**Duty to Clients.**

 **Duty of confidentiality**

**Duty of loyalty:**

**1) conflicts between clients**

**2) conflicts between lawyer and client**

**3) third party’s interference**

**Duty of financial integrity**

**Duty of competence**

 **duty to communicate**

**duty of diligence**

**duty to maintain the scope of representation**

**duty to withdrawal from representation**

**Duty to the Courts**

**Duty of Candor to the court**

**Duty to state the law truthfully**

**Duty to present facts truthfully**

**Duty to present evidence truthfully**

 **Duty to prevent perjury**

**Duty to Preserve the Dignity of the Court**

 **Duty to preserve the impartiality and decorum of the tribunal**

**Duty to expedite cases**

**Duty to adversaries and public**

**Duties of Fairness**

**Duty of fairness to the Adversaries**

**Duty to produce evidence \*not suppress**

**Dealing fairly with others**

 **Truthfulness in Statements to Others**

 **Respect for Rights of Third Persons**

**Communication with a party represented by counsel**

**Dealing with the press＝Trial Publicity**

**Special duties of prosecutors**

**Duty to Uphold the Law: to prevent the client from committing a crime**

**Duty of the Dignity to the Profession**

**Duty not to engage in the Unauthorized Practice of Law**

 **Duty to Courtesy? 明文なし**

**Duty not to conduct involving dishonesty**

**Duty not to commit a crime**

**Duty to Report Misconduct**

**Duties of Subordinate Lawyers**

**広告Duty to avoid false or misleading advertisements**.

**Duty not to improperly solicit clients**

**Attorney-Client Relationship**

**An attorney-client relationship is formed by express agreement or impliedly when the client reasonably believes the relationship formed. The attorney's beliefs are irrelevant.**

**Scope**

**Within the scope of the representation, an attorney determines the means, including which claims to present and which witnesses to call, and a client determines the ends, including whether to accept a settlement offer and other duties.**

**Duty of confidentiality**

 **A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent in writing.**

 **The disclosure is impliedly authorized to carry out the representation.**

 **Scope**

**The duty of confidentiality applies even when the client did not request it be kept confidential or its revelation might not harm or embarrass the client.**

**Duty to prospective client**

 **A person who consults with a lawyer about the possibility of forming a client-lawyer relationship is a prospective client.**

 **A lawyer shall not use or reveal the information for the prospective**

**client.**

**Exceptions**

**Crimes**

 **A lawyer may reveal information to the extent the lawyer reasonably believes necessary**

**1) to prevent reasonably certain death or substantially bodily harm, or**

**2) to prevent or mitigate substantial financial loss if the client has used or is using lawyer’s service to commit a crime or fraud.**

 **Ca has no exception for financial crimes**

**Defending the lawyer himself**

 **A lawyer may reveal information necessary to establish claims or defenses when 1) being sued for malpractice, 2) defending a disciplinary action, or 3) a client refuses to pay the fee.**

 **If compelled by the law or final court order**

**Duty of loyalty**

 **Concurrent conflict of interest**

 **A lawyer shall not represent a client if the representation involves a concurrent conflict of interest.**

 **A concurrent conflict of interest exists, if**

**1) the representation is directly adverse to another client, or**

**2) there is a significant risk that the representation is materially limited by**

**the lawyer’s responsibility or relationship to clients or a third person;**

**or by a personal interest of the lawyer.**

 **Potential Conflict**

**Even when a significant risk is not present, a lawyer shall not represent a client**

**without written disclosure to the client when the lawyer has (,or knows that**

**another lawyer in the lawyer’s firm has), a legal, business, financial, professional,**

**or personal relationship with a party or witness in the same matter.**

**Client Consents**

**Notwithstanding the existence of the concurrent conflict, a lawyer may represent a client, if**

**1) the lawyer reasonably believes that he or she can provide competent**

 **and diligent representation to each,**

**2) each affected client gives informed consent confirmed in writing, and**

 **CA=Informed written consent**

**3) there is no actual conflict in the same litigation.**

**Imputed disqualification**

 **When a lawyer shall not represent a client by conflict of interest, no lawyer in that lawyer’s firm may represent the client**

 **unless 1) the conflict arises from a purely personal relationship and**

 **there is no significant risk, or**

 **2) the conflict arises out of the disqualified lawyer’s association**

 **with a prior firm and a) the lawyer is timely and effectively**

 **screened and receives no part of the fee and b) written notice**

 **is promptly given to the former clients.**

 **Former clients**

 **A lawyer owes duty of loyalty and confidentiality to a client after representation ends.**

 **A lawyer shall not represent a new client in the same or substantially**

 **related matter in which he had represented a former client unless both**

 **clients give informed consent, confirmed in writing.**

 **Imputed disqualification**

 **A lawyer shall not represent a person in the same or substantially**

 **related matter in which his prior firm had represented a client**

 **a) whose interests are materially adverse to that person and**

 **b) about whom the lawyer had acquired confidential material**

 **information.**

 **Former government lawyer**

 **If the government lawyer worked personally and substantially on a**

 **matter, the lawyer shall not work on the matter later in private**

 **practice, unless the government gives informed consent confirmed**

 **in writing.**

 **Representation of multiple clients in the same matter**

 **The lawyer must disclose the potential conflicts and the potential that**

 **1) he must withdraw from the representation if an actual conflict**

**arises, and**

**2) whatever one client discloses will be shared with all of the other**

**clients.**

 **事後的事情**

 **If the potential conflict eventually ripens into an actual conflict, the**

 **lawyer must withdraw unless reasonable consents of all are given.**

**Conflicts between lawyer and client.**

 **Interest in the subject of litigation.**

 **A lawyer shall not acquire a proprietary interest in the subject matter of the**

 **litigation unless it is 1) to acquire a lien to secure the lawyer’s fee, or**

 **2) to work on a contingent fee basis.**

 **Business transactions or Adverse interests**

 **A lawyer shall not enter into business transaction with a client or obtain an**

 **interest adverse to a client unless**

 **1) the terms are fair, and fully disclosed in understandable writing,**

 **2) the client is given a reasonable opportunity to consult an outside lawyer,**

 **3) and the client gives informed written consent signed by the client.**

 **Publication rights contracts**

 **A lawyer shall not make a contract for his publication right prior to the conclusion of representation.**

 **CA case law discourage contracts but not prohibit them if the client clearly understands and consents.**

 **Loans and advances to your client. 1.8(e)　 1.8注釈10: 保証人になることも禁止**

**A lawyer shall not provide financial assistance to a client in connection with**

**litigation except that**

 **1) a lawyer may advance costs and expenses of litigation, the repayment of**

 **which may be contingent on the outcome of the matter, or**

 **2) a lawyer may pay costs and expenses of litigation on behalf of the indigent**

 **client.**

**3) a lawyer may lend money to the client based on the client’s written promise**

 **to repay the loan. (must satisfy the business transaction rule)**

**Limiting liability**

 **A lawyer shall not agree to limit his liability for malpractice, unless the client
 is independently represented in making the agreement.**

 **A lawyer shall not settle a claim for such liability with an unrepresented client or former**

 **client, unless that person is advised in writing to consult an independent lawyer first.**

**Use of information**

 **A lawyer shall not use information relating to representation of a client to**

 **the disadvantage of the client unless the client gives informed consent.**

 **→it violates the duties of both loyalty and confidentiality.**

**Gifts to the lawyer or lawyer’s family**

 **A lawyer shall not 1) solicit any substantial gift from a client or 2) prepare an**

 **instrument giving the lawyer or a person related to the lawyer any substantial gift**

**unless the lawyer or other recipient is related to the client.**

**Close relationships with the lawyer for the other side.**

**A lawyer should not represent a client where another party is represented by**

**a close relative without informed client consent.**

**(明文規制無し, conflict of interest一般で規制)**

 **Even when a significant risk is not present, a lawyer shall not represent a**

 **client without written disclosure where another party’s lawyer**

 **a) is a relative of the lawyer or lives with the lawyer,**

 **b) is a client of the lawyer or another lawyer in the lawyer’s firm, or**

 **c) has an intimate personal relationship with the lawyer.**

**Trial counsel as a necessary witness**

**In general, a lawyer cannot serve as counsel and witness in the same trial.**

**Lawyer shall not act as counsel at a trial in which the lawyer is likely to**

**be a necessary witness,**

**unless:**

**(1) the testimony relates to a) an uncontested issue or, b) the nature and**

 **value of legal services,**

**(2) disqualification of the lawyer will cause substantial hardship to the client.**

 **(3) or the lawyer has obtained informed written consent from the client.**

 **\*NO (2) Exception**

 **Conflicts due to Third Party interference**

**Compensation** [**1.8(f)**](https://www.law.cornell.edu/ethics/aba/index.htm#Rule_1.8)

 **A lawyer shall not accept compensation for representing a client from one**

 **other than the client,**

 **unless:** **1) the client gives** [**informed consent**](https://www.law.cornell.edu/ethics/aba/current/ABA_CODE.HTM#informed_consent)**; CA must be in writing**

**2) there is no interference with the lawyer's independence of**

 **professional judgement or with the client-lawyer relationship; and**

 **3) the arrangement does not compromise the client’s confidential**

 **Information**

 **Organizational clients.**

**A lawyer representing an organization must act in the best interest of the organization, even if an officer, employee, or other associated person acts to the contrary.**

 **Mandates "reporting up" and Permits limited "reporting out"**

**Reporting Up to higher authority**

 **If a lawyer for an organization knows that an officer, employee or other**

 **person is engaged in action that is likely to result in substantial injury to**

 **the organization, the lawyer shall refer the matter to higher authority in the**

 **organization.**

**Reporting Out**

 **If the highest authority fails to take timely and appropriate action,**

 **the lawyer may reveal information if he reasonably believes such**

 **disclosure is necessary to prevent substantially injury.**

 **New Rule 1.13 mandates reporting up, and permits “reporting out”.**

**Financial duties to the client**

 **Attorney fees**

 **Fee agreements should be reached early and clearly.**

**In non-contingent fee cases,**

**agreements shall include:**

**1) The scope of the representation,**

**2) the basis or rate of the fee, and**

**3) expenses for which the client will be responsible,**

 **preferably in writing,**

 **Agreementsmust be in writing,**

**unless a) the fee is under $1,000,**

**b) it is with a corporate client,**

**c) it is for routine services for a regular client, or**

**d) it is an emergency or impractical.**

**In contingent fee cases**

**A contingent fee agreement shall be in a writing signed by the client**

**and contain** **the method of calculating the fee:**

1) the percentages that shall accrue to the lawyer,

2) expenses to be deducted from the recovery; AND

3) whether such expenses are to be deducted before or after the contingent

fee is calculated.

 **Types of actions allowing contingent fees**

 **Contingent fees may not be used in criminal or domestic relations cases. 同様の規定に改正：1.5(c)**

**Termination before judgment is awarded**

**Quasi Contract**

**–the attorney can recover reasonable fees in proportion to the work**

 **performed. (Unjust Enrichment =quantum meruit)**

 **allows charging liens to guarantee collection from an award to be written**

 **into contingency agreements, but not in hourly fee agreements.**

**When are fees too high?**

**Fees must be reasonable, taking into account the totality of circumstances**

 **①labor ②novelty＆difficulty ③skill ④timing required ⑤result obtained**

 **⑥the experience of the attorney, etc.**

 **Fees must not be unconscionable**

 **+disclosure of material fact, the relative sophistication are taken into account.**

**Fee splitting**

**Fee splitting with lawyers**

 **A division of a fee between lawyers who are not in the same firm may be**

 **made only if:**

 **(1) the division is a) in proportion to the work performed by each lawyer or**

 **b) each lawyer assumes joint responsibility for the representation;**

 **(2) the client agrees to the division in writing; and**

 **(3) the total fee is reasonable.**

 **If 1) there is a written agreement to divide the fee and the client consented**

 **in writing, and**

 **2) the total fee is not increased solely by reason of the agreement to**

 **divide fees.**

 **※ does not require proportionality.**

**Fee splitting with non-lawyers**

 **A lawyer or law firm shall not share legal fees with a nonlawyer,**

 **except 1) death benefits, 2) a compensation or retirement plan for employees,**

 **and 3) sharing with a non-profit organization.**

 **Referral fees are not allowed under the ABA Rules.**

**A lawyer may enter a reciprocal referral arrangement with a non-lawyer or another lawyer, provided it is not exclusive and the lawyer explain the arrangement to the client at the time of the referral.**

**Partnership with non-lawyers in providing legal services.**

 **A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.**

**Client trust accounts**

**1 . A lawyer has a duty to safeguard his client’s property by labeling and storing it in a safe place.**

**2 . Money held for the client must be placed in a client trust account.**

3 . A lawyer must withhold the disputed portion in the client trust account until

resolution.

4 . A lawyer has a duty 1) to keep good records for his client,

 2) to render accountings, notify him of moneys received on

 his behalf, and pay promptly money due to him.

**Duty of competence**

**A lawyer shall provide competent representation to a client.**

**Competent representation requires 1) the legal knowledge, 2) skill,**

**3) thoroughness, and 4) preparation reasonably for the representation.**

 **Unfamiliarity**

 **If the lawyer is unfamiliar with the relevant law, he cannot take on the**

 **matter, unless:**

 **1) he can put in the time to learn it without undue expense or delay to**

 **his client, or**

 **2) he can associate with a lawyer competent in the area.**

**Duty of diligence**

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

**Duty to communicate**

**A lawyer shall keep the client reasonably informed about the case.**

**Then a lawyer must inform the client of settlement offers.**

* **A settlement offer to joint clients must be conveyed to ALL and make sure they agree on the division of the settlement before accepting.**
* **A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.**
* **A lawyer shall explain a matter to the extent reasonably necessary for the client to make informed decisions regarding the representation.**

**Scope of representation**

**・　A lawyer shall abide by a client's decision whether to settle a matter.**

**・ In a criminal case, the lawyer shall abide by the client's decision, after**

**consultation with the lawyer, as to a plea to be entered, whether to waive**

**jury trial and whether the client will testify.**

**Accepting representation**

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

1) the representation will violate ethical rule,

2) representing the client is likely to result unreasonable financial burden, or

3) the client or the cause is so repugnant.

**Duty of withdrawal and refusal**

**Mandatory withdrawal**

**A lawyer shall not represent a client or, shall withdraw from the representation of a client if:**

**1) the representation will violate an ethical rule or other law**

**2) the lawyer's physical or mental condition materially impairs the**

**lawyer's ability to represent the client; or**

**3) the lawyer is discharged. (= fired)**

**CA＋the lawyer know or reasonably should know that the client is**

**bringing action…without probable cause.**

**Permissive withdrawal**

**If there is "good cause", A lawyer may withdraw from representing a**

**client if:**

 **1) withdrawal can be accomplished without material adverse effect on**

 **the interests of the client,**

 **2) the client persists in action that the lawyer reasonably believes is**

**criminal or fraudulent,**

 **3) the client has used the lawyer's services to perpetrate a crime,**

 **4) the client insists upon repugnant action,**

 **5) the client fails to pay, or**

 **6) the representation will result in an unreasonable financial burden on**

**the lawyer or has been rendered unreasonably difficult by the client.**

**6) financial burden & 3)use of your services to commit a past crime**

**is not grounds for permissive withdrawal.**

**Sexual relations**

**A lawyer shall not have sexual relations with a client unless consensual sexual relationship existed between them when the client-lawyer relationship commenced.**

**Advertising and Solicitation**

**Under the Constitution, the government may regulate attorney advertising and solicitation only when 1) there is a substantial interest, 2) the regulation directly advances the interest, and 3) it is narrowly tailored.**

**Advertising**

**A lawyer shall not make a false or misleading communication about the**

**lawyer or the lawyer's services.**

**A communication is false or misleading if 1) it contains a material misrepresentation of fact or law, or 2) it omits a material information.**

**It is misleading when it forms an unjustified expectation or makes unverified comparison.**

 **Claims of legal specialties**

**A lawyer can state one’s fields of practice but may not advertise**

**specialization unless he is a certified specialist.**

**Harassment**

**Advertising must not harass or solicit someone who has indicated they want to be left alone.**

**Label**

**Every solicitation must be labeled as advertising and it must identify at least one lawyer responsible for its contents.**

A lawyer must keep records of the content and placement for two years.

**Solicitation**

**A lawyer shall not, by in-person, live telephone or real-time electronic**

 **contact, solicit professional employment for pecuniary gain,**

**unless the person contacted**

**1) is a lawyer or**

**2) has a family, close personal or prior professional relationship with**

**the lawyer.**

**DUTY OF CANDOR to the others**

**A lawyer is prohibited from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.**

**Duty of Candor to the tribunal**

**A lawyer shall not knowingly**

 **1) make a false statement of fact or law to tribunal,**

 **2) fail to correct a false statement, and**

 **3) offer false evidence.**

**If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.**

**Duty to prevent perjury**

**・A lawyer must refuse to call the client as a witness if he know he intends to perjure himself.**

**・If the matter is a criminal case, because of 5th Amendment right to testify and 6th Amendment right to effective counsel, a lawyer must call to stand.**

**However, the lawyer must**

**1) persuade the defendant to testify truthfully,**

**2) then it fails, try to withdraw from the case,**

**3) if that fails, tell the judge.**

**In CA, seeking withdraw is not mandatory and may allow the defendant to testify in narrative fashion.**

 **・If a client tells a lawyer after the proceedings that he lied, the lawyer must**

**take reasonable remedial measures.**

**Duty to produce evidence**

**・A lawyer shall not counsel or assist a witness to testify falsely or to become unavailable.**

**A lawyer may pay basic expenses of a witness or reasonable fees for expert so long as the payment is not contingent on the content of the testimony.**

**・A lawyer shall not suppress any evidence that he or his client has a legal**

**obligation to produce.**

**・A lawyer shall not request a person to refrain from voluntarily giving relevant information to another party,**

**unless 1) the person is relative or an employee of the client, and**

**2) the lawyer reasonable believes that the person’s interest will not**

**be adversely affected be refraining from giving such information**

**Interference with evidence**

**A lawyer must not obstruct access to or tamper with fruits or instrumentalities of a crime.**

**Prosecutor’s duty to disclose**

**Prosecutors have a special duty to timely disclose evidence favorable**

**to the defense.**

**Mistaken receipt**

**If attorney knows document was inadvertently sent, he must promptly notify opposing counsel.**

**In CA the lawyer shall refrain from examining the writing any more than is necessary to determine that it is privileged.**

**Duty to state the law truthfully**

**The lawyer shall not knowingly make a false statement of law.**

**A lawyer may only bring a claim if there is a basis in law and fact.**

**Duty to Uphold the Law**

**・A lawyer shall not counsel or assist a client, in conduct that the lawyer**

**knows is criminal or fraud.**

**・A lawyer has a duty to disclose a material fact to a third person when**

**disclosure is necessary to avoid assisting a criminal or fraudulent act**

**by a client unless disclosure is prohibited by duty of confidentiality.**

**・If continued representation would require the lawyer to commit or**

**assist in committing a crime, the lawyer must withdraw.**

**・If the client persists in actions that a lawyer reasonable believes are**

**criminal or fraudulent,** but the lawyer is not assisting in a crime**, he may**

**withdraw.**

**Duties of Fairness**

**Truthfulness in Statements**

**In the course of representing a client, a lawyer shall not knowingly:**

**(a) make a false statement of material fact or law to a third person or**

**(b) fail to disclose a material fact to a third party when disclosure is**

**necessary to avoid assisting a criminal or fraudulent by a client.**

**Respect for Rights of Third Person**

**In representing a client, a lawyer shall not**

1. **use means that have no substantial purpose other than to embarrass,**

 **delay, or burden a third person, or**

1. **use methods of obtaining evidence that violate the legal rights of such**

 **a person.**

 **A lawyer shall not threaten to present criminal, administrative or**

 **disciplinary charges to obtain an advantage in a civil dispute.**

**Communication with a party**

**1. A lawyer shall not communicate about the subject of the representation with a person the lawyers know to be represented by another lawyer in the matter without consent of his lawyer or authorization by law or a court order.**

 **In the case of a represented organization, the lawyer must obtain the consent of**

 **the organization’s counsel, if: (1) the employee is a managing agent or (2) the**

 **communication may be imputed to the organization.**

**2. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested**

**The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel if the lawyer knows or should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.**

 **Dealing with the press.　 Rule 3.6**

 A lawyer shall not make an extrajudicial (out-of-court) statement that the lawyer

 **reasonably should know** has a **substantial likelihood of materially prejudicing** an

 adjudicative proceeding in the matter without good cause such as

 1) warning of the danger,

 2) a request of assistance in obtaining evidence, or

 3) protecting a client from substantial undue prejudice.

**Preserving the dignity of the court**

**・A lawyer has a duty to expedite the case.**

**・A lawyer has a duty to follow valid procedural rules or court orders, unless the lawyer are making good faith challenge to their validity.**

 **Duty to preserve the impartiality of the court**

 **A lawyer shall not**

**1) communicate ex parte with a judge, jury, or prospective jury during**

**the proceeding,**

 **2) communicate with a juror or prospective juror after the discharge if**

 **a) the juror has made known to the lawyer a desire not to communicate, or**

 **b) the communication involves misrepresentation, coercion, duress,**

 **or harassment.**

**Duty of the Dignity to the Profession**

 **Unauthorized practice of law**

 **A lawyer must not engage in the unauthorized practice of law.**

 **A lawyer may not practice in another state, but may provide legal**

 **services on a temporary basis, if**

 **1) he associates with a local lawyer,**

 **2) the practice is reasonably related to the lawyer’s home state practice, or**

 **3) he obtains special permission.**

 **In CA, out-of-state lawyer must be registered.**

 **Reporting Misconduct**

 **ABA rules require a lawyer to report any other lawyer’s violation of the**

 **rules if it raises a substantial question as to the person’s honesty or**

 **fitness as a lawyer.**

 **CA rule does not require this, but instead require self-reporting**

 **if he is　　　　1) charged with a felony or certain crimes,**

 **2) found civilly liable for fraud or breach of fiduciary duty,**

 **3) disciplined in another jurisdiction, or**

 **4) under certain conditions, sued for malpractice.**

**Duty not to commit a crime**

**A lawyer shall not commit a criminal act that reflects adversely on the**

**lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.**

**Duty not to conduct involving dishonesty**

**A lawyer is prohibited from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.**

**Duties of subordinate lawyers**

**Subordinates**

**Subordinates who is under the control or supervision of another lawyers is subject to discipline for taking clear violation, even if a senior partner orders.**

**However, when it is debatable violation, partner is solely responsible if a subordinate lawyer acts in accordance with a supervisory lawyer’s reasonable resolution.**

**Managing partners**

**must make reasonable efforts to ensure that all employees conform to the professional obligations of a lawyer, including non-lawyer assistants.**

**If the managing partner know of the conduct and failed to take action, it is a violation.**