 3-1201 to 3-1204,**

*- In Wisconsin, the prohibition against disbarred and suspended attorneys applies only if they are suspended or disbarred "for disciplinary reasons or medical incapacity". The comment makes clear that if the lawyer is suspended or disbarred for any reason in his or her primary jurisdiction of practice, then he or she is not eligible.

In Wisconsin, a lawyer from another state who provides legal services in Wisconsin consents to the appointment of the Clerk of the Wisconsin Supreme Court as agent for service of process.

Rule 5.6 Restrictions on right to practice

A lawyer may not participate in any kind of business arrangement that restricts his or her right to practice law after terminating the relationship. There is an exception for agreements concerning retirement benefits. A lawyer may not participate in an agreement that restricts his or her right to practice as part of the settlement of a client's case.

Minnesota, Nebraska and Iowa Rule 5.7: Responsibilities regarding law-related services.

A "law-related service" is a service that might reasonably be performed with and substantially related to the provision of legal services. However, it is the type of service that can be performed by a nonlawyer and not be prohibited as the unauthorized practice of law.

A lawyer providing such services is subject to the Rules of Professional Conduct in either of the following situations:

1. They are not distinct from the lawyer's provision of legal services to clients
2. If the lawyer fails to take reasonable measures to assure the person obtaining the services knows that they are not legal services, and that the protections of the lawyer-client relationship do not apply.

Rule 6.1 Voluntary pro bono publico service

"Every lawyer has a professional responsibility to provide legal services to those unable to pay." A lawyer "should aspire" to render at least 50 hours of pro bono service per year. This obligation can be fulfilled in the following ways:

A substantial majority of those fifty hours shall be without fee or expectation of fee to the following:
1. persons of limited means
2. charitable, religious, civic, government, etc., organizations, in matters that are designed primarily to help persons of limited means.

In addition, a lawyer should provide services for no fee or substantially reduced fee, to secure or protect civil rights or civil liberties, public rights. Or, a lawyer shoud provide services to charitable, religious, civic, etc., organizations in furtherance of those organizations' purposes, when standard fees would significantly deplete the organization's resources or would otherwise be inappropriate.

A lawyer should deliver legal services at a substantially reduced fee to persons of limited means.

A lawyer should participate in activities for improving the law, legal system, or legal profession.

In addition, a lawyer should voluntarily contribute financially to organizations that provide legal services to persons of limited means.

Rule 6.2 Accepting appointments

A lawyer shall "not seek to avoid appointment" by a tribunal, except for good cause. Examples of good cause include:

1. Representing the person is likely to result in a rule violation.
2. It would be an unreasonable financial burden.
3. The person's cause is so repugnant that it will likely impair the lawyer's ability to represent the person.

Rule 6.3 Membership in legal services organization

A lawyer may serve as a director, officer, or member of a legal services organization, even though the organization serves persons with interests adverse to one of his or her clients. However, the lawyer should not knowingly participate in any decision or action of the organization in either of the following cases:

1. Doing so would be a conflict of interest under Rule 1.7.
2. The decision could have a material adverse effect on the organization's representation of such a client.

Rule 6.4 Law reform activities affecting client interests

A lawyer is permitted to serve as a director, officer, or member of an organization involved in the reform of the law or its administration. This is true even though the reform may affect the interests of one of his or her clients. But if the lawyer knows that a client's interests may be materially benefited by a decision in which the lawyer participates, the lawyer must disclose this fact. However, the lawyer need not identify the client.

Rule 6.5 Nonprofit and court-annexed limited legal services programs

The following rules apply to a lawyer who participates in a program sponsored by a nonprofit organization or court which provides short-term legal services to clients, where neither the lawyer nor the client expect that the lawyer will provide continuing representation in the matter.

The lawyer is subject to Rules 1.7 (conflicts of interest) and 1.9(a) (conflicts of interest with former clients), only if the lawyer knows that the representation involves a conflict of interest.

The lawyer is subject to Rule 1.10 (imputed conflict of interest of firm) only if he knows that another lawyer in his or her firm would be disqualified. Otherwise, Rule 1.10 does not apply.

Note: Rules 7.1 through 7.5 will be covered separately this year, in the Attorney Advertising portion of the program.

Iowa Rule 7.6 Political contributions to obtain government legal engagements or appointments by judges.

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if he or she makes a political contribution or solicits contributions for the purpose of being considered.

Note: This rule has not been adopted in Nebraska or Minnesota. Among the states adopting this rule are Iowa and Wisconsin.

Rule 8.1 Bar admission and disciplinary matters

The following applies to an applicant for admission to the bar, or to a lawyer in connection with a bar admission application or with a disciplinary matter. Such a person shall not:
1. knowingly make a false statement of material fact, or
2. fail to disclose a fact necessary to correct a misapprehension that the person knows has arisen.
3. Knowingly fail to respond to a lawful demand for information.
However, this rule does not require disclosure of information that is otherwise confidential because of Rule 1.6 (or Iowa Code section 622.10).

Rule 8.2 Judicial and legal officials

A lawyer shall not knowingly or recklessly make a false statement concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or candidate for judicial or legal office.
A lawyer who is a candidate for judicial office shall comply with the code of judicial conduct.

Rule 8.3: Reporting professional misconduct.

A lawyer who knows that another lawyer has violated these Rules shall inform the appropriate authority.
A lawyer who knows that a judge has violated the applicable rules of judicial conduct shall inform the appropriate authority.

This rule does not require disclosure of information that is confidential under Rule 1.6 (or Iowa Code section 622.10). It does not require disclosure of information gained while participating in a lawyers assistance program. (In Iowa, the program must be an "approved" one.)

Rule 8.4: Misconduct

The following are professional misconduct in both Iowa and Nebraska:

1. Violate the rules of professional conduct, knowingly assist or induce a violation, or do so through another's acts.
2. Commit a criminal act that reflects adversely on honesty, trustworthiness, or fitness as a lawyer.
3. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
4. State or imply an ability to improperly influence a government agency or official or achieve results that violate these Rules or other law.
5. Knowingly assist a judicial officer in conduct that violates the rules of judicial conduct or other law
6. Engage in conduct that is prejudicial to the administration of justice, including sexual harassment or other unlawful discrimination in the practice of law.

Nebraska has added to this list the willful refusal to timely pay a support order.

Rule 8.5 Disciplinary authority; choice of law

Disciplinary Authority
A lawyer admitted to the bar in the state is subject to the disciplinary authority of the state regardless of where the conduct occurs.

A lawyer not admitted in the state is subject to the state's disciplinary authority if he or she offers to provide any legal services in the state.
A lawyer may be subject to disciplinary authority in more than one state for the same conduct.

Choice of Law
For conduct before a tribunal, the law of the jurisdiction where the tribunal sits shall apply (unless that court's rules provide otherwise.

For other conduct, if the lawyer is admitted only in one state, then the rules shall be the rules of that state. If the lawyer is admitted in more than one state, then the rules of the jurisiction where he or she principally practices shall apply. However, if the conduct has its predominant effect in another jurisdiction, then the rules of that jurisdiction will apply.