

RHODE ISLAND DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

PREAMBLE, SCOPE AND TERMINOLOGY

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of

service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] 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. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship

between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to

provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0. TERMINOLOGY

(a) "**Belief**" or "**believes**" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "**Confirmed in writing**," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "**Firm**" or "**law firm**" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "**Fraud**" or "**fraudulent**" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive

(e) "**Informed consent**" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "**Knowingly**," "**known**," or "**knows**" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "**Partner**" denotes a member of a partnership, a shareholder in a [law firm](#) organized as a professional corporation, or a member of an association authorized to practice law.

(h) "**Reasonable**" or "**reasonably**" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "**Reasonable belief**" or "**reasonably believes**" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is [reasonable](#).

(j) "**Reasonably should know**" when used in reference to a lawyer denotes that a lawyer of [reasonable](#) prudence and competence would ascertain the matter in question.

(k) "**Screened**" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "**Substantial**" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "**Tribunal**" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "**Writing**" or "**written**" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

LAWYER-CLIENT RELATIONSHIP

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.

Comment - [Rule 1.1](#)

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or [consult](#) with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or [consultation](#) or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that [reasonably](#) necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by [reasonable](#) preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also [Rule 6.2](#)

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

1.1:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.1](#)
- ◆ Background References: [ABA Model Rule 1.1](#),
[Other Jurisdictions](#)
- ◆ Commentary:

1.1:101 Model Rule Comparison

Rhode Island has adopted [MR 1.1](#) including the Comments thereto.

1.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.1](#) and other jurisdictions.

1.1:200 Disciplinary Standard of Competence

- ◆ Primary Rhode Island References: [RI Rule 1.1](#)
- ◆ Background References: [ABA Model Rule 1.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:201, ALI-LGL ◆ 16,
Wolfram ◆ 5.1

Attorney's failure to effectuate service of process in timely manner, and his inability to appreciate requirement of timely service, demonstrate incompetence. **In the Matter of Krause, 737 A.2d 874 (R.I. 1999)**. There is no other authority in RI concerning the disciplinary standard of competence. As stated in the Comment to the Rule, in determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the complexity and specialized nature of the matter, the lawyer's general experience and other related factors.

1.1:300 Malpractice Liability

- ◆ Primary Rhode Island References: [RI Rule 1.1](#)
- ◆ Background References: [ABA Model Rule 1.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 301:101, ALI-LGL ◆
49-54 , Wolfram ◆ 5.6

Plaintiff in a legal malpractice action based on negligence must produce evidence of any damages resulting to her legal position or to her legal detriment personally as a result of her attorney's activities, i.e., inappropriate sexual activities. **Dal Rosario Vallinoto v. DiSandro, 688 A.2d 830 (R.I. 1997)**. In this case the Court found that plaintiff failed to produce any evidence of damages and therefore failed in her legal action.

1.1:310 Relevance of Ethics Codes in Malpractice Actions

The [Scope](#) section of the Preamble of the RI Rules provides that violation of a Rule should neither give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The section further provides that the Rules are not designed to be the basis for civil liability. There is no other authority in Rhode Island on this topic.

1.1:320 Duty to Client

Notarizing Photostatted deed containing signatures of parties to correct error in deed's transcription, and recording Photostatted deed in land records without notifying parties, constitutes dishonesty and fraud, and justifies suspension from practice of law for six months, despite attorney's sincere remorse. **Lisi v. Gallucci, 602 A.2d 938 (R.I. 1992)**.

Failure to communicate with clients regarding reasonable requests for information, failure to respond to lawful demands for information from disciplinary counsel, and failure to act with necessary competence and due diligence warrants public censure and supervision of practice. **In re Rosen, 637 A.2d 1378 (1994)**.

Attorney's public reprimand in Massachusetts for leading client to believe that case had been filed, but then waiting almost three years to notify client that case was meritless and had not been filed, warranted reciprocal discipline of public censure. **In re Frank, 706 A.2d 927 (R.I. 1998)**.

Attorney failed to provide competent representation to client by advising client to list property for sale in absence of proper foreclosure; attorney's poor advice evidenced that he lacked the legal knowledge necessary to

represent client in foreclosure proceedings. **In re Holland, 713 A.2d 227 (R.I. 1998).**

An attorney may not condition continued representation of client upon client's release of another lawyer from liability. To do so would impermissibly circumscribe Client's options and compromise the quality of the representation, contrary to [RI Rule 1.1](#). **RI Eth. Op. 90-37 (1990).**

As stated in [RI Rule 1.1](#), a lawyer has the duty to provide competent representation to a client and to provide that representation loyally and in the exercise of the lawyer's independent professional judgment. See also [Comment to RI Rule 1.7](#).

1.1:330 Standard of Care

There is no authority in Rhode Island on this topic.

1.1:335 Requirement of Expert Testimony

There is no authority in Rhode Island on this topic.

1.1:340 Causation and Damages

See DiSandro case, *supra*, under [1.1:300](#) Malpractice Liability, *supra*.

1.1:350 Waiver of Prospective Liability

See Section [1.2:240](#), *infra*.

1.1:360 Settlement of Client's Malpractice Claim

There is no authority in Rhode Island on this topic.

1.1:370 Defenses to Malpractice Claim

There is no authority in Rhode Island on this topic.

1.1:380 Liability to Client for Breach of Contract, Breach of Fiduciary Duty, and Other Liabilities

There is no authority in Rhode Island on this topic.

1.1:390 Liability Where Non-Lawyer Would Be Liable

There is no authority in Rhode Island on this topic.

[1.1:400](#) Liability to Certain Non-Clients

- ◆ Primary Rhode Island References: [RI Rule 1.1](#)
- ◆ Background References: [ABA Model Rule 1.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:1101, ALI-LGL ◆
51, Wolfram ◆ 5.6

1.1:410 Duty of Care to Certain Non-Clients

An attorney has no general duty to the opposing party, although an attorney does owe a duty to an adverse party not to participate in fraudulent conduct. Thus, a third party ordinarily does not have standing to pursue a claim for tortious interference with a contract against his/her adversary's attorney. **Toste Farm Corp. v. Hadbury, Inc., 798 A.2d 901 (R.I. 2002)**. Beneficiaries of trust had standing to bring suit against law firm because the court determined that a trustee's attorney owes a duty of care to the trust beneficiaries. The voluntary assignment of a legal malpractice claim by a trustee to the beneficiary is permissible under Rhode Island law because the assignment is similar to market assignments involving purely economic transactions rather than to freestanding malpractice personal injury claims. **Am. Kennel Club Museum of the Dog ex rel. Camilla Lyman Unitrust v. Edwards & Angell, LLP, 2002 WL 1803923, (R.I. Super. Jul. 26, 2002)**.

1.1:420 Reliance of Lawyer's Opinion [See also [2.3:300](#)]

See Section ◆ [2.3:300](#), *infra*.

1.1:430 Assisting Unlawful Conduct [See also [1.2:600-1.2:630](#), *infra*]

There is no authority in Rhode Island on this topic.

1.1:440 Knowledge of Client's Breach of Fiduciary Duty

There is no authority in Rhode Island on this topic.

1.1:450 Failing to Prevent Death or Bodily Injury

See Section on [Rule◆1.6](#), *infra*.

[1.1:500](#) Defenses and Exceptions to Liability

- ◆ Primary Rhode Island References: [RI Rule 1.1](#)
- ◆ Background References: [ABA Model Rule 1.1](#),
[Other Jurisdictions](#)

◆ Commentary: ABA/BNA ◆ 301:1001, ALI-LGL
◆◆ 54, 57, Wolfram ◆ 5.6

1.1:510 Advocate's Defamation Privilege

There is no authority in Rhode Island on this topic.

1.1:520 Wrongful Use of Civil Proceedings; Abuse of Process; False Arrest

There is no authority in Rhode Island on this topic.

1.1:530 Assisting Client to Break a Contract

There is no authority in Rhode Island on this topic.

[1.1:600](#) Vicarious Liability [See [5.1:500](#)]

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

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall 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.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Comment - [Rule 1.2](#)

Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to [consult](#) with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because the client may wish that a lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to [Rule 1.14](#).

Independence from Client's Views or Activities

[3] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of a client's views or activities.

Services Limited in Objectives or Means

[4] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate [Rule 1.1](#), or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, Fraudulent and Prohibited Transactions

[6] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or [fraudulent](#) does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not [knowingly](#) assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[7] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by [Rule 1.6](#). However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or [fraudulent](#). Withdrawal from the representation, therefore, may be required.

[8] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[9] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or [fraudulent](#) escape of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[1.2:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.2](#)
- ◆ Background References: [ABA Model Rule 1.2](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.2:101 Model Rule Comparison

Rhode Island has adopted [MR 1.2](#) including the Comments thereto.

1.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.2](#) and other jurisdictions.

[1.2:200](#) Creating the Client - Lawyer Relationship

- ◆ **Primary Rhode Island References:** [RI Rule 1.2](#)
- ◆ **Background References:** [ABA Model Rule 1.2](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:101, ALI-LGL ◆◆ 14-18, Wolfram ◆ 9.2

1.2:210 Formation of Client - Lawyer Relationship

There is no authority in Rhode Island on this topic.

1.2:220 Lawyer's Duties to Prospective Client

See Section ◆[1.1:330](#) and Section [1.9:200](#), *supra*. The lawyer's duty to abide by the client's decision is also qualified if the client appears to be suffering mental disability. See [Comment to RI Rule◆1.2](#).

1.2:240 Client - Lawyer Agreements

A client may not be asked to agree "to surrender the right to terminate the lawyer's services" and agreements to the contrary are impermissible. **RI Eth. Op. 90-31 (1990)**. The cited opinion also stands for the proposition that an attorney may not assist the client in violating the client's agreement to pay from the proceeds of the case medical services rendered in connection with the case.

An attorney may not condition continued representation of client on client's release of another lawyer from liability. **RI Eth. Op. 90-37 (1990)**. To do so would impermissibly circumscribe client's options and compromise the quality of the representation, contrary to [RI Rule 1.1](#).

1.2:250 Lawyer's Duties to Client In General

See Section [1.1:320](#), *supra*.

1.2:260 Clients - Duties to Lawyer

See [RI Rule 1.4](#), *infra*.

1.2:270 Termination of Lawyers Authority

A client may not be asked to agree to surrender the right to terminate the lawyer's services. **RI Eth. Op. 90-31 (1990)**.

1.2:300 Authority to Make Decisions or Act for Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.2\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.2\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31.301, ALI-LGL ◆◆ 21-23, 25-29, Wolfram ◆◆ 4.4, 4.6

1.2:310 Allocating Authority to Decide Between Client and Lawyer

There is no authority in Rhode Island on this topic.

1.2:320 Authority Reserved to Client

Where attorneys are solicitors for a municipality, the municipality, acting through its Council, is the attorneys' client. Pursuant to [Rule 1.2\(a\)](#), the attorneys should comply with the Council's request that they submit redacted itemized statements of prior bills to the Council and maintain the unredacted statements at their law offices as confidential information. Providing an individual Council member with unredacted itemized statements would violate [Rules](#)◆[1.2](#), [1.6](#), and [1.13](#), unless the Council consented. **RI Eth. Op. 2002-02.**

When an attorney was asked to forward a copy of his client's file to another attorney for "review", **RI Eth. Op. 89-13 (1989)** held that the attorney was obliged to comply with the request.

Payment to a third party with funds deposited with the attorney by the client may only be made with the client's consent. **RI Eth. Op. 96-33 (1996).**

Settlement of personal injury action without consent of clients violated [RI Rule 1.2\(a\)](#) and justified suspension from the practice of law for sixty days. **In re Nugent, 624 A.2d 291 (R.I. 1993).**

After filing an appeal, client informed the attorney of her desire to dismiss the appeal and settle the case. **RI Eth. Op. 90-3 (1990).** The attorney explained in writing the risks involved. The client did not respond. **RI Eth. Op. 90-3 (1990)** stated that an attorney may not superimpose the attorney's judgment on a client no matter how praiseworthy the lawyer's motives may be. Under the circumstances, it would be permissible [and perhaps required] for the attorney to withdraw.

A lawyer must abide by a client's decision to settle or not settle a matter. **RI Eth. Op. 99-01 (1999).** An attorney's acceptance of a settlement offer against client's expressed directive was ethically improper under [Rule](#)◆[1.2](#),

which requires an attorney to abide by a client's decision whether to accept an offer of settlement, regardless of the attorney's belief that client's settlement position was unreasonable, warranted a 90-day suspension. **In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).**

See also RI Eth. Op. 91-37 (1991) and **RI Eth. Op. 92-25(1992)**, where the Rhode Island Ethics Panel reiterated its opinion in **Op. 90-3** and again opined that a lawyer could not superimpose his/her judgment on the client no matter how laudable the lawyer's motives may be.

Criminal Matters

Pursuant to [RI Rule 1.2](#), 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.

In a case where a client maintained his innocence but felt it was in his best interest to plead guilty or nolo, the attorney was required to abide by the wishes of the client even if the attorney believed the client innocent if the attorney continues in the representation. **RI Eth. Op. 91-4 (1991).**

The Rhode Island Ethics Panel has underscored the mandate of a client's decision by ruling in **RI Eth. Op. 96-33 (1996)** that in a case involving payment from a client's funds to a third person the attorney must abide by the client's decisions concerning the objectives of representation, including payment to a third party without the client's consent. If the attorney believed the third party had a claim to the funds, the attorney has an obligation to notify the third party. If the attorney had possession of funds earmarked for payment to the third party but did not have authority of the client to release them, and there is a bona fide dispute, the attorney must hold the funds in trust until the matter is resolved. **See also RI Eth. Op. 91-37 (1991).**

1.2:330 Authority Reserved to Lawyer

In accordance with the [Comment to RI Rule 1.2](#), both lawyer and client have authority and responsibility in the objectives and means of representation. A lawyer is not required to pursue objectives or employ means desired by a client simply because the client may wish the lawyer to do so. A clear distinction of the authority of lawyer and client cannot be drawn. The lawyer should assume responsibility for technical and legal tactical issues.

1.2:340 Lawyer's Authority to Act for Client

There is no authority in Rhode Island on this topic.

1.2:350 Lawyer's Knowledge Attributed to Client

There is no authority in Rhode Island on this topic.

1.2:360 Lawyer's Act or Advice as Mitigating or Avoiding Client Responsibility

There is no authority in Rhode Island on this topic.

1.2:370 Appearance Before Tribunal

There is no authority in Rhode Island on this topic.

1.2:380 Authority of Government Lawyer

There is no authority in Rhode Island on this topic.

1.2:400 Lawyer's Moral Autonomy

- ◆ Primary Rhode Island References: [RI Rule 1.2\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.2\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: Wolfram ◆ 10.4

1.2:500 Limiting the Scope of Representation

- ◆ Primary Rhode Island References: [RI Rule 1.2\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.2\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:301, ALI-LGL ◆ 19,
Wolfram ◆ 5.6.7

1.2:510 Waiver of Client or Lawyer Duties (Limited Representation)

There is no authority in Rhode Island on this topic.

1.2:600 Prohibited Assistance

- ◆ Primary Rhode Island References: [RI Rule 1.2\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.2\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:301, ALI-LGL ◆ 94,
Wolfram ◆ 13.3

An attorney may not follow a client's instructions to disregard a facially valid assignment or statutory lien in favor of the client's creditor. **RI Eth. Op. 95-60.**

1.2:610 Counseling Illegal Conduct

With respect to the matter of client perjury, Rhode Island has adopted the following positions: (1) there is no difference between a lawyer's obligations in a criminal case and in a civil case; and (2) where the lawyer's doubts about the veracity of a client's testimony are without a reasonable basis, he should nevertheless resolve them in favor of the client under the duty to provide zealous representation. **RI General Informational Opinion #2 (1990)**. On the question of whether an attorney should continue his/her representation of a client who someone has alleged is "a fraud", **RI Eth. Op. 88-30 (1989)** opines in the affirmative stating that if an attorney knows of no dishonesty on the part of his client, the attorney may continue to represent the client. In **RI Eth. Op. 91-39 (1991)** the Ethics Panel opined that [RI Rule 1.2](#) prohibits the attorney from assisting a client in taking advantage of the Court's apparent unawareness of the mandatory provisions of a new law and the attorney is therefore required to disclose the recent change in the law to the Court in a criminal proceeding.

1.2:620 Assisting Client Fraud

If an attorney reasonably believes the client is engaged in a fraud, the attorney should withdraw from representation. **RI Eth. Op. 93-35 (1993)**.

Where attorney has no personal knowledge of any dishonesty on the part of his client, but has been advised by a third party that his client is "a fraud," the attorney's continued representation is proper. **RI Eth. Op. 88-30 (1989)**. Whether or not the client is ultimately proven to be "a fraud" is of no particular relevance, and is properly left to the appropriate tribunal.

In **RI Eth. Op. 93-81 (1993)**, the client was awarded benefits in a judicial proceeding. The amount of the award was unclear. The attorney and the client believed the client was entitled to receive less than the amount actually received by the client from the insurance company. The attorney disbursed the lesser amount and held the difference in escrow. It was opined that the client may be committing larceny by accepting the larger amount. In citing [RI Rule 1.2\(d\)](#) the Panel stated that the attorney should notify the other side. If the attorney fails to do so he/she may be assisting the client to commit a criminal act in violation of the Rule.

Assisting Client Fraud -- In General

Where the attorney represented a guardian estate in which the Ward was incompetent, and the attorney discovered withdrawals from the estate which appeared to be wrongful and or fraudulent, **RI Eth. Op. 92-23 (1992)** held that the attorney must undertake remedial measures concerning the alleged

misappropriation by counseling the guardian, and if that fails to disclose the facts to the ward and ultimately to the probate court. The Opinion makes it clear that under no circumstances may the attorney allow the guardian to file a fraudulent accounting. (The Panel was concerned about the attorney's obligation of confidentiality under [RI Rule 1.6](#) and pointed out that in such fiduciary situations the attorney should explain to the guardian at the outset the ethical duties to which the attorney will be bound prior to accepting the representation.)

An attorney may deliver a check issued pursuant to a pre-trial order to client, despite subsequent testimony which may be determined to be groundless or fraudulent, since attorney had no knowledge of and did not assist in any possible fraud, and the attorney took reasonable steps and provided reasonable opportunity to the opposing counsel to have the pre-trial order modified. **RI Eth. Op. 92-18 (1992)**.

Fraudulent Claim Admitted By Client

RI Eth. Op. 92-80 (1992) opined that an attorney having knowledge of a fraudulent accident would violate [RI Rule 1.2\(d\)](#) if he/she represented a client in that situation.

An attorney was requested to commence an action for breach of contract for a client; immediately prior thereto client obtained a discharge in bankruptcy and did not list the claim as an asset. In **RI Eth. Op. 95-36 (1995)** it was opined that the attorney should counsel the client regarding the proposed course of conduct. If the contract claim is an asset that should have been disclosed in the bankruptcy petition and failure to list the claim constitutes fraud, the attorney cannot represent the client in this matter.

1.2:630 Counseling About Indeterminate or Uncertain Law

There is no authority in Rhode Island on this topic.

1.2:700 Warning Client of Limitations on Representations

- ◆ **Primary Rhode Island References:** [RI Rule 1.2\(e\)](#)
- ◆ **Background References:** [ABA Model Rule 1.2\(e\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:301, ALI-LGL ◆ 105

1.2:800 Identifying to Whom A Lawyer Owes Duties

- ◆ **Primary Rhode Island References:** [RI Rule 1.2](#)
- ◆ **Background References:** [ABA Model Rule 1.2](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:101, ALI-LGL ◆◆ 50, 51, 96, Wolfram ◆ 7.2

1.2:810 Prospective Clients [See [1.2:220](#)]

There is no authority in Rhode Island on this topic.

1.2:820 Persons Paying for Representation of Another [See also [1.7:400](#)]

There is no authority in Rhode Island on this topic.

1.2:830 Representing an Entity [See also [1.13:200](#)]

There is no authority in Rhode Island on this topic.

1.2:840 Representing a Fiduciary [See also [1.13:520](#)]

Referring to [RI Rule 1.2\(d\)](#) **RI Eth. Op. 92-23 (1992)** recites with approval that "where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary". The Opinion goes on to make the following statement: "The Panel does not suggest that the Rules of Professional Conduct give rise to an attorney/client relationship with the beneficiary where an attorney undertakes representation of a fiduciary. Nor does the Panel suggest that representation of a fiduciary obligates an attorney to provide the beneficiary with the full panoply of rights and privileges enjoyed by a client. We do believe, however, that in instances where an attorney representing a guardianship estate has knowledge of the guardian's willful misappropriation of funds from the estate, the attorney owes an ethical and fiduciary duty to the incompetent ward to undertake appropriate remedial steps".

1.2:850 Class Action Clients

There is no authority in Rhode Island on this topic.

Rule 1.3. Diligence

A lawyer shall act with [reasonable](#) diligence and promptness in representing a client.

Comment - [Rule 1.3](#)

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See [Rule 1.2](#). A lawyer's work load should be controlled so that each matter can be handled adequately.

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16 [[Rule 1.17](#)], a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a [substantial](#) period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

1.3:100 Comparative Analysis of Rhode Island

- ◆ Primary Rhode Island References: [RI Rule 1.3](#)
- ◆ Background References: [ABA Model Rule 1.3](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.3:101 Model Rule Comparison

Rhode Island has adopted [MR 1.3](#) including the Comments thereto.

1.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.3](#) and other jurisdictions.

1.3:200 Diligence and "Zeal"

- ◆ Primary Rhode Island References: [RI Rule 1.3](#)
- ◆ Background References: [ABA Model Rule 1.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:401, ALI-LGL ◆ 16, Wolfram ◆ 10.3

Where, *inter alia*, an attorney failed to act with reasonable diligence by failing to promptly file a claim, to promptly record the judgment as a lien against real estate, to levy on an execution issued by the court, and to take affirmative steps to collect the amount owed to his client, the proper disciplinary action was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. **In re MacLean, 774 A.2d 888 (R.I. 2001).**

An attorney's failure to exercise diligence by failing to provide his clients with documents, to communicate with them to resolve the matter, and to respond during disciplinary investigations, and when he had a history of receiving admonishments and reprimands, the proper disciplinary action was indefinite suspension. **In re Cozzolino, 774 A.2d 891 (R.I. 2001)**

Attorney's neglect of interests of ward throughout attorney's involvement in guardianship estate violated Rule 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client. **In the Matter of Krause, 737 A.2d 874 (R.I. 1999).**

Failure to act with reasonable diligence in effectuating service on defendant, which resulted in dismissal of client's claim, failure to advise clients concerning ramifications of dismissal, and engaging in deceitful conduct warranted public censure and requirement that attorney receive additional legal education. **In re D'Ambrosio, 714 A.2d 1198 (R.I. 1998).**

Attorney's public reprimand in Massachusetts for leading client to believe that case had been filed, but then waiting almost three years to notify client that case was without merit and had not been filed, warranted public censure. **In re Frank, 706 A.2d 927 (R.I. 1998).** Attorney's failure to finalize client's divorce for two years following trial violated [Rule 1.3](#), which requires exercise of due diligence in representation with clients. **In the Matter of A. Cozzolino, 767 A.2d 71 (R.I. 2001).**

Where an attorney misled her client to believe that she filed a civil action on her client's behalf and was attempting to resolve the case, failed to respond to her client's inquiries, and delayed the return of her client's file and fees, the attorney violated [Rule 1.3](#), and the proper disciplinary action was public censure. **In re Veiga, 783 A.2d 911 (R.I. 2001).**

Where a client retained other counsel to pursue a legal malpractice action against predecessor counsel, the attorney-client relationship had been terminated and predecessor counsel had no ethical obligation under [Rules 1.3](#) or [1.4](#) to continue to advise the client regarding the previous matter. Predecessor counsel would also violate [Rule 4.2](#) if he/she communicated with the client about the previous matter without the malpractice attorney's consent. **RI Eth. Op. 2002-01.**

When an attorney fails to exercise diligence by neglecting to pursue the legal matters of his clients, fails to keep his clients reasonably informed of the state of their legal matters, and fails to provide either an accounting or refund of unearned portions of fees to his clients when requested upon termination of his representation, he should be publicly censured. **In re Foster, 826 A.2d 94 (R.I. 2003).**

[1.3:300](#) Promptness

- ◆ Primary Rhode Island References: [RI Rule 1.3](#)
- ◆ Background References: [ABA Model Rule 1.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:401, ALI-LGL ◆ 16, Wolfram ◆ 10.3

[RI Rule 1.3](#) requires a lawyer to act with reasonable diligence and promptness in representing a client.

Persistent Neglect

Failure to implement client's wishes after his professional advice was rejected violated this rule. **In re Brousseau, 697 A.2d 1079 (R.I. 1997)**. Repeated delay in paying client medical bills resulted in suspension although client was not actually harmed by the delay. **In re Watt, 701 A.2d 319 (R.I. 1997)**.

Discipline was warranted when an attorney failed to timely file an appeal ([RI Rule 1.3](#)) together with failure to keep the client informed. **In re Grochowski, 701 A.2d 1013 (R.I. 1997)**. Attorney was disbarred when, on several occasions he represented to clients that action had been taken on their cases when in fact attorney had failed to act. **Lisi v. Biafore, 615 A.2d 473 (R.I. 1992)**.

Attorney's tumultuous home life, overwhelming caseload, and lack of support staff did not mitigate failure to proceed with client's case with reasonable diligence and promptness, to keep client reasonably informed, or to cooperate with disciplinary counsel, and warranted public censure. **In re Watt, 701 A.2d 1011 (R.I. 1997)**.

Public censure was warranted for attorney with prior disciplinary history who failed to diligently pursue clients' claims and stopped communicating with clients, even though terminal illness of attorney's father was mitigating factor. **In re Fishbein, 701 A.2d 1018 (R.I. 1997)**.

Failure to settle decedent's estate for more than six years after attorney was retained and knowing failure to respond to disciplinary counsel's lawful demands for information, in addition to continued failure to exercise due diligence on client's behalf after conduct became subject of disciplinary proceedings, warranted three-month suspension from practice of law. **In re Grochowski, 687 A.2d 77 (R.I. 1996)**. Failure to commence probate proceedings for two and a half years after having been retained, with the result of financial harm to client, respondent violated [RI Rule 1.3](#). **In re Holland, 713 A.2d 227 (R.I. 1998)**.

Note: Violation of [RI Rule 1.3](#) generally results in discipline when accompanied by other rule violations. **See, e.g., In re Rosen, 637 A.2d 1378 (R.I. 1994)** (failure to communicate with clients regarding reasonable requests for information, failure to respond to lawful demands for information from disciplinary counsel, and failure to act with necessary competence and due diligence required of attorneys warrants public censure and supervision of practice).

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) When a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the attorney-client relationship and the expectations and obligations arising out of that relationship, the lawyer shall take reasonable steps to inform the client of the nature of the attorney-client relationship before the representation is undertaken. Such disclosure should include what the lawyer expects of the client and what the client can expect from the lawyer. A lawyer may make such disclosure by providing the client with a copy of the statement of client's rights and responsibilities contained in Appendix 2 to these rules, or in any other manner sufficient to provide the client with a clear understanding of what services will be rendered by the lawyer and what the client's responsibilities are in order that the services can be performed effectively.

Comment - Rule 1.4

[1] In order to promote good communication between attorney and client and thus to promote more effective representation, the client should have an understanding of the nature of the attorney-client relationship, including what the lawyer expects of the client and what the client can expect from the lawyer. When a lawyer considers representing a potential new client, the lawyer should determine whether the client has a full understanding of the nature of the attorney-client relationship and, if the lawyer believes that the client does not, the lawyer shall take reasonable steps to provide the client

with such an understanding before the representation is undertaken. One manner of providing such information to the client is by providing the client with a copy of the Client's Statement of Rights and Responsibilities included in Appendix 2 to these rules.

[2] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other [reasonable](#) steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See [Rule 1.2\(a\)](#). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

[3] Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should [consult](#) the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

[4] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See [Rule 1.14](#). When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See [Rule 1.13](#). Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior [consultation](#).

Withholding Information

[5] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure

would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. [Rule 3.4\(c\)](#) directs compliance with such rules or orders.

1.4 Rule 1.4 Communication

[1.4:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.4](#)
- ◆ Background References: [ABA Model Rule 1.4](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.4:101 Model Rule Comparison

Effective July, 1998, [RI Rule 1.4](#) was revised by adding a new Paragraph (a) to provide that when a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the attorney-client relationship, the lawyer shall take steps to inform the client of the nature of that relationship before the representation is undertaken. Appendix 2, referred to in the Rule, includes a copy of the Statement of Client's Rights and Responsibilities, which, if given to a client, will satisfy the requirements of the Rule. A statement that will satisfy the Rule has been printed by and will be available through the Rhode Island Bar Association. The requirements of the Rule may also be satisfied in any other manner that will be reasonably equivalent to the Statement, including incorporating the required notices in the engagement letter.

1.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.4](#) and other jurisdictions.

1.4:200 Duty to Communicate with Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.4\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.4\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31.501, ALI-LGL ◆ 20,
Wolfram ◆◆ 4.5, 4.6

Attorney who forged client's signatures on INS documents in immigration matter, without client's knowledge or approval, violated [RI Rules 1.4](#) and [8.4\(c\)](#), warranting public censure. **In re Devane, 656 A.2d 617 (R.I. 1995).**

When requiring a client to obtain additional, impartial advice about continued representation may be the only means of ensuring that a client will be able to make an informed decision, an attorney may condition continued representation on client obtaining advice from independent counsel. **RI Eth. Op. 90-37 (1990).**

Attorney who is unsure whether third party has been paid in full may disburse funds to client so long as the attorney properly informed the client regarding possible problems which may arise as a consequence of an unresolved issue with payments. **RI Eth. Op. 92-47 (1992).** Attorney's failure to finalize client's divorce for two years following trial violated Rule 1.4, which requires the exercise of due diligence in communicating with clients. **In the Matter of A. Cozzolino, 767 A.2d 71 (R.I. 2001).** An attorney's transmittal of untruthful information to a client does not keep that client reasonably informed about the status of representation and is a violation of [Rule 1.4\(a\)](#), which imposes upon an attorney a duty to keep his client informed regarding a case and settlement payments that he may have received. **In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).**

Where a client retained other counsel to pursue a legal malpractice action against predecessor counsel, the attorney-client relationship had been terminated and predecessor counsel had no ethical obligation under [Rules 1.3](#) or [1.4](#) to continue to advise the client regarding the previous matter. Predecessor counsel would also violate [Rule 4.2](#) if he/she communicated with the client about the previous matter without the malpractice attorney's consent. **RI Eth. Op. 2002-01.**

When an attorney fails to exercise diligence by neglecting to pursue the legal matters of his clients, fails to keep his clients reasonably informed of the state of their legal matters, and fails to provide either an accounting or refund of unearned portions of fees to his clients when requested upon termination of

his representation, he should be publicly censured. **In re Foster, 826 A.2d 94 (R.I. 2003).**

Settlement Offers – In General

In an opinion which clearly suggests that a violation of [RI Rule 1.4](#) exists if an attorney fails to communicate settlement offers to his/her client, **RI Eth. Op. 92-11 (1992)** suggests that the opposing lawyer should consider filing a disciplinary complaint pursuant to [RI Rule 8.3](#) if the lawyer has knowledge that the other attorney is violating **RI Rule 1.4** by failing to communicate settlement offers to the client.

Settlement Offers and Malpractice Liability

There is no authority in Rhode Island on this topic.

Corporate Entity

There is no authority in Rhode Island on this topic.

1.4:300 Duty to Consult With Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.4\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 1.4\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31.501, ALI-LGL ◆ 20,
Wolfram ◆◆ 4.5

In **RI Eth. Op. 94-70 (1994)**, [Comments to RI Rule 1.4](#) mandating that the client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation are quoted affirmatively and the attorney is directed to notify the client of a legal error made by the attorney who forwarded the matter to the inquiring attorney. **RI Eth. Op. 96-10 (1996)** states that a lawyer has an obligation to keep a client informed concerning matters undertaken on the client's behalf. The Opinion went on to state that a duty to communicate means that the lawyer must advise clients as to the status of their affairs. In **RI Eth. Op. 96-15 (1996)**, it was opined that a lawyer has an obligation to keep a client informed concerning matters of the legal representation. [RI Rule 1.4 \(a\) and \(b\)](#) were cited.

In a factual context where an attorney was retained by an insurance company to represent its insured and the insured has asked the attorney for copies of letters that the attorney wrote to the insurance company's adjuster containing the attorney's mental impressions and legal analysis of liability, damage and settlement negotiations in the tort action, it was opined that the attorney has

the obligation under [RI Rule 1.4](#) to keep the attorney's client reasonably informed and to comply promptly with reasonable requests for information. **RI Eth. Op. 98-10 (1998)**. A lawyer hired by an insurance company was held to represent the insured as his/her client.

Where, *inter alia*, an attorney failed to keep his client reasonably informed by failing to respond to client's repeated requests regarding the status of the case, to notify client of changed trial date, and to respond to a number of his client's requests for speedier action, the proper disciplinary measure was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. **In re MacLean, 774 A.2d 888 (R.I. 2001)**.

An attorney's failure to exercise diligence by failing to provide his clients with documents, to communicate with them to resolve the matter, and to respond during disciplinary investigations, and when he had a history of receiving admonishments and reprimands, the proper disciplinary action was indefinite suspension. **In re Cozzolino, 774 A.2d 891 (R.I. 2001)**.

Where an attorney misled her client to believe that she filed a civil action on her client's behalf and was attempting to resolve the case, failed to respond to her client's inquiries, and delayed the return of her client's file and fees, the attorney violated Rule 1.4(b), and the proper disciplinary action was public censure. **In re Veiga, 783 A.2d 911 (R.I. 2001)**.

[1.4:400](#) Duty to Inform the Client of Settlement Offers

- ◆ Primary Rhode Island References: [RI Rule 1.4](#)
- ◆ Background References: [ABA Model Rule 1.4](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31.501, ALI-LGL ◆ 20, Wolfram ◆◆ 4.5

See Section [1.4:200](#), Duty to Communicate with Client, above.

An attorney violated [RI Rule 1.4 \(a\)](#) by failing to communicate with clients regarding reasonable requests for information. **In re Rosen, 637 A.2d 1378 (R.I. 1994)**. An attorney was censured for failing to represent and communicate with a client. **In re Watt, 701 A.2d 1011 (R.I. 1997)**. The imposition of discipline was warranted for an attorney's failure to keep the client informed of the status of her claim. **In re Grochowski, 701 A.2d 1013 (R.I. 1997)**. Censure of an attorney was warranted based upon findings that the attorney failed to provide clients with timely information about their cases. **In re Fishbein, 701 A.2d 1018 (R.I. 1997)**. (In the foregoing cases the discipline was imposed when violation of [RI Rule 1.4](#) was combined with other violations.) An attorney who failed to inform his client that he had settled the

case and had received settlement monies violated Rule 1.4(a), which requires that an attorney keep a client reasonably informed about the status of a matter. **In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).**

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the [reasonableness](#) of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Where the fee is not fixed or contingent, billings regarding the fees, costs, and expenses shall be provided to the client on a quarterly basis or as otherwise provided in the agreement.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is

prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same [firm](#) may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is [reasonable](#).

(As amended by the court on April 7, 1998.)

Comment - [Rule 1.5](#)

Basis or Rate of Fee -- Written Fee Information -- Billing

[1] When the lawyer has regularly represented a client, the lawyer and the client ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, where the client is to be obligated directly to the lawyer for the payment of fees, an understanding about the fee should be established promptly. In those cases, the lawyer must communicate the basis or rate of the fee in writing to the client. It is preferable that the lawyer provide written fee information to the client before

the representation is undertaken. In some instances, however, it is sufficient if the lawyer communicates the basis of the fee to the client in writing after the representation has been commenced, so long as the lawyer does so promptly thereafter. This is particularly true in the criminal practice, where the lawyer and the client may have their first communication while the client is incarcerated or immediately prior to a court hearing. Under such circumstances, it may be impractical if not impossible for the lawyer to provide the client with a written statement of the basis for the fee before the representation commences. The lawyer should, however, communicate the basis for the fee to the client orally before the representation is undertaken and must communicate the fee information in writing to the client promptly thereafter.

[2] The fee information may be provided to the client in a fee agreement, engagement letter, or other suitable form. It is not necessary for the lawyer to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. If the lawyer has provided the client with an estimated fee and developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. Where a lawyer is required to provide the client with written fee information, in addition to the fee information the lawyer should inform the client regarding the client's obligations with respect to costs and expenses.

[3] The obligation to provide written fee information does not apply to lawyers representing clients who are not paying fees to the lawyer or where the lawyer is to be paid by a third-party. A typical example is in insurance defense practice, where the lawyer represents the insured but is paid by the insurer. Under such or similar circumstances, the lawyer may not be obligated to inform the client of the specifics of the fee arrangement the lawyer has with the insurer. The lawyer's obligations under such circumstances, however, are controlled by Rule 1.8(f).

[4] The lawyer should provide the client with a billing regarding the fees, costs, and expenses incurred on a quarterly basis at a minimum, unless in the written fee information the lawyer and client have agreed to a different billing schedule. The billing should provide information sufficient for the client to determine the basis for the particular fee charged.

Terms of Payment

[5] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.17(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j).

However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

[6] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases [sic] for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same [firm](#). A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved.

Disputes over Fees

[8] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

1.5 Rule 1.5 Fees

1.5:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.5](#)
- ◆ Background References: [ABA Model Rule 1.5](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.5:101 Model Rule Comparison

[RI Rule 1.5](#) requires, as a result of a 1998 amendment, that the fee to be charged in all cases be in writing (a) where the lawyer has not regularly represented the client and (b) in all cases of a contingency fee. Comment to the Rule is revised accordingly. The obligation to provide written fee information to the client does not apply to lawyers representing clients who are not paying the fees, such as in an insurance defense practice. Bills for fees, costs and expenses must be submitted on a quarterly basis unless otherwise agreed. Contingent fees are allowed in domestic relations matters, except in cases securing a divorce, or involving the initial application for alimony or support, or a property settlement in lieu thereof. The Comment to [MR 1.5](#) provides that although a written fee agreement is preferable, in some cases it may be sufficient to communicate the basis of the fee in writing after the representation has commenced, so long as this is done promptly thereafter. The obligation to provide written fee information does not apply to lawyers representing clients who are not paying fees to the lawyer or where the lawyer is to be paid by a third-party. The Comment also states that the lawyer should provide the client with a billing regarding the fees, costs, and expenses incurred on at least a quarterly basis. [MR 1.5](#) further generally prohibits contingent fees for representation of a defendant in a criminal case.

1.5:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.5](#) and other jurisdictions.

1.5:200 A Lawyer's Claim to Compensation

- ◆ Primary Rhode Island References: [RI Rule 1.5](#)
- ◆ Background References: [ABA Model Rule 1.5](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:101, ALI-LGL ◆◆ 38-42, Wolfram ◆◆ 9.1-9.6

1.5:210 Client-Lawyer Fee Agreements

RI Eth. Op. 92-42 (1992) states that [RI Rule 1.5\(b\)](#) provides that the fee arrangements should be communicated to the client and should be in writing. The [Comment to RI Rule 1.5](#) points out that an understanding with and consent of the client regarding the fee should be promptly established. The opinion further states that a written statement regarding the fee reduces the possibility of a misunderstanding and miscommunication between attorney and client. (This Opinion predates the Amendment to [RI Rule 1.5](#) which now requires written fee agreements in certain instances.)

1.5:220 A Lawyer's Fee in Absence of Agreement

When a client has retained an attorney on a contingent fee basis and thereafter discharges the attorney prior to reaching an agreement as to settlement, the discharged attorney is only entitled to payment for services on a *quantum meruit* basis. See **RI Eth. Op. 89-21 (1989)**; **RI Eth. Op. 92-52 (1992)**; **RI Eth. Op. 92-61**; **RI Eth. Op. 93-37**; and **RI Eth. Op. 2001-03 (2001)**.

1.5:240 Fee Collection Procedures

An attorney may assist a client in obtaining a loan which will enable the client to pay the legal fees, but can not co-sign a note for that purpose. **RI Eth. Op. 92-2 (1992)**. An attorney may charge interest on unpaid legal bills in the absence of a prior agreement with the client. **RI Eth. Op. 98-06 (1998)**.

1.5:250 Fee Arbitration

Lawyers are encouraged to submit to the fee arbitration program of the Rhode Island Bar Association in order to resolve a fee dispute. **RI Eth. Op. 92-34 (1992)**; and **RI Eth. Op. 92-85 (1992)**.

1.5:260 Forfeiture of Lawyers Compensation

A suspended attorney may be paid a fee based on *quantum meruit* for the fair value of services rendered before the suspension. **RI Eth. Op. 92-58 (1992)**; and **RI Eth. Op. 92-87 (1992)**.

[1.5:300](#) Attorney-Fee Award (Fee Shifting)

- ◆ Primary Rhode Island References: [RI Rule 1.5](#)
- ◆ Background References: [ABA Model Rule 1.5](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:301, Wolfram ◆ 16.6

An attorney retained by insurance company to represent insured can not agree to abide by "litigation management guidelines" established by the insurance company, delineating the financial relationship between insured and law firm, and setting parameters and approval prerequisites for legal services provided, noncompliance with which would result in non-payment. **RI Eth. Op./ 99-18 (1999)**. Such guidelines violate the [Comment to RI Rule 1.5](#), which provides that "an agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest."

1.5:310 Paying For Litigation: The American Rule (ASF - see Am. Rule material)

Rhode Island follows the "American rule," which requires adverse parties in litigation to pay their own attorney's fees. The trial justice has authority to make award of costs to prevailing party, but such award should not include attorney fees unless authorized by separate statute, rule, or other law. **R.I. Gen. Laws, § 9-22-5 (1956); Super. Ct. R. Civ. P. Rule 54(d). See also DiRaimo v. Providence, 714 A.2d 554 (R.I. 1998)**. This rule is subject to few exceptions. See [1.5:330](#).

1.5:320 Common/Law Fee Shifting

Attorney fees may not be awarded absent contractual or statutory authorization. **See, e.g., DiRaimo v. Providence, 714 A.2d 554 (R.I. 1998); Eleazer v. Ted Reed Thermal, Inc., 576 A.2d 1217 (R.I. 1990); Farrell v. Garden City Builders, 477 A.2d 81 (R.I. 1984)**.

This principle has been applied to worker's compensation cases, where a provision in the Act authorizing an award of attorneys' fees to an injured employee who successfully prosecutes a petition does not authorize the award of attorney's fees to any person other than the employee. **Orthopedic Specialists, Inc. v. Great Atlantic and Pacific Tea Co., 388 A.2d 352 (R.I. 1978)**.

1.5:330 Statutory Fee Shifting

Rhode Island has enacted various statutes to shift fees in particular circumstances. For example, Rule 64 of the Rhode Island Rules of Procedure for Domestic Relations Matters provides, *inter alia*, that a party may seek temporary support or counsel fees in a domestic relations matter. Section 9-1-45 of R.I. Gen. Laws (1956, as amended) provides that the court may award a reasonable attorney's fee to the prevailing party in any civil action arising from a breach of contract where the court finds (i) there was a complete absence of a justiciable issue of either law or fact raised by the losing party; or (ii) the court renders a default judgment against the losing party.

Similarly, a prevailing plaintiff may recover reasonable costs of litigation and attorney's fees as determined by the court under the Rhode Island Consumer Enforcement of Motor Vehicle Warranties law ("Lemon Law"), R.I. Gen. Laws

◆ 31-5.2-12 (1956); the Rhode Island Truth in Lending and Retail Selling law, R.I. Gen. Laws ◆ 6.26-27-7 (1956); the Rhode Island Antitrust law, R.I. Gen. Laws ◆ 6-36-11 (1956); the Rhode Island Deceptive Trade Practices law, R.I. Gen. Laws ◆ 13.1-25 (1956); the Rhode Island Environmental Marketing Act, R.I. Gen. Laws ◆ 6-13.3-3 (1956); the law on Limits on Strategic Litigation Against Public Participation (SLAPP suits), R.I. Gen. Laws ◆ 9-33-2(2)(d) (1956) (costs and reasonable attorney's fees available for prevailing party who asserts immunity under the law).

1.5:340 Financing Litigation

There is no authority in Rhode Island on this topic.

1.5:400 Reasonableness of Fee Agreement

- ◆ **Primary Rhode Island References:** [RI Rule 1.5\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.5\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 41:301, ALI-LGL ◆ 34,
Wolfram ◆ 9.3.1

1.5:410 Excessive Fees

In a litigation setting, it has been held that the determination of whether an attorney's fee is reasonable requires particular facts in the form of affidavits and testimony upon which a court may premise a decision. **St. Jean Place Condominium v. Decelles, 656 A.2d 628 (R.I. 1995)**. A lawyer's fee was held to be unreasonable when the lawyer charged the clients one-third of the savings on a reduced real estate lien that never existed. **Lisi v. Pearlman, 641 A.2d 81 (R.I. 1994)**. Expert testimony based solely on time spent on the matter by an attorney was rejected since the expert did not consider any of the other factors contained in [RI Rule 1.5](#) in determining the reasonableness of a fee. **Laverty v. Pearlman, 654 A.2d 696 (R.I. 1995)**. Results achieved were properly considered in determining the reasonableness of the fee.

In a contingent fee case where the attorney was discharged, payment of a fee to the discharged attorney on more than a *quantum meruit* basis would not be reasonable. **RI Eth. Op. 89-21**. In determining the ethical propriety of billing an estate based upon a percentage fee for work performed on an estate as set forth in a written fee agreement, it was stated in **RI Eth. Op. 92-73** that the eight categories listed in [RI Rule 1.5\(a\)](#) govern the inquiry and the attorney should assess a fee which is reasonable under the circumstances and commensurate with the time and labor required and the value of services

rendered to the client. This was held to be true even if a client agreed to a percentage fee. The Opinion went on to state that a fee might not be set based upon the size of a matter.

An attorney's failure to provide any substantive services, despite receiving \$2700 in fees, rendered the fee charged unreasonable in violation of [RI Rule 1.5](#). See *In re Grochowski*, 701 A.2d 1013 (R.I. 1997).

1.5:420 "Retainer Fees:" Advance Payment, Engagement Fee or Lump-Sum Fee

In *RI Eth. Op. 94-63 (1994)* the question arose regarding a refund of a retainer. The retainer agreement did not state that the retainer was "non-refundable". It was opined: "The Rhode Island Disciplinary Board's Policy on Non-Refundable Retainer Agreements discusses the difference of opinion regarding the refunding of retainers in the absence of a clear and unambiguous written agreement. This issue differentiates between the definition of a true retainer and a fee advance. However, it is the Disciplinary Board's Policy 'that the term 'retainer' as used by attorneys of this Bar is a fee advance and therefore refundable, minus a reasonable 'quantum meruit' amount'. The Panel believes that pursuant to [RI Rule 1.5](#) and the comments thereto, as well as the Disciplinary Board's Policy, the attorney is obligated to return the non-earned portion of the retainer fee."

1.5:430 Non-Refundable Fees

See [1.4:101](#) Model Rule Comparison above.

A new paragraph (a) has been added to [RI Rule 1.4](#) to provide that when a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the attorney-client relationship, the lawyer shall take steps to inform the client of the nature of that relationship before the representation is undertaken. Appendix 2 referred to in the Rule includes a copy of the Statement of Client's Rights and Responsibilities, which if given to a client will satisfy the requirements of the Rule. Such a statement has been printed by and will be available through the Rhode Island Bar Association. The requirements of the Rule may also be satisfied in any other matter that will be the reasonable equivalent of the statement, including incorporating the required notices in the engagement letter.

[RI Rule 1.5\(b\)](#) requires that when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client in writing and all contingency fee arrangements shall be in writing. Comment to the Rule as amended has been revised accordingly. The obligation to provide written fee information does not apply to lawyers representing clients who are not paying the fees, such as in an insurance defense practice.

1.5:500 Communication Regarding Fees

- ◆ Primary Rhode Island References: [RI Rule 1.5\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.5\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:101, ALI-LGL ◆ 38,
Wolfram ◆ 9.2.1

1.5:600 Contingent Fees

- ◆ Primary Rhode Island References: [RI Rule 1.5\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.5\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:901, ALI-LGL ◆◆ 34,
35, Wolfram ◆ 9.4

All contingency fee agreements are required to be in writing. [RI Rule 1.5\(c\)](#). Fees in a domestic relations matter contingent upon securing of a divorce or in the initial application for alimony or support, or a property settlement in lieu thereof, are not permitted. Therefore, it is presumed that contingent fees are allowed in domestic relations matters in all other situations. [RI Rule 1.5\(d\)](#). **See also RI Eth. Op. 91-78 (1991)** where it was opined that a contingent fee arrangement was permissible in the collection of child support arrearages but not for increased child support. Subject to the guidelines in [RI Rule 1.5\(a\)](#) it is permissible to have a mixed fee arrangement including both a fixed fee and a contingency fee for services provided in a litigation matter. **RI Eth. Op. 92-42 (1992)**.

1.5:610 Special Requirements Concerning Contingent Fees

See comments under [1.5:600](#) Contingent Fees above.

1.5:620 Quantum Meruit in Contingent Fee Cases

When a client who has retained an attorney on a contingent fee basis discharges that attorney prior to reaching an agreement as to settlement, the discharged attorney is only entitled to payment for services rendered on a *quantum meruit* basis. **RI Eth. Op. 89-21 (1989)**.

1.5:700 Unlawful Fees

- ◆ Primary Rhode Island References: [RI Rule 1.5\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.5\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 41:901, ALI-LGL ◆ 36,
Wolfram ◆◆ 9.3.2; 9.4

1.5:710 Contingent Fees in Criminal Cases

[RI Rule 1.5\(d\)\(2\)](#) prohibits a lawyer from charging a contingent fee in a criminal case.

1.5:720 Contingent Fees in Domestic Relations Matters

[RI Rule 1.5\(d\)\(1\)](#) provides that a lawyer shall not charge a fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the *original* amount of alimony or support or property settlement in lieu thereof. **RI Eth. Op. 91-78 (1991)** adopts the foregoing by opining that a contingent fee arrangement is permissible for collecting child support arrearages but is not permitted when seeking to obtain increased child support, citing RI Rule 1.5(d)(1).

1.5:730 Other Illegal Fees in Rhode Island

There is no authority in Rhode Island on this topic.

1.5:800 Fee Splitting (Referral Fees)

- ◆ Primary Rhode Island References: [RI Rule 1.5\(e\)](#)
- ◆ Background References: [ABA Model Rule 1.5\(e\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:701, ALI-LGL ◆ 47,
Wolfram ◆ 9.24

[RI Rule 1.5\(e\)](#) provides that a fee between lawyers not in the same firm may only be made if (1) the division is in proportion to the services performed by each lawyer, or by written agreement with the client, with each lawyer assuming joint responsibility for the representation; (2) the client is advised of and does not object to the arrangement; and (3) the total fee is reasonable. Imply referring a client to another lawyer is not sufficient to make a fee-splitting arrangement ethical under the Rules. **See ABA/BNA Law. Man. of Prof. Conduct at 41:709; RI Eth. Op. 97-16 (1997)**. In a case where client never consented to a fee division, client's prior lawyer was entitled to a

fee on a *quantum meruit* basis for the work performed before termination. **RI Eth. Op. 92-52. See also RI Eth. Op. 92-61 (1992); RI Eth. Op. 93-37 (1993).** In **RI Eth. Op. 95-15 (1995)** it was held that if no services are to be performed by the referring attorney, the referring attorney is not jointly responsible for the representation, and no written agreement exists with respect to the division of fees with the client, there is no basis to divide the fee with the referring attorney. **See also RI Eth. Op. 95-18 (1995)**, RI Rule 1.5(e) applies to attorneys from another state.

RI Eth. Op. 97-16 (1997) held that attorneys may divide a fee without regard to the amount of work performed provided there is a written agreement with the client by which the lawyers assume joint responsibility for the representation. In the absence of such an agreement, [RI Rule 1.5\(e\)](#) does not permit the sharing of attorney's fees. A 50-50 contingency fee splitting arrangement is permissible even where an attorney is suspended during the case, so long as the suspension is for a brief period relative to the overall length of time that the case has been pending. **RI Eth. Op. 99-19 (1999).**

An attorney representing a lender in residential real estate transactions may not share fees paid by borrower for legal services with lender. **RI Eth. Op. 90-23 (1990).**

An attorney may share a proportion of a fee paid by a client referred to the attorney by opposing counsel, so long as the division is proportionate to services rendered by each lawyer or by written agreement with the client, joint responsibility is assumed by each lawyer, the client is advised and does not object to the attorney's involvement and the total fee is reasonable. **RI Eth. Op. 94-51 (1994).**

Rule 1.6. Confidentiality of Information

(a) 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 in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer [reasonably believes](#) necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or [substantial](#) bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to

respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

Comment - [Rule 1.6](#)

[1] The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[3] Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[4] A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

[5] The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also [Scope](#).

[6] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized Disclosure

[7] A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

[8] Lawyers in a [firm](#), may in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[9] The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

[10] Several situations must be distinguished.

[11] First, the lawyer may not counsel or assist a client in conduct that is criminal or [fraudulent](#). See [Rule 1.2\(d\)](#). Similarly, a lawyer has a duty under [Rule 3.3\(a\)\(4\)](#) not to use false evidence. This duty is essentially a special instance of the duty prescribed in [Rule 1.2\(d\)](#) to avoid assisting a client in criminal or fraudulent conduct.

[12] Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or [fraudulent](#). In such a situation the lawyer has not violated [Rule 1.2\(d\)](#), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

[13] Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in paragraph (b)(1), the lawyer has professional discretion to reveal information in order to prevent the crime which the lawyer [reasonably believes](#) is intended by a client. It is, of course, sometimes difficult for a lawyer to "[know](#)" when such a purpose will actually be carried out, for the client may have a change of mind.

[14] The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction

and factors that may extenuate the conduct in question. Where practical, the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer [reasonably believes](#) necessary to the purpose. A lawyer's decision not to take preventive action permitted by paragraph (b)(1) does not violate this Rule.

Withdrawal

[15] If the lawyer's services will be used by the client in materially furthering a course of criminal or [fraudulent](#) conduct, the lawyer must withdraw, as stated in [Rule 1.16\(a\)\(1\)](#).

[16] After withdrawal the lawyer is required to refrain from making disclosure of the clients' confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor [Rule 1.8\(b\)](#) nor [Rule 1.16\(d\)](#) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

[17] Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in [Rule 1.13\(b\)](#).

Dispute Concerning Lawyer's Conduct

[18] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer [reasonably believes](#) necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(2) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer [reasonably believes](#) is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to [know](#) it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[19] If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or

professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by paragraph (b)(2) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to [know](#) it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures Otherwise Required or Authorized

[20] The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

[21] The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See [Rules 2.2](#), [2.3](#), [3.3](#) and [4.1](#). In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

Former Client

[22] The duty of confidentiality continues after the client - lawyer relationship has terminated.

1.6 Rule 1.6 Confidentiality of Information

[1.6:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

1.6:101 Model Rule Comparison

Rhode Island has adopted [MR 1.6](#).

1.6:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.6](#) and other jurisdictions.

[1.6:200](#) Professional Duty of Confidentiality

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:101, ALI-LGL ◆◆ 59-66, Wolfram ◆◆ 6.1, 6.7

An attorney must preserve the client's confidences under [RI Rule 1.6](#) of the Rhode Island Supreme Court Rules of Professional Conduct. **RI Eth. Op. 96-27 (1996)**. A fundamental principal in the client-lawyer relationship is that the lawyer safeguards the confidentiality of information relating to the representation. **RI Eth. Op. 96-08 (1996)**. The obligation of confidentiality imposed by RI Rule 1.6 has been broadly interpreted in Rhode Island. **RI Eth. Op. 97-23 (1997)**. **See also In re: Ethics Advisory Panel No. 92-1, 627 A.2d 317 (R.I. 1993)** where the Rhode Island Supreme Court held that a lawyer's duty of confidentiality to his clients superseded the lawyer's obligation to report another attorney's misconduct, where the lawyer learned of the misconduct during the course of representation of his client, even though he learned of the misconduct from the admission of the other attorney, not from his client.

1.6:210 Definition of Protected Information

Statements made to an attorney by a former client are protected under [RI Rule 1.6](#) as long as the statements arose from the attorney-client relationship, but not otherwise. **RI Eth. Op. 91-10 (1991)**. As stated in [RI Rule 1.6\(a\)](#), a lawyer shall not reveal information relating to representation of a client except as otherwise provided in this section. **RI Eth. Op. 92-67 (1992)**. Information that has become generally known or is a matter of public record is not subject to RI Rule 1.6. **RI Eth. Op. 93-49 (1993)**. **RI Rule 1.6** does not distinguish between information, which would be considered a confidence or a secret. The client's name, address and fee amount owed, are related to the representation and is confidential information. **RI Eth. Op. 94-42 (1994)**. RI Rule 1.6 of the Rules of Professional Conduct addresses the fundamental principle of confidentiality between the client and lawyer regarding information relating to the representation. **RI Eth. Op. 95-26 (1995)**.

Where attorneys are solicitors for a municipality, the municipality, acting through its Council, is the attorneys' client. The attorneys should comply with the Council's request that they submit redacted itemized statements of prior

bills to the Council and maintain the unredacted statements at their law offices as confidential information. Providing an individual Council member with unredacted itemized statements would violate [Rules 1.6](#), [1.2](#), and [1.13](#), unless the Council consented. **RI Eth. Op. 2002-02.**

1.6:220 Lawyer's Duty to Safeguard Confidential Client Information

An attorney has the duty to assert the attorney-client privilege on behalf of the client if subpoenaed for a grand jury or any like body. **RI Eth. Op. 91-27 (1991).** See also **RI Eth. Op. 92-50 (1992).** An attorney has the duty to assert the attorney-client privilege in a case where the attorney receives a summons from a government agency seeking certain client records. **RI Eth. Op. 94-52 (1994).** A lawyer is obligated to hold client communications in confidence, may not disclose them to third parties without the client's consent, and may not appropriate them to his/her own use. **RI Eth. Op. 96-26 (1996).** Pursuant to [RI Rule 1.6](#), an attorney has a duty to invoke the attorney-client privilege and the work product doctrine with respect to documents and information, which, in his/her professional judgment, are protected by the privilege, or the doctrine. **RI Eth. Op. 98-02 (1998).**

1.6:230 Lawyer Self Dealing in Confidential Information [See also [1.8:300](#)]

A lawyer is obligated to hold client communications in confidence, may not disclose them to third parties without the client's consent, and may not appropriate them to his/her own use. **RI Eth. Op. 96-26 (1996).** See also [RI Rule 1.8\(b\)](#).

1.6:240 Use or Disclosure of Confidential Information of Co-Clients

In a case where an attorney represented multiple defendants and one of the defendants disclosed damaging information to the attorney, it was opined by the Rhode Island Ethics Advisory Panel that the information was protected by [RI Rule 1.6](#) and could not be shared with the other co-defendants. See **RI Eth. Op. 96-08 (1996).** In so ruling it was noted that the fundamental principle in the client-lawyer relationship is that the lawyer safeguard the confidentiality of information relating to the representation, citing [RI Rule 1.6\(a\)](#). The opinion went on to state that the information about the defendant's actions is protected under RI Rule 1.6 and the attorney cannot disclose the information to other co-defendants. If the attorney believes that a conflict arose as a result of the inability to share the information, the attorney must withdraw from the representation.

1.6:250 Information Imparted in Lawyer Counseling Programs

There is no authority in Rhode Island on this topic.

1.6:260 Information Learned Prior to Becoming a Lawyer

There is no authority in Rhode Island on this topic.

1.6:300 Exceptions to Duty of Confidentiality - In General

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:101, ALI-LGL ◆◆ 59-66, Wolfram ◆◆ 6.4, 6.7

1.6:310 Disclosure to Advance Client Interests or With Client Consent

[RI Rule 1.6\(a\)](#) permits a lawyer to disclose confidential information with the client's consent or in the case where disclosures are impliedly authorized in order to carry out the representation. In a situation where an attorney represented a client in a tort claim and the client agreed to pay creditor the proceeds of the claim, Rhode Island Ethics Advisory Panel opined that the lawyer was impliedly authorized to notify the creditor that the case was settled, such disclosure being held to be impliedly authorized in order to carry out the representation. **RI Eth. Op. 93-45 (1993)**. See also **RI Eth. Op. 93-81 (1993)** (where it was similarly held that disclosures might be impliedly authorized in order to carry out the representation).

1.6:320 Disclosure When Required by Law or Court Order

An attorney has an obligation to keep attorney-client information confidential and to object to its disclosure during any legal proceeding as stated in ABA Comm. on Ethics and Professional Responsibility, **Formal Op. 94-385 (1994)** (lawyer has professional responsibility to seek to limit subpoena or court order on any legitimate ground, such as attorney-client privilege, work product immunity, burden or relevance, or to protect information to which obligations under [RI Rule 1.6](#) apply). However, an attorney must comply with the final orders of the court requiring the attorney to produce the documents sought or to give information about the former client. **RI Eth. Op. 98-02 (1998)**.

An attorney's obligation to disclose to the criminal court the existence of his contingent fee agreement to represent a sexual assault victim in a civil action superseded his obligation of confidentiality toward his client, and required his disclosure of relevant information to the criminal trial court where the attorney

suspected that the client did not fully disclose the nature and extent of the contingent fee arrangement during the criminal trial. **In re Request for Instructions from Disciplinary Counsel, 610 A.2d 115 (R.I. 1992).**

1.6:330 Disclosure in Lawyer's Self-Defense

In a situation where a former client, in a divorce matter, alleged that the attorney coerced her into a divorce and the attorney was subpoenaed by the husband's attorney, the Rhode Island Ethics Advisory Panel noted that the [Comments to RI Rule 1.6\(b\)](#) explicitly state that "if the lawyer is charged with a wrongdoing in which the client's conduct implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge." The Panel further stated that "...such a charge can arise in a civil proceeding and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person..." and that "lawyers must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or to make other arrangements minimizing the risk of disclosure." **RI Eth. Op. 93-2 (1993).** A law firm may turn over to a collection agency the name, address and amount due of its debtor-clients for collection purposes. **RI Eth. Op. 94-6 (1994).** In such a case, the information regarding the debtors' identity and the amount due on the accounts may be revealed under subsection (b)(2) of [RI Rule 1.6](#) in order to establish a claim on behalf of the law firm.

An attorney is permitted to reveal to the extent necessary information relating to a client's representation in support of the attorney's claimed deduction in an IRS proceeding. **RI Eth. Op. 97-19 (1997)** (citing [RI Rule 1.6\(b\)\(2\)](#)).

1.6:340 Disclosure in Fee Dispute

Although there appear to be no cases or opinions in point on this topic, [RI Rule 1.6\(b\)\(2\)](#) makes it clear that a lawyer may reveal such confidential information to the extent the lawyer reasonably believes necessary to establish a claim on behalf of the lawyer in a controversy between the lawyer and the client.

1.6:350 Disclosure to Prevent a Crime

If an attorney has the consent of the attorney's client, the attorney may report an alleged crime but is not obligated to do so. **RI Eth. Op. 93-29 (1993).** [RI Rule 1.6\(b\)](#) permits, but does not obligate, an attorney to reveal such information to the extent the attorney reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm. In Rhode Island, therefore, disclosures are not permitted to prevent lesser crimes.

1.6:360 Disclosure to Prevent Death or Serious Bodily Injury

An attorney may, but is not obligated to, reveal such information to prevent the client from committing a criminal act that the lawyer believes is likely to

result in substantial bodily harm. **RI Eth. Op. 94-32 (1994)**. See also [RI Rule 1.6\(b\)\(1\)](#) which expressly authorizes, but does not require, attorneys to make such disclosures.

1.6:370 Disclosure to Prevent Financial Loss

An insurance company retained an attorney, to bring suit to suspend workers' compensation benefits to a recipient who was allegedly operating a home business. **RI Eth. Op. 94-19 (1994)**. Through investigation, the attorney confirmed the allegation. Coincidentally, recipient retained the attorney's law firm as the lawyer for the home business. The RI Ethics Advisory Panel opined that the attorney was under an obligation not to reveal information relating to the representation of a client subject to certain specified exemptions that were held not applicable in this case. As a result, the attorney could not report his findings to the Workers' Compensation Fraud Unit in order to attempt to recover the payments improperly made.

Rhode Island follows the Model Rule and does not provide an exception to prevent clients from causing financial losses.

1.6:380 Physical Evidence of Client Crime

There are no cases or opinions in Rhode Island on this topic. It would be expected, in view of the limited exceptions in [RI Rule 1.6](#), that an attorney would not be permitted to disclose such evidence under this rule.

1.6:390 Confidentiality and Conflict of Interest

[RI Rule 1.9](#) prohibits a lawyer who has formally represented a client in a matter from using information relating to the representation to the disadvantage of the former client except as permitted by [RI Rule 1.6](#) or [RI Rule 3.3](#). Similarly see **RI Eth. Op. 93-36 (1993)**. In a situation where the representation of a current client against a former client was held to be substantially related to the representation of the former client, a conflict of interest, absent consent, would arise and the attorney could not use derivative information from the initial representation under **RI Rule 1.6. RI Eth. Op. 93-68 (1993)**. An attorney must comply with the confidentiality principles of **RI Rule 1.6** and may not use information obtained in a former representation to the disadvantage of the former client. **RI Eth. Op. 94-22 (1994)**. See also **RI Eth. Op. 94-53 (1994); 94-55 (1994); 94-69 (1994); 96-09 (1996); and 96-12 (1996)**.

Attorney who represented his friend's mortgage company and as closing attorney for bank owed duty to disclose his friend's diversion of funds from the mortgage company, where his dealing with the friend individually did not establish the attorney/client relationship; further, attorney should have withdrawn from representing both clients. **In re Silva, 636 A.2d 316 (R.I. 1994)**.

1.6:395 Relationship with Other Rules

There is no authority in Rhode Island on this topic.

1.6:400 Attorney-Client Privilege

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:301, ALI-LGL ◆◆ 68-78, Wolfram ◆◆ 6.3-6.5

[RI Rule 1.6](#) prohibits an attorney from assisting in the prosecution of his/her client. An attorney has an obligation to maintain the confidentiality of information relating to the representation of the client. The same duty is applicable to judicial and other proceedings where a lawyer is called as a witness. **RI Eth. Op. 92-28 (1992)**. [RI Rule 1.6\(a\)](#) mandates that a lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation. To the extent that the violation may be premised upon information relating to the inquiring attorney's representation of his/her client, the client's consent is required under RI Rule 1.6 for the inquiring attorney's disclosure of the information. **RI Eth. Op. 92-72 (1992)**. Information relating to the representation of a client is protected under RI Rule 1.6(a). **RI Eth. Op. 93-10◆(1993)**. If an attorney is called as a witness to give testimony concerning a client, the attorney has the duty to assert the attorney-client privilege. **RI Eth. Op. 93-26 (1993)**. RI Rule 1.6 forbids disclosure of information relating to representation of a client unless the client consents. The Rule does not distinguish between information that would be considered a confidence or secret. **RI Eth. Op. 94-42 (1994)**. RI Rule 1.6 addresses the fundamental principal of confidentiality between the client and lawyer regarding information relating to the representation. **RI Eth. Op. 95-26 (1995)**. A lawyer is obligated to hold client communications in confidence, may not disclose them to third parties without the client's consent, and may not appropriate them to his/her own use. **RI Eth. Op. 96-26 (1996)**. The principal of confidentiality is given effect in two (2) related bodies of law: the rule of confidentiality established in professional ethics and the attorney-client privilege in the law of evidence. RI Rule 1.6 protects from disclosure a broader range of information than would be protected under the attorney-client privilege. **In re Ethics Opinion No. 92-1, 627 A.2d 317 (1993)**; **RI◆Eth. Op. 96-34 (1996)**. However, in the litigation context, RI Rule 1.6 does not alter or expand the scope of the attorney/client privilege, nor does it provide an alternative source of protection against disclosure when no such protection exists under the attorney-client privilege. **Callahan v. Nystedt, 641 A.2d 58 (R.I. 1994)**. The rule of confidentiality applies not only to matters communicated to the attorney in confidence by the client, but also to all

information relating to the representation, whatever its source. **RI Eth. Op. 96-27 (1996)**. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from a lawyer through compulsion of law. The confidentiality rules apply not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. See RI Rule 1.6 and **RI Eth. Op. 97-15 (1997)**. Pursuant to RI Rule 1.6, an attorney has a duty to invoke the attorney-client privilege and the work product doctrine with respect to documents and information, which, in his/her professional judgment, are protected by the privilege, or the doctrine. **RI Eth. Op. 98-02 (1998)**.

1.6:410 Privileged Communications

There is no authority in Rhode Island on this topic.

1.6:420 Privileged Persons

There is no authority in Rhode Island on this topic.

1.6:430 Communications "Made in Confidence"

An attorney may properly testify concerning statements made to the attorney by a former client provided the statements do not arise from the attorney-client relationship. **RI Ethics Panel 91-10 (1991)**. [RI Rule 1.6\(a\)](#) requires attorneys to keep confidential only information that relates to the representation. **RI Eth. Op. 97-15 (1997)**.

1.6:440 Communications from Lawyer to Client

In a situation where an attorney's organization is considering the creation of an expert witness/deposition bank for its members consisting of the deposition and expert testimony transcripts of its members, the RI Ethics Advisory Ethics Panel opined that the procedure would run afoul of [RI Rule 1.6](#) since the furnishing of clients' depositions and expert testimony would be divulging confidential information contrary to the Rule. **RI Eth. Op. 95-35 (1995)**. In **RI Eth. Op. 96-35 (1996)**, the RI Ethics Advisory Panel favorably noted, referring to [RI Rule 1.6\(a\)](#), that a lawyer "shall not reveal information relating to representation of a client♦." Communications from lawyer to client, if related to representation of a client, come within the broad net of RI Rule 1.6(a) and, therefore, the attorney has the ethical duty of maintaining its confidentiality.

1.6:450 Client Identity, Whereabouts and Fee Arrangements

In **RI Eth. Op. 92-50 (1992)**, the RI Ethics Advisory Panel declined to rule whether a client's billing records were within the attorney-client privilege. The opinion does state, however, that [RI Rule 1.6](#) requires an attorney to invoke the privilege whenever it becomes appropriate to the situation. When a third

party is paying a client's fee, the attorney must disclose this fact. **RI Eth. Op. 92-65 (1992)**. [RI Rule 1.8\(f\)](#) does not, however, require the disclosure of the amount of fee being paid. (As part of the collection effort, a law firm may furnish a collection agency with the name and address of a client and the amount due in accordance with the exception in [RI Rule 1.6\(b\)\(2\)](#). **RI Eth. Op. 94-6 (1994)**). A law firm was not permitted to furnish a bank the names of clients, addresses and amounts owed by them in order to grant a security interest in the firm's accounts receivable as security for a loan. **RI Eth. Op. 94-42 (1994)**. When an attorney's client changes addresses, the attorney is not under an obligation to offer to furnish the client's new address to opposing counsel because the information is protected under RI Rule 1.6. If the matter is in litigation, the client's attorney's duty may be otherwise under [RI Rule 3.4](#). An attorney may not provide government agency with an accounts receivable list including client's names. The identity of a client is confidential information and is protected under RI Rule 1.6. **RI Eth. Op. 95-61 (1996)**. **RI Eth. Op. 97-19 (1997)** again recites that the identity of a client is confidential. Nevertheless, the RI Ethics Advisory Ethics Panel opined that pursuant to exception in RI Rule 1.6(b)(2), an attorney is permitted to reveal, to the extent necessary, information relating to a client's representation in support of attorney's claimed deductions in an IRS proceeding. A lawyer's billing statement is information relating to the representation of a client and is therefore protected by Rule 1.6. **RI Eth. Op. 2002-02**.

1.6:460 Legal Assistants as Object of Communication

There is no authority in Rhode Island on this topic.

1.6:470 Privilege for Organizational Clients

An attorney who represented the wife in a domestic matter, who formerly represented a corporation controlled by the client's husband, may represent the wife but may not, without the consent of the husband's corporation, reveal any information that was gained through the previous representation of the husband's corporation. The plain meaning of this opinion is that privileged communications apply to corporations. **RI Eth. Op. 92-67 (1992)**. In a situation where an attorney represents a school committee which has suspended its superintendent and the attorney has rendered legal opinions to and given legal assistance to the superintendent, the attorney may discuss the superintendent's performance with an investigator appointed by the school committee since the school committee, not the superintendent, was the attorney's client. Reference is made to [RI Rule 1.13](#), *infra*. **RI Eth. Op. 95-51 (1995)**.

1.6:475 Privilege for Governmental Clients

In circumstances where an attorney was a former employee of a state agency and leaves the agency, the attorney is bound by [RI Rule 1.6](#). **RI Eth. Op. 95-33 (1995)**.

1.6:480 Privilege of Co-Clients

When an attorney represents multiple defendants in an action brought against them by the administrator of an estate and the attorney representing co-defendants was informed by one of the defendants that she had appropriated funds to her own use, the Attorney may not disclose that information to the co-defendants since the information is protected under [RI Rule 1.6](#). (If the attorney believes a conflict of interest arises under the circumstances of this case, the attorney must withdraw from the representation of all parties). **RI Eth. Op. 96-08 (1996)**.

1.6:490 Common-Interest Arrangements

There is no authority in Rhode Island on this topic.

1.6:495 Duration of Attorney-Client Privilege

The [Comment to RI Rule 1.6](#), stating that a lawyer's "duty of confidentiality continues after the clients/lawyer relationship has terminated," was cited with approval in **RI Eth. Op. 93-84 (1993)**. An attorney has an obligation of confidentiality to the client, which continues after the client's death. **RI Eth. Op. 96-34 (1996)**.

1.6:500 Waiver of Attorney-Client Privilege

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:401, ALI-LGL ◆◆ 78-80, Wolfram ◆ 6.4

1.6:510 Waiver by Agreement, Disclaimer, or Failure to Object

There is no authority in Rhode Island on this topic.

The mere presence of a third party does not *per se* See **Rosati v. Kuzman, 660 A.2d 263 (R.I. 1995)**.

1.6:520 Waiver by Subsequent Disclosures

There is no authority in Rhode Island on this topic.

Client did not waive attorney/client privilege by authorizing his attorney to communicate with authorities where client sufficiently specified those confidences he wished to protect. **See Rosati v. Kuzman, 660 A.2d 263 (R.I. 1995)**.

1.6:530 Waiver by Putting Assistance or Communication in Issue

The mere fact that a plaintiff has made a claim for attorneys' fees as part of a claim for damages does not indicate a waiver of the attorney-client privilege. **See Mortgage Guarantee & Title Co. v. Fernando S. Cunha, 745 A.2d 156 (R.I. 2000)**. A party is determined to have waived the attorney-client privilege "only when the contents of the legal advice is integral to the outcome of the legal claims of the action." **Id.**, citing **Metropolitan Life Insurance Co. v. Aetna Casualty & Surety Co., 730 A.2d 51, 60 (Conn. 1999)**. Therefore, the determination of whether the attorney-client privilege has been placed in issue such that the information is actually required for truthful resolution of the issues raised in the controversy. **See id.**

[1.6:600](#) Exceptions to Attorney-Client Privilege

- ◆ Primary Rhode Island References: [RI Rule 1.6](#)
- ◆ Background References: [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 55:901 *et seq.*, ALI-LGL
- ◆◆ 81-86, Wolfram ◆◆ 6.4

Attorney-client privilege protects from disclosure only confidential communications between a client and his or her attorney. It does not bar an attorney from testifying regarding his observations of clients' demeanor, his assessment of their knowledge, or his recollection of whether they appeared to be under duress. **DeFusco v. Giorgio, 440 A.2d 727 (R.I. 1982)**. An allegation that attorneys promised their former client that they would fund litigation to prevent the former client from pursuing a malpractice claim against them supported a claim for maintenance. **Toste Farm Corp. v. Hadbury, Inc., 798 A.2d 901 (R.I. 2002)**.

1.6:610 Exception to Disputes Concerning Decedents Disposition of Property

There is no authority in Rhode Island on this topic.

1.6:620 Exception for Client Crime or Fraud

An attorney is not obliged to disclose and may not disclose the fraud of his client (falsely recorded accident) since the information is protected under [RI Rule 1.6\(a\)](#). RI Eth. Op. 93-10 (1993). ([RI Rule 1.6\(b\)\(1\)](#), allows for an exception "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantially bodily harm.").

1.6:630 Exception for Lawyer Self-Protection

An attorney may furnish a collection agency with the name and address of clients and the amount due in seeking to collect those amounts under exception in [RI Rule 1.6\(b\)\(2\)](#) permitting such disclosure to establish a claim on behalf of the lawyer. **RI Eth. Op. 94-6 (1994)**.

1.6:640 Exception for Fiduciary-Lawyer Communications

In a case where an attorney represents a guardianship estate in the probate court, the ward of the estate is incompetent, and the attorney discovers a series of unexplained withdrawals from the estate, and the guardian is unable to account for the withdrawals (it appears that the withdrawals were wrongful and/or fraudulent), the attorney may disclose the relevant facts to the ward, and if the ward is incompetent, as in the instant case, disclosure should be made to the probate court. **RI Eth. Op. 92-23 (1992)**. This is a complex opinion based on [RI Rules 1.2\(d\)](#), [3.3](#), [1.16\(a\)\(1\)](#), [1.16\(b\)](#), [1.14](#), in addition to [1.6](#). When an attorney believes that another attorney acting as executor of an estate has diverted funds from the estate, the attorney may not disclose his/her knowledge of the executor's alleged wrong doings. The exceptions in subsection [RI Rule 1.6\(b\)](#) are not applicable. **RI Eth. Op. 94-78 (1994)**. The opinion also referred back to **RI Eth. Op. 92-23, supra** but without any guidance as to the relation between the two (2) opinions.

1.6:650 Exception for Organizational Fiduciaries

There is no authority in Rhode Island on this topic.

1.6:660 Revoking the Privilege and Its Exceptions

There is no authority in Rhode Island on this topic.

1.6:700 Lawyer Work-Product Immunity

- ◆ **Primary Rhode Island References:** [RI Rule 1.6](#)
- ◆ **Background References:** [ABA Model Rule 1.6](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:2201, ALI-LGL ◆◆
87-93, Wolfram ◆ 6.6

Work-Product Immunity

Pursuant to [RI Rule 1.6](#), an attorney has a duty to invoke the attorney-client privilege and the work product doctrine to protect confidential information. **RI Eth. Op. 98-2 (1998)**.

1.6:720 Ordinary Work Product

Pursuant to [RI Rule 1.6](#), the inquiring attorney has a duty to invoke the attorney-client privilege and the work product doctrine to protect confidential information. **RI Eth. Op. 98-02 (1998)**.

1.6:730 Opinion Work Product

Pursuant to [RI Rule 1.6](#), the inquiring attorney has a duty to invoke the attorney-client privilege and the work product doctrine to protect confidential information. **RI Eth. Op. 98-02 (1998)**.

1.6:740 Invoking Work-Product Immunity and Its Exceptions

Pursuant to [RI Rule 1.6](#), the inquiring attorney has a duty to invoke the attorney-client privilege and the work product doctrine to protect confidential information. **RI Eth. Op. 98-02 (1998)**.

1.6:750 Waiver of Work-Product Immunity By Voluntary Acts

There is no authority in Rhode Island on this topic.

1.6:760 Waiver of Work-Product Immunity by Use in Litigation

There is no authority in Rhode Island on this topic.

1.6:770 Exception for Crime or Fraud

There is no authority in Rhode Island on this topic.

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer [reasonably believes](#) that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Comment - [Rule 1.7](#)

Loyalty to a Client

[1] Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. The lawyer should adopt [reasonable](#) procedures, appropriate for the size and type of [firm](#) and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See [Rule 1.16](#). Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by [Rule 1.9](#). See also [Rule 2.2\(c\)](#). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see [Comment to Rule 1.3](#) and [Scope](#).

[3] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

[4] Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself

preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and Consent

[5] A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's Interests

[6] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation

[7] Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of

adverse effect is minimal and the requirements of paragraph (b) are met. Compare [Rule 2.2](#) involving intermediation between clients.

[8] Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon [consultation](#). By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging [fraud](#) entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

[9] A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for a Lawyer's Service

[10] A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See [Rule 1.8\(f\)](#). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after [consultation](#) and the arrangement ensures the lawyer's professional independence.

Other Conflict Situations

[11] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

[12] For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

[13] Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

[14] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party

[15] Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See [Scope](#).

1.7 Conflict of Interest: General Rule

1.7:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 1.7](#)
- ◆ **Background References:** [ABA Model Rule 1.7](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

1.7:101 Model Rule Comparison

Rhode Island has adopted the ABA Model Rule version of [RI Rule 1.7](#)

1.7:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.7](#) and other jurisdictions.

[1.7:200](#) Conflicts of Interest in General

- ◆ **Primary Rhode Island References:** [RI Rule 1.7](#)
- ◆ **Background References:** [ABA Model Rule 1.7](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:101, ALI-LGL ◆◆ 121-124, Wolfram ◆◆ 7.1-7.6

The attorney's belief under [RI Rule 1.7](#) must be "reasonable". Under RI Rule 1.7 the attorney's "reasonable belief" was the standard used in determining whether the representation of one client will adversely affect the relationship with another client. **RI Eth. Op. 95-32 (1995)**. In a matter in which an attorney represented a woman in an uncontested divorce and the attorney asked whether he could assist the husband in implementing their agreement, the Ethics Panel opined that in the situation, the wife's interest being directly adverse to the husband's interest, the attorney could not reasonably believe that the representation of the husband will not adversely affect the attorney-client relationship with the wife. Therefore, the attorney could not assist the husband in the proceeding. **RI Eth. Op. 96-22 (1996)**. The reasonable belief standard was again stated in **RI Eth. Op. 96-23 (1996)**. In a case where parties are in direct conflict with each other, it has been held that it is not reasonable to believe that the representation of one client will not adversely affect the representation of the other. **RI Eth. Op. 97-21 (1997)**.

When consent will satisfy a conflict, the consent may be oral. **RI Eth. Op. 89-19 (1989)**. When a lawyer believes representation of a client will not be adversely affected, any impropriety (conflict) can be cured by obtaining client consent. **RI Eth. Op. 89-22 (1989)**. In order for an attorney to fulfill the requirement of [RI Rule 1.7\(b\)\(2\)](#), the attorney must obtain consent from the client after consultation. Client consent must be informed consent and informed consent requires full disclosure. Full disclosure is not a set of conclusory statements but a recitation of specific details and an explanation of foreseeable consequences. **RI Eth. Op. 90-16 (1990)**, citing **DeBott v. Parker, 560 A.2d 1323, 1329 (1988)**. See also **RI Eth. Op. 90-24 (1990)**.

Under [RI Rule 1.7\(a\)](#), when a client is directly adverse to another client, the condition imposed by the rule that a lawyer shall not represent a client unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client can be tantamount to a virtual *per se* ban on simultaneous representation of adverse interests, relying on, **Hodes and Hazard, The Law of Lawyering. RI Eth. Op. 90-36 (1990)**.

An attorney, co-owner of a close corporation with a non-client, has been asked by a client to undertake an action adverse to the co-owner's unrelated business venture. **RI Eth. Op. 92-37 (1992)**. Relying on the [Comment to RI Rule 1.7\(b\)](#), the Ethics Panel cautioned the attorney as to potential problems. If he/she undertakes such representation, the Ethics Panel is unable to conclude that the clients' informed consent would be sufficient to avoid a conflict of interest. In so holding, the Ethics Panel set down the following guidelines: "Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the third-party, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree." **RI Eth. Op. 92-37 (1992)**.

An attorney who represented several members of a town council in their individual capacities was asked to represent a client before the same town council. He/she was advised that three (3) members of the council would recuse themselves because of their relationship with the attorney giving a minimum of four (4) council members to hear the case when four (4) affirmative votes were needed to act upon the client's request. The Ethics Panel, citing [RI Rule 1.7\(b\)](#), stated, "In this case, the lawyer's own interest is his personal relationship with the town council. There exists a conflict of interest because the attorney is unable to effectively represent the client in the hearing. The limited number of council people qualified to vote is materially limiting the client's ability to be granted the license. Given the recusals, if the attorney reasonably believes that his client's interest are adversely affected, this is not a conflict that the client can waive." **RI Eth. Op. 92-86 (1993)**. In a matter in which the attorney represents a client in a domestic matter and also represents the adverse counsel in an unrelated matter, it was held that the attorney may represent adverse counsel if the attorney reasonably believes that the representation of the client in the domestic matter will not be adversely affected and the attorney receives informed consent from both clients." **RI Eth. Op. 92-66 (1992)**. When an attorney in a law firm is an assistant town solicitor and the law firm is asked to represent clients in civil actions against the town, the Ethics Panel opined that ". . . if the attorney reasonably believes that the relationship of one client will not adversely affect the relationship with the other client and the attorney acquires each client's consent, then the law firm may represent plaintiffs in the civil cases. **RI Eth. Op. 95-32 (1995)**. If the belief is not reasonable and/or the clients do not consent to the representation, then the law firm may not represent the plaintiffs in the civil matters." The Ethics Panel went on to

state that the law firm could represent private clients before the town council zoning board or planning board because a conflict of interest was held not to exist under the rule in those cases. **RI Eth. Op. 95-32 (1995).**

Differentiating between the two (2) parts of [RI Rule 1.7](#), the Ethics Panel stated, "[RI Rule 1.7\(a\)](#) applies when the representation of a client is directly adverse to another client. [RI Rule 1.7\(b\)](#) applies when representation of one client would be materially limited by other interests or responsibilities of the attorney. In this situation [attorney represented a client in a divorce proceeding against her spouse, represented another client in a divorce proceeding against his spouse, the two (2) clients are romantically involved and each may be witnesses in each others divorce proceeding], it does not appear that the representation of the two (2) clients would be directly adverse. If, however, the attorney's representation of one (1) client may be materially limited by his/her responsibilities to the other client, the inquiring attorney may represent both clients simultaneously but only if the attorney reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. **RI Eth. Op. 95-54 (1995).**

An attorney may not simultaneously represent a city as its city solicitor and clients whose interests are adverse to the city, even if the matters are wholly unrelated. There is a clear case of direct conflict where clients oppose each other in litigation. When such conflicts exists, [RI Rule 1.7\(a\)](#) contemplates a *per se* ban on the concurrent representation of such clients, since the attorney could not reasonably believe that representation of the city would not adversely affect the relationship with his/her current clients who have interests directly adverse to those of the city. Therefore, client consents will not resolve the conflict. **RI Eth. Op. 97-06 (1997).** In determining that an attorney may not represent both the husband and wife in connection with the husband's personal injury claim when the parties are seeking a divorce, even though they have asked the attorney to do so and waived any conflict that exists, the Ethics Panel opined that since the spouse has an interest in the husband's personal injury recovery which is adverse to the husband's interest and the allocation of loss wages, conflict arises in the dual representation and in the face of such a direct conflict it is not reasonable to believe that the representation of one spouse will not adversely affect the representation of the other. Waivers cannot cure this type of conflict. **RI Eth. Op. 97-21 (1997).**

The Rules of Professional Conduct do not prohibit an attorney from representing clients before the town council or before the planning and zoning boards if he or she is elected town moderator. **RI Eth. Op. 2002-06.**

1.7:210 Basic Prohibition of Conflict of Interest

In deciding a conflict of interest situation, reference was made to the preamble of the Rhode Island Rules of Professional Conduct stating that "[a] lawyer should avoid even the appearance of professional impropriety." **RI Eth.**

Op. 89-1 (1989). In reviewing the practical effect of [RI Rule 1.7\(a\)](#), prohibiting representation of a client if the representation of that client is "directly adverse" to another client, the Rhode Island Ethics Advisory Panel quoted Geoffrey Hazard in **The Law of Lawyering**, in noting that in such a case the requirement of "reasonable belief" is tantamount to a virtual *per se* ban on simultaneous representations under those circumstances. **RI Eth. Op. 90-14.**

Although the Rhode Island Rule requires "consent after consultation" in order to waive a conflict of interest, the Rhode Island Ethics Advisory Panel has interpreted that requirement to require full disclosure. **RI Eth. Op. 90-16 (1990).** Subsequent Rhode Island Ethics Advisory Panel Opinions have reiterated that standard. In **RI Eth. Op. 90-32 (1990)**, the Ethics Panel stated, "[RI Rule 1.7](#) addresses the situation in which an attorney is asked to represent a client whose interests are directly adverse to another present client of the attorney's." As stated in the [Comments to RI Rule 1.7](#), "loyalty to a client is impaired when a lawyer can not consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Where an attorney has withdrawn as counsel for an agency in order to represent the former director of the agency in an action against the agency, the appropriate inquiry is [Rule 1.7](#), which prohibits an attorney from representing a client if that representation would be adverse to the interests of another client. **RI Eth. Op. 2000-1 (2000).**

A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." The foregoing was quoted with approval in **RI Eth. Op. 92-86 (1993)**. A lawyer should not represent a client "unless it can be performed competently, promptly, without proper conflict of interest and to completion". **RI Eth. Op. 94-22 (1994)**. An attorney shall not represent a client if the representation of that client will be directly adverse to another client. **RI Eth. Op. 94-45 (1994)**. An attorney cannot offer legal training to the staff of a school department if the attorney also represents another party in proceedings against that school department. **RI Eth. Op. 94-47 (1994).**

Under the conflict rules two clients must be either directly adverse or materially adverse to one another. **RI Eth. Op. 95-48 (1995)**. Economic competitors, without more, do not create a conflict. **RI Eth. Op. 95-52 (1995)**. [RI Rule 1.7\(a\)](#) applies when the representation of a client is directly adverse to another client. [RI Rule 1.7\(b\)](#) applies when representation of one client would be materially limited by other interests or responsibilities of the attorney. **RI Eth. Op. 95-54 (1995)**. In a situation in which no conflict of interest was found to exist but since there was, according to the Ethics Panel,

a "serious appearance of impropriety", the Ethics Panel advised the attorney to give "serious consideration to withdrawing from the matter". **RI Eth. Op. 97-02**. In opining that an attorney may not simultaneously represent a city and clients who have claims against the city, it was held that a conflict existed even if the matters are wholly unrelated. In such a case, the Ethics Panel was of the opinion that the attorney could not reasonably believe that representation of the city would not adversely affect the relationship with current clients who have interests directly adverse to those of the city. **RI Eth. Op. 97-06 (1997)**. The Rules of Professional Conduct impose on lawyers an ethical obligation of loyalty to clients. The rules that address conflict of interest protect clients and assure an attorney's loyalty. **RI Eth. Op. 98-07 (1998)**.

1.7:220 Material Adverse Effect on Representation

[RI Rule 1.7\(b\)](#) generally prohibits an attorney from undertaking representation of a client when the representation may be "materially limited ... by the lawyer's own interest..." **RI Eth. Op. 92-30 (1992)**. Despite the absence of an attorney-client relationship, a violation of **RI Rule 1.7(b)** may arise if the attorney's representation of a client may be "materially limited by the lawyer's responsibility to another client or to a third person, or by the lawyer's own interest." **RI Eth. Op. 93-24 (1993)**. Examining one's own client and conducting discovery on behalf of another client will present a material limitation on the lawyer's representation and the attorney should withdraw. **RI Eth. Op. 97-03 (1997)**. The Office of the Public Defender considers itself to be the equivalent of a law firm for conflict of interest purposes; it may undertake multiple representation of clients in circumstances in which the representation of one client may be materially limited by the representation of another, only if the client consents after consultation. **Hughes III v. State, 656 A.2d 971 (R.I. 1995)**.

An attorney who engages in sexual relations with his or her divorce client jeopardizes the client's rights, because the sexual conduct of the client may have significant bearing on that client's ability to secure child custody and in the determination of the distribution of marital assets. **In re DiPippo, 678 A.2d 454 (R.I. 1996)**. "The lawyer's own interest in maintaining the sexual relationship creates an inherent conflict with the proper representation of the client." **678 A.2d at 456. See also In re Pellizzari, 726 A.2d 451 (R.I. 1999); In re DiSandro, 680 A.2d 73 (R.I. 1996)**.

1.7:230 Perspective for Determining Conflict of Interest

Under [RI Rule 1.7\(b\)](#) an attorney must "reasonably believe" that the representation of a client will not be adversely affected. **RI Eth. Op. 89-2 (1989)** ("Reasonably" not mentioned in this opinion.). "Reasonable belief" of the attorney is the standard used in determining whether the representation of a client will be adversely affected by simultaneous representation of another client. In such circumstances, however, irrespective of the "belief", consent from both clients should be obtained. **RI Eth. Op. 92-66 (1992)**. If the attorney reasonably believes that the representation of a client in a domestic

matter will not be adversely affected when the attorney represents the adverse counsel in an unrelated matter, the conflict of interest situation may be resolved by obtaining informed consent from both clients. **RI Eth. Op. 92-66**. In a matter involving RI Rule 1.7(b) and material limitation of the representation, it was opined, quoting from the Comment, that "the lawyer's own interest should not be permitted to have adverse affect on representation of a client" and "[b]ecause there is an issue of malpractice ..., it is the attorney's decision to make whether he/she's representation of the client will be 'materially limited.'" **RI Eth. Op. 94-29 (1994)**.

In **RI Eth. Op. 95-6 (1995)**, an attorney was appointed clerk of a municipality's Probate Court and asked whether he could practice law before the municipality's boards and agencies. The Ethics Panel questioned whether the attorney could reasonably believe that he/she could function as an effective advocate against his/her own employer as appointive authority over his/her employment.

The attorney's belief under [RI Rule 1.7](#) must be "reasonable". Under RI Rule 1.7 the attorney's "reasonable belief" was the standard used in determining whether the representation of one client will adversely affect the relationship with another client. **RI Eth. Op. 95-32 (1995)**. In a matter in which an attorney represented a woman in an uncontested divorce and the attorney asked whether he could assist the husband in implementing their agreement, the Ethics Panel opined that in the situation, the wife's interest being directly adverse to the husband's interest, the attorney could not reasonably believe that the representation of the husband will not adversely affect the attorney-client relationship with the wife. Therefore, the attorney could not assist the husband in the proceeding. **RI Eth. Op. 96-22 (1996)**. The reasonable belief standard was again stated in **RI Eth. Op. 96-23 (1996)**. In a case where parties are in direct conflict with each other, it has been held that it is not reasonable to believe that the representation of one client will not adversely affect the representation of the other. **RI Eth. Op. 97-21 (1997)**.

An attorney who operates a real estate referral company may not provide legal services in a real estate transaction involving agents who have brokered the transaction even if the company does not receive any portion of the commissions. "The inter-relationship between the referral company and the agents and brokers presents a substantial risk that the attorney's independent professional judgment will be compromised. There is also significant risk that his/her representation of parties to a real estate transaction will be materially limited by his/her interest in the referral company or by his/her responsibilities to the company and to the associated agents and brokers. In the opinion of the Ethics Panel, there could not exist a reasonable belief that the representation would not be affected. Therefore, consent should not be solicited." **RI Eth. Op. 98-08 (1998)**.

An attorney who is a part-time municipal court judge in a municipality which recently underwent a property revaluation and who is also a partner in a law firm may contest the property revaluation of his/her property in the

municipality. Further, [Rule 1.10](#) does not prohibit the attorney's law firm from representing property owners in the municipality in the appeals of the revaluation of their properties so long as, in compliance with [Rule 1.7\(b\)](#), the lawyers reasonably believe that the representation will not be adversely affected, and the clients consent after full disclosure. **RI Eth. Op. 2003-03.**

1.7:240 Client Consent to a Conflict of Interest; Non-Consentable Conflicts

When consent will satisfy a conflict, the consent may be oral. **RI Eth. Op. 89-19 (1989)**. When a lawyer believes representation of a client will not be adversely affected, any impropriety (conflict) can be cured by obtaining client consent. **RI Eth. Op. 89-22 (1989)**. In order for an attorney to fulfill the requirement of [RI Rule 1.7\(b\)\(2\)](#), the attorney must obtain consent from the client after consultation. Client consent must be informed consent and informed consent requires full disclosure. Full disclosure is not a set of conclusory statements but a recitation of specific details and an explanation of foreseeable consequences. **RI Eth. Op. 90-16 (1990)**, citing **DeBott v. Parker, 560 A.2d 1323, 1329 (1988)**. See also **RI Eth. Op. 90-24 (1990)**.

Under [RI Rule 1.7\(a\)](#), when a client is directly adverse to another client, the condition imposed by the rule that a lawyer shall not represent a client unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client can be tantamount to a virtual *per se* ban on simultaneous representation of adverse interests, relying on, Hodes and Hazard, the **Law of Lawyering. RI Eth. Op. 90-36 (1990)**.

When an attorney in a law firm is an assistant city solicitor, the law firm cannot represent any client, which has a claim against the city. The city and the claimants against the city are directly adverse to each other and under those circumstances client consents cannot resolve the conflict. **RI Eth. Op. 91-45 (1991)**.

An attorney, co-owner of a close corporation with a non-client, has been asked by a client to undertake an action adverse to the co-owner's unrelated business venture. **RI Eth. Op. 92-37 (1992)**. Relying on the [Comment to RI Rule 1.7\(b\)](#), the Ethics Panel cautioned the attorney as to potential problems. If he/she undertakes such representation, the Ethics Panel is unable to conclude that the clients' informed consent would be sufficient to avoid a conflict of interest. In so holding, the Ethics Panel set down the following guidelines: "Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the third-party, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree." **RI Eth. Op. 92-37 (1992)**.

An attorney who represented several members of a town council in their individual capacities was asked to represent a client before the same town council. He/she was advised that three (3) members of the council would recuse themselves because of their relationship with the attorney giving a minimum of four (4) council members to hear the case when four (4) affirmative votes were needed to act upon the client's request. The Ethics Panel, citing [RI Rule 1.7\(b\)](#), stated, "In this case, the lawyer's own interest is his personal relationship with the town council. There exists a conflict of interest because the attorney is unable to effectively represent the client in the hearing. The limited number of council people qualified to vote is materially limiting the client's ability to be granted the license. Given the recusals, if the attorney reasonably believes that his client's interest are adversely affected, this is not a conflict that the client can waive." **RI Eth. Op. 92-86 (1993)**. In a matter in which the attorney represents a client in a domestic matter and also represents the adverse counsel in an unrelated matter, it was held that the attorney may represent adverse counsel if the attorney reasonably believes that the representation of the client in the domestic matter will not be adversely affected and the attorney receives informed consent from both clients." **RI Eth. Op. 92-66 (1992)**. When an attorney in a law firm is an assistant town solicitor and the law firm is asked to represent clients in civil actions against the town, the Ethics Panel opined that ". . . if the attorney reasonably believes that the relationship of one client will not adversely affect the relationship with the other client and the attorney acquires each client's consent, then the law firm may represent plaintiffs in the civil cases. **RI Eth. Op. 95-32 (1995)**. If the belief is not reasonable and/or the clients do not consent to the representation, then the law firm may not represent the plaintiffs in the civil matters." The Ethics Panel went on to state that the law firm could represent private clients before the town council zoning board or planning board because a conflict of interest was held not to exist under the rule in those cases. **RI Eth. Op. 95-32 (1995)**.

Differentiating between the two (2) parts of [RI Rule 1.7](#), the Ethics Panel stated, "[RI Rule 1.7\(a\)](#) applies when the representation of a client is directly adverse to another client. [RI Rule 1.7\(b\)](#) applies when representation of one client would be materially limited by other interests or responsibilities of the attorney. In this situation [attorney represented a client in a divorce proceeding against her spouse, represented another client in a divorce proceeding against his spouse, the two (2) clients are romantically involved and each may be witnesses in each others divorce proceeding], it does not appear that the representation of the two (2) clients would be directly adverse. If, however, the attorney's representation of one (1) client may be materially limited by his/her responsibilities to the other client, the inquiring attorney may represent both clients simultaneously but only if the attorney reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. **RI Eth. Op. 95-54 (1995)**.

In **RI Eth. Op. 95-56 (1995)**, the Ethics Panel stated that matters can be directly adverse to multiple clients of an attorney, and the attorney may

continue the representation as long as the lawyer reasonably believes the representation will not adversely affect the relationship between the clients and each client consents after the consultation. When an attorney is a party in a divorce action, is retained by a client to prosecute the client's divorce, learns that the opposing counsel in the client's divorce matter is his attorney in his own divorce, the Ethics Panel concluded that if the attorney reasonably believes the representation of the client will not be adversely affected by the attorney's own interest and obtains the client's consent after disclosing the facts, the attorney may continue to represent the client. **RI Eth. Op. 96-23 (1996).**

An estate-planning attorney who is licensed to sell life, accident and health insurance may not sell insurance to estate planning clients and may not provide estate planning legal services to insurance customers. Although the Ethics Panel took the position that the attorney may conduct both businesses, cross selling is impermissible and under these circumstances since there could not be meaningful consent of the client. Therefore, the conflict created cannot be waived. **RI Eth. Op. 96-26 (1996).**

An attorney may not simultaneously represent a city as its city solicitor and clients whose interests are adverse to the city, even if the matters are wholly unrelated. There is a clear case of direct conflict where clients oppose each other in litigation. When such conflicts exists, [RI Rule 1.7\(a\)](#) contemplates a *per se* ban on the concurrent representation of such clients, since the attorney could not reasonably believe that representation of the city would not adversely affect the relationship with his/her current clients who have interests directly adverse to those of the city. Therefore, client consents will not resolve the conflict. **RI Eth. Op. 97-06 (1997).** In determining that an attorney may not represent both the husband and wife in connection with the husband's personal injury claim when the parties are seeking a divorce, even though they have asked the attorney to do so and waived any conflict that exists, the Ethics Panel opined that since the spouse has an interest in the husband's personal injury recovery which is adverse to the husband's interest and the allocation of loss wages, conflict arises in the dual representation and in the face of such a direct conflict it is not reasonable to believe that the representation of one spouse will not adversely affect the representation of the other. Waivers cannot cure this type of conflict. **RI Eth. Op. 97-21 (1997).**

An attorney may not provide legal services relating to real estate transactions in which agents or brokers related to his/her real estate referral company brokered the transaction even where the referral company waives or does not receive a share of the broker's commission. Consents will not eliminate the conflict. **RI Eth. Op. 98-08 (1998).**

An attorney who is a town solicitor for the town in which he or she lives may represent individuals in a civil action against the families of two juveniles whom the town is prosecuting if the solicitor's office does not represent the town in the prosecution of the juveniles, and if in accordance with Rule 1.7,

both the town and the individuals consent after consultation and disclosure of all potential conflicts. Rule 1.11(a) does not present an impediment to the attorney's proposed representation since the solicitor's office has had no involvement in the case. **RI Eth. Op. 2003-01.**

1.7:250 Imputation of Conflict of Interest to Affiliated Lawyers
[See [1.10:200](#)]

An attorney has a conflict that may be waived when the attorney is asked to handle a malpractice claim against a physician on the staff of a hospital on which one of his partners is a member of the board. The Ethics Panel noted the provisions of [RI Rule 1.10](#) which prohibits those associated in the firm from representing clients when anyone of them would be prohibited from doing so. In **RI Eth. Op. 90-36 (1990)**, the Ethics Panel stated that while an attorney is an assistant city solicitor, all members of the firm are disqualified from representing a client whose position is directly adverse to the city, under RI Rule 1.10, Imputed Disqualification. **See also RI♦Eth. Op. 95-32 (1995); RI Eth. Op. 95-59 (1996)** (when an associate in a law firm is a town solicitor whose function is to prosecute criminal cases for the town, and other members of the law firm represent clients involved in domestic assault cases prosecuted by the town, the attorney-town solicitor may not prosecute such matters in view of RI Rule 1.10.). RI Rule 1.10 covers the circumstances under which members of the same firm may not represent opposing parties where any member of the firm could not individually represent that party by reason of a "conflict". **RI Eth. Op. 92-70 (1993)**. Where an attorney could not represent a private client before the municipal zoning board on which he/she sat, it was opined that all members of the attorney's law firm are similarly disqualified pursuant to RI Rule 1.10. **RI Eth. Op. 93-14 (1993)**. RI Rule 1.10 prohibits attorneys in the same law firm from representing a client in a matter materially adverse to the interest of any client of the law firm absent consent after consultation. RI Rule 1.10, Imputed Disqualification, prohibits a legal entity (in this case a non-profit legal services agency) from representing a client when either of the predecessor agencies would have been prohibited from doing so. **RI Eth. Op. 94-77 (1995)**. If an attorney cannot represent a client, an associate in the firm is disqualified from "drafting the paperwork" concerning a guardianship matter. **RI Eth. Op. 94-79 (1995)**. Under [RI Rule 1.10\(a\)](#), an attorney in a law firm would be prohibited from continuing to represent a client if another attorney in the law firm was prohibited from doing so because of a conflict of interest. **RI Eth. Op. 97-02 (1997)**.

Conflicts under [RI Rule 1.7\(b\)](#) are imputed to other lawyers in a disqualified lawyer's firm pursuant to [RI Rule 1.10\(a\)](#) and the other lawyers would likewise be disqualified unless the requirements of RI Rule 1.7(b) are satisfied. **RI Eth. Op. 97-13 (1997)**.

1.7:260 Sanctions and Remedies for Conflicts of Interest

If the interest of a client is or becomes adverse to that of a former client, the attorney cannot continue to represent the client without consent. **RI Eth. Op. 93-15 (1993)**. In a custody matter where the attorney represents the mother who has little hope of obtaining custody, the attorney may also represent grandparents who alternatively seek custody, provided the mother consents to the representation. However, if a dispute arises in the future between the mother and the grandparents, the attorney must withdraw from representation. **RI Eth. Op. 93-65 (1993)**. An attorney may not represent a client if the representation of that client will be directly adverse to another client and must withdraw from representing the second client under the circumstances. **RI Eth. Op. 94-45 (1994)**. A lawyer who continued to represent a client while his small-claims suit was pending against her for unpaid legal bills violated [RI Rule 1.7\(b\)](#) because his representation of the client was materially limited by the lawyer's own interests. **Lisi v. Pearlman, 641 A.2d 81 (R.I. 1994)**. For this violation, he was suspended from practice for three months.

In a situation where two non-profit legal service agencies merge, the new entity must review its caseload to identify instances where clients' interests are directly adverse. If consent is appropriate in any such case, consents must be obtained. Absent such consent, the combined entity cannot represent either party to the controversy. **RI Eth. Op. 94-77 (1994)**.

Obtaining loan from clients, providing dual representation in other loan transactions involving clients without informing clients of potential conflicts, and obtaining security interest adverse to client was conduct warranting public censure. **In re Scott, 694 A.2d 732 (R.I. 1997)**.

Engaging in consensual sexual relationship with divorce client warrants public censure. **In re Pellizzari, 726 A.2d 451 (R.I. 1999)**; **In re DiSandro, 680 A.2d 73 (R.I. 1996)**. See also **In re DiPippo, 678 A.2d 454 (R.I. 1996)** (engaging in sexual relationship with divorce client and certifying truth of false statements made by such client warranted three month suspension).

1.7:270 Positional Conflicts

A conflict of interest may exist by reason of a substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. **RI Eth. Op. 92-66 (1992)**.

1.7:280 Relationships to Other Rules

In a situation where the attorney represented two parties in forming a corporation who later had a dispute with respect to the operation of the corporation, the attorney could not represent one of the parties without consent. In reaching its conclusion, the Ethics Panel referred to [RI Rule 2.2\(c\)](#)

- **Lawyer as an Intermediary**; [RI Rule 1.13](#): **Organization as Client**; and [RI Rule 1.7\(b\)](#). **RI Eth. Op. 93-58 (1993)**.

An attorney, also a licensed real estate broker, could pursue both endeavors but independently of each other. The Ethics Panel noted that Rhode Island has not adopted [MR Rule 5.7](#), although the provisions of [RI Rule 5.4\(b\)](#) prohibiting a partnership with a non-lawyer could be applicable. Reference was also made to [RI Rule 1.8\(a\)](#) and [RI Rule 1.7\(b\)](#), emphasizing impairment of the lawyer's independent professional judgment because of the lawyer's own interests. **RI Eth. Op. 93-59 (1993)**.

An estate-planning attorney licensed to sell insurance may not sell insurance through his/her legal clients and may not perform legal services for his/her insurance customers. Reference is made to [RI Rule 1.8](#), which prohibits a lawyer from entering into a business transaction with a client unless there is compliance with [RI Rule 1.7\(b\)](#) and RI Rule 1.8. The Ethics Panel noted, however, that in this case there could not be meaningful consent because the opportunity for overreaching by the lawyer was substantial. Therefore, the conflict could not be waived. **RI Eth. Op. 96-26 (1996)**.

[RI Rule 1.11\(a\)](#): **Successive Government and Private Employment** limits representation of a client in connection with the matter in which the lawyer participated as a public officer or employee. This disqualification is imputed to the firm. **RI Eth. Op. 95-59 (1996)**.

[RI Rule 3.7](#): **Lawyer as Witness** seeks to avoid the perception that the lawyer as a witness is distorting the truth to assist the client. The rationale of the rule does not apply to *pro se* lawyer litigants. The rule also does not permit a lawyer from being a witness for another lawyer, in the same firm or otherwise, if he/she is the client's advocate at a trial. **RI Eth. Op. 94-75 (1994)**.

[RI Rule 3.7\(b\)](#) permits an attorney to represent the executor of the estate in probate proceedings in which another lawyer in his/her law firm is likely to be called as a witness provided no other conflict exists under [RI Rule 1.7](#) or [RI Rule 1.9](#). **RI Eth. Op. 97-11 (1997)**.

An attorney who represents a corporation may not represent one shareholder in the dissolution of the corporation where other shareholders will oppose the dissolution, because there would be a conflict of interest pursuant to [RI Rule 1.7](#). **RI Eth. Op. 2003-02**.

1.7:300 Conflict of Interest Among Current Clients (Concurrent Conflicts)

- ◆ **Primary Rhode Island References:** [RI Rule 1.7](#)
- ◆ **Background References:** [ABA Model Rule 1.7](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆◆ 51:101, 51:301, ALI-LGL ◆◆ 128-131, Wolfram ◆◆ 7.1-7.3

1.7:310 Representing Parties with Conflicting Interests in Civil Litigation

An attorney may not represent co-defendants in a civil lawsuit when the attorney discovers evidence, which would tend to exculpate one and shift the liability to the other because the interests of the clients are so materially adverse. In this situation, clients could not waive the conflict. **RI Eth. Op. 91-23 (1991)**. An attorney may not represent two clients with joint claims against a party who had an insurance policy with limits exceeding the aggregate of the two claims. Order of settlement of the cases could prejudice the parties and a conflict would exist under [RI Rule 1.7](#). **RI Eth. Op. 93-15 (1993)**.

A city solicitor who prosecuted two employees of the city on matters unrelated to a current negligence lawsuit may not defend those employees in the negligence case without their consent since the city solicitor had a lawyer-client relationship with the employees who had been prosecuted and has an interest directly adverse to the municipality. [Ed: If the prosecution has already taken place, it would be questionable whether this situation constituted a conflict.] **RI Eth. Op. 93-83 (1993)**. Attorney who represented two state agencies did not represent the state and was not disqualified from representing private clients in civil action against another state agency, where the agencies that attorney represented had no relationship to agency being sued, not any interest in the case. **Gray v. RI Dept. of Children, Youth and Families, 937 F.Supp. 153 (D.R.I. 1996)**.

A husband and wife filed for bankruptcy and several years before the filing transferred their home to their son-in-law. The trustee has brought an adversary proceeding against the son-in-law alleging a fraudulent conveyance. Although the Ethics Panel concluded that the attorney could represent the son-in-law with the consent of the debtors, the Panel cautioned the attorney that circumstances could develop where the representation of the son-in-law could materially interfere with the lawyer's independent professional judgment as related to the debtors in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the debtors. **RI Eth. Op. 94-21 (1994)**.

An attorney may represent a client who is being sued for attorneys' fees by a law firm when another client will likely be a witness in the case, if the attorney reasonably believes the representation will not adversely affect the relationship with either client and each client consents. **RI Eth. Op. 95-11 (1995)**.

In **RI Eth. Op. 96-08 (1996)**, the question arose as to whether an attorney could continue to represent members of a family in an action brought against them by the administrator of an estate on the basis of fraud. After the attorney learned that one of the defendants violated a court order regarding the use of the funds in question, the Ethics Panel opined the attorney could not disclose this information to others because of the confidentiality rule ([RI Rule 1.6](#)) and that [RI Rule 1.7\(b\)](#) regarding simultaneous representation of co-parties controlled whether the attorney could continue to represent all of the defendants. If the attorney determines that the multiple representation will be adversely affected when the information becomes discoverable during the litigation, the lawyer will be required to withdraw. An attorney may represent the executor or the estate in probate proceedings if another lawyer in the law firm is likely to appear as a witness, provided that the attorney is not otherwise precluded from representation by reason of the conflict rules. See [RI Rule 3.7\(b\)](#); **RI Eth. Op. 97-11 (1997)**. In a matter involving a personal injury claim, during the pendency of which the claimant and his spouse file for divorce, the attorney may not represent both spouses in the personal injury matter (other attorneys were involved in the divorce proceeding) because the dual representation raises a direct conflict since the allocation of the various elements of the claim consisting of lost damages and other damage components would affect the distribution of assets in the divorce proceeding. **RI Eth. Op. 97-21 (1997)**.

Pursuant to [RI Rule 1.7\(b\)](#), a conflict of interest arises where attorneys are co-counsel for several plaintiffs in multiple lawsuits arising out of the same facts, and as such are simultaneously representing the survivor and the representatives of decedents' estates. **RI Eth. Op. 2002-07**.

1.7:315 Insured - Insurer Conflicts [See also [1.7:410](#) and [1.8:700](#)]

Where an attorney represents an insurance company in defense of workers' compensation claims against company X, he/she may not represent the workers' compensation claimant against company Y who is similarly insured by the same insurance company. Since the attorney represents the insurance company in defense of claims made against its insured, both entities are the attorney's clients for purposes of a conflict of interest analysis [Ed: Notwithstanding the existence of a direct conflict, as found by the Ethics Panel, the opinion states that the conflict may be waived if the attorney reasonably believes that his/her representation of the individual client will not be adversely affected by his/her relationship with the insurance company. This finding appears to be in opposition to other opinions where direct conflicts are found to be prohibited *per se* and cannot be waived. It is also questionable as to whether the conclusion of the Ethics Panel is correct in that the general rule

is that an attorney representing an insured through his/her/its insurance company is principally the attorney for the insured. **See RI Eth. Op. 98-10 (1998)** (holding that a lawyer hired by an insurance company to represent its insured must represent the insured as his/her client with undivided loyalty).

An attorney may not ethically agree to abide by insurance company's "litigation management guidelines" in representation of insured, where such guidelines interfere with the independent professional judgment of defense counsel and the quality of legal services provided to the insured by delineating the financial relationship between the insured and the law firm and setting parameters and approval prerequisites for the legal services to be provided. **RI Eth. Op. 99-18 (1999).**

1.7:320 Conflicts of Interest in Criminal Litigation

There is no authority in Rhode Island on this topic.

1.7:330 Multiple Representation in Non-Litigated Matters

When an attorney represents a partnership business and is given contrary instructions by the partners, the attorney may neither prepare nor assist another attorney in the preparation of real estate closing documents pertaining to the partnership business in accordance with the instructions of one of the partners. If the partners do not agree that the attorney should perform certain legal services for the partnership, then the provisions of [RI Rule 1.7\(a\)](#) prevent the attorney from performing such services. The Ethics Panel concludes that both partners were the attorney's clients and, therefore, an irreconcilable conflict exists. **RI Eth. Op. 90-38 (1990)**. An attorney may represent income and remainder beneficiaries of a trust in a suit against the trustee for failing to properly diversify trust assets if the lawyer reasonably believes that the dual representation will not adversely affect the relationship with each client and consents are obtained. The Ethics Panel cautioned the attorney that the interests of the parties could become adverse to one another as the matter proceeded and withdrawal from representation might be required. **RI Eth. Op. 94-24 (1994)**.

1.7:340 Conflicts of Interest in Representing Organizations

RI Eth. Op. 90-38 (1990) holds that the partners of a partnership, not the partnership itself, which does not exist under Rhode Island law, are the clients of the attorney and when the partners have a dispute which cannot be resolved, the attorney must withdraw from representation of the partners. As long as no overlapping interests exist between attorneys, state agency employment, and potential clients, an attorney may represent those clients before other state agencies. **RI Eth. Op. 91-63 (1991)**. Where an attorney was engaged to represent a corporation by its two stockholders who later had a dispute, the attorney could not represent either stockholder. The Ethics Panel referred to [RI Rule 2.2: Lawyer as Intermediary](#) and in particular section (c) thereof which requires a lawyer to withdraw if that rule applies and any client so requests. The Opinion also referred to [RI Rule 1.13](#) which allows

a lawyer to represent an organization, its officers, employees, members, shareholders, or other constituents of the organization subject to the provisions of [RI Rule 1.7](#). The Panel concluded that the attorney's responsibilities to the corporation may be materially limited by the representation of either stockholder and client's consent is therefore required to permit such representation. In this matter, the Panel further noted that the opposing shareholder, not the shareholder who requested the attorney's services, must give consent. **RI Eth. Op. 93-58 (1993)**. In **RI Eth. Op. 94-43 (1994)**, the Ethics Panel voted favorably from [RI Rule 1.13\(e\)](#), allowing a lawyer to represent an organization and its various constituents subject to the provisions of RI Rule 1.7. An attorney who represents a corporation owned by two stockholders may continue to represent the corporation and one of the stockholders in negotiating for the stock purchase from the other stockholder in accordance with RI Rule 1.13 and RI Rule 1.7. The consent of the selling stockholder is required. **RI Eth. Op. 95-17 (1995)**.

[1.7:400](#) Conflict of Interest Between Current Client and Third-Party Payer

- ◆ **Primary Rhode Island References:** [RI Rule 1.7](#)
- ◆ **Background References:** [ABA Model Rule 1.7](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51.901, ALI-LGL ◆◆ 134, 135, Wolfram ◆ 8.8

1.7:410 Insured - Insurer Conflicts [See [1.7:315](#) and [1.8:700](#)]

See RI Eth. Op. 90-24 under section [1.7:315](#), *supra*. Where an attorney has been retained by an insurance company to represent its insured and the insured has also retained a second attorney to represent the insured with respect to liability in excess of the policy limits, it was held that the insured is the attorney's client and as such the attorney has obligations under [RI Rule 1.4](#) to keep the client notified promptly with reasonable requests for information. Referring to **ABA Formal Op. 96-403 (1996)**, the Ethics Panel opined that a lawyer hired by an insurance company to represent its insured must represent the insured as his/her client with undivided loyalty. **RI Eth. Op. 98-10 (1998)**.

An attorney may not ethically agree to abide by insurance company's "litigation management guidelines" in representation of insured, where such guidelines interfere with the independent professional judgment of defense counsel and the quality of legal services provided to the insured by delineating the financial relationship between the insured and the law firm and setting

parameters and approval prerequisites for the legal services to be provided. **RI Eth. Op. 99-18 (1999).**

1.7:420 Lawyer With Fiduciary Obligations to Third Person [See [1.13:520](#)]

Where an attorney is a faculty member at an academic institution and has been asked to represent a full-time faculty member in a ten year suit against the institution, the Ethics Panel opined that although there is no client-lawyer relationship between the attorney and the academic institution, the attorney must nevertheless inform the client of the attorney's potential responsibilities to the third party (institution) and of the attorney's own interest. If the attorney reasonably believes the representation will not be adversely affected, and the client consents after consultation, the representation is permissible. **RI Eth. Op. 93-60 (1993).**

[1.7:500](#) Conflict of Interest Between Current Client and Lawyer's Interest [See also [1.8:200](#)]

- ◆ **Primary Rhode Island References:** [RI Rule 1.7](#)
- ◆ **Background References:** [ABA Model Rule 1.7](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:501, ALI-LGL ◆◆ 125-127, Wolfram ◆ 8.11

In a matter where an attorney has to pursue a medical malpractice claim against a physician in a hospital where a partner served as a member of the board of directors, the Ethics Panel opined that the attorney's partner's position on the board could constitute a limiting interest within the meaning of [RI Rule 1.7\(b\)](#), but a client consent would cure the conflict if the lawyer believed the representation of the client will not be adversely affected. **RI Eth. Op. 89-22 (1989).** When an attorney is engaged to represent a client in a matter and the attorney for the opposing counsel in that matter is the same attorney who represents the attorney's spouse in the attorney's own divorce action, the Ethics Panel concluded that if the attorney reasonably believes the representation of the client will not be adversely affected by the attorney's own interest and obtains the client's consent after disclosing the facts, the attorney may continue to represent the client. Reference is made to RI Rule 1.7(b) which covers the situation where representation of a client will be materially limited by an attorney's own interest. **RI Eth. Op. 96-23 (1996).**

Where an attorney has a financial interest or affiliation with a particular insurance company, the attorney's independent professional judgment in recommending insurance products for a particular client would unavoidably

and impermissibly be affected by the lawyer's personal interest in selling insurance. Under these circumstances, a non-consensual conflict exists. **RI Eth. Op. 96-26 (1996)**. Absent a conflict of interest, the ethical rules do not require informed consent of the clients where an attorney (or other members of his/her law firm) represents a client and a member of the attorney's spouse's law firm represents the opposing side, provided the attorney's spouse is not involved in the matter. Even where disclosure and client consent are not required, the Ethics Panel opined that it would be prudent for the attorneys to inform their respective clients. **RI Eth. Op. 97-13 (1997)**.

An attorney was permitted to represent a client against whom the law firm with which the attorney was formerly associated filed suit to collect outstanding attorneys' fees. **RI Eth. Op. 98-07 (1998)**. The attorney represented that he/she had no financial interest in the recovery should the former firm prevail. It was opined that the representation is permitted if the attorney reasonably believes the representation will not be adversely affected by the attorney's own interests or by any responsibilities to the former law firm. The relationships must be disclosed to the client, however, and consent obtained.

In a matter involving the interrelationship between a referral company owned by an attorney and performing legal services for the customers of the agents and brokers of the referral company, the Ethics Panel opined that a substantial risk existed that the attorney's independent professional judgment would be compromised and, under those circumstances, a consent would be required. **RI Eth. Op. 98-08 (1998)**. In a matter involving an attorney using constable services in which the attorney has a financial interest, the Ethics Panel referred to the [Comments to RI Rule 1.7](#): "The lawyer's own interests should not be permitted to have adverse effect on representation of a client... A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest." In this matter, the attorney was required to make full disclosure and to offer clients a choice of other constable services. **RI Eth. Op. 92-38 (1992)**. To the same effect, see **RI Eth. Op. 93-4 (1993)**. Despite the absence of an attorney-client relationship, a violation of [RI Rule 1.7\(b\)](#) may arise if an attorney's representation of a client may be materially limited by the lawyer's own interests. **RI Eth. Op. 93-24 (1993)**. RI Rule 1.7(b) lists the lawyer's own interests as a source of influence which could impair the lawyer's exercise of independent professional judgment on behalf of a client. An attorney must be mindful of the potential conflict of interest situations, which may arise by virtue of the attorney's operation of an ancillary business or other similar activities. **RI Eth. Op. 93-59 (1993)**.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by [Rule 1.6](#).

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a [reasonable](#) contingent fee in a civil case.

(j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment - [Rule 1.8](#)

Transactions Between Client and Lawyer

[1] As a general principle, all transactions between client and lawyer should be fair and [reasonable](#) to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a [substantial](#) gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donee or the gift is not [substantial](#).

Literary Rights

[3] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to [Rule 1.5](#) and paragraph (j).

Person Paying for a Lawyer's Services

[4] Paragraph (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of [Rule 1.6](#) concerning confidentiality and [Rule 1.7](#) concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Limiting Liability

[5] Paragraph (h) is not intended to apply to customary qualifications and limitations in legal opinions and memoranda.

Family Relationships Between Lawyers

[6] Paragraph (i) applies to related lawyers who are in different [firms](#). Related lawyers in the same firm are governed by [Rules 1.7](#), [1.9](#), and [1.10](#). The disqualification stated in Rule 1.8(i) is personal and is not imputed to members of firms with whom the lawyers are associated.

Acquisition of Interest in Litigation

[7] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules, such as the exception for [reasonable](#) contingent fees set forth in [Rule 1.5](#) and the exception for certain advances of the costs of litigation set forth in paragraph (e).

1.8 Rule 1.8 Conflict of Interest: Prohibited Transactions

[1.8:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 1.8](#)
- ◆ **Background References:** [ABA Model Rule 1.8](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA Lawyer's Manual on Professional Conduct 01:121 – 01:123

1.8:101 Model Rule Comparison

Rhode Island has adopted [MR 1.8](#), including the comments thereto.

1.8:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.8](#) and other jurisdictions.

1.8:200 Business Transactions with Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:501 *et seq.*, ALI-LGL
- ◆ 126, Wolfram ◆◆ 7.6, 8.11

Actions of an attorney who, while serving as administrator of a client's estate, withdrew assets for personal use without seeking approval of the Probate Court for the loan or disclosing the loan to the attorney for the estate warranted disbarment. **In the Matter of Brousseau, 697 A.2d 1079 (1997).**

An attorney who obtained a security interest in favor of his spouse in a client's property, without meeting the requirements of [RI Rule 1.8\(a\)](#) was subject to public censure for his actions. **In the Matter of Scott, 694 A.2d 732 (1997).**

Although attorneys may simultaneously engage in other businesses or professions, the attorney must not allow the representation of the attorney's law clients to be materially limited by the attorney's non-legal business. **RI Eth. Op. 96-26 (1996).** An attorney with an estate planning practice who also sells insurance may not sell insurance to estate planning law clients and may not provide estate planning legal services to insurance customers. The attorney may not solicit or accept a client's consent to such a direct and substantial conflict.

An attorney may lend money to a non-client to pay his mortgage, since a violation of [RI Rule 1.8\(a\)](#) can only occur in the existence of an attorney-client relationship. **RI Eth. Op. 94-23 (1994).**

An attorney who obtained a mortgage to secure payment of his legal fees, without advising the clients to seek independent legal advice before signing the mortgage documents in his favor and did not explain the consequences of signing them, did not meet the requirements for obtaining a security interest in clients' property under [RI Rule 1.8\(a\)](#). **Lisi v. Pearlman, 641 A.2d 81 (1994).**

Because [RI Rule 1.8\(a\)](#) does not apply once a client's dealings in a transaction are completed, an attorney may properly purchase an interest in a real estate trust where the attorney formerly represented a client in his sale of land to the trust. **RI Eth. Op. 90-9 (1990).**

So long as an attorney abides by [RI Rule 1.8\(a\)](#)'s requirements concerning disclosure, fairness, and client consent, it is proper for the attorney to submit an offer to purchase real estate from clients, with other clients as the attorney's partners in the purchase. **RI Eth. Op. 88-31 (1989)**.

An attorney who represents the co-guardians of two wards may purchase real estate owned by the wards (through the co-guardians), provided that the attorney gives them a written disclosure of the transaction, the attorney advises them to obtain independent counsel regarding the transaction, and the co-guardians consent in writing to the terms of the transaction. **RI Eth. Op. 99-16 (1999)**.

[1.8:300](#) Lawyer's Use of Information to Disadvantage of Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆◆ 55:501-55:2001 , ALI-LGL ◆◆ 61-66, Wolfram ◆ 6.7

Consultation with an out-of-state attorney results in an employment relationship between the two attorneys, creating a temporary attorney-client relationship between the consulted attorney and the out-of-state attorney's client. **RI Eth. Op. 89-7 (1989)**. Thus, representation of a client whose interests are directly adverse to the client of the out-of-state attorney by the consulted attorney is improper because the consulted attorney could have been privy to pertinent information, whether or not he actually learned anything relevant to the particular case, unless consent is obtained from the client of the out-of-state attorney.

[1.8:400](#) Client Gifts to Lawyer

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:601, ALI-LGL ◆ 127, Wolfram ◆ 8.12

There is no authority in Rhode Island on this topic.

1.8:500 Literary or Media Rights Relating to Representation

- ◆ Primary Rhode Island References: [RI Rule 1.8\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.8\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:701, ALI-LGL ◆ 36,
Wolfram ◆ 9.3.3

There is no authority in Rhode Island on this topic.

1.8:600 Financing Litigation

- ◆ Primary Rhode Island References: [RI Rule 1.8\(e\)](#)
- ◆ Background References: [ABA Model Rule 1.8\(e\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:801, ALI-LGL ◆ 36,
Wolfram ◆ 9.2.3

It is the attorney's prerogative whether or not to waive the costs of litigation to a non-indigent client where there is a successful recovery. **RI Eth. Op. 94-33 (1994)**.

An attorney may enter into a loan agreement between the client and the lawyer for purposes that are unrelated to the subject of representation, so long as the loan conforms to the requirements of [RI Rule 1.8\(a\)](#). **RI Eth. Op. 93-100 (1993)**.

An attorney may advance court costs and expenses of litigation to represent indigent plaintiffs in a personal injury matter, where the repayment is contingent upon the outcome of the matter. **RI Eth. Op. 93-7 (1993)**.

A written agreement for collection services that allows the attorney to deduct expenses from one suit to cover the cost of prior suits is proper, so long as the expense reimbursements are in accordance with the written contract and the client is fully aware that the fees recovered from one suit may cover the costs from prior suits. **RI Eth. Op. 92-92 (1993)**.

An attorney may not lend a client in a personal injury action money to assist the client in meeting monthly mortgage obligations. **RI Eth. Op. 91-26 (1991)**.

1.8:700 Payment of Lawyer's Fee by Third Person

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(f\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(f\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:901, ALI-LGL ◆◆
134, 135, Wolfram ◆ 8.8

An attorney's obligation is only to the client, and not to a third party who paid the legal expenses. Thus, when a third party agrees to pay for legal services and subsequently requests the remainder of the unused fee in the client's account, the attorney has no obligation to refund it to the third party without the client's consent. **RI Eth. Op. 96-17 (1996).**

An attorney who is also an investment advisor may not pay to another attorney a referral fee from the proceeds of a commission paid as a result of a client using investment services. **RI Eth. Op. 93-54 (1993).**

An attorney may represent a client in an action against one who formerly contributed to an earlier client's fee, because the fact that the defendant in the present action may have contributed to an earlier client's fee does not render that person to be a former client. **RI Eth. Op. 92-65 (1992).**

An attorney retained by an insurance company to represent its insured must represent the insured with undivided loyalty and may not ethically agree to abide by "litigation management guidelines" established by the insurance company (setting parameters and approval prerequisites for the legal services provided) to the extent that they interfere with the attorney's independent judgment and ultimately with the quality of the legal services provided to the insured. **RI Eth. Op. 99-18 (1999).**

1.8:800 Aggregate Settlements

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(g\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(g\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:375, ALI-LGL ◆ 128,
Wolfram ◆ 8.15

There is no authority in Rhode Island on this topic.

1.8:900 Agreements Involving Lawyer's Malpractice Liability

- ◆ Primary Rhode Island References: [RI Rule 1.8\(h\)](#)
- ◆ Background References: [ABA Model Rule 1.8\(h\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:110I, ALI-LGL ◆ 54,
Wolfram ◆ 5.6.7

There is no authority in Rhode Island on this topic.

1.8:1000 Opposing Lawyer Relative

- ◆ Primary Rhode Island References: [RI Rule 1.8\(i\)](#)
- ◆ Background References: [ABA Model Rule 1.8\(i\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:130I, ALI-LGL ◆ 123,
Wolfram ◆ 7.6.6

An attorney who represents clients in family court matters does not need to disclose to clients that the attorney's spouse is an associate in a law firm that also represents clients in family court matters, where the attorney's spouse does not personally represent family law clients. **RI Eth. Op. 97-13 (1997)**. [RI Rule 1.8\(i\)](#) permits an attorney to represent a client when a lawyer in that attorney's spouse's firm is opposing counsel, so long as the spouse is not involved in that matter.

An attorney, whose father is a member of the trial board that decides disciplinary complaints against union members, may represent union members in all matters except those in which his father is involved. **RI Eth. Op. 96-11 (1996)**. Although [RI Rule 1.8\(i\)](#) applies to lawyers who are in different firms, this opinion extended its application by analogy to include this situation because of the direct conflict that such representation would present.

An attorney is not barred from representing a family as plaintiffs in a lawsuit against the school committee in a town where the attorney's fiancé is a town solicitor (but does not represent the school committee). **RI Eth. Op. 94-26 (1994)**. However, once the marriage takes place the attorney cannot represent a client in any matter where the attorney's spouse is the lawyer representing an adverse party.

Absent informed consent, [RI Rule 1.8\(i\)](#) prohibits a lawyer from representing a client in a matter directly adverse to another person whose retained counsel is

closely related to the lawyer because of the perception that representation of opposing interests by closely related layers risks the inadvertent breach of client confidences. **RI Eth. Op. 93-50 1(1993)**. However, a husband may represent his wife's client in front of a state board that is statutorily separate from, but funded by, the agency where the wife is employed as legal counsel.

An attorney-wife, as a chief hearing officer, should take great caution to insulate and completely reclude herself from any situation where her attorney-husband, a private practitioner, is involved. **RI Eth. Op. 92-56 (1992)**. This disqualification applies only to the attorney-wife and not to the office as a whole.

The disqualification in the absence of consent required under [RI Rule 1.8\(j\)](#), where the lawyer knows that the lawyer's parent, child, sibling, or spouse is the lawyer representing an adverse party, does not extend to members of the related attorneys' law firms. **RI Eth. Op. 91-19 (1991)**.

[1.8:1100](#) Lawyer's Proprietary Interest in Subject Matter of Litigation

- ◆ **Primary Rhode Island References:** [RI Rule 1.8\(j\)](#)
- ◆ **Background References:** [ABA Model Rule 1.8\(j\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ , ALI-LGL ◆◆ 35, 41, 43,
Wolfram ◆◆ 8.13, 9.6.3

It is impermissible to file a lien on property that was part of a divorce and settlement agreement to ensure payment of the client's legal fees, where the client paid the retainer and terminated the representation because the client was upset about the amount due in legal fees. **RI Eth. Op. 95-2 (1995)**. Because the proposed lien falls outside the scope of the statutory procedures, it is improper conduct.

An attorney may assist a client in obtaining a loan that will enable the client to pay the legal fees, but cannot co-sign a note for that purpose. **RI Eth. Op. 92-2 (1992)**.

Rule 1.9. Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the

interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by [Rules 1.6](#) and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment - [Rule 1.9](#)

[1] After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this Rule. The principles in [Rule 1.7](#) determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

[2] The scope of a "matter" for purposes of paragraph (a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the

lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally [known](#) information about that client when later representing another client.

[4] Disqualification from subsequent representation is for the protection of former clients and can be waived by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of the new client.

[5] With regard to an opposing party's raising a question of conflict of interest, see [Comment to Rule 1.7](#). With regard to disqualification of a [firm](#) with which a lawyer is or was formerly associated, see [Rule 1.10](#).

1.9 Rule 1.9 Conflict of Interest: Former Client

[1.9:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.9](#)
- ◆ Background References: [ABA Model Rule 1.9](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.9:101 Model Rule Comparison

Rhode Island has adopted [MR 1.9](#), including the Comments thereto.

1.9:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.9](#) and other jurisdictions.

[1.9:200](#) Representation Adverse to Interest of Former Client -- In General

- ◆ Primary Rhode Island References: [RI Rule 1.9\(a\)](#)
- ◆ Background References: [ABA Model Rule 1.9\(a\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:201, ALI-LGL ◆ 132, Wolfram ◆ 7.4

If a husband and wife's interests are materially adverse, and if the inquiring attorney obtains confidential information in the first representation that is relevant in the second representation, the husband must consent after consultation to the inquiring attorney's representation of the wife. **RI Eth. Op. 96-07.**

Unless attorney's former client expressly consents after consultation, an attorney may not represent former City Planning Board member in a boundary dispute against the former client, where the attorney represented the former client in hearings before the Planning Board while the new client was serving on the Board. **RI Eth. Op. 89-6 (1989).** This is true even though the attorney did not believe he learned anything from the former client pertinent to the representation of the new client.

An attorney may represent a client in a criminal matter even though the victim was previously represented by the attorney's law firm and it will be necessary to use the victim's past criminal and other records to impeach the victim, so long as the attorney uses only information generally known or a matter of public record, and not confidential information obtained through prior representation of the victim. **RI Eth. Op. 93-49 (1993).**

An attorney who was sued by a former client (formerly represented in a personal injury action) after they were in an automobile collision may not reveal information obtained through representation to the disadvantage of the former client unless such information has become generally known and/or a matter of public record. **RI Eth. Op. 94-7 (1994).**

An attorney who drafted lease agreements for a former client, which were subsequently terminated by the parties, may not represent a potential client in a suit to recover the unpaid balance of those same contracts from the former client because the matters are substantially related and the potential client's interest are adverse to those of the former client. **RI Eth. Op. 95-53 (1993).**

An attorney who represented a client in a divorce proceeding, but was discharged prior to entry of final decree, may not subsequently represent the former client's ex-spouse in a child support matter against the former client. **RI Eth. Op. 93-68 (1993).**

An attorney may represent a client in a personal injury action against a former divorce client. **RI Eth. Op. 93-68 (1993).**

An attorney who represented a criminal defendant in a DUI case may not represent the tavern in an action based upon the same facts against both the tavern and the criminal defendant where the criminal defendant has not retained the attorney for civil representation, unless the attorney obtained the criminal defendant's consent after consultation under Subsection (a). **RI Eth. Op. 93-72 (1993).** Under subsection (b), confidential information may not be

used to the criminal defendant's disadvantage even after termination of the client-lawyer relationship.

An attorney may represent a potential client in a personal injury action where the former client-doctor (previously represented in an unrelated medical malpractice suit) is expected to testify as the potential client's treating physician, because the matters are not substantially related and are not materially adverse. **RI Eth. Op. 93-77 (1993).**

A law firm that formerly represented Client A for four years in a family law matter before withdrawing from the representation may subsequently file a complaint against that client on behalf of Client B, provided that any information obtained in the representation of Client A is not used to the disadvantage of A. **RI Eth. Op. 92-48 (1992).**

An attorney who formerly represented several corporations owned by a client-husband in collection matters may subsequently represent the potential client-wife in a domestic matter, provided that the attorney does not use any information the attorney may have gained through previous representation of the husband's corporations to disadvantage the former client. **RI Eth. Op. 92-59 (1992).**

An attorney who formerly represented three clients in a real estate matter may represent one of the clients in an unrelated matter involving one of the other former clients. **RI Eth. Op. 93-95 (1995).**

An attorney may represent a criminal defendant charged with assaulting the daughter of a former client even though the former client has an outstanding bill with the attorney's office because the matters are not substantially related and the interests of the criminal defendant are not materially adverse to the mother. **RI Eth. Op. 93-97 (1997).** The fact of the outstanding bill is irrelevant to the [RI Rule 1.9](#) analysis.

Where an attorney prepared a will for Client Y and a trust for Client X, and subsequently represented the trust company in probating X's estate, the attorney may represent the trust company in defending against a suit brought by Y and other remainder persons (represented by another attorney) under the trust, for failure to properly invest the trust funds, because preparing Y's will and the suit brought by Y against the trust company are not substantially related. **RI Eth. Op. 94-10 (1994).**

An attorney representing a therapist and the therapist's patients in a suit against a third party who improperly eavesdropped on sessions should withdraw from representing the patients because of a potential conflict of interest. **RI Eth. Op. 94-22 (1994).** Upon withdrawal, the clients become former clients and the attorney may only continue to represent the therapist if the patients consent after consultation.

An attorney who acted on behalf of an insurance company to expedite settlement within the limits of the insurance policy in a suit against decedent driver brought by the passenger in a fatal car accident and who subsequently represented insurance company in a suit brought by the executor of the driver's estate must withdraw upon executor's objection to the attorney's representation of the insurance company. **RI Eth. Op. 94-28 (1995).**

An individual does not become a former client by marrying a former client; therefore an attorney may represent the employer in an age discrimination suit brought by a former client's spouse. **RI Eth. Op. 95-48 (1995).**

No conflict of interest is present when an attorney represents an employee in an action against the employee's employer, who is also the employer of the attorney's spouse, because the Rules are concerned with conflicts between clients. **RI Eth. Op. 96-02 (1996).**

An initial, substantive consultation is sufficient to constitute representation for purposes of [Rule 1.9](#), where an attorney conducted an initial consultation with a party who did not retain the attorney for that matter. **RI Eth. Op. 91-72 (1991).** An attorney is precluded by Rule 1.9 from representing another party in the same matter, where the interests of the two parties are adverse and the first party has taken the position that the attorney's initial meeting and review of material precludes the attorney from representing another interested party. **See id.**

1.9:210 "Substantial Relationship" Test

An attorney may represent clients in an action against a former client in matters not related to the former representation. **RI Eth. Op. 96-09 (1996).**

[RI Rule 1.9's](#) "substantially related" language prohibits any situation in which a lawyer could have obtained confidential information in the first representation that would have been relevant in the second. **RI Eth. Op. 96-07 (1996).**

An attorney may represent a client whose interests are adverse to those of a former client if the subject matter of the current client's representation is not the same or substantially related to that of the former client. **RI Eth. Op. 98-05 (1998).**

The issues addressed in the former client's action must be substantially related to the issues in the current client's action in order for the two matters to be considered "substantially related." **RI Eth. Op. 97-18 (1997).** More specifically, the particular issues giving rise to a former client's action must be substantially related to the current client issues for the matters to be "substantially related." **RI Eth. Op. 97-08 (1997).**

An attorney may represent a client whose interests are adverse to those of a former client if the subject matter of the current client's representation is not

the same or substantially related to that of the former client. **RI Eth. Op. 97-08 (1997).**

If an attorney obtained any information from a husband and wife's former representation involving real estate closings that would be helpful in the current divorce action by the husband, the matters may be considered substantially the same and consent is necessary. **RI Eth. Op. 95-49 (1995).**

An attorney's representation of Corporation A in a claim against the corporation's Former Employee X and later representation by the attorney's associate in collection cases are not substantially related to Former Employee Y's action for age discrimination against Corporation A, and therefore the firm's representation of Former Employee Y against the corporation is permissible. **RI Eth. Op. 96-19 (1996).**

An attorney's former representation of a client in a divorce action is not the same or substantially related to the current case for defective goods, brought by the attorney's former client, in which the attorney will be the defense lawyer. **RI Eth. Op. 96-12 (1996).**

An attorney may represent a former criminal client's husband in a divorce action against the former client, despite the former client's objections, because the matters are not substantially related. **RI Eth. Op. 94-36 (1994).**

Representing a client for breaking and entering a former client's home is not the same or substantially related to representing the former client in a real estate closing and civil suit. **RI Eth. Op. 94-69 (1994).**

An attorney who represented a lending institution that is currently in receivership may not represent one of the institution's board members in a matter brought by the receiver without obtaining consent from the receiver because a substantial relationship exists between the past representation of the lending institution and the board members. **RI Eth. Op. 94-17 (1994).**

The former representation of a wife in a prior divorce is the same or substantially related to the current representation of her husband, who the attorney also represented in a prior divorce, because the attorney is privy to personal, financial, and private information concerning both the husband and the wife in their prior separate divorces. **RI Eth. Op. 95-20 (1995).**

A criminal matter in which the prosecution may call the victim's Grandmother as a witness is not the same or substantially related to a domestic matter not involving the current defendant in which the defense counsel formerly represented the grandmother. **RI Eth. Op. 95-34 (1995).**

An attorney may represent a wife in a divorce action and in a separate action filed against the wife by her mother-in-law where the attorney prepared a will for the mother-in-law 13 years prior, because preparation of the will is not the

same or substantially related to the mother-in-law's action against the wife. **RI Eth. Op. 95-42 (1995).**

A mentally ill former client's refusal to consent to the attorney's appointment as guardian prohibits the attorney from serving as such because the former representation to secure the client's release from the hospital is substantially related to the appointment of a guardian for the client. **RI Eth. Op. 94-79 (1995).**

The fact that a former client corporation and current clients could have taken adverse positions in estate distribution and thus could have become adverse parties is not relevant if the opposing postures are never taken. **RI Eth. Op. 90-32 (1990).** Thus [RI Rule 1.9](#) does not prohibit representation of current clients because any potential adversity did not develop.

Where an attorney formerly represented a client in a divorce proceeding and a transfer of real estate, [Rule 1.9\(a\)](#) prohibited the attorney from representing individuals in a boundary dispute relating to the former client's property. **RI Eth. Op. 2001-05 (2001).**

An attorney may represent a client in a real estate boundary dispute where two of the attorney's former clients from an unrelated corporate and personal injury matter are witnesses for the adverse party. The representation does not violate [Rule 1.9](#) because the matters are unrelated. **RI Eth. Op. 2001-06 (2001).**

Where an attorney formerly represented a company in connection with the purchase of real estate, the attorney may not represent another company in connection with the purchase of an adjacent parcel of real estate if the two matters are substantially related. **RI Eth. Op. 2001-08 (2001).**

An attorney represented a school committee during a termination hearing subsequent to which the terminated employee filed a lawsuit against the committee and various individuals on it. The committee retained other counsel to represent it in the lawsuit. Two members of the committee requested that the original attorney represent them in their individual capacities. Absent consent by the school committee, the attorney was not permitted to represent the two committee members because their interests were adverse to the interest of the committee as a whole and the pending lawsuit was substantially related to the prior termination hearing. The attorney's law firm was also prohibited from representing the individual members under [Rule 1.10\(a\)](#). **RI Eth. Op. 2002-03.**

Where an attorney is a solicitor for a municipality, and as such serves as legal counsel to the municipality's planning and zoning boards, the attorney's representation of the municipality in an appeal brought before the zoning board by a property owner who is a former client does not present a conflict of interest under [Rule 1.9](#) provided that the two matters are not substantially

related. The attorney's representation of the municipality does not present a conflict of interest under [Rule 1.11](#) provided that the attorney did not participate personally and substantially in the subject matter of the appeal in the prior representation. **RI Eth. Op. 2002-03A.**

Defendant successfully rebutted plaintiff's assertion that defendant's law firm should be disqualified because confidential information about the plaintiff was shared while plaintiff was a former client of the defendant's law firm. Factors leading to a successful rebuttal included the limited representation of the plaintiff and the questionable transmission of confidential information given the size of the law firm and a screen was used to insulate the new attorneys joining the law firm. **Mearthane Prod. Corp. v. Lexmark Int'l, Inc., C.A. No. 00-245 ML (D.R.I. Nov. 21, 2001).**

1.9:220 Material Adversity of Interest

An attorney who represented Client A in a divorce proceeding for custodial rights against husband X, may represent husband X's present wife, Client B, in a child support matter against her former husband Y, because Client A's interests are not materially adverse to those of Client B. **RI Eth. Op. 98-04 (1998).**

The attorney's drafting of a prior partnership agreement between husband and wife, is not materially adverse to the interests of the husband, as a former client, if the wife and husband's interest in the partnership are not marital assets in the divorce action. **RI Eth. Op. 97-07 (1997).**

A wife's request to the lawyer who drafted her estate plan and her husband's living will to amend her estate in order to leave out her husband's daughter from a previous marriage is not materially adverse to the husband's interest, but rather is only adverse to husband's daughter as a beneficiary. **RI Eth. Op. 95-58 (1995).** Therefore the lawyer can amend the spouse's estate plan without violating [RI Rule 1.9](#).

An attorney who represented Client A in a contested divorce from B can not subsequently represent B in divorce proceedings against A after they remarried unless A consents after consultation, with the advice of his or her own counsel. **RI Eth. Op. 94034 (1994).**

1.9:230 Relevance of "Appearance of Impropriety" Standard [See also [1.7:230](#)]

There is no authority in Rhode Island on this topic.

1.9:300 Client of Lawyer's Former Firm

- ◆ **Primary Rhode Island References:** [RI Rule 1.9\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 1.9\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:2001, ALI-LGL ◆◆
123, 124, 132, Wolfram ◆ 7.6

An attorney may represent Client X in a matter against Client Y, who is the client of the attorney's former law firm, so long as Client X's matter is not the same or substantially related to the attorney's representation of Client Y in his/her former firm. **RI Eth. Op. 94-74 (1994).**

An attorney who formerly represented Client X while associated with Lawyer L's law firm may properly represent Client X in an action against Client Y who is represented by Lawyer L, because the attorney was not associated with Lawyer L when Layer L was retained by Client Y. **RI Eth. Op. 90-6 (1990).**

An attorney who drafted a mortgage assumption agreement while working at another law firm may not represent a potential client of the attorney's present firm in a bankruptcy filing concerning that mortgage assumption. **RI Eth. Op. 92-51 (1992).** Relying on the [Comments to RI Rule 1.9](#) which state that "a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of a former client," the Ethics Panel found that the matters are substantially related and therefore a conflict of interest exists.

Although an attorney's former firm represented a defendant in other matters, the attorney may represent the plaintiff in a civil suit against that defendant because the attorney did not have any contact with the defendant, never saw the defendant's files and never acquired information relating to the defendant. **RI Eth. Op. 94-71 (1994).** The key test is the lawyer's actual knowledge about a client of his or her former firm. **RI Eth. Op. 94-71(A) (1995).** Thus, whether or not the matters are substantially related, the attorney is not disqualified from representing the plaintiff because he or she does not possess any actual knowledge about the former firm's client.

Where an attorney's former firm began representation of a wife in a matter against her husband while the attorney was associated with the firm, but the attorney did not acquire knowledge of information relating to the wife or the pending matter while so associated, the attorney is not disqualified from representing the husband in the matter after terminating his or her association with the firm. **RI Eth. Op. 97-10 (1997).**

1.9:310 Removing Imputed Conflict of Migratory Lawyer

There is no authority in Rhode Island on this topic.

1.9:320 Former Government Lawyer of Officer

An attorney who is a former city solicitor may represent a client in a suit against the city if the matter in which the attorney will represent the client against the city is not the same or substantially related to the matters in which he/she represented the city as its solicitor. **RI Eth. Op. 97-06 (1997).**

A former government attorney may represent private clients against his/her former government agency employer in connection with the same kinds of cases he/she handled while a government attorney. [Rule 1.11](#) prohibits the attorney from representing private clients in matters in which he/she personally participated, and [Rule 1.9\(b\)](#) prohibits the attorney from disclosing confidential information about the government agency. **RI Eth. Op. 2001-04 (2001).**

1.9:400 Use or Disclosure of Former Client's Confidences

- ◆ **Primary Rhode Island References:** [RI Rule 1.9\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 1.9\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 55:501–55:2001, ALI–LGL
- ◆ 132, Wolfram ◆◆ 6.7 and 7.4

Even if the matters are not substantially related and the attorney is permitted to represent the current client, the attorney may not use any information relating to the representation of the former client to the disadvantage of the former client. **RI Eth. Op. 97-08 (1997).**

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a [firm](#), none of them shall [knowingly](#) represent a client when any one of them practicing alone would be prohibited from doing so by [Rules 1.7](#) or [1.9](#), unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a [firm](#), the firm is not prohibited from thereafter representing a person with interests materially

adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the [firm](#) has information protected by [Rules 1.6](#) and [1.9\(c\)](#) that is material to the matter.

(c) When a lawyer becomes associated with a [firm](#), no lawyer associated in the firm shall [knowingly](#) represent a person in a matter in which that lawyer is disqualified under [Rule 1.9](#) unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in [Rule 1.7](#).

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by [Rule 1.11](#).

Comment - [Rule 1.10](#)

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "[firm](#)" includes lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally [consult](#) or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as the firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a [firm](#) within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a [firm](#), but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

[4] Where a lawyer has joined a private [firm](#) after having represented the government, the situation is governed by [Rule 1.11\(a\)](#), [\(b\)](#), and [\(c\)](#); where a lawyer represents the government after having served private clients, the situation is governed by [Rule 1.11\(d\)\(1\)](#). The individual lawyer involved is bound by the Rules generally, including [Rules 1.6](#), [1.7](#) and [1.9](#).

[5] Different provisions are thus made for movement of a lawyer from one private [firm](#) to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in [Rules 1.6](#), [1.9](#) and [1.11](#). However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in [Rule 1.11](#).

Principles of Imputed Disqualification

[6] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a [law firm](#). Such situations can be considered from the premise that a [firm](#) of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a [firm](#). When a lawyer moves from one [firm](#) to another, the situation is governed by paragraphs (b) and (c)

Lawyers Moving Between Firms

[7] When lawyers have been associated in a [firm](#) but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented by the former firm must be [reasonably](#) assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[8] Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a [partner](#) in a [law firm](#) is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there may be a presumption that all confidences [known](#) by the partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

[9] The other rubric formerly used for dealing with disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

[10] A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

[11] Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that [reasonably](#) may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a [law firm](#) and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

[12] Application of paragraphs (b) and (c) depends on a situation's particular facts. In such an inquiry the burden of proof should rest upon the [firm](#) whose disqualification is sought.

[13] Paragraph (b) and (c) operate to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by [Rules 1.6](#) and [1.9\(b\)](#). Thus, if a lawyer while with one [firm](#) acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

[14] Independent of the question of disqualification of a [firm](#), a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See [Rules 1.6](#) and [1.9](#).

Adverse Positions

[15] The second aspect of loyalty to a client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by [Rule 1.9\(a\)](#). Thus, if a lawyer left one [firm](#) for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of paragraphs (b) and (c) concerning confidentiality have been met.

1.10 Rule 1.10 Imputed Disqualification: General Rule

1.10:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.10](#)
- ◆ Background References: [ABA Model Rule 1.10](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.10:101 Model Rule Comparison

Rhode Island has adopted [MR 1.10](#), including the Comments thereto.

1.10:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.10](#) and other jurisdictions.

1.10:103 Definition of "Firm"

Attorneys who entered into an expense and space-sharing agreement may not represent opposing sides in a post-final judgment petition. **RI Eth. Op. 91-43 (1991).**

An attorney who engages in an office-sharing arrangement with a city counselor is not disqualified from practicing law before the city's municipal entities because such an arrangement is not considered a law firm. **RI Eth. Op. 92-33 (1992).** An attorney who is part of an office-sharing agreement that does not constitute a law firm is not precluded from representing a client before the municipal zoning board when the other lawyers who share the office are city solicitors. **RI Eth. Op. 2001-02 (2001).**

A husband and wife who are each sole practitioners with separate offices and practices are not considered a "law firm" under [RI Rule 1.10](#) and the imputed disqualification principles under RI Rule 1.10 will not apply. **RI Eth. Op. 93-50 (1993).**

"Sole practitioners" who share office space and expenses, refer clients and cases among one another, and list each other as "associates" on letterhead are really a law firm. **RI Eth. Op. 93-14 (1993).**

The phrase "an association of independent attorneys" will be regarded as a law firm for purposes of [RI Rule 1.10](#)'s imputed disqualification. **RI Eth. Op. 94-12 (1994).**

Four attorneys who each have a separate practice and client accounts but share office space and advertisements with each attorney's name and the

phrase "an association of independent lawyers" will be considered a "law firm" for purposes of [RI Rule 1.10](#). **RI Eth. Op. 93-66 (1993)**.

Factors to be considered in whether a shared office arrangement with attorneys constitutes a law firm include: whether the lawyers share information, whether they advertise as a firm, and the administrative operations of their practice. **RI Eth. Op. 93-99 (1994)**.

An attorney may refer individuals or entities in need of legal services to other attorneys in the same office building, provided that the referring attorney and the other attorneys do not "...present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm" **RI Eth. Op. 98-08 (1998)**. The attorney to whom the client is referred must independently determine in each case that he/she does not have a conflict of interest before undertaking representation, and may not share the legal fees with the referring attorney.

[1.10:200](#) Imputed Disqualification Among Current Affiliated Lawyers

- ◆ Primary Rhode Island References: [RI Rule 1.10\(a\)](#)
- ◆ Background References: [ABA Model Rule 1.10\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:2001, ALI-LGL ◆ 123,
Wolfram ◆ 7.6

Rhode Island has adopted the four-part test that was also adopted in the Tenth Circuit to determine when a lawyer's new firm should be disqualified. **Falvey v. A.P.C. Sales Corp., 185 F.R.D. 120 (D.R.I. 1999)**. The factors indicate that in interpreting [RI Rule 1.10\(b\)](#), disqualification will be found when: "(1) the moving lawyer, or his or her prior firm, had represented a client whose interests are materially adverse to the client at the new firm; (2) the matter in the new firm is the same or substantially related to the previous representation; (3) the lawyer had acquired information protected by [RI Rules 1.6](#) and [1.9\(b\)](#) that is material to the latter in the new firm; and (4) the new firm knew of the conflict arising from its representation." **Id. at 125** (citations omitted.)

If an attorney accepts part-time work representing the state's interests against claims pursuant to a particular statute, then no one in the attorney's firm, even someone who is theoretically isolated, may represent future clients seeking recovery pursuant to that particular statute. **RI Eth. Op. 89-1 (1989)**.

When an attorney serves as part-time Assistant City Solicitor, all members of her firm are disqualified from representing a client, whose position is directly adverse to the city, including criminal cases. **RI Eth. Op. 90-36 (1990).**

No partners in a law firm may represent a wife in a domestic relations action in the situation where one of the partners had the husband perform plumbing work on the partner's home unless the husband consents. **RI Eth. Op. 91-28 (1991).**

A law firm cannot represent a client whose interests are adverse to a town while a partner in the firm is an assistant city solicitor for that town. **RI Eth. Op. 91-45 (1991).** The firm must withdraw its representation in all matters except one matter where the case has already been adjudicated.

An attorney representing a client in a criminal matter may offer information about the victim that is available on the public record even though another attorney from the firm represented the victim in an unrelated matter. **RI Eth. Op. 93-49 (1993).**

Attorney A is disqualified under [RI Rule 1.10](#) from representing a client in a lawsuit against a municipality naming the council as a defendant, despite having a client waiver, when Attorneys A and B represented this client in the suit before Attorney B was elected to the council of the same municipality. **RI Eth. Op. 93-82 (1993).**

An attorney is not disqualified from representing a plaintiff when his former firm represented the defendant on unrelated matters unless the attorney or any of his/her current partners or associates were precluded from representing the plaintiff under [RI Rule 1.9](#). **RI Eth. Op. 94-71 (1994).**

Attorneys associated with an attorney serving on a municipal zoning board may not represent clients before the board because the attorney-board member's disqualification is imputed to all members of his or her law firm. **RI Eth. Op. 93-14 (1993).**

Disqualification under [RI Rule 1.8](#), prohibiting representation of clients by an attorney whose relative represents an adverse party, is personal and not subject to imputation under [RI Rule 1.10](#). **RI Eth. Op. 96-11 (1996).**

Clarifying **Opinion 94-71**, an attorney is not disqualified from representing a plaintiff when his or her former firm represented the defendant on unrelated matters unless the attorney possesses actual knowledge about the former client. **RI Eth. Op. 94-71(A) (1995).**

When two non-profit legal service agencies merge into one, the combined entity is disqualified from representing a client that would be materially adverse to the interests of any former client of either of the predecessor agencies absent consent. **RI Ethics Op. 94-77 (1995).**

When an associate at a law firm works part-time as an assistant town solicitor, acting as a prosecutor for the town police department, the law firm is not disqualified from representing private citizens before the town council, zoning board, or planning board because a conflict of interest does not exist. **RI Eth. Op. 95-32 (1995).**

When an attorney serves as Town Solicitor prosecuting criminal cases for the town, the attorney's law firm is not disqualified from representing in a domestic case the spouse of a criminal defendant who is prosecuted by the Attorney General's Office, so long as the attorney believes the representation will not adversely affect the attorney's relationship with the client spouse or both parties consent after consultation. **RI Eth. Op. 95-59 (1996).**

An attorney and Town Solicitor who is "of counsel" to a law firm has a sufficient relationship to trigger the application of imputed disqualification and thus any attorney at the firm is barred from representing any clients whose interests are adverse to the town and who the town solicitor represents. **RI Eth. Op. 97-06 (1997).**

An attorney represented a school committee during a termination hearing subsequent to which the terminated employee filed a lawsuit against the committee and various individuals on it. The committee retained other counsel to represent it in the lawsuit. Two members of the committee requested that the original attorney represent them in their individual capacities. Absent consent by the school committee, the attorney was not permitted to represent the two committee members because their interests were adverse to the interest of the committee as a whole and the pending lawsuit was substantially related to the prior termination hearing. The attorney's law firm was also prohibited from representing the individual members under [Rule 1.10\(a\)](#). **RI Eth. Op. 2002-03.**

If an attorney is prohibited from serving as a guardian for a mentally ill individual, the associates in the attorney's firm are disqualified from drafting the guardianship paperwork. **RI Eth. Op. 94-79 (1995).**

When a lessee's attorney's law partner advised the buyer of the leased property, conducted a title search, and drafted legal documents for the seller/lessor, the law partner is treated as having undertaken to represent the seller, and the attorney may not continue representation of the lessee in an action against the seller/lessor. **RI Eth. Op. 94-80 (1995).**

Attorneys in the firm of a spouse of opposing counsel are not *per se* disqualified by imputation under [RI Rule 1.10\(a\)](#), but may be so if disqualification arises under [RI Rules 1.7](#), [1.9](#), [2.2](#), or [1.8\(c\)](#), but not under [RI Rule 1.8\(j\)](#). **RI Eth. Op. 97-13 (1997).**

Attorney at a new firm is not disqualified from representing a client in litigation against a former client of the firm where attorney previously worked,

if the attorneys have no actual knowledge or information relating to that particular client. **RI Eth. Op. 94-74 (1994).**

An attorney whose former firm represented a wife in a domestic action is not disqualified from representing the husband while working at a new firm if he/she has no knowledge or information relating to the wife or the pending matter. **RI Eth. Op. 97-10 (1997).**

An attorney who is a part-time municipal court judge in a municipality which recently underwent a property revaluation and who is also a partner in a law firm may contest the property revaluation of his/her property in the municipality. Further, [Rule 1.10](#) does not prohibit the attorney's law firm from representing property owners in the municipality in the appeals of the revaluation of their properties so long as, in compliance with [Rule 1.7\(b\)](#), the lawyers reasonably believe that the representation will not be adversely affected, and the clients consent after full disclosure. **RI Eth. Op. 2003-03.**

[1.10:300](#) Removing Imputation by Screening

- ◆ **Primary Rhode Island References:** [RI Rule 1.10](#)
- ◆ **Background References:** [ABA Model Rule 1.10](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:2001, ALI-LGL ◆ 124, Wolfram ◆ 7.6

If an attorney accepts part-time work representing the state's interests against claims pursuant to a particular statute, then no one in the attorney's firm, even someone who is theoretically isolated, may represent future clients seeking recovery pursuant to that particular statute. **RI Eth. Op. 89-1 (1989).**

An Assistant Solicitor, who works under the direct supervision of a Solicitor who is also employed by a private law firm, may not represent the municipality when clients of the Solicitor's private law firm are engaged in litigation with the municipality, even when the private law firm has withdrawn from representation. **RI Eth. Op. 92-70 (1993).** Imputed Disqualification extends to a Solicitor's office when an attorney is under the direct supervision of the Solicitor because screening or removal may not be feasible.

Defendant successfully rebutted plaintiff's assertion that defendant's law firm should be disqualified because confidential information about the plaintiff was shared while plaintiff was a former client of the defendant's law firm. Factors leading to a successful rebuttal included the limited representation of the plaintiff and the questionable transmission of confidential information given the size of the law firm and a screen was used to insulate the new

attorneys joining the law firm. **Mearthane Prod. Corp. v. Lexmark Int'l, Inc., C.A. No. 00-245 ML (D.R.I. Nov. 21, 2001).**

1.10:400 Disqualification of Firm After Disqualified Lawyer Departs

- ◆ **Primary Rhode Island References:** [RI Rule 1.10\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 1.10\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:2008, ALI-LGL ◆ 124,
Wolfram ◆ 7.6.3

RI Eth. Op. 91-51 (1991) addresses disqualification in the circumstances where a former partner leaves a firm and takes an active role as Town Solicitor. The Opinion held that when an ex-partner serves as a town solicitor, after the ex-partner/solicitor has left the firm, the firm may represent clients before the town boards so long as the subject matter of the representation does not involve the same or a substantially related matter in which the ex-partner/solicitor participated on behalf of the town.

An attorney who was formerly a member of a now dissolved law firm may represent a client in negotiations with a client who is represented by another former member of the dissolved firm (and was represented by the same attorney when law firm existed), so long as the matters are not substantially related to the representation that occurred while the firm existed and the attorney has not knowledge of protected information. **RI Eth. Op. 93-47 (1993).**

1.10:500 Client Consent

- ◆ **Primary Rhode Island References:** [RI Rule 1.10\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 1.10\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:2001, ALI-LGL ◆ 122,
Wolfram ◆◆ 7.2, 7.3

No partners in a law firm may represent a wife in a domestic relations action where a partner in the firm had the husband perform plumbing work on the partner's home, unless the husband consents. **RI Eth. Op. 91-28 (1991).**

When a secretary at a law firm that represents a husband in a domestic action previously acquired confidential information while working at a law firm that represented the wife, any improper behavior on the part of the secretary

because of her knowledge will be imputed to her supervising attorney under [RI Rule 5.3](#) and then imputed to the rest of the firm under [RI Rule 1.10](#). **RI Eth. Op. 93-11 (1993)**. A waiver first from the wife, then from the husband, is required.

Attorney A is disqualified from representing a client in a law suit against a municipality naming the council as a defendant under [RI Rule 1.10](#), despite having a client waiver, when Attorneys A and B represented this client in the suit before Attorney B was elected to the council of the same municipality. **RI Eth. Op. 93-82 (1993)**.

An attorney who is a part-time municipal court judge in a municipality which recently underwent a property revaluation and who is also a partner in a law firm may contest the property revaluation of his/her property in the municipality. Further, [Rule 1.10](#) does not prohibit the attorney's law firm from representing property owners in the municipality in the appeals of the revaluation of their properties so long as, in compliance with [Rule 1.7\(b\)](#), the lawyers reasonably believe that the representation will not be adversely affected, and the clients consent after full disclosure. **RI Eth. Op. 2003-03**.

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the [matter](#) and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer [knows](#) is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a [matter](#) in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a [matter](#) in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a [matter](#) in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [Rule 1.12\(b\)](#) and subject to the conditions stated in [Rule 1.12\(b\)](#).

(e) As used in this Rule, the term "**matter**" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment - [Rule 1.11](#)

[1] This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of [Rule 1.10\(b\)](#), which applies to lawyers moving from one [firm](#) to another.

[2] A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in [Rule 1.7](#) and the protections afforded former clients in [Rule 1.9](#). In addition, such a lawyer is subject to [Rule 1.11](#) and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

[3] Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to [confidential government information](#) about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

[4] When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

[5] Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the lawyer's compensation to the fee in the [matter](#) in which the lawyer is disqualified.

[6] Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable

opportunity to ascertain that the lawyer is complying with [Rule 1.11](#) and to take appropriate action if it [believes](#) the lawyer is not complying. A prudent lawyer or law firm should also notify any and all adverse parties involved in the matter that the lawyer and the [law firm](#) are undertaking representation of a private client pursuant to the provisions of Rule 1.11(a)(1) and (2).

[7] Paragraph (b) is intended to prevent the appearance of impropriety that necessarily occurs when a lawyer terminates employment with a government office or agency and then appears, almost immediately, before that office or agency representing a private client. It is analogous to Article II, Rule 11, which prevents former law clerks of the Supreme Court from appearing before the Supreme court for a period of one year following their clerkships. The one year prohibition contained in paragraph (b) should be sufficient to alleviate any favoritism, or the appearance of such, when a lawyer appears before his former government colleagues on behalf of some private interest. The rule should not be construed, however, to apply to members of the law Clerk Pool. Former clerks are presently, and will be permitted to, practice before the trial courts at any time following their clerkships.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by [Rule 1.7](#) and is not otherwise prohibited by law.

[10] Paragraph (d) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

1.11 Rule 1.11 Successive Government and Private Employment

[1.11:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.11](#)
- ◆ Background References: [ABA Model Rule 1.11](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.11:101 Model Rule Comparison

Rhode Island has adopted [MR 1.11](#) including the Comments thereto.

1.11:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.11](#) and other jurisdictions.

1.11:110 Federal Conflict of Interest Statutes and Regulations

There is no authority in Rhode Island on this topic.

1.11:120 Rhode Island Conflict of Interest Statutes and Regulations

There is no authority in Rhode Island on this topic.

1.11:130 Definition of "Matter"

There is no authority in Rhode Island on this topic.

1.11:200 Representation of Another Client by Former Government Lawyer

- ◆ **Primary Rhode Island References:** [RI Rule 1.11\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.11\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:4001, ALI-LGL ◆ 133,
Wolfram ◆ 8.10

An attorney who is a town solicitor for the town in which he or she lives may represent individuals in a civil action against the families of two juveniles whom the town is prosecuting if the solicitor's office does not represent the town in the prosecution of the juveniles, and if in accordance with [Rule 1.7](#), both the town and the individuals consent after consultation and disclosure of all potential conflicts. [Rule 1.11\(a\)](#) does not present an impediment to the attorney's proposed representation since the solicitor's office has had no involvement in the case. **RI Eth. Op. 2003-01.**

1.11:210 No Imputation to Firm if Former Government Lawyer Is Screened

There is no authority in Rhode Island on this topic.

1.11:300 Use of Confidential Government Information

- ◆ Primary Rhode Island References: [RI Rule 1.11\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.11\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:4001, ALI-LGL ◆ 133,
Wolfram ◆ 8.10

1.11:310 Definition of "Confidential Government Information"

There is no authority in Rhode Island on this topic.

1.11:400 Government Lawyer Participation in Matters Related to Prior Representation

- ◆ Primary Rhode Island References: [RI Rule 1.11\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.11\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:4001, ALI-LGL ◆ 132,
133, Wolfram ◆ 8.9.4

An attorney may not represent a private client in connection with a matter in which he/she participated as a public employee. **RI Eth. Op. 93-22 (1993)**.

A former government attorney may represent private clients against his/her former government agency employer in connection with the same kinds of cases he/she handled while a government attorney. [Rule 1.11](#) prohibits the attorney from representing private clients in matters in which he/she personally participated, and [Rule 1.9\(b\)](#) prohibits the attorney from disclosing confidential information about the government agency. **RI Eth. Op. 2001-04 (2001)**.

Where an attorney is a solicitor for a municipality, and as such serves as legal counsel to the municipality's planning and zoning boards, the attorney's representation of the municipality in an appeal brought before the zoning board by a property owner who is a former client does not present a conflict of interest under [Rule 1.9](#) provided that the two matters are not substantially related. The attorney's representation of the municipality does not present a conflict of interest under [Rule 1.11](#) provided that the attorney did not participate personally and substantially in the subject matter of the appeal in the prior representation. **RI Eth. Op. 2002-03A**.

1.11:500 Government Lawyer Negotiating for Private Employment

- ◆ **Primary Rhode Island References:** [RI Rule 1.11\(c\)\(2\)](#)
- ◆ **Background References:** [ABA Model Rule 1.11\(c\)\(2\)](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:4001, ALI-LGL ◆◆ 97, 133, Wolfram ◆ 9.10

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a [firm](#) with which that lawyer is associated may [knowingly](#) undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment - [Rule 1.12](#)

[1] This Rule generally parallels [Rule 1.11](#). The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the [Comment to Rule 1.11](#). The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

1.12 Rule 1.12 Former Judge or Arbitrator

[1.12:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.12](#)
- ◆ Background References: [ABA Model Rule 1.12](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.12:101 Model Rule Comparison

Rhode Island adopted [MR 1.12](#) including the Comments thereto.

1.12:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.12](#) and other jurisdictions.

[1.12:200](#) Former Judge or Arbitrator Representing Client in Same Manner

- ◆ Primary Rhode Island References: [RI Rule 1.12\(a\)](#)
- ◆ Background References: [ABA Model Rule 1.12\(a\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91.4501

There is no authority in Rhode Island on this topic.

1.12:300 Negotiating for Future Employment

- ◆ Primary Rhode Island References: [RI Rule 1.12\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.12\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:4001, ALI-LGL ◆ 125,
Wolfram ◆ 8.10

There is no authority in Rhode Island on this topic.

1.12:400 Screening to Prevent Imputed Disqualification

- ◆ Primary Rhode Island References: [RI Rule 1.12\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.12\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:4501, ALI-LGL ◆◆
123, 124, Wolfram ◆ 7.6.4

There is no authority in Rhode Island on this topic.

1.12:500 Partisan Arbitrators Selected by Parties to Dispute

- ◆ Primary Rhode Island References: [RI Rule 1.12\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.12\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:1501

There is no authority in Rhode Island on this topic.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of [Rule 1.7](#). If the organization's consent to the dual representation is required by [Rule 1.7](#), the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment - [Rule 1.13](#)

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

[2] Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[3] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by [Rule 1.6](#). Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by [Rule 1.6](#). This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by [Rule 1.6](#).

[4] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer [knows](#) that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be [reasonably](#) necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer

may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

[5] In an extreme case, it may be [reasonably](#) necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in paragraph (b) are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under [Rule 1.6](#), [1.8](#), [1.16](#), [3.3](#) or [4.1](#). If the lawyer's services are being used by an organization to further a crime or [fraud](#) by the organization, [Rule 1.2\(d\)](#) can be applicable.

Government Agency

[7] The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for the purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See note on [Scope](#).

Clarifying the Lawyer's Role

[8] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the

individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[9] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[10] Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[11] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[12] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, [Rule 1.7](#) governs who should represent the directors and the organization.

1.13 Rule 1.13 Organization as Client

[1.13:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.13](#)
- ◆ Background References: [ABA Model Rule 1.13](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.13:101 Model Rule Comparison

Rhode Island has adopted [MR 1.13](#), including the Comments thereto.

1.13:102 Model Code Comparison

There is no counterpart to this rule in the Disciplinary Rules of the Code. [EC 5-18](#) states that "[a] lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interest and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for the entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such a case, the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present." [EC 5-24](#) states: "Although a lawyer may be employed by a business corporation with non-lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman." [DR 5-107\(B\)](#) provides that "[a] lawyer shall not permit a person who ... employs ... him to render legal services for another or to direct or regulate his professional judgment in rendering such legal services."

[1.13:200](#) Entity as a Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.13\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.13\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:2001, ALI-LGL ◆◆
96, 97, Wolfram ◆ 8.3

Where attorneys are solicitors for a municipality, the municipality, acting through its Council, is the attorneys' client. The attorneys should comply with the Council's request that they submit redacted itemized statements of prior bills to the Council and maintain the unredacted statements at their law offices as confidential information. Providing an individual Council member with unredacted itemized statements would violate [Rules 1.13](#), [1.2](#), and [1.6](#) unless the Council consented. **RI Eth. Op. 2002-02.**

1.13:210 Lawyer with Fiduciary Obligations to Third Person

When an attorney represents a school committee, the client is the school committee, not the Superintendent. RI Eth. Op. 95-51 (1995). A special investigator appointed by the school committee to investigate the suspended Superintendent of Schools sought to interview the attorney who represented the school committee and necessarily rendered legal opinions to and gave legal assistance to the Superintendent. The attorney may respond to a special investigator's inquiries as to the Superintendent's performance because the rules of

confidentiality that apply to an attorney-client relationship ([RI Rule 1.6](#)) are not applicable. Id.

Where an attorney represented a city in a Federal case where the named defendants were the city and members of the city's zoning board in their official and individual capacities, the zoning board members were clients and were therefore entitled to copies of the attorney's files pursuant to [RI Rule 1.7](#), although the attorney was hired by and compensated by the city and had been directed by several city officials not to produce the requested documents. RI Eth. Op. 94-41 (1994).

1.13:220 Lawyer Serving as Officer or Director of an Organization

There is no authority in Rhode Island on this topic.

1.13:230 Diverse Kinds of Entities as Organizations

The duties defined in [Rule 1.13](#) apply to government organizations, in this case the municipality acting through its duly authorized Council. RI Eth. Op. 2002-02.

[1.13:300](#) Preventing Injury to an Entity Client

- ◆ Primary Rhode Island References: [RI Rule 1.13\(b\)](#) & [\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.13\(b\)](#) & [\(c\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:2001, ALI-LGL ◆ 96, Wolfram ◆ 13.7

1.13:310 Resignation Versus Disclosure Outside the Organization

There is no authority in Rhode Island on this topic.

[1.13:400](#) Fairness to Non-Client Constituents Within an Entity Client

- ◆ Primary Rhode Island References: [RI Rule 1.13\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.13\(d\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:2001, ALI-LGL ◆ 103, Wolfram ◆ 13.7.5

An attorney who serves as the town solicitor may represent the town against a suit brought by a member of the town council, in his individual capacity, for relief from real estate taxes assessed by the same town. RI Eth. Op. 92-41 (1992). Although the town solicitor represents the town in all suits or proceedings, civil or criminal, brought by or against it or any of its officers, departments, or agencies, the town solicitor represents the town and agencies of that town, not individual council members. Thus, no conflict of interest exists in such a situation.

1.13:500 Joint Representation of Entity and Individual Constituents

- ◆ Primary Rhode Island References: [RI Rule 1.13\(e\)](#)
- ◆ Background References: [ABA Model Rule 1.13\(e\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:2601, ALI-LGL ◆◆
97, 131, Wolfram ◆ 13.7

Where an attorney was hired to form a corporation held by a majority owner former client and a minority owner non-client, represented the corporation, and continued to represent the former client in unrelated matters, the attorney could only continue to represent the former client or the corporation in a subsequent shareholder dispute concerning the operation of the corporation if the attorney had the consent of the minority owner for him/herself and for the corporation. RI Eth. Op. 93-58 (1993).

Where an attorney represented a corporation held equally by two shareholders (who were also the only officers or directors of the corporation) and provided legal advice to Shareholder A regarding a personal matter, the attorney may only represent the corporation or Shareholder B in negotiations with Shareholder A for a stock purchase or buyout when Shareholder A subsequently resigned as an officer and director but maintained his 50% ownership of the corporation, if consent is given for B's representation by Shareholder A. RI Eth. Op. 95-17.

1.13:510 Corporate Counsel's Role in Shareholder Derivative Actions

There is no authority in Rhode Island on this topic.

1.13:520 Representing Client with Fiduciary Duties

There is no authority in Rhode Island on this topic.

1.13:530 Representing Government Client

An attorney, who is a sole practitioner and has a part time position with State Agency #1, may represent an employee of State Agency #2 in an action against State Agency #2, despite objection from the counsel for State Agency #2, where neither Agency #1 nor the individual client object to the representation and the representation of the individual client is not directly adverse or materially limited by the lawyer's responsibility to Agency #1. RI Eth. Op. 94-43 (1994).

Rule 1.14. Client With Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as [reasonably](#) possible, maintain a normal clientlawyer relationship with the client.

(b) When the lawyer [reasonably believes](#) that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take [reasonably](#) necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by [Rule 1.6](#). When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment - [Rule 1.14](#)

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as five or six years of

age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

[4] If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See [Rule 1.2\(d\)](#).

Disclosure of the Client's Condition

[5] Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability can adversely affect the client's interests. For example, raising the question of disability could, in some circumstances, lead to proceedings for involuntary commitment. The lawyer's position in such cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate diagnostician.

1.14 Client Under a Disability

1.14:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.14](#)
- ◆ Background References: [ABA Model Rule 1.14](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.14:101 Model Rule Comparison

Rhode Island has adopted [MR 1.14](#), including the Comments thereto.

1.14:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.14](#) and other jurisdictions.

1.14:200 Problems in Representing a Partially or Severely Disabled Client

- ◆ Primary Rhode Island References: [RI Rule 1.14](#)
- ◆ Background References: [ABA Model Rule 1.14](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:601, ALI-LGL ◆ 24, Wolfram ◆ 4.4

When client's competency is in serious doubt, the attorney may withdraw; seek appointment of a guardian; seek unofficial consent from a family member or close friend; persuade the client to make a different choice; proceed as de facto guardian; or continue to presume competence irrefutably. **RI Eth. Op. 96-05 (1996)**. If the attorney reasonably believes that the client cannot adequately act in his own interest, the attorney should seek appointment of a guardian. **See id.**

1.14:300 Maintaining Client-Lawyer Relationship with Disabled Client

- ◆ **Primary Rhode Island References:** [RI Rule 1.14\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.14\(a\)](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:601, ALI-LGL ◆ 24, Wolfram ◆ 4.4

If the attorney believes that the client cannot adequately act in her own interest, the attorney should seek to have a guardian appointed. **RI Eth. Op. 96-05 (1996)**. Otherwise, the attorney owes the client no duty beyond the duty to maintain, so far as possible, a normal client-lawyer relationship, assisting the client with advice, which will help her protect her interests. **See id.**

1.14:400 Appointment of Guardian or Other Protective Action

- ◆ **Primary Rhode Island References:** [RI Rule 1.14\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 1.14\(b\)](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:601, ALI-LGL ◆ 24, Wolfram ◆ 4.4

If the client does not have a guardian or legal representative, the attorney may have to act as a de facto guardian. **RI Eth. Op. 92-16 (1992)**.

Unfounded client accusations of attorney misdeeds and refusal to consent to resignation of attorney as trustee should lead attorney to question client's mental capacity and seek appointment of a guardian. **RI Eth. Op. 92-40 (1992)**.

Attorney should seek appointment of guardian where client suffered a severe head injury and had difficulty communicating, especially where client's spouse may have adverse interest. **RI Eth. Op. 94-5 (1994)**.

Attorney should seek appointment of guardian where the original representation of an elderly client was pro bono but compensating attorney would allow her to qualify for Medicaid. **RI Eth. Op. 94-11 (1994)**.

Problems in Representing a Guardianship Estate of an Incompetent

If an attorney, representing a guardianship estate of an incompetent, finds out that the guardian of the incompetent person misappropriated the guardianship funds, the attorney should: counsel guardian to make disclosure to the ward; if the guardian fails to make disclosure, the attorney may disclose the fact to the ward; the attorney should also disclose to the Probate Court given the ward's incompetence. **RI Eth. Adv. Panel 92-23 (1992)**. An unexplained motion to withdraw is insufficient to fulfill the attorney's special ethical and fiduciary obligations to the ward. to undertake appropriate remedial steps (although not to the extent of an attorney-client relationship). **See id.** To avoid future problems, an attorney should explain to a guardian the ethical duties to which both are bound *before* accepting the representation. **See id.**

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) A lawyer or law firm shall, subject to paragraph (h) of this Rule, deposit clients' funds, which are nominal in amount or to be held for a short period of time, in one or more interest bearing trust accounts in accordance with the following provisions:

(1) Earnings from such accounts shall not be available to a lawyer or law firm.

(2) Whether clients' funds are nominal in amount or to be held for a short period of time shall be determined solely by each attorney or [law firm](#).

(3) Notification to clients whose funds are deposited in interest bearing trust accounts shall be necessary.

(4) Such interest bearing trust accounts may be established with any financial institution authorized by federal or state law to do business in Rhode Island, the deposits in which are insured by insurance entities regulated by the United States and/or the State of Rhode Island or any agency or instrumentality thereof. Funds deposited in such accounts shall be available for withdrawal immediately upon demand.

(5) The rate of interest payable on any interest bearing trust account shall not be less than the rate paid by the depository institution on similar deposits. Lawyers or law firms making such deposits shall direct the depository institution:

(i) To remit interest or dividends on such deposits, net of any service or fees, at least quarterly, to the Rhode Island Bar Foundation (the "Foundation").

(ii) To transmit to the Foundation and the depositor with each remittance statements showing the name of the depositor, the amount remitted, and the rate(s) at which the interest was computed.

(g) Interest paid to the Foundation shall be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration of justice; and for the reasonable costs of administration of interest earned on clients' trust accounts under this Rule.

(h) A lawyer or law firm may elect not to deposit clients' funds in an interest bearing account as authorized in paragraph (f) of this Rule by notifying the Clerk of the Supreme Court in writing of such election during the month of January in each year.

(i) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (f) of this Rule in an interest bearing account and accounting for the interest to such client.

Comment - [Rule 1.15](#)

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claim against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[4] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[5] A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

Disclosure of the Client's Condition

[5] Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability can adversely affect the client's interests. For example, raising the

question of disability could, in some circumstances, lead to proceedings for involuntary commitment. The lawyer's position in such cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate diagnostician.

1.15 Rule 1.15 Safekeeping Property

1.15:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.15](#)
- ◆ Background References: [ABA Model Rule 1.15](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.15:101 Model Rule Comparison

[RI Rule 1.15\(a\)-\(c\)](#) follows [MR 1.15\(a\)-\(c\)](#) and the comments thereto, except that by a Supreme Court order dated December 2, 1992, "seven (7)" was substituted for "five (5)" in the last sentence of subdivision (a) and the language "as provided under Rule 1.16" was added at the end of subdivision (a). RI Rule 1.15 also contains subdivisions (d) through (g), which are not found in MR 1.15.

Subdivisions (d) through (g) establish that a lawyer or law firm shall, unless having elected not to participate by notifying the Clerk of the Supreme Court in writing of such election during the month of January each year, deposit clients' funds which are nominal in amount or to be held for a short period of time into one or more interest bearing trust account, whose interest shall be paid to the Rhode Island Bar Foundation on a quarterly basis to be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration of justice; and for the reasonable costs of administration of interest earned on client's trust accounts under the rule. Specific requirements for the program are also enumerated in more detail in the subdivisions.

Required Bookkeeping Records

[RI Rule 1.16](#) has been added to the RI Rules and supplements [RI Rule 1.15](#). The Rule requires a lawyer to maintain all financial records for seven (7) years after the events which they record; that lawyers shall make entries of all financial transactions in books of account; and how records should be handled with respect to missing clients and when a law firm is dissolved. **RI Eth. Op. 94-9 (1994)**, which makes reference to **RI Rule 1.16**, notes that the rule sets forth an attorney's obligation to maintain certain accounts, agreements and records for a period of seven (7) years, but does not address the issue of

the specific method of disposal of such records at the conclusion of that period.

1.15:102 Model Code Comparison

With regard to paragraph (a), [DR 9-102\(A\)](#) provides that "funds of clients ... shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated..." [DR 9-102\(B\)\(2\)](#) provides that a lawyer shall "[i]dentify and label securities and properties of a client ... and place them ... in safekeeping..." [DR 9-102\(B\)\(3\)](#) requires that a lawyer "[m]aintain complete records of all funds, securities, and other properties of a client..." [RI Rule 1.15\(a\)](#) extends these requirements to property of a third person that is in the lawyer's possession in connection with the representation.

Paragraph (b) is substantially similar to [DR 9-102\(B\)\(1\), \(3\) and \(4\)](#).

Paragraph (c) is similar to [DR 9-102\(A\)\(2\)](#), except that the requirement regarding disputes applies to property concerning which an interest is claimed by a third person as well as by a client.

Paragraphs (d)-(g) have no parallel in the Model Code and are discussed at [1.15:101](#), *supra*.

1.15:110 Rhode Island's IOLTA Plan

The equivalent of an IOLTA plan for Rhode Island is codified in subdivisions (d) - (g) as discussed at [1.15:101](#) above.

The amount of interest to be paid to the Bar Association under the IOLTA Plan is the interest minus any service or fees charged upon the account. **RI Eth. Op. 93-93 (1993)**. However, a law firm may not use for other firm accounts or transfer to client accounts bookkeeping credits granted to it by the depository bank in connection to IOLTA accounts, which exceeded bookkeeping costs for the accounts. **RI Eth. Op. 94-25 (1994)**.

Where an attorney conducts loan closings for an out-of-state lender who requires that the attorney maintain a checking account with the lender, the attorney maintains an IOLTA account in Rhode Island, the lender deposits the mortgage proceeds in the out-of-state checking account when the closings are conducted, and the lender refuses to designate this account as an IOLTA account, the proper course of action is for the attorney to withdraw the funds from the non-conforming account and to deposit them into the Rhode Island IOLTA account as soon as practicable. **RI Eth. Op. 92-84 (1992)**.

1.15:120 Rhode Island Client Security Fund

The Lawyer's Fund for Client Reimbursement and its predecessors were established by the Rhode Island Bar Association to promote public confidence

in the integrity of the legal profession by reimbursing losses caused by dishonest conduct of Rhode Island Lawyers occurring in the course of the attorney-client relationship. **Rules of the Lawyer's Fund for Client Reimbursement** [hereinafter "**Fund Rules**"], **R 1**. It is funded entirely by contributions from Rhode Island lawyers. **Id.** The Fund is administered by a committee of seven or fewer members of the Rhode Island Bar Association, which committee shall hold the moneys or other assets of the Fund and shall, among other duties, receive, evaluate, determine, and pay claims. **Fund Rules R 2, 3**. To constitute a reimbursable loss, the loss must have arisen out of and during the course of a lawyer-client or fiduciary-beneficiary relationship between the lawyer and the claimant. **Fund Rules R 4(A)**. A claim may be filed when disciplinary action had been made public by the Supreme Court of Rhode Island against the lawyer causing the loss which is the subject of the claim, when disciplinary proceedings against the lawyer have been stayed and the lawyer is placed on Inactive Status by order of the Supreme Court, or where the lawyer has died or been adjudged insane or incompetent. **Fund Rules R 4(B)**. The claim must be filed within one year from the time of the public notice of the disciplinary action, Order of Inactive Status, death, insanity or incompetence, except in the case of extreme hardship or special and unusual circumstances. **Fund Rules R 4(B), (E)**. In order to recover, the claimant must prove by a preponderance of the evidence that the claimant's loss was a result of the lawyer's dishonest conduct. **Fund Rules R 4(C)**.

1.15:200 Safeguarding and Safekeeping Property

- ◆ **Primary Rhode Island References:** [RI Rule 1.15\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 1.15\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 45:101, ALI-LGL ◆◆ 44-46, Wolfram ◆ 4.8

Where an attorney received a check on behalf of a client and deposited this check into an all-purpose bank account, which the attorney used for client, business, and personal matters, and prior to making any disbursements of these funds to the client wrote checks on this account for unrelated business purposes and personal expenditures, the attorney violated his or her fiduciary duty. **In re Sheehan, 661 A.2d 526 (R.I. 1995)**.

Under the anti-commingling principle of [RI Rule 1.15\(a\)](#), a lawyer may maintain his or her own moneys in a client trust account in order to avoid bank service charges provided, however, that the amount of the lawyer's funds may not exceed that amount which is necessary to avoid bank service charges and further provided that the funds so deposited shall not be used by the lawyer for any other purpose. **RI Eth. Op. 93-57 (1993)**.

An attorney breached his fiduciary duty by commingling client funds and funds properly belonging to third parties into business account containing personal funds, by cashing settlement checks, and by delaying delivery of payment of client funds for inordinate and inexcusable periods, thereby violating [RI Rule 1.15](#), which requires an attorney to segregate funds of clients or third persons in separate client account and requiring prompt delivery of funds in lawyer's possession to those parties entitled to receive those funds. **In re Brown, 735 A.2d 774 (R.I. 1999). See also In re Rossi, C.A. No. 99-358-M.P. (1999).**

An attorney's failure to continuously maintain client funds in a client account, after withholding funds at a real estate closing for payment of property taxes, violated the rule requiring attorneys to hold funds in their possession that belong to a client or some other person in a separate account from the attorney's own funds. **In re Mocsá, 686 A.2d 927 (R.I. 1996).**

Attorney's failure, when acting as guardian of estate, to properly segregate ward's funds in separate account and attorney's commingling of those funds and other funds belonging to ward with his own accounts violated [Rule 1.15\(a\)](#), which requires lawyers to hold property of clients or third persons that is in the lawyer's possession in connection with representation separate from lawyer's own property. **In the Matter of Krause, 737 A.2d 874 (R.I. 1999).**

Attorney's conversion of funds belonging to client's health insurer as subrogee warranted three year suspension from the practice of law because the action violated Rule 1.15(a), which requires an attorney to segregate the funds of a client or third party in a separate client account. **In Re Dipippo, 745 A.2d 736 (R.I. 2000).**

An attorney who commingled his own funds with those of his client's funds in a client account was found to have violated [Rule 1.15\(a\)](#), which requires an attorney to keep funds that are the property of a client or of third parties in an account separate from those funds which belong to an attorney. **In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).**

Where, *inter alia*, an attorney commingled a monetary judgment with his business account, the proper disciplinary action was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. **In re MacLean, 774 A.2d 888 (R.I. 2001).**

Where an attorney obtained an arbitration award on behalf of his/her client and predecessor counsel asserted a lien on the proceeds equal to one-third of a previously rejected settlement offer, the attorney had to place the disputed funds in the client's account until the matter was resolved or pay them into the court registry in an interpleader action. **RI Eth. Op. 2001-03 (2001).**

1.15:210 Status of Fee Advances

An attorney may establish a procedure whereby the law firm would ask new clients to advance a certain amount of money for future expenses and costs, with the money placed in a client account and used as needed, as long as the law firm follows [RI Rule 1.15](#) precisely, particularly [Rule 1.15\(d\)-\(g\)](#), which specifically sets forth the procedure for the deposit of client funds. RI Eth. Op. 92-45 (1992).

1.15:220 Surrendering Possession of Property; Prompt Delivery of Property of Client or Third Person

Attorney who repeatedly failed to pay medical providers promptly in personal injury actions following receipt of clients' funds was properly suspended for one year. In re Watt, 701 A.2d 319 (R.I. 1997).

Attorney's failure, when acting as guardian of estate, to promptly pay bills owed by ward violated Rule 1.15(b), which requires lawyers to promptly deliver to client or third person any funds or other property that client or third person is entitled to receive. In the Matter of Krause, 737 A.2d 874 (R.I. 1999).

Attorney's four month delay in transferring former client's funds to the client's new attorney, and admission that the attorney appropriated the funds for his own purposes violated [RI Rule 1.15\(a\)](#) and [\(b\)](#). Lisi v. Hines, 610 A.2d 113 (R.I. 1992); In re Mosca, 686 A.2d 927 (R.I. 1996).

Attorney's conversion of funds belonging to client's health insurer as subrogee warranted three year suspension from the practice of law because the action violated [Rule 1.15\(b\)](#), which requires payment of those funds to the client or third party entitled to receive them. In Re Dipippo, 745 A.2d 736 (R.I. 2000).

An attorney who failed to conclude making payments to his client for more than one year following receipt of those funds was in violation of [Rule 1.15\(b\)](#), which requires the prompt delivery of funds in a lawyer's possession to those parties entitled to their receipt. In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).

1.15:230 Documents Relating to Representation

There is no authority in Rhode Island on this topic.

[1.15:300](#) Holding Money as a Fiduciary for the Benefit of Clients or Third Parties

- ◆ Primary Rhode Island References: [RI Rule 1.15\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.15\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 45:101, ALI-LGL ◆ 44,
Wolfram ◆ 4.8

[RI Rule 1.15\(b\)](#) imposes three duties upon a lawyer receiving funds in which a client or a third person has an interest: the duty to promptly notify, the duty to promptly deliver, and the duty to fully account. RI Eth. Op. 95-60 (1996).

Settling personal injury cases and withholding from clients amounts to cover medical liens, without paying physicians who held medical liens, and converting those funds to the attorney's own use violated the professional obligation to safeguard funds rightfully belonging to the physician, and constituted fraud and dishonesty, warranting one-year suspension from the practice of law. In re Hodge, 676 A.2d 1362 (R.I. 1996).

Where an attorney acts as escrow agent for the intended sale of a condominium by the attorney's client, the purchaser is unable to obtain financing and claims he is entitled to the refund of a deposit held by the attorney, and the client claims the deposit on the ground that the purchaser defaulted on the agreement, the attorney may refuse to surrender the property to the client in light of the attorney's duty to protect third party interests in the disputed property against the client's claim. RI Eth. Op. 92-21 (1992). The property should be kept in a client fund account and, if the dispute over the deposit cannot be resolved, the attorney should consider filing an interpleader action in the appropriate forum. Id.

In representing a client who was hospitalized, where a lien was recorded by the hospital and some of the hospital's claims were turned over to a collection agency, the liens were eventually discharged and an arrangement to pay the medical insurance was made, but before remittance to the client, written claims by the collection agency were received by the attorney making him/her unsure whether the hospital had been paid in full, the lawyer could refuse to surrender the property to the client without breaching an ethical obligation. RI Eth. Op. 92-47 (1992). However, dispersing the funds to the client would not be a violation of the Rules so long as the attorney properly informs the client regarding the possible problems that may arise as a consequence of an unresolved issue with the collection agency's claim for payment. Id.

Where an attorney has been instructed by his or her client to hold a check and not mail it to her, the moneys should be held in a client account in accordance with the client's wishes, but the attorney should consider the prohibition of [RI Rule 1.2\(d\)](#) against "engag[ing] or assist[ing] a client in conduct that the lawyer knows is criminal or fraudulent..." RI Eth. Op. 93-19 (1993). Where there was no suggestion that the attorney believed the client may have been engaged in fraudulent activity, the attorney could continue to hold the client's funds in accordance with the client's wishes. Id.

An attorney who represented one 50% owner of a property against his wife in a divorce action, and who pursued and settled a breach of contract action against a defaulting prospective purchaser of the property when the court ordered the property sold without entering a fee arrangement with the client's wife, and where the wife objected to the attorney receiving any payment from her percentage of the settlement, the attorney should keep the claimed fee separate until the dispute is resolved and the undisputed portion should be promptly tendered to the client's wife. RI Eth. Op. 92-34 (1992). Furthermore, the attorney should suggest methods of resolving the conflict to the wife's counsel, including turning for guidance to the family court that ordered the sale or resolving the matter through the fee arbitration program offered by the Bar Association. Id.

When an attorney received notice of a lien for payment of medical expenses prior to settling the client's personal injury matter for a lump sum, the attorney must notify the third party of the settlement even though he or she believes that the client actually owes only a fraction the lien amount. RI Eth. Op. 94-50 (1994). Because of the dispute over the cost of the medical expenses, the attorney, pending resolution, arbitration or interpleader should keep the portion in dispute separate. Id. See also RI Eth. Op. 95-12 (1995).

Where a secondary health insurance company pays medical bills in tortuous cases without any assurances from the attorney that the bills would be paid after recovery and the insurance company has failed to file a lien, the attorney is under no obligation to notify or pay the insurance companies upon receipt of an award or settlement. RI Eth. Op. 95-57 (1995).

An attorney who obtained a settlement for two family members involved in a serious automobile accident, one of whom requires continuous medical care, must deliver to Medicare any of the settlement funds, currently held in escrow, which it is entitled to receive. RI Eth. Op. 95-29 (1995). If the attorney reduces his or her fee, then that portion is also owed to Medicare, to the extent that the medical bills exceed the amount currently held in escrow, although the attorney is not prohibited from gifting money to his or her family members from his or her personal funds. Id.

An attorney who represented a client before an arbitrator and obtained from the client a sum of money for the arbitrator's fee, and who was subsequently discharged before the conclusion of the arbitration, should pay the arbitrator's fee once a bill is submitted unless the client has directed him or her not to pay, in which case the attorney should notify the arbitrator that he or she is in possession of these funds but should hold the amount until the dispute is resolved. RI Eth. Op. 96-33 (1996). A demand by the client for return of the funds is equivalent to a decision not to pay. Id.

Where, *inter alia*, an attorney commingled a monetary judgment with his business account, the proper disciplinary action was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. In re MacLean, 774 A.2d 888 (R.I. 2001).

Notification Requirement

A lawyer who is in possession of funds in which a client or third person has an interest has a duty to promptly notify the client or third person. RI Eth. Op. 93-64 (1993).

A one year delay between the receipt of funds and the notification to lien holders of possession of the property, by an attorney who knew the funds were subject to a lien, would constitute a violation of [RI Rule 1.15\(b\)](#). RI Eth. Op. 93-55 (1993).

An attorney who represents a husband in a divorce, where the husband agreed in writing to pay the wife one-half of the net proceeds received by him in a personal injury action, can not ignore this contract and must notify the wife when the proceeds are received. RI Eth. Op. 95-31 (1995).

An attorney must notify the opposing party and hold the overpayment in escrow when the opposing party may have overpaid the amount awarded by the court. RI Eth. Op. 93-81 (1993).

Where an attorney has notice of outstanding medical bills and has made a promise to pay the bills from the proceeds of settlement, the attorney is under an obligation to promptly notify the hospital upon receipt of the funds regardless of the fact that the hospital has not taken out a lien upon the recovery. RI Eth. Op. 94-46 (1994). However, where a medical insurance company pays medical bills without verbal or written assurances by the attorney involved in the lawsuit and without taking out a lien, the attorney is not obligated to notify the insurance company. RI Eth. Op. 95-57 (1995).

When an attorney received notice of a lien for payment of medical expenses prior to settling the client's personal injury matter for a lump sum, the attorney must notify the third party of the settlement even though he or she believes that the client actually owes only a fraction the lien amount. RI Eth. Op. 94-50 (1994). Because of the dispute over the cost of the medical expenses, the attorney, pending resolution, arbitration or interpleader should keep the portion in dispute separate. Id. See also RI Eth. Op. 95-12 (1995).

[1.15:400](#) Dispute over Lawyer's Entitlement to Funds Held in Trust

- ◆ Primary Rhode Island References: [RI Rule 1.15\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.15\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 45:101, ALI-LGL ◆◆ 44-45, Wolfram ◆ 4.8

Where an attorney holds funds in escrow on behalf of a party who owes the attorney legal fees, the legal fees are in dispute, and the party refuses to allow the attorney to take the amount due for legal services out of the funds held in escrow, the attorney's ethical duty is to hold the disputed funds in escrow until the matter is resolved. RI Eth. Op. 91-53 (1991).

An attorney who is holding an amount of the client's money in trust for the attorney's out of pocket expenses must return the client's funds upon termination of representation despite the attorney's allegations that the client failed to pay him or her the agreed upon hourly compensation. RI Eth. Op. 94-76. In a case where an attorney retains funds with the understanding that all or a portion of those funds would be used to pay the attorney's fees. Id.

Where an attorney who has been discharged by the client before final resolution of a matter undertaken on a contingency basis, and who has not yet been compensated for legal services rendered, holds in an escrow account a substantial sum of money on behalf of the client, the attorney must keep the property separately until any dispute over fees is resolved. RI Eth. Op. 91-56 (1991).

An attorney does not have a right of set-off against client funds for the payment of outstanding legal fees and expenses and should deposit the disputed funds in a client fund account. RI Eth. Op. 92-12 (1992). If the fee dispute with the client cannot be resolved, then the attorney may consider filing an interpleader action. Id.

Where, *inter alia*, an attorney commingled a monetary judgment with his business account, the proper disciplinary action was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. In re MacLean, 774 A.2d 888 (R.I. 2001).

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

1.16 Rule 1.16 Declining or Terminating Representation

1.16:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.17](#)
- ◆ Background References: [ABA Model Rule 1.16](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.16:101 Model Rule Comparison

Rhode Island has adopted [MR 1.16](#), including the Comments thereto, as [RI Rule 1.17](#).

1.16:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 1.16](#) and other jurisdictions.

1.16:200 Mandatory Withdrawal

- ◆ Primary Rhode Island References: [RI Rule 1.17\(a\)](#)
- ◆ Background References: [ABA Model Rule 1.16\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:1001, ALI-LGL ◆ 32,
Wolfram ◆ 9.54

1.16:210 Discharge by Client

A client has a right to discharge a lawyer at any time with or without cause. **RI Eth. Op. 2002-04.**

1.16:220 Incapacity of Lawyer

There is no authority in Rhode Island on this topic.

1.16:230 Withdrawal to Avoid Unlawful Conduct

A law firm may not represent one long-term client in a matter, which is to the detriment of a current client's interests where the firm, against the current client's objections, withdrew from that client's ongoing and unrelated representation. **RI Eth. Op. 93-44 (1993).**

A lawyer shall withdraw from representation if the representation will result in violation of the Rules of Professional Conduct. **RI Eth. Op. 94-29 (1994).** If an attorney believes his or her interests will impact the representation due to a conflict of interest pursuant to [RI Rule 1.7](#), then he or she should withdraw from representing the client. **See id.**

If an attorney believes a conflict of interest has arisen between the interests of his co-clients, he must withdraw. **RI Eth. Op. 96-08 (1996).**

An attorney who continued to represent a divorce client, while entering into a sexual relationship with that client, violated [RI Rule 1.17\(a\)\(1\)](#). **See In re DiPippo, 678 A.2d 454 (R.I. 1996).** "An attorney who desires to engage in sexual relations with a divorce client, when issues of child custody, support, and distribution of marital assets are at stake, must choose between furthering an intimate relationship or acting as a lawyer for the client. It is impermissible to do both." **Id.**

Where an attorney, hired by an insurance company to represent both its insured and the alleged driver of the insured's car, acquires information that is adverse to the interests of the driver and favorable to the insured, the attorney is prohibited from representing the insured. **RI Eth. Op. 98-01 (1998).**

1.16:300 Permissive Withdrawal

- ◆ Primary Rhode Island References: [RI Rule 1.17\(b\)](#)
- ◆ Background References: [ABA Model Rule 1.16\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:1101, ALI-LGL ◆ 32,
Wolfram ◆ 9.5.3

Unless the attorney is permitted to terminate the representation, he or she must continue to protect the client's interests. **RI Eth. Op. 92-94 (1993)**.

So long as the withdrawal would not prejudice the client's interests, an attorney may withdraw. **RI Eth. Op. 93-35 (1993)**.

1.16:310 Withdrawal to Undertake Adverse Representation

A law firm may not represent on long-term client in a matter, which is to the detriment of a current client's interests where the firm, against the current client's objections, withdrew from that client's ongoing and unrelated representation. **RI Eth. Op. 93-44 (1993)**. An attorney, who represented a corporation in a single litigation matter, may not represent an officer and shareholder of that corporation in a dispute against other shareholders, unless the corporation and the officer/shareholder consent after consultation. **See id.**

1.16:320 Circumstances Justifying Discretionary Withdrawal

Missing Client

An attorney is under obligation to exercise diligence in locating his client to advise him that the statute of limitations for filing his case is near expiration. **RI Eth. Op. 92-94 (1993)**. The attorney should make affirmative efforts to locate the client, perhaps by personal visitation to his or her last known address or a search of post office or registry of motor vehicles. **See id.**

Fraudulent Claims

If an attorney reasonably believes a claim is fraudulent, withdrawal is permitted. **RI Eth. Op. 92-94 request (1993); RI Eth. Op. 93-35 (1993)**.

Other good cause for withdrawal

When there is no conflict of interest, but a serious appearance of impropriety, the attorney should give serious consideration to withdraw. **RI Eth. Op. 97-02 (1997)**.

1.16:400 Order by Tribunal to Continue Representation

- ◆ Primary Rhode Island References: [RI Rule 1.17\(c\)](#)
- ◆ Background References: [ABA Model Rule 1.16\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:1101, ALI-LGL ◆ 32,
Wolfram ◆ 9.5.1

A lawyer shall continue representation when ordered by a tribunal to do so, notwithstanding good cause for terminating the representation.

There is no authority in Rhode Island on this topic.

1.16:500 Mitigating Harm to Client Upon Withdrawal

- ◆ Primary Rhode Island References: [RI Rule 1.17\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.16\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:1201, ALI-LGL ◆◆
32, 33, Wolfram ◆ 9.5.1

(a) Surrendering papers and property upon termination of representation.

Client is entitled to the contents of his or her file, excluding the attorney's work product. **RI Eth. Op. 92-88 (1993)**.

A client is not entitled to the lawyer's own personal notes that are unrelated to legal analysis such as time records, notes of conversations with the client, requests written to the advisory panel, and other record-keeping documents. **RI Eth. Op. 93-76 (1993)**.

Where the attorney represents a birthmother for the purpose of finding adoptive parents and all parties agreed that the identities of prospective adoptive parents were to remain confidential, the attorney may withhold the prospective and actual adoptive parent's identities when he or she surrenders papers to the birth mother. **RI Eth. Op. 95-13 (1995)**.

Where an attorney misled her client to believe that she filed a civil action on her client's behalf and was attempting to resolve the case, failed to respond to her client's inquiries, and delayed the return of her client's file and fees, the attorney violated [Rule 1.17\(d\)](#), and the proper disciplinary action was public censure. **In re Veiga, 783 A.2d 911 (R.I. 2001)**.

(b) Making copies for attorney's record

Attorney is obligated to return to the client the original documents; however, the attorney may, at his own expense, produce photocopies for himself. **RI Eth. Op. 93-84 (1993).**

(c) Cost of copying record

"Papers which were prepared for the client's benefit must be furnished without the cost of copying. Other papers, particularly internal notes, need not be furnished at all and to the extent the attorney consents to release them, forwarding may be conditioned upon a reasonable copying charge." **RI Eth. Op. 94-41 (1994).** "An attorney must furnish all 'end products' whose preparation was paid for by the client, regardless of whether the client will pay for copying." **Id.**

(d) Refund any advance payment of fee

The attorney must undertake efforts to determine from the arbitrator his actual fee to date, then return to the client, with an accounting, the portion of the fund that exceeds the actual fee of the arbitrator. **RI Eth. Op. 96-33 (1996).**

Where an attorney misled her client to believe that she filed a civil action on her client's behalf and was attempting to resolve the case, failed to respond to her client's inquiries, and delayed the return of her client's file and fees, the attorney violated [Rule 1.17\(d\)](#), and the proper disciplinary action was public censure. **In re Veiga, 783 A.2d 911 (R.I. 2001).**

When an attorney fails to exercise diligence by neglecting to pursue the legal matters of his clients, fails to keep his clients reasonably informed of the state of their legal matters, and fails to provide either an accounting or refund of unearned portions of fees to his clients when requested upon termination of his representation, he should be publicly censured. **In re Foster, 826 A.2d 94 (R.I. 2003).**

Attorney's desire to withdraw is warranted where there has been an irreparable breakdown in the relationship between attorney and client. The hearing justice should consider the reasons necessitating the withdrawal, the efficient and proper operation of the court, and the effect that granting or denying the motion will have on the parties. Court allowed attorney to withdraw when client repeatedly questioned attorney's competence and threatened to report him to the Supreme Court Disciplinary Board. Decision did not significantly affect the proper operation of the court because at the time of the hearing there were no additional motions pending before the court in the matter. Decision to allow attorney to withdraw did not negatively affect the client because client retained new counsel approximately one week after attorney withdrew. **Mills v. State Sales, Inc., 824 A.2d 461 (R.I. 2003).**

1.16:600 Fees on Termination

- ◆ Primary Rhode Island References: [RI Rule 1.17\(d\)](#)
- ◆ Background References: [ABA Model Rule 1.16\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 31:701, 31:1001,
31:1101 , ALI-LGL ◆◆ 43, 52, Wolfram ◆ 9.5

1.16:610 Termination of Lawyer's Authority [see [1.2:270](#)]

[The discussion of this topic has not yet been written.]

Rule 1.17. Sale of Law Practice

A lawyer or a [law firm](#) may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the jurisdiction in which the practice has been conducted;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) Actual written notice and a written request for consent to transfer the client's representation is given to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to

the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment - [Rule 1.17](#)

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also [Rule 6.2](#). Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself.

[6] If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate

proceedings for a conservatorship or similar protection of the client. See [Rule 1.14](#).

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer [reasonably believes](#) is criminal or [fraudulent](#), for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even of that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all [reasonable](#) steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

[10] Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

In Camera Hearing

[11] Withdrawal from representation under paragraph (a) of this Rule is mandatory. The nature of the factual material underlying withdrawal pursuant to (a)(1) or (a)(2) can be of a very sensitive nature; often delving into the private life of the attorney. It is a goal of the legal profession to encourage lawyers to seek professional treatment for physical or mental disabilities. To spread such material upon the public record would tend to discourage, rather than to encourage the search for assistance. A decision on the motion ought to consist of a denial or a grant of the motion without elaboration and the transcript of the hearing sealed subject to an order of the court.

1.17 Rule 1.17 Sale of Law Practice

1.17:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 1.18](#)
- ◆ Background References: [ABA Model Rule 1.17](#), [Other Jurisdictions](#)
- ◆ Commentary:

1.17:101 Model Rule Comparison

Rhode Island has adopted [MR 1.17](#) and the Comments thereto, as revised, as [RI Rule 1.18](#). In addition to the Model Rule's actual written notice requirement, the Rhode Island Rule also mandates that a lawyer obtain a written request for consent to transfer the client's representation. Unlike the Model Rule, the Rhode Island Rule does not require that actual written notice be given to each of the seller's clients regarding the terms of any proposed change in the fee arrangement authorized by paragraph (d). In paragraph (d), Rhode Island did not adopt the Model Rule's language stating that the purchaser may refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser rendering substantially similar services prior to the initiation of the purchase negotiation. Comments 9 and 10 to the Model Rule contain additional requirements for fee arrangements between clients and purchasers that are not included in the Comments to the Rhode Island Rule.

1.17:102 Model Code Comparison

See [MR 1.17](#) and other jurisdictions.

1.17:200 Traditional Rule Against the Sale of a Law Practice

- ◆ Primary Rhode Island References: [RI Rule 1.18](#)
- ◆ Background References: [ABA Model Rule 1.17](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:801, Wolfram ◆ 16.2.1

See [RI Rule 1.18](#).

1.17:300 Problems in Sale of Practice

- ◆ **Primary Rhode Island References:** [RI Rule 1.18](#)
- ◆ **Background References:** [ABA Model Rule 1.17](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:801, Wolfram ◆
16.2.1

See [RI Rule 1.18](#).

Rule 1.18. Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Comment - [Rule 1.18](#)

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire [firm](#) ceases to practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the [reasonable](#) value of the practice as may withdrawing partners of law firms. See [Rules 5.4](#) and [5.6](#).

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state.

Sale of Entire Practice

[5] The Rule requires that the seller's entire practice be sold. The prohibition against sale of less than an entire practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to [substantial](#) fee-generating matters. The purchasers are required to undertake all client matters in the practice, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[6] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no

more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, the representation of that client may be transferred to the purchaser only upon entry of any order so authorizing by a court having jurisdiction.

[7] A lawyer or [law firm](#) ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase or fail to respond to the request for consent. Since clients who cannot be located or who fail to respond to a notice requesting their consent to the proposed transfer cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether [reasonable](#) efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[8] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[9] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[10] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see [Rule 1.1](#)); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see [Rule 1.7](#) regarding conflicts); and the obligation to protect information relating to the representation (see [Rules 1.6](#) and [1.9](#)).

[11] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see [Rule 1.17](#)).

Applicability of the Rule

[12] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[13] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[14] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

1.18 Rule 1.18 Duties to Prospective Clients

1.18:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:**
- ◆ **Background References:** [ABA Model Rule 1.18](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

[MR 1.18](#) was added in February 2002. The Reporter's explanation of the change reads as follows:

Rule 1.18 is a proposed new Rule in response to the Commission's concern that important events occur in the period during which a lawyer and prospective client are considering whether to form a client-lawyer relationship. For the most part, the current Model Rules do not address that pre-retention period.

1.18:101 Model Rule Comparison

Rhode Island has not adopted the new model rule.

1.18:200 Definition of "Prospective Client"

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 1.18](#), [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island has not adopted the new model rule.

1.18:300 Confidentiality of Communications with a Prospective Client

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 1.18](#), [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island has not adopted the new model rule.

1.18:400 Conflicts of Interest Arising Out of Communications with a Prospective Client

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 1.18](#), [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island has not adopted the new model rule.

1.18:410 Conflict with an Existing Client

1.18:420 Consent of Prospective Client to an Existing Conflict of Interest

1.18:430 Screening to Cure an Imputed Conflict of Interest

Rule 1.19. Required Bookkeeping Records

(a) A lawyer shall maintain for seven (7) years after the events which they record:

(1) the records of all deposits in and withdrawals from special accounts specified in Rule 1.15 and of any other bank account which records the operations of the lawyer's practice of law. These records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement.

(2) A record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed.

(3) Copies of all retainer and compensation agreements with clients.

(4) Copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf.

(5) Copies of all bills rendered to clients.

(6) Copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed.

(7) Copies of all retainer agreements and closing statements.

(8) All checkbooks and check stubs, bank statements, pre-numbered cancelled checks and duplicate deposit slips with respect to the special accounts specified in [Rule 1.15](#) and any other bank account which records the operations of the lawyer's practice of law.

(b) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

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

(d) Missing Clients. Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought, or, if no action was commenced, to Superior Court for an order directing payment to the lawyer of his or her fee and disbursements and to the clerk of the court of the balance due to the client.

(e) Dissolution of a [Firm](#). Upon the dissolution of any firm of lawyers, the former [partners](#) or members shall make appropriate arrangements for the maintenance by one of them or by a successor firm of records specified in paragraph (a).

(f) Availability of Bookkeeping Records; Records Subject to Production in Disciplinary Investigations and Proceedings. The financial records required by this Rule shall be located, or made available, at the principal Rhode Island office of the lawyers subject hereto and any such records shall be produced in response to a notice of subpoena duces tecum issued in connection with a complaint before or any investigation by Disciplinary Counsel. All books and records produced pursuant to this subdivision shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the lawyer/client privilege.

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

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment - [Rule 2.1](#)

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where [consultation](#) with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer [knows](#) that a client proposes a

course of action that is likely to result in [substantial](#) adverse legal consequences to the client, duty to the client under [Rule 1.4](#) may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[2.1:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 2.1](#)
- ◆ Background References: [ABA Model Rule 2.1](#), [Other Jurisdictions](#)
- ◆ Commentary:

2.1:101 Model Rule Comparison

Rhode Island has adopted [MR 2.1](#) including the Comments thereto.

2.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 2.1](#) and other jurisdictions.

[2.1:200](#) Exercise of Independent Judgment

- ◆ Primary Rhode Island References: [RI Rule 2.1](#)
- ◆ Background References: [ABA Model Rule 2.1](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 31:701, ALI-LGL ◆ 94, Wolfram ◆ 4.3

It is a violation of [RI Rule 2.1](#) for a lawyer to agree to abide by guidelines of an insurance company that has retained him if the guidelines interfere with the independent judgment of the attorney. **RI Eth. Op. 99-18 (1999)**. The Advisory Panel reasoned an attorney retained by an insurance company to represent the insured "must represent the insured as his/her client with undivided loyalty." **Id.** (citing **RI Eth. Op. 98-10 (1998)**). The panel noted that the duty of an attorney under RI Rule 2.1 to exercise his or her independent professional judgment on behalf of a client is "[f]oremost among an attorney's ethical obligations." **Id.**

2.1:300 Non-Legal Factors in Giving Advice

- ◆ **Primary Rhode Island References:**[RI Rule 2.1](#)
- ◆ **Background References:** [ABA Model Rule 2.1](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 31:701, ALI-LGL ◆ 94, Wolfram ◆ 4.3

Rhode Island has adopted [MR 2.1](#) including the Comments thereto.

An attorney has a duty to inform his/her client of "fatal strategic and tactical errors" made by the client's former attorney and potential claims against the attorney, because "a client is entitled to straight forward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront." **RI Eth. Op. 94-70 (1994)** (citing [Comments to RI Rule 2.1](#)).

Rule 2.2. Intermediary (Deleted)

2.2 Rule 2.2 Intermediary

2.2:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:**[RI Rule 2.2](#)
- ◆ **Background References:** [ABA Model Rule 2.2](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

2.2:101 Model Rule Comparison

Rhode Island has adopted [MR 2.2](#), including the Comments thereto.

2.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 2.2](#) and other jurisdictions.

2.2:200 Relationship of Intermediation to Joint Representation

- ◆ Primary Rhode Island References: [RI Rule 2.2](#)
- ◆ Background References: [ABA Model Rule 2.2](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:1501, ALI-LGL ◆ 130, Wolfram ◆◆ 8.7, 13.6

If an attorney has acted as an intermediary between two parties in the formation of a corporation, and the parties subsequently have a dispute with respect to the operation of the corporation, the lawyer must withdraw an intermediary pursuant to [RI Rule 2.2\(c\)](#), and may not represent either party in matters involving the subject of the intermediation. **RI Eth. Op. 93-58 (1993)**.

2.2:300 Preconditions to Becoming an Intermediary

- ◆ Primary Rhode Island References: [RI Rule 2.2](#)
- ◆ Background References: [ABA Model Rule 2.2](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:1501, ALI-LGL ◆ 130, Wolfram ◆ 8.7, 13.6

When considering whether to act as an intermediary, an attorney should consider the relationship between the parties; if the relationship is antagonistic or subject to contentious litigation, or negotiation then intermediation is an impossible task. **RI Eth. Op. 95-25 (1995)**.

2.2:400 Communication During Intermediation

- ◆ Primary Rhode Island References: [RI Rule 2.2](#)
- ◆ Background References: [ABA Model Rule 2.2](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:1501, ALI-LGL ◆ 130, Wolfram ◆ 8.7, 13.6

If an attorney acts as an intermediary between two clients who subsequently dispute the subject of the intermediation and retain independent counsel, the intermediating attorney must withdraw from the representation pursuant to [RI Rule 2.2](#). **RI Eth. Op. 93-76 (1993)**. However, the intermediating attorney may communicate information concerning the terms of the assignment to either of the parties' attorneys, as under RI Rule 2.2 the attorney-client privilege does not attach between commonly represented clients. **See id.** (relying on the [Comment to RI Rule 2.2](#)).

[2.2:500](#) Consequences of a Failed Intermediation

- ◆ **Primary Rhode Island References:** [RI Rule 2.2](#)
- ◆ **Background References:** [ABA Model Rule 2.2](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:1501, ALI-LGL ◆ 130, Wolfram ◆ 8.7, 13.6

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by [Rule 1.6](#).

Comment - [Rule 2.3](#)

Definition

[1] An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a

borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

[3] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person

[4] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of [fraud](#), it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[5] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever

latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

2.3 Rule 2.3 Evaluation for Use by Third Persons

2.3:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 2.3](#)

- ◆ **Background References:** [ABA Model Rule 2.3](#), [Other Jurisdictions](#)

- ◆ **Commentary:**

2.3:101 Model Rule Comparison

Rhode Island has adopted [MR 2.3](#), including the Comments thereto.

2.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 2.3](#) and other jurisdictions.

2.3:200 Undertaking an Evaluation for a Client

- ◆ Primary Rhode Island References: [RI Rule 2.3](#)
- ◆ Background References: [ABA Model Rule 2.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:701, ALI-LGL ◆ 95, Wolfram ◆ 13.4

Although furnishing a third party evaluation constitutes a departure from the normal attorney-client relationship, an attorney is expressly authorized to render third party opinions so long as the lawyer possesses a reasonable belief that making the evaluation is compatible with other aspects of his or her relationship with the client and that the client consents to such evaluation. **In re Ethics Advisory Panel Opinion, 554 A.2d 1033, 1034 (R.I. 1989); RI Eth. Op. 91-13 (1991)**

2.3:300 Duty to Third Persons Who Rely on Lawyer's Opinion

- ◆ Primary Rhode Island References: [RI Rule 2.3](#)
- ◆ Background References: [ABA Model Rule 2.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:701, ALI-LGL ◆ 95, Wolfram ◆ 13.4.4

If the evaluation is intended for use by a third party, a legal relationship may or may not arise and a careful analysis of the situation is required.

There is no authority in Rhode Island on this topic.

2.3:400 Confidentiality of an Evaluation

- ◆ Primary Rhode Island References: [RI Rule 2.3](#)
- ◆ Background References: [ABA Model Rule 2.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:701, ALI-LGL ◆ 95, Wolfram ◆ 13.4.3

Except as required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by [RI Rule 1.6](#). **RI Eth. Op. 92-88 (1993)**. An attorney who compiled a title report for an out of state lending institution, including charts and abstracts for the attorney's own benefit, may not give out the information to a purchaser of the loan without the consent of the third party. **See id.**

Financial Auditor's Request for Information

There is no authority in Rhode Island on this topic.

Rule 2.4. Lawyer Serving as a Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

2.4 Rule 2.4 Lawyer Serving as a Third-Party Neutral

2.4:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:**
- ◆ **Background References:** [ABA Model Rule 2.4](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

[MR 2.4](#) was added in February 2002. The Reporter's explanation of the change reads as follows:

The role of third-party neutral is not unique to lawyers, but the Commission recognizes that lawyers are increasingly serving in these roles. Unlike nonlawyers who serve as neutrals, lawyers may experience unique ethical problems, for example, those arising from possible confusion about the nature of the lawyer's role. The Commission notes that there have been a number of attempts by various organizations to promulgate codes of ethics for neutrals (e.g., aspirational codes for arbitrators or mediators or court enacted rules governing court-sponsored mediators), but such codes do not typically address the special problems of lawyers. The Commission's proposed approach is designed to promote dispute resolution parties' understanding of the lawyer-neutral's role.

2.4:101 Model Rule Comparison

Rhode Island has not adopted the new model rule.

[2.4:200](#) Definition of "Third-Party Neutral"

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 2.4](#), [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island has not adopted the new model rule.

[2.4:300](#) Duty to Inform Parties of Nature of Lawyer's Role

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 2.4](#), [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island has not adopted the new model rule.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment - [Rule 3.1](#)

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer [believes](#) that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, or, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

3.1 Rule 3.1 Meritorious Claims and Contentions

[3.1:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 3.1](#)
- ◆ Background References: [ABA Model Rule 3.1](#),
[Other Jurisdictions](#)
- ◆ Commentary:

3.1:101 Model Rule Comparison

Rhode Island adopted [MR 3.1](#), including the Comments thereto.

3.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.1](#) and other jurisdictions.

[3.1:200](#) Non-Meritorious Assertions in Litigations

- ◆ Primary Rhode Island References: [RI Rule 3.1](#)
- ◆ Background References: [ABA Model Rule 3.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:101, ALI-LGL ◆
110, Wolfram ◆ 11.2

When defense counsel filed a motion to disqualify the judge from the case based in part on a false and misleading affidavit and on other allegations that were unsupported, they violated the Rhode Island Rules of Professional Conduct causing their pro hac vice status to be revoked. **Obert v. Republic Western Ins, Co., 264 F.Supp.2d 106 (R.I. 2003).**

[3.1:300](#) Judicial Sanctions for Abusive Litigation Practice

- ◆ Primary Rhode Island References: [RI Rule 3.1](#)
- ◆ Background References: [ABA Model Rule 3.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:151, ALI-LGL ◆
110, Wolfram ◆ 11.2

[RI Rule 3.1](#) does not incorporate this subsection.

There is no authority in Rhode Island on this topic.

[3.1:400](#) Civil Liability for Abusive Litigation Practice

- ◆ Primary Rhode Island References: [RI Rule 3.1](#)
- ◆ Background References: [ABA Model Rule 3.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:101, ALI-LGL ◆◆
56, 110, Wolfram ◆ 11.2

[RI Rule 3.1](#) does not incorporate this subsection.

There is no authority in Rhode Island on this topic.

[3.1:500](#) Complying with Law and Tribunal Proceedings

- ◆ **Primary Rhode Island References:** [RI Rule 3.1](#)
- ◆ **Background References:** [ABA Model Rule 3.1](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 16:1201, ALI-LGL ◆
105, Wolfram ◆◆ 12.1.3, 13.3.7

[RI Rule 3.1](#) does not incorporate this subsection.

There is no authority in Rhode Island on this topic.

Despite the fact that [RI Rule 3.1](#) does not specifically incorporate provisions imposing judicial sanctions or civil liability, violations of the good faith requirement of RI Rule 3.1 may give rise to both judicial and civil sanctions for abusive litigation practices. **Goldberg v. Whitehead, 713 A.2d 204 (R.I. 1998)** ("[s]uch unwarranted conduct by one presumed to be knowledgeable in the law should not be overlooked or condoned by us, and sanctions in the nature of counsel fees are warranted.").

Rule 3.2. Expediting Litigation

A lawyer shall make [reasonable](#) efforts to expedite litigation consistent with the interests of the client.

Comment - [Rule 3.2](#)

[1] Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and the bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some [substantial](#) purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

[2] In connection with the duty imposed by Rule 3.2, a lawyer shall not, in an administrative hearing, arbitration, or trial, refuse to stipulate documentary evidence whose authenticity is not questioned, but a lawyer may reserve the right to object to the admission of any stipulated documentary evidence on grounds of materiality or relevance.

3.2 Rule 3.2 Expediting Litigation

[3.2:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 3.2](#)
- ◆ Background References: [ABA Model Rule 3.2](#),
[Other Jurisdictions](#)
- ◆ Commentary:

3.2:101 Model Rule Comparison

Rhode Island has adopted [MR 3.2](#), including the comments thereto.

3.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.2](#) and other jurisdictions

[3.2:200](#) Dilatory Tactics

- ◆ Primary Rhode Island References: [RI Rule 3.2](#)
- ◆ Background References: [ABA Model Rule 3.2](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:201, ALI-LGL ◆
106, Wolfram ◆ 11.2.5

[3.2:300](#) Judicial Sanctions for Dilatory Tactics

- ◆ Primary Rhode Island References: [RI Rule 3.2](#)
- ◆ Background References: [ABA Model Rule 3.2](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:201, ALI-LGL ◆
106, Wolfram ◆ 11.2.5

An attorney's failure to commence probate of estate for more than four years violated the attorney's duty under [RI Rule 3.2](#) to make reasonable

effort to expedite litigation. **See In re Grochowski, 702 A.2d 1013 (R.I. 1977).**

When defense counsel filed a motion to disqualify the judge from the case based in part on a false and misleading affidavit and on other allegations that were unsupported, they violated the Rhode Island Rules of Professional Conduct causing their pro hac vice status to be revoked. **Obert v. Republic Western Ins. Co., 264 F.Supp.2d 106 (R.I. 2003).**

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not [knowingly](#):

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. 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. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by [Rule 1.6](#).

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts [known](#) to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment - [Rule 3.3](#)

[1] The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

Representations by a Lawyer

[2] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare [Rule 3.1](#). However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer [knows](#) the assertion is true or [believes](#) it to be true on the basis of a [reasonably](#) diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in [Rule 1.2\(d\)](#) not to counsel a client to commit or assist the client in committing a [fraud](#) applies in litigation. Regarding compliance with [Rule 1.2\(d\)](#), see the [Comment to that Rule](#). See also the [Comment to Rule 8.4\(b\)](#).

Misleading Legal Argument

[3] Legal argument based on a [knowingly](#) false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence

[4] When evidence that a lawyer [knows](#) to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

[5] When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be

disclosed. If the persuasion is ineffective, the lawyer must take [reasonable](#) remedial measures.

[6] Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See [Rule 1.2\(d\)](#). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to [fraud](#) on the court.

Perjury by a Criminal Defendant

[7] Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

[8] The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer [knows](#) that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

[9] Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

[10] The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not

have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See [Rule 1.2\(d\)](#).

Remedial Measures

[11] If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.

Constitutional Requirements

[12] The general rule -- that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client -- applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. In some jurisdictions these provisions have been construed to require that counsel present an accused as a witness if the accused wishes to testify, even if counsel [knows](#) the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement.

Duration of Obligation

[13] A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a [reasonably](#) definite point for the termination of the obligation.

Refusing to Offer Proof Believed to Be False

[14] Generally speaking, a lawyer has authority to refuse to offer testimony or other proof that the lawyer [believes](#) is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of

evidence and thus impair the lawyer's effectiveness as an advocate. In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel. For further evidence in this area, see *Nix v. Whiteside*, 475 U.S. 157, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986) (it is not a violation of the sixth amendment right to counsel for defense counsel to undertake a "[reasonable](#) professional response" to a client's stated intention to commit perjury).

Ex Parte Proceedings

[15] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts [known](#) to the lawyer and that the lawyer [reasonably believes](#) are necessary to an informed decision.

Notes to Decisions

[16] 1. False Statement of Material Fact to Tribunal. When an attorney submitted and subsequently defended a false affidavit in support of the attorney's claims for fees and costs in a federal civil rights action, since this affidavit was not mere boilerplate or surplusage, but rather a sworn statement designed to convince the court that the attorney's fee application was fair, reasonable, and accurate, and since the attorney knew or should have [known](#) that this statement was not true and, indeed, these misrepresentations to the court bore a close resemblance to an attempt to obtain money under false pretenses, the imposition of public censure was not a sufficiently severe response to the egregious character of the attorney's conduct in making a false statement of material fact to a tribunal, and a suspension from the practice of law for 18 months was warranted. *In re Schiff*, 677 A.2d 422 (R.I. 1996).

3.3 Rule 3.3 Candor Toward the Tribunal

3.3:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 3.3](#)
- ◆ Background References: [ABA Model Rule 3.3](#),
[Other Jurisdictions](#)
- ◆ Commentary:

3.3:101 Model Rule Comparison

Rhode Island has adopted [MR 3.3](#), including the Comments thereto.

3.3:102 Model Rule Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.3](#) and other jurisdictions.

3.3:200 False Statements to a Tribunal

- ◆ Primary Rhode Island References: [RI Rule 3.3\(a\)\(1\)](#)
& [\(2\)](#)
- ◆ Background References: [ABA Model Rule 3.3\(a\)\(1\)](#)
& [\(2\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:301, ALI-LGL ◆
120, Wolfram ◆ 12.5

An attorney representing a guardianship estate for an incompetent ward who has discovered a series of apparently wrongful and/or fraudulent withdrawals from the estate may not present to the Probate Court an accounting that the attorney believes to be false or fraudulent. **RI Eth. Op. 92-93 (1992)**. Rather, the attorney should counsel the guardian to make disclosure to the court of the existence and nature of the guardian's unexplained withdrawals and, if this effort fails, should attempt to withdraw. **See id.**

If an attorney chooses to negotiate a lower fee for his or her client, then all representations regarding the fees made to the court or third parties must be amended to reflect the actual fee received. **RI Eth. Op. 94-64 (1994)**.

An attorney's appearance before the court without disclosing the fact of the plaintiff's death to the court or his or her adversary is tantamount to making a false statement to a tribunal under [RI Rule 3.3](#). **RI Eth. Op. 97-01 (1997)**.

Submission and defense of false affidavit in support of claims for fees and costs in violation of [RI Rule 3.3\(a\)\(1\)](#)'s prohibition against knowingly making a false statement of material fact to a tribunal warranted suspension. **See In re Schiff, 677 A.2d 422 (R.I. 1996).**

When defense counsel filed a motion to disqualify the judge from the case based in part on a false and misleading affidavit and on other allegations that were unsupported, they violated the Rhode Island Rules of Professional Conduct causing their pro hac vice status to be revoked. **Obert v. Republic Western Ins. Co., 264 F.Supp.2d 106 (R.I. 2003).**

[3.3:300](#) Disclosure to Avoid Assisting Client Crime or Fraud

◆ Primary Rhode Island References: [RI Rule 3.3\(a\)\(2\)](#)

◆ Background References: [ABA Model Rule 3.3\(a\)\(2\)](#),

[Other Jurisdictions](#)

◆ Commentary: ABA/BNA ◆ 61:301, ALI-LGL ◆

120

The results of court-ordered medical testing in connection with a suit regarding government assistance, the results of which were to be made available to the parties and to the court, may not be revealed to the court or the third parties where the client stopped receiving government assistance and the case was dropped. **RI Eth. Op. 96-27 (1996).** The individual does not intend to perpetuate a fraud on the court, since the individual, in light of the test results, no longer intends to pursue any claims against the third part. **See id.**

[RI Rule 3.3](#) does not require defense counsel to voluntarily disclose information regarding a prior conviction of a criminal defendant to either the court or the prosecution but the attorney cannot mislead the court or not respond accurately if asked a direct question. **RI Eth. Op. 91-59 (1991).**

An attorney has no duty to disclose the fact that his former criminal client, who was released from prison on the condition that he participate in a residential drug treatment program, has left the program in violation of his parole because the attorney learned of the information after the conclusion of the proceeding. **RI Eth. Op. 93-56 (1993).**

3.3:310 Prohibition on Counseling or Assisting Fraud on a Tribunal [See also [1.6:350](#)]

There is no authority in Rhode Island on this topic.

[3.3:400](#) Disclosing Adverse Legal Authority

- ◆ **Primary Rhode Island References:** [RI Rule 3.3\(a\)\(3\)](#)
- ◆ **Background References:** [ABA Model Rule 3.3\(a\)\(3\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 4:301, ALI-LGL ◆ 111,
Wolfram ◆ 12.8

An attorney is required to disclose a recent change in a criminal statute that is adverse to the client defendant where the prosecutor and the court appear unaware of the recent change. **RI Eth. Op. 91-39 (1991)**.

[3.3:500](#) Offering False Evidence

- ◆ **Primary Rhode Island References:** [RI Rule 3.3\(a\)\(4\)](#)
- ◆ **Background References:** [ABA Model Rule 3.3\(a\)\(4\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:301, ALI-LGL ◆◆
115-120, Wolfram ◆◆ 12.3, 12.43, 12.5

An attorney's appearance before the court without disclosing the fact of the plaintiff's death to the court or his or her adversary is tantamount to making a false statement to a tribunal under [RI Rule 3.3](#). **RI Eth. Op. 97-01 (1977)**.

3.3:510 False Evidence in Civil Proceedings

There is no authority in Rhode Island on this topic.

3.3:520 False Evidence in Criminal Proceedings

There is no authority in Rhode Island on this topic.

3.3:530 Offering a Witness an Improper Inducement

There is no authority in Rhode Island on this topic.

3.3:540 Interviewing and Preparing Witnesses

There is no authority in Rhode Island on this topic.

3.3:600 Remedial Measures Necessary to Correct False Evidence

- ◆ **Primary Rhode Island References:** [RI Rule 3.3\(a\)\(4\)](#)
- ◆ **Background References:** [ABA Model Rule 3.3\(a\)\(4\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:401 *et seq.*, ALI-LGL ◆ 66, 67, Wolfram ◆◆ 12.5, 12.6, 13.3.6

An attorney discovering past client perjury affecting an ongoing proceeding must first call upon the client to rectify the situation. **RI Sup. Ct. Eth. Advisory Panel General Informational Opinion #2 (1990)**. If the client will not do so, the attorney must move to withdraw. **See id.** If withdrawal is not permitted, the attorney has "an affirmative obligation to inform the court of the falsity of the client's assertions." **Id.** [RI Rule 3.3](#) expressly provides that the duties to rectify client perjury apply even when compliance requires disclosure of information otherwise protected by [RI Rule 1.6](#)." **Id.**

An attorney has no duty to disclose the fact that his former criminal client, who was released from prison on the condition that he participate in a residential drug treatment program, has left the program in violation of his parole because the attorney learned of the information after the conclusion of the proceeding. **RI Eth. Op. 93-56 (1993)**.

Where the employee of a client admits giving false testimony in a deposition, the attorney should first encourage the client to persuade the employee to come forward to correct the error, and if the employee refuses, the attorney must disclose the falsity to the court or to the other party. **RI Eth. Op. 91-76 (1991)**.

3.3:610 Duty to Reveal Fraud to the Tribunal

An attorney has an obligation to disclose information regarding the existence of an unperfected lien, which includes information disputed by his client if the failure to do so would assist a fraudulent act by the client. **RI Eth. Op. 92-17 (1992)**.

The results of court-ordered medical testing in connection with a suit regarding government assistance, the results of which were to be made available to the parties and to the court, may not be revealed to the court or the third parties where the client stopped receiving government assistance and the case was dropped. **RI Eth. Op. 96-27 (1996)**. The individual does not intend to perpetuate a fraud on the court, since the individual, in lights of the test results, no longer intends to pursue any claims against the third party. **See id.**

3.3:700 Discretion to Withhold Evidence Believed to Be False

- ◆ Primary Rhode Island References: [RI Rule 3.3\(c\)](#)
- ◆ Background References: [ABA Model Rule 3.3\(c\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:301, ALI-LGL ◆ 120, Wolfram ◆ 12.5

There is no authority in Rhode Island on this topic.

3.3:800 Duty of Disclosure in Ex Parte Proceedings

- ◆ Primary Rhode Island References: [RI Rule 3.3\(d\)](#)
- ◆ Background References: [ABA Model Rule 3.3\(d\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:301, ALI-LGL ◆ 172 , Wolfram ◆ 12.7

In an ex parte proceeding, an attorney "shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an unformed decision." **RI Eth. Op. 94.32 (1994)**.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) [knowingly](#) disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment - Rule 3.4

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also [Rule 4.2](#).

3.4 Rule 3.4 Fairness to Opposing Party and Counsel

[3.4:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 3.4](#)
- ◆ **Background References:** [ABA Model Rule 3.4](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

3.4:101 Model Rule Comparison

Rhode Island has adopted [MR 3.4](#), including the Comments thereto.

3.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.4](#) and other jurisdictions.

[3.4:200](#) Unlawful Destruction and Concealment of Evidence

- ◆ **Primary Rhode Island References:** [RI Rule 3.4\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 3.4\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:701, ALI-LGL ◆◆
118, 119, Wolfram ◆ 12.3, 12.4

Advising or causing a person to secrete himself or leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness in a pending trial of cause violates [RI Rule 3.4](#) because it amounts to the unlawful concealment of the testimony of a witness which may have potential evidentiary value. **RI Eth. Op. 91-9 (1991)**.

An attorney must comply with a court order to produce all health care provider records and a statement that the attorney did in fact comply with the court order, even though the attorney has already furnished the defendant with all of the medical information in the attorney's file. **RI Eth. Op. 92-44 (1992)**. Failing to comply with such an order from the court would violate [RI Rule 1.6](#) and [Rule 3.4](#). **See id.**

[3.4:300](#) Falsifying Evidence

- ◆ Primary Rhode Island References: [RI Rule 3.4\(b\)](#)
- ◆ Background References: [ABA Model Rule 3.4\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 61:601, 61:701, ALI-LGL ◆ 118, Wolfram ◆ 12.3

There is no authority in Rhode Island on this topic.

3.4:310 Prohibited Inducements

[RI Rule 3.4](#) prohibits a lawyer from the destroying or concealing of evidence, improperly influencing a witness or obstructing discovery.

[3.4:400](#) Knowing Disobedience to Rules of Tribunal

- ◆ Primary Rhode Island References: [RI Rule 3.4\(c\)](#)
- ◆ Background References: [ABA Model Rule 3.4\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:1231, ALI-LGL ◆ 105, Wolfram ◆ 12.1

The Rhode Island Supreme Court disbarred an attorney from the practice of law for violating, *inter alia*, [RI Rule 3.4\(c\)](#) when the attorney continued to serve as guardian of an estate after the Court directed him to remove himself from involvement. **See *In re Harold E. Krause*, 737 A.2d 874 (R.I. 1999).**

Advising or causing a person to secrete himself or leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness in a pending trial of cause violated [RI Rule 3.4](#) because it amounts to the unlawful concealment of the testimony of a witness which may have potential evidentiary value. **RI Eth. Op. 91-9 (1991).**

An attorney must comply with a court order to produce all health care provider records and a statement that the attorney did in fact comply with the court order, even though the attorney has already furnished the defendant with all of the medical information in the attorney's file. **RI Eth. Op. 92-44 (1992).** Failing to comply with such an order from the court would violate [RI Rule 1.6](#) and [RI Rule 3.4](#). **See id.**

[3.4:500](#) Fairness in Pretrial Practice

- ◆ Primary Rhode Island References: [RI Rule 3.4\(d\)](#)
- ◆ Background References: [ABA Model Rule 3.4\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:701, ALI-LGL ◆
106, Wolfram ◆ 12.4

An attorney must comply with a court order to produce all health care provider records and a statement that the attorney did in fact comply with the court order, even though the attorney has already furnished the defendant with all of the medical information in the attorney's file. **RI Eth. Op. 92-44 (1992)**. Failing to comply with such an order from the court would violate [RI Rule 1.6](#) and [RI Rule 3.4](#). **See id.**

[3.4:600](#) Improper Trial Tactics

- ◆ Primary Rhode Island References: [RI Rule 3.4\(e\)](#)
- ◆ Background References: [ABA Model Rule 3.4\(e\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:1361, ALI-LGL ◆
107, Wolfram ◆ 12.1

There is no authority in Rhode Island on this topic.

[3.4:700](#) Advising Witness Not to Speak to Opposing Parties

- ◆ Primary Rhode Island References: [RI Rule 3.4\(f\)](#)
- ◆ Background References: [ABA Model Rule 3.4\(f\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ALI-LGL ◆ 116, Wolfram ◆ 12.4.2

There is no authority in Rhode Island on this topic.

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

Comment - [Rule 3.5](#)

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

3.5 Rule 3.5 Impartiality and Decorum of the Tribunal

[3.5:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 3.5](#)
- ◆ **Background References:** [ABA Model Rule 3.5](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

3.5:101 Model Rule Comparison

Rhode Island has adopted [MR 3.5](#), including the Comments thereto.

3.5:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.5](#) and other jurisdictions.

[3.5:200](#) Improperly Influencing a Judge, Juror, or Other Court Official

- ◆ Primary Rhode Island References: [RI Rule 3.5\(a\)](#)
- ◆ Background References: [ABA Model Rule 3.5\(a\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:801, 101:702, ALI-LGL ◆◆ 113, 115, Wolfram ◆◆ 11.3, 11.4

3.5:210 Improperly Influencing a Judge

In providing legal services to judges a law firm should determine its fees on the same basis for all other clients. **RI Eth. Op. 92-14 (1992)**.

It is not improper for an attorney to send flowers to a judge who is hospitalized when the attorney has appeared before the judge on several occasions, and expects to appear before the judge in the future. **RI Eth. Op. 91-41 (1991)**. The act of sending flowers to a judge in this circumstance is "normal courtesy" that would not create an appearance of impropriety. **See id.** The Ethics Panel cited with approval an Illinois Supreme Court opinion that provided a standard for determining the propriety of giving gifts to judges, holding that an attorney may "◆ treat members of the judiciary with ordinary social hospitality." **See id.** (citing **In re Corboy, Tuite, 528 N.E.2d 964 (1988)**). In determining whether a gift is social and proper, the principal inquiry is whether the gift creates an appearance of impropriety. **See id.** The Court listed several factors to be considered in making this determination: "(1) the monetary value of the gift; (2) the relationship, if any, between the judge and the donor lawyer; (3) the social practices and customs associated with gifts and loans; and (4) the particular circumstances surrounding the gifts and loans." **Id.**

It would be ethically appropriate to invite members of the judiciary to a holiday party where the monetary value is minimal, holiday parties are customary, and the party will be hosted by the court bench/bar committee and those attorneys who regularly appear before the judges, not one person or one law firm. **RI Eth. Op. 92-90 (1992)**.

The Rhode Island Supreme Court has listed factors to be considered in determining whether a violation of [RI Rule 3.5\(a\)](#) has occurred:

Whether the attorney involved had an opportunity to receive a favor from a judge;

Whether the donor appeared before the judge, and if so, how frequently;

Whether a reasonable inference can be drawn that the attorney expected or hoped for favors;

Whether there was a particular relationship between the attorney and the judge that it would appear the gift was a transaction between friends;

Whether the facts lead to a reasonable inference that the attorney was not seeking to influence a matter then before or soon to come before the court;

Whether the attorney has a prior disciplinary record that would indicate lack of regard for the Rules of Ethics.

See *Lisi v. Several Attorneys*, 596 A.2d 313 (R.I. 1991).

In providing legal services to judges a law firm should determine its fees on the same basis as for all other clients. **RI Eth. Op. 92-14 (1992).**

3.5:220 Improperly Influencing a Juror

There is no authority in Rhode Island on this topic.

3.5:300 Improper Ex Parte Communication

- ◆ Primary Rhode Island References: [RI Rule 3.5\(b\)](#)
- ◆ Background References: [ABA Model Rule 3.5\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:801, 61:903, ALI-LGL ◆ 112, Wolfram ◆ 11.3.3

There is no authority in Rhode Island on this topic.

3.5:400 Intentional Disruption of a Tribunal

- ◆ Primary Rhode Island References: [RI Rule 3.5\(c\)](#)
- ◆ Background References: [ABA Model Rule 3.5\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:901, ALI-LGL ◆ 105, Wolfram ◆ 12.1.3

When defense counsel filed a motion to disqualify the judge from the case based in part on a false and misleading affidavit and on other allegations that were unsupported, they violated the Rhode Island Rules of Professional Conduct causing their pro hac vice status to be revoked. **Obert v. Republic Western Ins. Co., 264 F.Supp.2d 106 (R.I. 2003).**

Rule 3.6. Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment - Rule 3.6

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to the trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social

interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] No body of rules can simultaneously satisfy all interests of fair trial and all those of free expression. The formula in this Rule is based upon the ABA Model Code of Professional Responsibility and the ABA Standards Relating to Fair Trial and Free Press, as amended in 1978.

[3] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. [Rule 3.4\(c\)](#) requires compliance with such Rules.

3.6 Rule 3.6 Trial Publicity

[3.6:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 3.6](#)
- ◆ **Background References:** [ABA Model Rule 3.6](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

3.6:101 Model Rule Comparison

Although the Rhode Island Rule is substantially similar to the Federal Rule in terms of its intent to prohibit an attorney from making statements that he/she reasonably should know may prejudice a case, the Rhode Island Rule is far more detailed in explaining when such statements are likely to be prejudicial. Initially, the Rhode Island rule applies to all lawyers, whether or not they are involved in the particular case. The Model Rule, however, only applies to an attorney who is or has been involved in a particular case, and who then makes such an extra judicial statement about that case. In section (b) of the Rhode Island Rule, which is contained only in the Comment to the Model Rule, specific matters in which an extra judicial statement is likely to be prejudicial are stated. For example, the Rhode Island rule describes that statements about character or credibility of witnesses, or statements regarding the existence of confessions in a criminal case, are deemed likely to be prejudicial to the matter. That portion of the Rhode Island rule relating to permissible statements is substantially identical to the Model Rule, with the exception that the RI rules contains no provision for responding to adverse publicity. The Comment to the RI Rule echoes the spirit of the Model Rule, but the Model Rule specifies that it only applies to attorneys involved in the matter

because the likelihood of an attorney who is not involved actually prejudicing the matter is so small. Additionally, the Comment to the RI rule, unlike the Comment to the Model Rule, omits references to an attorney responding to adverse publicity.

3.6:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.6](#) and other jurisdictions.

[3.6:200](#) Improper Extrajudicial Statements

- ◆ Primary Rhode Island References: [RI Rule 3.6\(a\)](#)
- ◆ Background References: [ABA Model Rule 3.6\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:1001, ALI-LGL ◆
109, Wolfram ◆ 12.2

The purpose of [RI Rule 3.6](#) is to protect the integrity of the adjudicatory process by proscribing "out-of-court" public statements that threaten to influence the proceedings improperly. **RI Eth. Op. 92-29 (1992) (citing Hazard, The Law of Lawyering. ◆ 3.6:101.** RI Rule 3.6 precludes only "public statements by lawyers that have a '*substantial likelihood of materially prejudicing*' a proceeding. **RI Eth. Op. 92-29 (1992)** (emphasis in original) (citing **Hazard, ◆ 3.6:102.**)

[3.6:300](#) Permissible Statements

- ◆ Primary Rhode Island References: [RI Rule 3.6\(b\)](#)
- ◆ Background References: [ABA Model Rule 3.6\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 69:1001, ALI-LGL ◆
109, Wolfram ◆ 12.2

There is no authority in Rhode Island on this topic.

3.6:400 Responding to Adverse Publicity

- ◆ **Primary Rhode Island References:** [RI Rule 3.6\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 3.6\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:100I, ALI-LGL ◆
109, Wolfram ◆ 12.2

Rhode Island has not adopted a comparable provision for Responding to Adverse Publicity.

An attorney may, as a member of a public commission, participate in the Commission's legislatively mandated activities without violating [RI Rule 3.6](#) because: (1) the term "Statement" as used in the Rule does not encompass the asking of questions at a public hearing if such questions are not intended to constitute assertions; (2) RI Rule 3.6 does not preclude an attorney from attending hearings when testimony is being presented that may bear upon the culpability of persons who have been arrested; (3) the attorney may influence the Commission to satisfy its legislative mandate with the least possible improper influence on pending or probable court proceedings and should attempt to influence the Committee to do the same; and (4) RI Rule 3.6 would preclude the attorney from making statements outside the Commission's reports or as an individual member of the Commission that would have a substantial likelihood of materially prejudicing an adjudicative proceeding. **RI Eth. Op. 92-29 (1992)**.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work [substantial](#) hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's [firm](#) is likely to be called as a witness unless precluded from doing so by [Rule 1.7](#) or [Rule 1.9](#).

Comment - [Rule 3.7](#)

[1] Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client.

[2] The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the opposing party. Whether the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could [reasonably](#) foresee that the lawyer would probably be a witness. The principle of imputed disqualification stated in [Rule 1.10](#) has no application to this aspect of the problem.

[5] Whether the combination of roles involves an improper conflict of interest with respect to the client is determined by [Rule 1.7](#) or [Rule 1.9](#). For example, if there is likely to be [substantial](#) conflict between the testimony of the client and that of the lawyer or a member of the lawyer's [firm](#), the representation is improper. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. See [Comment to Rule 1.7](#). If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, [Rule 1.10](#) disqualifies the firm also.

3.7:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 3.7](#)
- ◆ Background References: [ABA Model Rule 3.7](#),
[Other Jurisdictions](#)
- ◆ Commentary:

3.7:101 Model Rule Comparison

Rhode Island has adopted [MR 3.7](#) including the comments thereto.

3.7:102 Model Code Comparison

Rhode Island has not adopted Model Code comparison. See [MR 3.7](#) and other jurisdictions.

3.7:200 Prohibition of Advocate as Witness

- ◆ Primary Rhode Island References: [RI Rule 3.7\(a\)](#)
- ◆ Background References: [ABA Model Rule 3.7\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:501, ALI-LGL ◆
108, Wolfram ◆ 7.5
- ◆ ST Commentary:

An attorney, employed by the Attorney General's office, may testify in a criminal proceeding as to the circumstances surrounding a defendant's confession. **See State v. Smith, 602 A.2d 931 (R.I. 1992)**. Although an attorney is subject to the rules prohibiting conflicts of interest, the court held that because the employee of the Attorney General's office was not an attorney of record on the case, [RI Rule 3.7](#) had not been violated. **See id.** Additionally, the court has held that a prosecuting attorney did not need to be disqualified under **RI Rule 3.7** in order to be called as a witness by the defendant, when the defendant had other access to the information he sought to obtain through the prosecutor's testimony. **See State v. Usenia, 599 A.2d 1026 (R.I. 1991)**. An attorney may not continue to represent a state agency if he/she will be a witness in that case. **RI Eth. Op. 2000-2 (2000)**.

An attorney who prepared real estate documents may not represent one of the two joint purchasers in a subsequent action between the purchasers regarding the purchase, because the attorney has knowledge which

pertains to a material issue and, therefore, may be called as a witness in this action. **RI Eth. Op. 91-31 (1991)**.

An attorney who may be called to testify about an heir's inconsistent statements, which were made to the attorney during his/her representation of the administrator of an estate, may continue to represent the administrator in pre-trial negotiations and may act in an advisory capacity during trial, but another attorney (including any attorney in the attorney's firm) must act as the administrator's advocate at trial. **RI Eth. Op. 94-61 (1994)**.

It is not improper for an attorney to represent him/herself at trial, despite the fact that the attorney is likely to be a witness. **RI Eth. Op. 94-75 (1994)**. The rationale of [RI Rule 3.7](#), to avoid the public perception that the attorney as a witness is distorting the truth to help a client or enhancing his/her own credibility by taking an oath as a witness, does not apply to this situation. **Id.** An attorney who witnessed a former client's will and healthcare power of attorney may assist the estate's lawyer with discovery and pre-trial motions regarding contest of the will so long as the attorney does not advocate at the trial. **RI Eth. Op. 95-40 (1995); RI Eth. Op. 95-44 (1995)**.

[3.7:300](#) An Affiliated Lawyer as Advocate (Imputed Disqualifications)

- ◆ **Primary Rhode Island References:** [RI Rule 3.7\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 3.7\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:501, ALI-LGL ◆
108, Wolfram ◆ 7.5, 7.6

Rhode Island had adopted [MR 3.7](#) including the comments thereto.

An attorney whose sole partner represented a client in arbitration and settlement negotiations may represent that client in a civil action regarding the settlement agreement, even though the attorney's partner will probably be called as a witness. **RI Eth. Op. 93-46 (1993)**.

An attorney may represent the executor or the estate in probate proceedings in which another lawyer in his/her firm is likely to be called as a witness. **RI Eth. Op. 97-11 (1997)**.

Where an attorney represented a seller in pending litigation relating to the purchase and sale of a business, the attorney may continue to represent the seller even though another attorney in his/her firm who represented the

seller at the closing will testify at the trial, provided that the testimony of the attorney is not adverse to the firm's client. **RI Eth. Op. 2002-05.**

An attorney may represent a real estate partnership, where one of the real estate partners is also the attorney's law partner, in an action against an insurance company because [RI Rule 3.7\(b\)](#) provides that "[a] lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless precluded from doing so by [RI Rule 1.7](#) or [RI Rule 1.9](#)." **RI Eth. Op. 89-8 (1989).**

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor [knows](#) is not supported by probable cause;
- (b) make [reasonable](#) efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information [known](#) to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under [Rule 3.6](#) or this Rule;

(f) not, without prior judicial approval, subpoena a lawyer for the purpose of compelling the lawyer to provide evidence concerning a person who is or was represented by the lawyer when such evidence was obtained as a result of the attorney–client relationship.

Comment - [Rule 3.8](#)

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also [Rule 3.3\(d\)](#), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of [Rule 8.4](#).

[2] Paragraph (c) does not apply to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] The prohibition in paragraph (f) was added by the committee because of the increasing incidence of grand jury and trial subpoenas directed towards attorneys. It is the [belief](#) of the committee that the requirements of prior judicial approval, which should be granted or denied after an opportunity for an adversarial proceeding, will serve as an appropriate safeguard to this practice and its threat to the confidentiality and integrity of the attorney-client relationship. The committee believes that a court called upon for prior judicial approval should be guided by appropriate standards. See e.g., *U.S. v. Klubock*, 832 F.2d 664 (1st Cir. 1987) (en banc). Accordingly, prior judicial approval should be withheld unless (1) the information sought is not protected from disclosure by an applicable privilege, (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution and is not merely peripheral, cumulative or speculative, (3) the subpoena lists the information sought with particularity, is directed at information regarding a limited subject matter in a [reasonably](#) limited period of time, and gives reasonable and timely notice, (4) the purpose of the subpoena is not to harass the attorney or his or her client, and (5) the prosecutor has unsuccessfully

made all reasonable attempts to obtain the information sought from non-attorney sources and there is no other feasible alternative to obtain the information. See "Report to the House of Delegates," ABA Criminal Justice Section, February 1988.

3.8 Rule 3.8 Special Responsibilities of a Prosecutor

3.8:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 3.8](#)
- ◆ **Background References:** [ABA Model Rule 3.8](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

3.8:101 Model Rule Comparison

[Rule 3.8](#) of the Rhode Island Rules of Professional Conduct parallels the [MR 3.8\(a-e\)](#). However, RI Rule 3.8(f) deviates from MR 3.8(f) because it does not give leave for a prosecutor to subpoena a lawyer based on his or her reasonable beliefs. Pursuant to MR 3.8(f), a prosecutor may subpoena a lawyer if, based on his or her reasonable belief, the information sought is not protected by the attorney-client privilege, the evidence sought is essential to the successful completion of an ongoing investigation, or there is no feasible alternative to gain the information. Instead, R.I. Rule 3.8(f) always requires prior judicial approval before a prosecutor may subpoena a lawyer for the purpose of compelling an attorney to produce evidence protected by the attorney-client privilege. Also, R.I. Rule 3.8 did not adopt [MR 3.8\(g\)](#), which protects the accused from heightened public condemnation, by only allowing a prosecutor to publish statements that are necessary to inform the public of the nature and extent of the criminal investigation. The [Comment to RI Rule 3.8](#) is identical to the Comment to [MR 3.8](#), except for the Comment pertaining to paragraph (f). The Comment regarding paragraph (f) points out that the committee because of the "increasing incidence of grand jury and trial subpoenas directed towards attorney" added it. The committee was confident that requiring prior judicial approval would provide an "appropriate safeguard" to protect attorney-client information.

3.8:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.8](#) and other jurisdictions.

3.8:200 The Decision to Charge

- ◆ **Primary Rhode Island References:** [RI Rule 3.8\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 3.8\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:601, ALI-LGL ◆ 97,
Wolfram ◆ 13.10

There is no authority in Rhode Island on this topic.

3.8:300 Efforts to Assure Accused's Right to Counsel

- ◆ **Primary Rhode Island References:**[RI Rule 3.8\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 3.8\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:601, ALI-LGL ◆ 97,
Wolfram ◆ 13.10

[RI Rule 3.8\(b\)](#) provides that a prosecutor shall make reasonable efforts to assure that the accused was advised of his right to counsel and the procedure for exercising that right. In addition, the prosecutor shall assure that the accused was given reasonable opportunity to obtain counsel.

There is no authority in Rhode Island on this topic.

3.8:400 Seeking Waivers of Rights from Unrepresented Defendants

- ◆ **Primary Rhode Island References:** [RI Rule 3.8\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 3.8\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 61:601, ALI-LGL ◆ 97,
Wolfram ◆ 13.10

A prosecutor shall not attempt to obtain a waiver of important pretrial rights, like a preliminary hearing, from an unrepresented accused under [RI Rule 3.8\(c\)](#).

There is no authority in Rhode Island on this topic.

3.8:500 Disclosing Evidence Favorable to the Accused

- ◆ Primary Rhode Island References: [RI Rule 3.8\(d\)](#)
- ◆ Background References: [ABA Model Rule 3.8\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:601, ALI-LGL ◆ 97,
Wolfram ◆ 13.10.5

[RI Rule 3.8\(d\)](#) provides that, except when relieved by protective order from the tribunal, the prosecutor shall make timely disclosure to the defense of all information that tends to negate the guilt of the accused or mitigate the offense.

The Rhode Island Supreme Court held in **State v. Binns, 732 A.2d 114 (R.I. 1999)** that when a prosecutor has no pretrial knowledge of certain testimony, and when the defendant has failed to make a minimal showing that evidence in his favor has been suppressed or withheld by the state, there will be no prosecutorial misconduct.

In **State v. Gasparico, 694 A.2d 1204 (R.I. 1997)**, the Rhode Island Supreme Court held that a prosecutor has an obligation to ensure that justice is done, while presenting the strongest possible case against the defendant.

3.8:600 Monitoring Extrajudicial Statements by Law Enforcement Officials

- ◆ Primary Rhode Island References: [RI Rule 3.8\(e\)](#)
- ◆ Background References: [ABA Model Rule 3.8\(e\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:601, ALI-LGL ◆ 97,
Wolfram ◆ 13.10

A prosecutor, pursuant to [RI Rule 3.8\(e\)](#), shall exercise reasonable care to prevent investigators, law enforcement officials, and others associated with the prosecution from making extra judicial statements that would be prohibited under [RI Rule 3.6](#).

There is no authority in Rhode Island on this topic.

3.8:700 Issuing a Subpoena to a Lawyer

- ◆ Primary Rhode Island References: [RI Rule 3.8\(f\)](#)
- ◆ Background References: [ABA Model Rule 3.8\(f\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 55:1301, ALI-LGL ◆
97

[RI Rule 3.8\(f\)](#) requires that a prosecutor obtain prior judicial approval if he or she wishes to subpoena a lawyer for the purpose of compelling the lawyer to divulge evidence that was gained as a result of the attorney-client privilege.

In re Almond, 603 A.2d 1087 (R.I. 1992), the Rhode Island Supreme Court denied a United States Attorney's petition to amend [RI Rule 3.8\(f\)](#). The Court held that the state and federal courts of Rhode Island are "in harmony as to the proper ethical conduct of attorneys practicing in their respective courts." **Id. at 1097.**

In re: Investigation of the Failure of RISDIC-Insured Financial Institutions, 605 A.2d 497 (R.I. 1992), the Rhode Island Supreme Court denied a writ of certiorari and found that a subpoena by the RISDIC Commission seeking the names and addresses of a lawyer's clients did not fall under [RI Rule 3.8\(f\)](#). Additionally, the court found that the RISDIC Commission was not a prosecutorial arm of the state and thus not hindered by the requirements of RI Rule 3.8(f).

3.8:800 Making Extrajudicial Statements

- ◆ Primary Rhode Island References: [RI Rule 3.8\(g\)](#)
- ◆ Background References: [ABA Model Rule 3.8\(g\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 61:601, ALI-LGL ◆
109, Wolfram ◆ 12.2.2

Rhode Island did not adopt [MR 3.8\(g\)](#) as part of its Rhode Island Rules of Professional Conduct.

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of [Rules 3.3\(a\) through \(c\)](#), [3.4\(a\) through \(c\)](#), and [3.5](#).

Comment - [Rule 3.9](#)

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by [Rules 4.1 through 4.4](#).

[3.8:900](#) Peremptory Strikes of Jurors

- ◆ Primary Rhode Island References: [RI Rule 3.8](#)
- ◆ Background References: [Other Jurisdictions](#)
- ◆ Commentary:

Rhode Island did not adopt this paragraph as part of its Rhode Island Rules of Professional Conduct.

3.9 Rule 3.9 Advocate in Nonadjudicative proceedings

3.9:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 3.9](#)
- ◆ Background References: [ABA Model Rule 3.9](#),
[Other Jurisdictions](#)
- ◆ Commentary:

3.9:101 Model Rule Comparison

Rhode Island has adopted [MR 3.9](#) and the Comments thereto.

3.9:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 3.9](#) and other jurisdictions.

3.9:200 Duties of Advocate in Nonadjudicative Proceedings

- ◆ Primary Rhode Island References: [RI Rule 3.9](#)
- ◆ Background References: [ABA Model Rule 3.9](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ , ALI-LGL ◆ 104,
Wolfram ◆ 13.8

There is no authority in Rhode Island on this topic.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

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 person when disclosure is necessary to avoid assisting a criminal or [fraudulent](#) act by a client, unless disclosure is prohibited by [Rule 1.6](#).

Comment - [Rule 4.1](#)

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer [knows](#) is false. Misrepresentations can also occur by failure to act.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute [fraud](#).

Fraud by Client

[3] Paragraph (b) recognizes that substantive law may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or [fraud](#). The requirement of disclosure created by this paragraph is, however, subject to the obligations created by [Rule 1.6](#)

4.1 Rule 4.1 Truthfulness in Statements to Others

[4.1:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 4.1](#)
- ◆ Background References: [ABA Model Rule 4.1](#), [Other Jurisdictions](#)
- ◆ Commentary:

4.1:101 Model Rule Comparison

Rhode Island has adopted [MR 4.1](#) including the Comments thereto.

4.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 4.1](#) and other jurisdictions.

[4.1:200](#) Truthfulness in Out-of-Court Statements

- ◆ **Primary Rhode Island References:** [RI Rule 4.1](#)
- ◆ **Background References:** [ABA Model Rule 4.1](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 71:201, ALI-LGL ◆ 98

An attorney has an obligation under [RI Rule 4.1](#) not to sign a client's name to an interrogatory, which he then has notarized by an employee in his office, regardless of the fact that the attorney may have been trying to meet a deadline to prevent the case from being dismissed. **See Lisi v. Resmini, 603 A.2d 321 (R.I. 1992).**

An attorney who presents a purportedly valid foreclosure deed to a client when the foreclosure proceedings have not been concluded violates [RI Rule 4.1](#), which prohibits false statements of material facts to others. **See In the Matter of Holland, 713 A.2d 227, 229 (R.I. 1998).**

An attorney may continue to negotiate with an insurance adjuster on behalf of a client who has sustained personal injuries in an accident, even if the statute of limitations has run, so long as he does not make a false statement of material fact or law in the course of the negotiations. **RI Eth. Op. 89-20 (1989).**

An attorney is not always required to report violations of [RI Rule 4.1](#), but rather must report only those violations which he feels are mandatory under [RI Rule 8.3](#). The [Comment to RI Rule 8.3](#) is instructive in making the determination. **RI Eth. Op. 90-4 (1990).**

A law firm may not allow the use of its letterhead by someone outside the firm because such use would constitute a material representation of fact "giving the impression that the writer of the letter is a member of the Rhode Island firm." **RI Eth. Op. 93-52 (1993).**

All representations concerning an attorney's fee agreement made to a court or third party must accurately represent the actual fee that the attorney will receive; any misrepresentation about the amount the attorney will actually receive is a violation of [RI Rule 4.1](#). **RI Eth. Op. 94-64 (1994).**

A lawyer's failure to disclose his client's death to the opposing side prior to accepting an offer of settlement is equivalent to making a false statement of material fact under [RI Rule 4.1\(a\)](#). **RI Eth. Op. 97-01 (1997)**.

[4.1:300](#) Disclosures to Avoid Assisting Client Fraud [see also [1.6:370](#)]

- ◆ **Primary Rhode Island References:** [RI Rule 4.1\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 4.1\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 71:201, ALI-LGL ◆◆ 66,
94, Wolfram ◆◆ 12.6, 13.3

If an attorney and his client know that the opposing party has overpaid an award on a judgment, and the attorney holds the excess in escrow, he is obligated under [RI Rule 4.1](#) to disclose to the opposing party that he is holding the funds. **RI Eth. Op. 93-81 (1993)**. Failure to do so would violate [RI Rule 4.1\(b\)](#)'s prohibition against failure to disclose a material fact necessary to avoid assisting a criminal or fraudulent act by a client, because the client's knowing retention of the overpaid amount would constitute larceny. **See id.**

Although [RI Rule 4.1](#) recognizes that a lawyer may be required to disclose false statements made by a client to a third party, this Rule is subject to the protection of [RI Rule 1.6](#), which precludes an attorney from disclosing information relating to the representation of a client (subject to exceptions). **RI Eth. Op. 92-17(1992), RI Eth. Op. 96-27 (1996)**.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer [knows](#) to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment - [Rule 4.2](#)

[1] This Rule does not prohibit communication with a party, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the

other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

[2] In the case of an organization, this Rule prohibits communications by a lawyer for another person or entity concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare [Rule 3.4\(f\)](#).

[3] This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

4.2 Rule 4.2 Communication with Person Represented by Counsel

[4.2:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 4.2](#)
- ◆ Background References: [ABA Model Rule 4.2](#), [Other Jurisdictions](#)
- ◆ Commentary:

4.2:101 Model Rule Comparison

[RI Rule 4.2](#) is identical to [MR 4.2](#), except that it substitutes the term "party" where "person" appears in MR 4.2. Rhode Island has adopted Comment [1] to MR 4.2, except that the Rhode Island Comment uses the term "party" in place of "represented person." Rhode Island has also adopted MR 4.2 Comment [4] but has changed the text slightly, referring to a "lawyer for one party" instead of the phrase "lawyer for another person or entity," used in the Comment to MR 4.2. Comments [2], [3], [5], and [6] to MR 4.2 have not been adopted by Rhode Island.

4.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 4.2](#) and other jurisdictions.

[4.2:200](#) Communication with a Represented Person

- ◆ **Primary Rhode Island References:** [RI Rule 4.2](#)
- ◆ **Background References:** [ABA Model Rule 4.2](#), [Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 71:301, ALI-LGL ◆ 99-103, Wolfram ◆ 11.6.2

Predecessor counsel may not communicate with a former client about his/her discharge by the client or file transfer without successor counsel's consent. **RI Eth. Op. 2002-04.**

Where a client retained other counsel to pursue a legal malpractice action against predecessor counsel, the attorney-client relationship had been terminated and predecessor counsel had no ethical obligation to continue to advise the client regarding the previous matter. Predecessor counsel would violate [Rule 4.2](#) if he/she communicated with the client about the previous matter without the malpractice attorney's consent. **RI Eth. Op. 2002-01.**

Direct contact with a Chapter 7 debtor by a creditor's attorney while counsel represents the debtor is ethically improper and may constitute a violation of [RI Rule 4.2](#). **See In Re Laurie, 183 B.R. 30, 33 (D.R.I. 1995).**

An attorney who makes repeated attempts to contact an opposing party's counsel and has no success because her mail is returned and she is unable to locate the attorney's phone number through the Rhode Island Bar Association or by other means, may properly send mail to the opposing party. **RI Eth. Op. 89-18 (1989).**

A lawyer who believes that his client was intentionally misled or defrauded by the opposing attorney through the opposing attorney's violation of [RI Rule 4.2](#) is obligated to report the RI Rule 4.2 violation to the disciplinary authorities pursuant to [RI Rule 8.3](#). **RI Eth. Op. 92-72 (1992).**

An attorney may communicate with a former client concerning that attorney's payment for services even though new counsel represents the client at the time of the communication. RI Eth. Op. 92-96(1993). The attorney is prohibited by [RI Rule 4.2](#) only from communication with the otherwise represented former-client in connection with the representation of a client or on behalf of a client. See id.

RI Rule 4.2 does not govern the propriety of a criminal defense attorney contacting a victim regarding a pending criminal matter; the prosecutor's client in a criminal matter is the state, not the victim. RI Eth. Op. 93-32 (1993). If the victim is not represented by counsel, the defense attorney's contact with the victim is governed by **RI Rule 4.3**. See id.

4.2:210 "Represented Person" (Contact with an Agent or Employee of a Represented Entity)

An attorney may not advise a salesperson working for an insurance company that she may be more personally liable for her actions than the insurance company's lawyer has made her aware where the insurance company is an opposing party. RI Eth. Op. 90-8 (1990). Even if the attorney feels that the salesperson ought to be made aware of her rights, he may not contact her to explain these rights in the absence of the insurance company's lawyer's consent. See id. If the attorney feels that the insurance company's counsel has engaged in professional misconduct, his remedy is to report that counsel to the disciplinary authorities pursuant to **RI Rule 8.3**, rather than to attempt to help the opposing party's sales agent himself in violation of **RI Rule 4.2**. See id.

RI Rule 4.2 does not prohibit an attorney or his agent from conducting ex parte interviews of former employees of an adverse corporate party. RI Eth. Op. 91-74 (1991). RI Rule 4.2 was not meant to cover a corporate party's former employees, but rather applies only when a "party" witness is involved. See id.

An attorney may not contact a represented opposing party's insurance carrier, but rather must communicate exclusively through opposing counsel. RI Eth. Op. 96-14 (1996). The **comment to RI Rule 4.2** prohibits contact with any person represented by counsel concerning the matter in question, whether or not that person is a party to a formal proceeding. See id. Thus, an attorney cannot contact the opposing party's insurance carrier without the consent of the opposing counsel. See id.

It is a violation of **RI Rule 4.2** for an attorney to communicate with the opposing side's insurance company, even if numerous attempts to settle claims have been made with opposing counsel with no response and the attorney believed that the offers were not conveyed to the opposing side. RI Eth. Op. 92-11(1992). In such a case, the proper recourse is to file a complaint with the Disciplinary Counsel against the opposing attorney pursuant to **RI Rule 8.3**. See id. See also RI Eth. Op. 93-33 (1993); RI Eth. Op. 94-81 (1995).

4.2:220 Communications "Authorized by Law"- Law Enforcement Activities

There is no authority in Rhode Island on this topic.

4.2:230 Communications "Authorized by Law"- Other

The Commission for Human Rights' directive, which requires attorneys to send copies of position papers to complainants who are known to be represented by counsel, may fall within the exception to [RI Rule 4.2](#) which allows direct communication with a person who is represented by counsel when authorized by law. RI Eth. Op. 97-14(1997). However, an attorney may not send a represented party extraneous material, such as an adversarial letter to a compliance officer, which are not properly part of the pleadings and thus not authorized by the Commission for Human Rights or permitted by RI Rule 4.2. Seeid.

4.2:240 Communication with a Represented Government Agency or Officer

There is no authority in Rhode Island on this topic.

4.2:250 Communication with a Confidential Agent of Non-Client

An attorney may not communicate with the in-house counsel of an opposing institutional party if the in-house counsel is not the opposing counsel of record in the matter even if the attorney wishes to contact the in-house counsel due to his belief that the opposing counsel of record has not been communicating various settlement offers to the client. RI Eth. Op. 94-81 (1995).

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably 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.

Comment - [Rule 4.3](#)

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

4.3 Rule 4.3 Dealing with Unrepresented Person

[4.3.100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 4.3](#)
- ◆ Background References: [ABA Model Rule 4.3](#), [Other Jurisdictions](#)
- ◆ Commentary:

4.3:101 Model Rule Comparison

Rhode Island has adopted [MR 4.3](#) including the Comments thereto.

4.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 4.3](#) and other jurisdictions.

[4.3:200](#) Dealing with Unrepresented Person

- ◆ Primary Rhode Island References: [RI Rule 4.3](#)
- ◆ Background References: [ABA Model Rule 4.3](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:501, ALI-LGL ◆ 103, Wolfram ◆ 11.6.3

The Comment states that while representing a client, a lawyer should be wary of unrepresented persons inexperienced in legal matters since they may believe that a lawyer's loyalties do not lie elsewhere. In addition, no lawyer should give advice to an unrepresented person other than to advise whether s/he should obtain counsel.

[RI Rule 4.3](#) requires only that when dealing with a person who is not represented by counsel, the lawyer shall: (1) make no representation of disinterest; and (2) if the lawyer becomes aware that there is a

misunderstanding, then the lawyer shall make reasonable efforts to correct the misunderstanding. **RI Eth. Op. 91-74 (1991)**.

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment - [Rule 4.4](#)

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

4.4 Rule 4.4 Respect for Rights of Third Persons

[4.4:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 4.4](#)
- ◆ **Background References:** [ABA Model Rule 4.4](#), [Other Jurisdictions](#)
- ◆ **Commentary:**

4.4:101 Model Rule Comparison

Rhode Island has adopted [MR 4.4](#) including Comments thereto.

4.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 4.4](#) and other jurisdictions.

4.4:200 Disregard of Rights or Interests of Third Persons

- ◆ Primary Rhode Island References: [RI Rule 4.4](#)
- ◆ Background References: [ABA Model Rule 4.4](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 71:101, ALI-LGL ◆◆ 103, 106, 107, Wolfram ◆ 12.4.4

4.4:210 Cross-Examining a Truthful Witness; Fostering Falsity

The Comments to [MR 4.4](#) and [RI Rule 4.4](#) articulate that no lawyer will maliciously or vexatiously elicit evidence from third persons so as to violate the rights of those third persons. The Comment, however, fails to list examples of such rights, citing them to be too numerous.

There is no authority in Rhode Island on this topic.

4.4:220 Threatening Prosecution

Although not commented on in either [MR 4.4](#) or [RI Rule 4.4](#), [MR 8.4\(e\)](#) manifests that it is deemed misconduct if a lawyer conveys or implies that s/he has the power to improperly influence a government agency or official.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A [partner](#) in a [law firm](#), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make [reasonable](#) efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a [partner](#) or has comparable managerial authority in the [law firm](#) in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

Comment - [Rule 5.1](#)

[1] Paragraphs (a) and (b) refer to lawyers who have supervisory authority over the professional work of a [firm](#) or legal department of a government agency. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; lawyers having supervisory authority in the law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm.

[2] The measures required to fulfill the responsibility prescribed in paragraphs (a) and (b) can depend on the firm's structure and the nature of its practice. In a small [firm](#), informal supervision and occasional admonition ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior [partner](#) or special committee. See [Rule 5.2](#). Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and a lawyer having authority over the work of another may not assume that the subordinate lawyer will inevitably conform to the Rules.

[3] Paragraph (c)(1) expresses a general principle of responsibility for acts of another. See also [Rule 8.4\(a\)](#).

[4] Paragraph (c)(2) defines the duty of a lawyer having direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners of a private [firm](#) have at least indirect responsibility for all work being done by the firm, while a [partner](#) in charge of a particular matter ordinarily has direct authority over other firm lawyers engaged in the matter. Appropriate remedial action by a partner would depend on the immediacy of the partner's involvement and the seriousness of the misconduct. The supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor [knows](#) that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[5] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[6] Apart from this Rule and [Rule 8.4\(a\)](#), a lawyer does not have disciplinary liability for the conduct of a [partner](#), associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

5.1 Rule 5.1 Responsibilities of a Partner and Supervisory Lawyer

[5.1:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 5.1](#)
- ◆ Background References: [ABA Model Rule 5.1](#),
[Other Jurisdictions](#)
- ◆ Commentary:

5.1:101 Model Rule Comparison

[RI Rule 5.1](#), and comments thereto, are the same as the Model Rule and its comments.

5.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 5.1](#) and other jurisdictions.

[5.1:200](#) Duty of Partners to Monitor Compliance with Professional Rules

- ◆ Primary Rhode Island References: [RI Rule 5.1\(a\)](#)
- ◆ Background References: [ABA Model Rule 5.1\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆ 11,
Wolfram ◆ 16.2

An attorney who is a member of a legislatively appointed investigative committee is not required to supervise other members of that committee under [RI Rule 5.1](#) although other Rules may apply. **RI Eth. Op. 92-29 (1992)**.

5.1:300 Monitoring Duty of Supervisory of Lawyer

- ◆ Primary Rhode Island References: [RI Rule 5.1\(b\)](#)
- ◆ Background References: [ABA Model Rule 5.1\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆ 11,
Wolfram ◆ 16.2

This supervisory duty requires attorneys to supervise non-attorneys in their employ. **RI Eth. Op. 95-9 (1995)** (duty to supervise extends to paralegal's representations).

5.1:400 Failing to Rectify the Misconduct of a Subordinate Lawyer

- ◆ Primary Rhode Island References: [RI Rule 5.1\(c\)](#)
- ◆ Background References: [ABA Model Rule 5.1\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆ 5,
Wolfram ◆ 16.2

There is no authority in Rhode Island on this topic.

5.1:500 Vicarious Liability of Partners

- ◆ Primary Rhode Island References: [RI Rule 5.1](#)
- ◆ Background References: [ABA Model Rule 5.1](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆◆
8, 9

There is no authority in Rhode Island on this topic.

Rule 5.2. Responsibilities of a Subordinate Lawyer

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

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

Comment - [Rule 5.2](#)

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can [reasonably](#) be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under [Rule 1.7](#), the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

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

(a) a [partner](#), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a [law firm](#) shall make [reasonable](#) efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make [reasonable](#) efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a [partner](#) or has comparable managerial authority in the [law firm](#) in which the person is employed, or has direct supervisory authority over the person, and [knows](#) of the conduct at a time when its consequences can be avoided or mitigated but fails to take [reasonable](#) remedial action.

Comment - [Rule 5.3](#)

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

5.3 Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

[5.3:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 5.3](#)
- ◆ **Background References:** [ABA Model Rule 5.3](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

5.3:101 Model Rule Comparison

Rhode Island has adopted [MR 5.3](#) including the Comments thereto.

5.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code Comparison. See [MR 5.3](#) and other jurisdictions.

5.3:200 Duty to Establish Safeguards

- ◆ Primary Rhode Island References: [RI Rule 5.3\(a\)](#)
- ◆ Background References: [ABA Model Rule 5.3\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆◆
4, 5, Wolfram ◆ 16.3

An attorney serving as an officer, director, or member of a non-profit corporation to render consulting services to local artists on legal, financial, and tax issues must take precautionary measures so as not to assist non-lawyers in the unauthorized practice of law. **RI Eth. Op. 93-25 (1993)**. See Provisional Order No. 18 following [RI Rule 5.5](#).

5.3:300 Duty to Control Nonlawyer Assistants

- ◆ Primary Rhode Island References: [RI Rule 5.3\(b\)](#)
- ◆ Background References: [ABA Model Rule 5.3\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 21:8601, ALI-LGL ◆◆
4, 5, Wolfram ◆ 16.3

See [Provisional Order No. 18](#) following [RI Rule 5.5](#).

5.3:400 Responsibility for Misconduct of Nonlawyer Assistants

- ◆ Primary Rhode Island References: [RI Rule 5.3\(c\)](#)
- ◆ Background References: [ABA Model Rule 5.3\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:201, ALI-LGL ◆◆
4, 5, Wolfram ◆ 16.3

An attorney's secretary's knowledge of confidential information about the wife of the attorney's client in a domestic action is imputed to the attorney, creating a conflict of interest under [RI Rule◆1.10](#). **RI Eth. Op. 93-11 (1993)**.

Provisional Order No. 18 - Use of Legal Assistants

(Effective February 1, 1983; revised October 31, 1990; revised April 15, 2007)

These guidelines shall apply to the use of legal assistants by members of the Rhode Island Bar Association. A legal assistant is one who under the supervision of a lawyer, shall apply knowledge of law and legal procedures in rendering direct assistance to lawyers, clients and courts; design, develop and modify procedures, technique, services and processes; prepare and interpret legal documents; detail procedures for practicing in certain fields of law; research, select, assess, compile and use information from the law library and other references; and analyze and handle procedural problems that involve independent decisions. More specifically, a legal assistant is one who engages in the functions set forth in Guideline 2. Nothing contained in these guidelines shall be construed as a determination of the competence of any person performing the functions of a legal assistant, or as conferring status upon any such person serving as a legal assistant.

Guidelines

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer or law firm may agree to share a statutory or tribunal–approved fee award, or a settlement in a matter eligible for such an award, with an organization that referred the matter to the lawyer or law firm if: (i) the organization is one that is not for profit; (ii) the organization is tax–exempt under federal law; (iii) the fee award or settlement is made in connection with a proceeding to advance one or more of the purposes by virtue of which the organization is tax–exempt; and (iv) the tribunal approves the fee–sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment - [Rule 5.4](#)

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

5.4 Rule 5.4 Professional Independence of a Lawyer

5.4:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 5.4](#)
- ◆ Background References: [ABA Model Rule 5.4](#),
[Other Jurisdictions](#)
- ◆ Commentary:

5.4:101 Model Rule Comparison

Rhode Island has adopted [MR 5.4\(a\)\(1\)](#), [5.4\(a\)\(3\)](#), and [5.4\(b\)](#) including the Comments thereto.

[Model Rule 5.4\(a\)\(2\)](#) provides that "a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of [Rule 1.17](#), pay to the estate or other representative of that lawyer the agreed-upon purchase price." In comparison, the [RI Rule 5.4\(a\)\(2\)](#) is more restrictive because the provision omits the "disabled, or disappeared" language. Therefore, the exception to fee sharing in this context is limited in Rhode Island to situations where a lawyer purchases the practice of a deceased lawyer.

5.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 5.4](#) and other jurisdictions.

5.4:200 Sharing Fees with a Nonlawyer

- ◆ Primary Rhode Island References: [RI Rule 5.4\(a\)](#)
- ◆ Background References: [ABA Model Rule 5.4\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 41:801, Wolfram ◆◆
16.4, 16.5

An attorney may not receive a fee for "document preparation" where such fee is occasionally paid directly to the lender the attorney represents. **RI Eth. Op. 90-90-23 (1990)**. If this is a legal service, the attorney is sharing fees with a non-lawyer for legal work; if it is not, the attorney is charging legal fees for non-legal services (in violation of the general requirement that an attorney's fee be reasonable).

When a tribunal must determine a fair and reasonable attorney fee, it does not violate the fee sharing prohibition of [RI Rule 5.4](#) to include fees for paralegal time for services rendered. **See *Schroff, Inc. v. Taylor-***

Peterson, 732 A.2d 719, 721 (R.I. 1999). Paralegal fees should not be eliminated from calculation of attorneys' fees, since other normal out-of-pocket expenditures are usually included in the award. **See id.**

A lawyer with an L.L.M may not state in an announcement that he/she is affiliated with an IRS agent who is a nonlawyer, because such an announcement suggests a partnership between the two, in violation of [RI Rule 5.4\(a\)](#) (a lawyer shall not share fees with a non-lawyer) and [RI Rule 5.4\(b\)](#) (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). **RI Eth. Op. 93-61 (1993).**

An attorney who pays a consulting company a fee to advertise her legal services runs afoul of [Rule 5.4\(a\)](#), which prohibits lawyers from sharing its legal fees with nonlawyers. **RI Eth. Op. 2000-4 (2000).**

It is ethically improper under [Rule 5.4\(a\)](#), which prohibits a lawyer from sharing fees with a nonlawyer, for a lawyer who undertakes pro bono representation in RI-ACLU sponsored litigation to pay a percentage of court-awarded attorneys' fees to the RI-ACLU. **RI Eth. Op. 2000-5 (2000).**

A law firm may pay a suspended attorney for services he/she performed before the suspension on a quantum meruit basis. **RI Eth. Op. 2001-07 (2001).**

The Rhode Island Supreme Court declined to enact amendments to [Rules 5.4\(a\)](#) and [7.2\(c\)](#) of the Rules of Professional Conduct which would permit lawyers to share court awarded counsel fees or a settlement amount derived from a case that would have been eligible for court-awarded counsel fees with nonprofit corporations and associations. The Court reasoned that the receipt by a nonprofit corporation of any part of a fee for legal services would constitute the illegal practice of law. **In re Rule Amendments to Rules 5.4(a) and 7.2(c) of the Rules of Professional Conduct, 815 A.2d 47 (R.I. 2002).**

[5.4:300](#) Forming a Partnership with Nonlawyers

- ◆ Primary Rhode Island References: [RI Rule 5.4\(b\)](#)
- ◆ Background References: [ABA Model Rule 5.4\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:401, Wolfram ◆◆
16.4, 16.5

An attorney may be employed by a non-profit corporation providing legal, financial, and tax services for artists but he/she must at all times maintain

the independent professional judgment addressed by [RI Rule 5.4](#). **RI Eth. Op. 93-25 (1993)**.

Although [RI Rule 5.4](#) does not prohibit an attorney who is a licensed real estate broker from operating a real estate business from his/her office, the lawyer may not "form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law". **RI Eth. Op. 93-59 (1993)**.

A lawyer with an L.L.M may not state in an announcement that he/she is affiliated with an IRS agent who is a non-lawyer, because such an announcement suggests a partnership between the two, in violation of [RI Rule 5.4\(a\)](#) (a lawyer shall not share fees with a non-lawyer) and [RI Rule 5.4\(b\)](#) (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). **RI Eth. Op. 93-61 (1993)**.

A lawyer is prohibited from conducting a law practice and also participating with a non-lawyer therapist in a business capacity to provide mediation services in family law matters. **RI Eth. Op. 95-1 (1995)**.

[5.4:400](#) Third Party Interference with a Lawyer's Professional Judgment

- ◆ Primary Rhode Island References: [RI Rule 5.4\(c\)](#)
- ◆ Background References: [ABA Model Rule 5.4\(c\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 51:901, Wolfram ◆ 8.8

[5.4:500](#) Nonlawyer Ownership in or Control of Profit-Making Legal Service Organization

- ◆ Primary Rhode Island References: [RI Rule 5.4\(d\)](#)
- ◆ Background References: [ABA Model Rule 5.4\(d\)](#), [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:401, Wolfram ◆ 16.4, 16.5

5.4:510 Group Legal Services

"Litigation Management Guidelines" established by insurance company to delineate and set parameters for attorney's representation of the company's insured interfere with the attorney's independent professional judgment, and therefore the attorney cannot ethically agree to abide by them. **RI Eth. Op. 99-18 (1999)**.

5.4:520 Nonprofit Organizations Delivering Legal Services

An attorney may be employed by a non-profit corporation providing legal, financial, and tax services for artists but he/she must at all times maintain the independent professional judgment addressed by [RI Rule 5.4](#). **RI Eth. Op. 93-25 (1993)**.

A lawyer with an L.L.M may not state in an announcement that he/she is affiliated with an IRS agent who is a nonlawyer, because such an announcement suggests a partnership between the two, in violation of [RI Rule 5.4\(a\)](#) (a lawyer shall not share fees with a non-lawyer) and [RI Rule 5.4\(b\)](#) (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). **RI Eth. Op. 93-61 (1993)**.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment - [Rule 5.5](#)

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. As used in this Rule, the term "jurisdiction" includes not only the separate states, but jurisdictions within a single state as well. Thus, a lawyer may be admitted to practice in the courts of a particular state, but, unless licensed to do so, same may not practice in the federal courts located in that state. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See [Rule 5.3](#). Likewise, it does not prohibit lawyers from providing

professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

5.5 Rule 5.5 Unauthorized Practice of Law

5.5:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 5.5](#)
- ◆ Background References: [ABA Model Rule 5.5](#),
[Other Jurisdictions](#)
- ◆ Commentary:

5.5:101 Model Rule Comparison

Rhode Island has adopted [MR 5.5](#) including the comments thereto.

5.5:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 5.5](#) and other jurisdictions.

5.5:200 Engaging in Unauthorized Practice

- ◆ Primary Rhode Island References: [RI Rule 5.5\(a\)](#)
- ◆ Background References: [ABA Model Rule 5.5\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 21:8001, ALI-LGL ◆◆
3, 4, Wolfram ◆ 15.1

An attorney must not practice law in a jurisdiction where it would constitute a violation of the legal profession. The comment to the Model Rule demonstrates the principle that limiting the practice of law to members of the bar serves to protect the public against hiring unqualified persons to engage in legal representation.

Both an attorney and a non-attorney principal, who jointly set up a placement agency for temporary employment of lawyers, are permitted to explain information contained in an ABA Formal Opinion regarding temporary lawyers. **RI Eth. Op. 90-34 (1990)**. Because any consideration paid to the advising attorney or non-attorney was paid for placement

services, not legal advice, their explanation of the ABA opinion does not fall within the definition of the practice of law. **See id.**

5.5:210 Practice of Law by Nonlawyers

Both an attorney and a non-attorney principal, who jointly set up a placement agency for temporary employment of lawyers, are permitted to explain information contained in an ABA Formal Opinion regarding temporary lawyers. **RI Eth. Op. 90-34 (1990)**. Because any consideration paid to the advising attorney or non-attorney was paid for placement services, not legal advice, their explanation of the ABA opinion does not fall within the definition of the practice of law. **See id.**

5.5:220 Admission and Residency Requirement for Out-of-State Lawyers

A lawyer must be admitted to practice in the one's own jurisdiction in order to practice law. The Comments relate how a license to practice in a "jurisdiction" encompasses not only separate states, but also federal courts located within that state.

5.5:230 Pro Hac Vice Admission [see also [8.1:240](#)]

Rhode Island has not adopted a comparable provision for Pro Hac Vice Admission within [RI Rule 5.5](#).

5.5:240 Performing Legal Services in Another Jurisdiction

Rhode Island has not adopted a comparable provision for Performing Legal Services in Another Jurisdiction within [RI Rule 5.5](#).

5.5:300 Assisting in the Unauthorized Practice of Law

- ◆ **Primary Rhode Island References:** [RI Rule 5.5\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 5.5\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 21:8201, ALI-LGL ◆ 4,
Wolfram ◆ 15.1

A lawyer must not assist a non-lawyer in activities that constitute the unauthorized practice of law. The Rhode Island Comments provide that a lawyer will not be considered as assisting in the unauthorized practice of law where the lawyer employs the services of paraprofessionals and delegates functions to them, provided that the lawyer supervises and retains responsibility over the delegated work. Similarly, the rule does not prohibit lawyers from rendering professional advice and instruction to non-lawyers whose employers incorporate knowledge of the field of law. For instance, claims adjusters, employees of financial or commercial

institutions, social workers, accountants and persons employed in government agencies, are entitled to receive legal knowledge without running afoul of the rule. Additionally, a lawyer is permitted to counsel non-lawyers who appear *pro se*.

An attorney may be responsible for the conduct of non-lawyer assistants employed by a non-profit corporation which provides legal, financial, and tax advice for a minimal fee and, if precautionary measures are not taken, could be construed to be assisting a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law. **RI Eth. Op. 93-25 (1993)**.

An attorney's assisting as a bank employee in the preparation of loan documents is not considered assisting in the unauthorized practice of law and does not violate the Rules of Professional Conduct. **RI Eth. Op. 94-57 (1994)**. Moreover, the Rhode Island Statutes that define the unauthorized practice of law specifically authorizes the preparation of loan documents by bank employees within its language. **See id.**

Generally, the panel ruled that the activities of the State X collection agency affiliated with a Rhode Island law firm, including sending letters on the law firm's stationary, would constitute the practice of law and accordingly would be subject to State X's laws, regulations, and rules regarding practice. **RI Eth. Op. 93.52 (1993)**. Also, The Panel found that the proposed arrangement would be in violation of [RI Rule 5.5](#) because a lawyer shall not assist a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law. **See id.**

It would be proper for a law firm's opinion letter and bill to a client company, regarding claims submitted to the client by its customer, to be drafted on the firm's stationary where the firm had no financial interest in the client company. **RI Eth. Op. 89-2 (1989)**. It also would be proper for the firm's opinion, in memo form, to be on the client company's own stationary, but the bill to the client must be prepared on the firm's own stationary. **See id.** It is proper for the client to incorporate the legal opinion from the firm into its own correspondence with the customer. **See id.** Finally, the law firm may send a legal opinion directly to the customer of the client company, concerning a claim they submitted to the client company. **See id.**

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment - [Rule 5.6](#)

[1] An agreement restricting the right of [partners](#) or associates to practice after leaving a [firm](#) not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

5.6 Rule 5.6 Restrictions on Right to Practice

[5.6:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 5.6](#)
- ◆ Background References: [ABA Model Rule 5.6](#),
[Other Jurisdictions](#)
- ◆ Commentary:

5.6:101 Model Rule Comparison

Rhode Island has adopted [MR 5.6](#), including the comments thereto.

5.6:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 5.6](#) and other jurisdictions.

5.6:200 Restrictions on Lawyers Leaving a Firm

- ◆ **Primary Rhode Island References:** [RI Rule 5.6\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 5.6\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:1201 ALI-LGL ◆ 9

This comment states the prohibition against an agreement restricting the right of partners or associates to practice after leaving a firm. This practice not only limits the attorney's professional autonomy, but also the freedom of clients to choose a lawyer. The exception here is for restrictions that are incident to provisions concerning retirement benefits for service with the firm.

There is no authority in Rhode Island on this topic.

5.6:300 Private Settlements Restricting a Lawyer's Future Practice

- ◆ **Primary Rhode Island References:** [RI Rule 5.6\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 5.6\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 51:1201, ALI-LGL ◆ 9,
Wolfram ◆ 16.2.3

A lawyer must not be prohibited from agreeing to represent other persons in connection with settling a claim on behalf of a client. The restriction is not placed on the lawyer in relation to the terms of a sale of a law practice.

There is no authority in Rhode Island on this topic.

Rule 5.7. Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

- (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

5.7 Rule 5.7 Responsibilities Regarding Law-Related Services

5.7:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 5.7](#)
- ◆ Background References: [ABA Model Rule 5.7](#),
[Other Jurisdictions](#)
- ◆ Commentary:

5.7:101 Model Rule Comparison

Rhode Island has not adopted [MR 5.7](#).

5.7:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 5.7](#) and other jurisdictions.

5.7:200 Applicability of Ethics Rules to Ancillary Business Activities

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 5.7](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:2101

Rhode Island has not adopted [MR 5.7](#).

PUBLIC SERVICE

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 publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment - [Rule 6.1](#)

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This

Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

6.1 Rule 6.1 Pro Bono Public Service

6.1:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 6.1](#)
- ◆ **Background References:** [ABA Model Rule 6.1](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

6.1:101 Model Rule Comparison

[RI Rule 6.1](#) and [MR 6.1](#) are similar in spirit but there are also some significant differences between them. First, RI Rule 6.1 is substantially shorter than MR 6.1. Second, while RI Rule 6.1 holds that "[a] lawyer should render public interest legal service" it does not mandate any specific minimum number of pro bono hours. In contrast, MR 6.1 requires a minimum of fifty hours of pro bono service annually. Third, while MR 6.1(a) binds lawyers to perform "a substantial majority" of the fifty hours without any financial remuneration, RI Rule 6.1 allows for "no fee or reduced fee" for all pro bono services. Fourth, RI Rule 6.1 is not as specific in describing the types of persons or organizations who would benefit from the pro bono public services. The Comment section to RI Rule 6.1 is not as detailed as

the comment section to MR 6.1 that goes to great length in specifying how a lawyer may satisfy the pro bono public services.

6.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 6.1](#) and other Jurisdictions.

[6.1:200](#) Lawyer's Moral Obligation to Engage in Public Interest Legal Service

- ◆ **Primary Rhode Island References:** [RI Rule 6.1](#)
- ◆ **Background References:** [ABA Model Rule 6.1](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 91:6001, ALI-LGL ◆ ,
Wolfram ◆ 16.9

There is no authority in Rhode Island on this topic.

Rule 6.2. Accepting Appointments

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

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

Comment - [Rule 6.2](#)

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See [Rule 6.1](#). An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see [Rule 1.1](#), or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

6.2 Rule 6.2 Accepting Appointments

[6.2:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 6.2](#)
- ◆ Background References: [ABA Model Rule 6.2](#),
[Other Jurisdictions](#)
- ◆ Commentary:

6.2:101 Model Rule Comparison

Rhode Island has adopted [MR 6.2](#), including the Comments thereto.

6.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code Comparison. See [MR 6.2](#) and other jurisdictions.

[6.2:200](#) Duty to Accept Court Appointments Except for Good Cause

- ◆ Primary Rhode Island References: [RI Rule 6.2](#)
- ◆ Background References: [ABA Model Rule 6.2](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:6201, ALI-LGL ◆
14, Wolfram ◆ 16.9

A lawyer may decline an appointment to represent a person for good cause. Good cause may occur if: the lawyer is unable "to handle the matter competently" (see [RI Rule 1.1](#)) representation would result in an "improper conflict of interest," or "acceptance would be unreasonably burdensome" to the lawyer. An appointed attorney is " subject to the same limitations on the client-lawyer relationship" and is under "the same obligations to the client as retained counsel."

There is no authority in Rhode Island on this topic.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the [law firm](#) in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not [knowingly](#) participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under [Rule 1.7](#); or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment - [Rule 6.3](#)

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

6.3 Rule 6.3 Membership in Legal Services Organization

6.3:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 6.3](#)
- ◆ Background References: [ABA Model Rule 6.3](#),
[Other Jurisdictions](#)
- ◆ Commentary:

6.3:101 Model Rule Comparison

Rhode Island has adopted [MR 6.3](#), including the Comments thereto.

6.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 6.3](#) and other jurisdictions.

6.3:200 Conflicts of Interest of Lawyers Participating in Legal Service Organizations

- ◆ Primary Rhode Island References: [RI Rule 6.3](#)
- ◆ Background References: [ABA Model Rule 6.3](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:6401, ALI-LGL ◆
135, Wolfram ◆ 16.7.4

An attorney may serve as a "member, officer or director of [a] non-profit corporation within the confines of [RI Rule 6.3](#)," which pertains to conflicts between clients of the non-profit organization and other clients of the attorney. **RI Eth. Op. 93-25 (1993)**. An attorney is allowed to be retained by non-profit corporations from time to time but the attorney is subject to RI Rule 6.3 and [RI Rule 5.4](#). **See id.**

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer

[knows](#) that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment - [Rule 6.4](#)

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also [Rule 1.2\(b\)](#). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly [Rule 1.7](#). A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer [knows](#) a private client might be materially benefitted.

6.4 Rule 6.4 Law Reform Activities Affecting Client Interests

[6.4:100](#) Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 6.4](#)
- ◆ **Background References:** [ABA Model Rule 6.4](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

6.4:102 Model Rule Comparison

Rhode Island has adopted [MR 6.4](#) and the Comments thereto.

6.4:103 Model Code Comparison

There is no counterpart to this rule in the Code. Rhode Island has not adopted a Model Code comparison. See [MR 6.4](#) and Other Jurisdictions.

6.4:200 Conflicts of Interest of Lawyers Participating in Law Reform Organizations

- ◆ Primary Rhode Island References: [RI Rule 6.4](#)
- ◆ Background References: [ABA Model Rule 6.4](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 91:6401, ALI-LGL ◆ ,
Wolfram ◆ 13.8

There is no authority in Rhode Island on this topic.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

6.5 Rule 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

6.5:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References:
- ◆ Background References: [ABA Model Rule 6.5](#),
[Other Jurisdictions](#)
- ◆ Commentary:

[MR 6.5](#) was added in February 2002. The Reporter's explanation of the change reads as follows:

Rule 6.5 is a new Rule in response to the Commission's concern that a strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program. The paradigm is the legal-advice hotline or pro se clinic, the purpose of which is to provide short-term limited legal assistance to persons of limited means who otherwise would go unrepresented.

6.5:101 Model Rule Comparison

Rhode Island has not adopted the new model rule.

[6.5:200](#) Scope of Rule

- ◆ **Primary Rhode Island References:**
- ◆ **Background References:** [ABA Model Rule 6.5](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

Rhode Island has not adopted the new model rule.

[6.5:300](#) Special Conflict of Interest Rule

- ◆ **Primary Rhode Island References:**
- ◆ **Background References:** [ABA Model Rule 6.5](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

Rhode Island has not adopted the new model rule.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services

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 it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) contains any testimonial about, or endorsement of, the lawyer without identifying the fact that it is a testimonial or endorsement, and if payment for the testimonial or endorsement has been made, that fact must also be disclosed. If the testimonial or endorsement is not made by an actual client that fact must also be identified. If the testimonial or endorsement appears in a televised advertisement, the foregoing disclosures and identifications must appear continuously throughout the advertisement;
- (c) contains a dramatization or simulated description of the lawyer, [partners](#) or associates, offices or facilities, or services without identifying the fact that the description is a simulation or dramatization. If the dramatization or simulated description appears in a televised advertisement, the fact that it is a dramatization or simulated description must appear continuously throughout the advertisement.

(As amended by the court on October 30, 1997; April 15, 2007)

Comment - [Rule 7.1](#)

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by [Rule 7.2](#). Whatever means are used to make [known](#) a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

7.1 Rule 7.1 Communication's Concerning a Lawyer's Services

7.1:100 Comparative Analysis of Rhode Island Law

- ◆ Primary Rhode Island References: [RI Rule 7.1](#)
- ◆ Background References: [ABA Model Rule 7.1](#),
[Other Jurisdictions](#)
- ◆ Commentary:

7.1:101 Model Rule Comparison

Rhode Island [RI Rule 7.1](#) parallels [MR 7.1\(a-c\)](#) with two exceptions, the addition of subparagraphs (d) and (e). Subparagraph (d) prohibits testimonials about, or endorsements of, a lawyer that do not indicate that they are in fact testimonials or endorsements. Additionally, if the person(s) providing the testimonial or endorsement were compensated the communication must disclose this fact. Communications containing non-client testimonials or endorsements must disclose the fact that the person is not a client of the lawyer. This subparagraph requires that in the event any testimonial or endorsement is featured in a televised advertisement that the foregoing disclosures and identifications appear and remain throughout the advertisement.

7.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 7.1](#) and other jurisdictions.

7.1:200 Lawyer Advertising ◆ In General

- ◆ Primary Rhode Island References: [RI Rule 7.1](#)
- ◆ Background References: [ABA Model Rule 7.2](#),
[Other Jurisdictions](#)
- ◆ Commentary:

7.1:210 Prior Law and the Commercial Speech Doctrine

In **Bates v. State Bar of Arizona, 433 U.S. 350 (1977)** the United States Supreme Court held that since attorney advertising enjoys First Amendment protection the permissible extent of state regulation is extremely limited (total bans on lawyer advertising violated the United States Constitution). "For all practical purposes the only remaining

permissible limitation on advertising - as distinct from solicitation - is that it not be misleading." **I. G. Hazard, The Law of Lawyering, 508 (1989).**

7.1:220 False and Misleading Communications

The rule requires that a description of a law firm be accurate and truthful. The Rules of Professional Conduct expressly allow attorneys engaged in private practice to use trade names provided no connection is implied with public, governmental or charitable organizations and provided the trade name does not otherwise violate [RI Rule 7.1](#); **R.I. Eth. Op. 89-10 (1989)**. An attorney may not make use of a trade name in lieu of his / her real name for advertisement purposes only because the name misleads the public regarding the identity of the lawyer. **R.I. Eth. Op. 94-14 (1995)**.

A law firm must identify on business cards, correspondence and in newspaper announcements that a new associate, although a member of the bar of another state, is not a member of the Rhode Island Bar. **R.I. Eth. Op. 90-35 (1990)**. The new associate may not sign correspondence as an attorney without indicating that he is not admitted to the Rhode Island Bar. **See id.** Failure to so indicate would constitute a "misleading communication" within the meaning of [RI Rule 7.1](#). **See id.** A law firm may not publish a newspaper announcement that the new lawyer in question has been hired without indicating that he is not a member of the Rhode Island Bar. **See id.**

Rhode Island, pursuant to [RI Rule 7.2\(a\)](#), allows lawyers to advertise by various means including outdoor advertising signs; however, advertisements which are ambiguous and lack sufficient facts, such as a sign stating the name of the law firm and the statement "Benefits for the Injured", violate [RI Rule 7.1](#); **R.I. Eth. Op. 91-50 (1991)**.

A law firm may not add to the firm's letterhead the name of an individual who has passed the bar of another state but is ineligible to sit for the Rhode Island bar since he graduated from a non-accredited law school. **R.I. Eth. Op. 91-64 (1991)**. It would be improper to reference the individual as a member of the bar of another state since that would imply that he is eligible to become a lawyer in Rhode Island, which is not the case and would be a violation of [RI Rule 7.1](#), as misleading. **See id.**

A statement on letterhead that an attorney is certified by the National Board of Trial Advocacy is not misleading and therefore not in violation of [RI Rule 7.1](#). **See Peel v. Illinois, 496 U.S. 91 (1990)**. However, the statement of certification on the lawyer's letterhead implies a concentration, which, in turn, requires the disclaimer under [RI Rule 7.4](#). **R.I. Eth. Op. 93-39 (1993)**.

A suspended attorney's name must be removed from the law firm's name during the period of suspension. **RI Eth. Op. 2001-07 (2001).**

The Rhode Island Disciplinary Board's policy regarding the rules on office sharing states that disclaimers such as "not a partnership" or "association of independent attorneys" is not sufficient to inform the general public that the attorneys are not a law firm. **R.I. Eth. Op. 94-12 (1994).** The phrase "An Association of Independent Attorneys" creates the appearance of a law firm and is therefore subject to [RI Rule 1.10](#), "Imputed Disqualification." **See id.** A lawyer's letterhead must not be false or misleading. An attorney may use the designations "Attorney at Law (Retired)" and may indicate applicable academic degrees on his / her letterhead. **R.I. Eth. Op. 96-24 (1996).** The use of the word "retired" will serve to avoid any implication of the attorney's continued law practice. **See id.** It clearly indicates the attorney's status and indicates that the attorney is no longer authorized to practice law. **See id.** However, the designation "Member of the Rhode Island Bar Association" should not be used on the letterhead as it is misleading. **See id.** Even though such a designation may be truthful, it could be misleading to a lay person, as membership in the bar association implies that a lawyer is eligible to practice law. **See id.**

The rule does not prohibit a lawyer from indicating on a letterhead or by other forms of communication that the lawyer is also qualified in a different field such as medicine, psychiatry, accounting or marriage counseling. **R.I. Eth. Op. 93-73 (1993).**

The placement of a sign at an office building where that attorney does not practice law is misleading to the public because it conveys to the public that there is in fact an attorney holding office hours and conducting legal business at the location. **R.I. Eth. Op. 94-56 (1994).**

A law firm may only designate a lawyer as "of counsel" where there is a close, regular personal relationship between the lawyer and the firm. **R.I. Eth. Op. 94-65 (1994).** The rule regarding the use of the "of counsel" attorney's name in the firm's title is that if the lawyer is a named partner of the firm and is retiring to become "of counsel," the lawyer's name may be retained in the firm name. **See id.** This is not true if instead of retiring, the lawyer is withdrawing to practice in another state, to take other employment or is taking a leave of absence. **See id.** Under such circumstances, the departing "of counsel" attorney may not continue to have his / her name a part of the law firm's name because such inclusion connotes a partnership and is therefore misleading to the public. **See id.**

The use of an attorney's name for the purposes of solicitation by a non-lawyer violates the Rules of Professional Conduct. **R.I. Eth. Op. 95-47 (1995).**

7.1:230 Creating Unjustifiable Expectations

Any reference to a prior favorable verdict in an advertisement violates [RI Rule 7.1\(b\)](#) as being misleading notwithstanding the use of disclaimers. **R.I. Eth. Op. 93-102 (1993)**.

Despite the fact that an advertisement is paid for, and run by, a group of clients who are represented by a law firm, the proposed advertisement is subject to the Rules of Professional Conduct. **R.I. Eth. Op. 93-101 (1993)**. Such an advertisement that states that the attorney's law firm provides "top notch legal representation" is subjective and inherently misleading. **See id.**

7.1:240 Comparison with Other Lawyers

There is no authority in Rhode Island on this topic.

Rule 7.2. Advertising

(a) Subject to the requirements of [Rules 7.1](#) and [7.3](#), a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A copy of each print advertisement (other than yellow page advertisements), a recording of each radio advertisement, and a videotape of each television advertisement shall be sent to the Supreme Court Disciplinary Counsel prior to or within 48 hours of the first dissemination of such advertisement and another copy of each print advertisement (including yellow page advertisement), recording of each radio advertisement and videotape of each television advertisement shall be retained by the lawyer for three years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(d) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

(e) Lawyer advertising or written communications which indicate that no fee will be charged if no recovery, shall also state conspicuously if the client will be responsible for costs or expenses regardless of outcome.

(f) Any lawyer or [law firm](#) who advertises that his or her practice includes or concentrates in particular fields of law and then refers the majority of cases in those fields of law or of that type to another lawyer, law firm or group of lawyers shall clearly state the following disclaimer:

(1) "Most cases of this type are not handled by this firm, but are referred to other attorneys.", or if applicable:

(2) "While this firm maintains joint responsibility, most cases of this type are referred to other attorneys for principal responsibility."

(As amended by the court on December 2, 1992; December 16, 1997; April 15, 2007.)

Comment - [Rule 7.2](#)

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or [firm](#) name, address and telephone number; the kinds of services the

lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

[4] Neither this Rule nor [Rule 7.3](#) prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

[6] A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

7.2 Rule 7.2 Advertising

7.2:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 7.2](#)
- ◆ Background References: [ABA Model Rule 7.2](#),
[Other Jurisdictions](#)
- ◆ Commentary:

7.2:101 Model Rule Comparison

[MR 7.2\(a\)](#) permits lawyer advertising subject to the requirements of [MR 7.1](#), which prohibits false or misleading communications, and [MR 7.3](#), which restricts solicitation. [RI Rule 7.2\(a\)](#) subjects the same advertising services to MR 7.1 as does the Model Rule; however, the Rhode Island Rule subjects only "written or recorded communication" to MR 7.3.

[MR 7.2\(b\)](#) provides only that "a recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used. [RI Rule 7.2\(b\)](#) shares this requirement. Additionally, RI Rule 7.2(b) requires lawyers to send "a copy of each print advertisement (other than a yellow page advertisement), a recording of each radio advertisement, and a videotape of each television advertisement" to the Supreme Court Disciplinary Counsel before its first dissemination or within 48 hours of its first dissemination.

[RI Rule 7.2\(c\)](#) is substantially similar to [MR 7.2\(c\)](#) with the exception that RI Rule 7.2(c) omits the particular provision of MR 7.2(c)(3) that provides an exception for a lawyer to pay for a law practice in accordance with [MR 1.17](#).

[RI Rule 7.2\(d\)](#) is identical to [MR 7.2\(d\)](#).

[RI Rule 7.2\(e\)](#) has no counterpart in the Model Rules.

[RI Rule 7.2\(f\)](#) has no counterpart in the Model Rules.

7.2:102 Model Code Comparison

Rhode Island has not adopted a Model code comparison. See [MR 7.2](#) and other jurisdictions.

7.2:200 Permissible Forms of Lawyer Advertising

- ◆ Primary Rhode Island References: [RI Rule 7.2\(a\)](#)
- ◆ Background References: [ABA Model Rule 7.2\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81.201, Wolfram ◆
14.2

It is not improper for an attorney to publish in a newspaper of general circulation an advertisement which states the attorney's name, and the name, time and location of a course the attorney has been invited to conduct by a local municipality, provided they do not contain any false or misleading statements about the attorney or the attorney's services. R.I. Eth. Op. 91-12 (1991).

A law firm may provide legal seminars to clients and non-clients so long as neither the seminar brochures nor the presentation contain recommendations of employment for legal representation. R.I. Eth. Op. 92-55 (1992). The seminar and the brochures do not constitute solicitation even if the seminar's motivation is to generate future business. See id.

Lawyers may place a notice in the newspaper for the purpose of gathering information from the general public regarding a notorious case. R.I. Eth. Op. 93-38 (1993). Such a notice, when not intended to solicit business or clients, is not an advertisement. See id. If the intent was to solicit business, then the attorney would have to comply with the advertising rules. ([RI Rules 7.1, 7.5](#)).

An attorney advertisement containing the attorney's name, address, and telephone number on a wall mounted display which is equipped with a telephone for reaching the attorney's office directly by dialing a three digit number is permitted under the rules as long as the attorney follows the guidelines of [RI Rule 7.2](#). R.I. Eth. Op. 92-93 (1993). The [Comment to RI Rule 7.2](#) specifically provides that a lawyer's foreign language ability may be communicated in advertising legal services. R.I. Eth. Op 93-61 (1993).

7.2:300 Retaining Copy of Advertising Material

- ◆ Primary Rhode Island References: [RI Rule 7.2\(b\)](#)
- ◆ Background References: [ABA Model Rule 7.2\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81:401, Wolfram ◆
14.2

[RI Rule 7.2\(b\)](#) requires that a copy of the advertisement must be kept for two (2) years after its last dissemination along with a record of where and when it was last used. **R.I. Eth. Op 91-12.**

It is quite unreasonable to expect the staff to search out advertisements in each issue; thus the attorney must send a copy of each print advertisement to the Disciplinary Counsel in order to comply with the Rules of Professional Conduct. **R.I. Eth. Op 93-9 (1993).** If an advertisement addresses the practice of law in Rhode Island, expects to be read or received in Rhode Island, or intends to solicit or invite business in Rhode Island, a copy must be sent to the Disciplinary Counsel. If the advertisement is placed in an out of state medium, which is not intended to be read or received in Rhode Island and does not intend to solicit or invite business in Rhode Island then a copy of that advertisement does not have to be sent to the Disciplinary Counsel. **R.I. Eth. Op 93-21, Req. 354 (1993).**

7.2:400 Paying to Have Services Recommended

- ◆ Primary Rhode Island References: [RI Rule 7.2\(c\)](#)
- ◆ Background References: [ABA Model Rule 7.2\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81.301, Wolfram ◆
14.2

An attorney who pays a consulting company a fee to advertise her legal services runs afoul of [Rule 7.2\(c\)](#), which prohibits lawyers from giving "anything of value to a person for recommending the lawyer's services." **RI Eth. Op. 2000-4 (2000).**

The Rhode Island Supreme Court has refused to amend [Rules 7.2\(c\)](#) or [5.4\(a\)](#) to allow lawyers to share court-awarded counsel fees or settlement amounts with nonprofit corporations and associations that refer the case to the lawyer or law firm. **In re Rule Amendments to Rules 5.4(a) and 7.2(c) of the Rules of Professional Conduct, No. 2000-436-M.P., 2002 WL 649020 (R.I. Feb. 15, 2002).**

The Rules of Professional Conduct do not prohibit an existing client from recommending the professional services of a lawyer, provided the client is neither paid a fee nor given anything of value in exchange for such a referral. **R.I. Eth. Op 96-28 (1996)**. One exception is that an attorney may "pay the usual charges of a not-for-profit lawyer referral service or legal service organization." **R.I. Eth. Op. 95-3 (1995)**. The "usual charges" includes flat enrollment charges as well as percentage fees. **See id.** The usual charge of the percentage fee should be reasonable and should not affect the quality of legal services performed by the attorney. **See id.** The referral fee should not be so great as to infringe upon the lawyer's initiative and enthusiasm regarding the results achieved. **See id.**

An attorney may not properly give a former client a gift in appreciation for referring a client to the firm for whom the firm recovered a substantial sum of money, even though the former client did not make the referral with any expectation of recompense. **R.I. Eth. Op 89-5 (1989)**. **An attorney may not give a gift of appreciation to a physician who refers injured clients to him. RI Eth. Op. 2000-3 (2000).**

It is ethically improper under [Rule 7.2\(c\)](#), which prohibits a lawyer from giving anything of value to a person for recommending their services, for a lawyer who undertakes pro bono representation in RI-ACLU sponsored litigation to pay a percentage of court-awarded attorneys' fees to the RI-ACLU. RI Eth. Op. 2000-5 (2000).

The use of an attorney's name for the purposes of solicitation by a non-lawyer violates the Rules of Professional Conduct. R.I. Eth. Op. 95-47 (1995).

The Rhode Island Supreme Court declined to enact amendments to [Rules 5.4\(a\)](#) and [7.2\(c\)](#) of the Rules of Professional Conduct which would permit lawyers to share court awarded counsel fees or a settlement amount derived from a case that would have been eligible for court-awarded counsel fees with nonprofit corporations and associations. The Court reasoned that the receipt by a nonprofit corporation of any part of a fee for legal services would constitute the illegal practice of law. In re Rule Amendments to Rules 5.4(a) and 7.2(c) of the Rules of Professional Conduct, 815 A.2d 47 (R.I. 2002).

7.2:500 Identification of a Responsible Lawyer

- ◆ Primary Rhode Island References: [RI Rule 7.2\(d\)](#)
- ◆ Background References: [ABA Model Rule 7.2\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 81.201, 81:301,
Wolfram ◆ 14.2

[RI Rule 7.2\(d\)](#) clearly states that any advertisement by a lawyer must contain the name of an attorney responsible for the content of the ad. R.I. Eth. Op. 95-55 (1995).

Rule 7.3. Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) is a business organization, a not-for-profit organization, or governmental body and the lawyer seeks to provide services related to the organization.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress or harassment;
- (3) the communication contains a false, fraudulent, misleading or deceptive statement or claim or is improper under Rule 7.1;

(4) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(5) the communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1), (a)(2), or (a)(3).

(d) A copy of each such communication shall be sent to the Supreme Court Disciplinary Counsel and another copy shall be retained by the lawyer for three (3) years. If communications identical in content are sent to two (2) or more prospective clients, the lawyer may comply with this requirement by sending a single copy together with a list of the names and addresses of personal to whom the communication was sent to the Supreme Court Disciplinary Counsel as well as retaining the same information.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment - [Rule 7.3](#)

[1] There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client [known](#) to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services, and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

[2] The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising permitted under [Rule 7.2](#) offers an alternative means of

communicating necessary information to those who may be in need of legal services.

[3] Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and [law firms](#), without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

[4] The use of general advertising to transmit information from lawyer to prospective client, rather than direct private contact, will help to assure that the information flows cleanly as well as freely. Advertising is out in public view, thus subject to scrutiny by those who know the lawyer. This informal review is itself likely to help guard against statements and claims that might constitute false or misleading communications, in violation of [Rule 7.1](#). Direct, private communications from a lawyer to a prospective client are not subject to such third-person scrutiny and consequently are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] Rule 7.3 is patterned after Florida Rule of Professional Conduct 4-7.3, and was written in light of the Supreme Court's decision in *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466, 108 S. Ct. 1916, 100 L. Ed. 2d 475, 56 U.S.L.W. 4532 (1988). Because direct written communications seeking employment by specific prospective clients present less potential for abuse or overreaching than in-person solicitation, these communications are not prohibited, but are subject to [reasonable](#) restrictions designed to minimize or preclude abuse and overreaching, and to ensure lawyer accountability if such should occur. Thus, it is appropriate to limit the circumstances under which such direct contact is permitted; require the identification of such communication by nature; and require the keeping of a record of such direct contact for a reasonable period of time.

[6] Similarly, this Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insured, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or the lawyer's [firm](#) is willing to offer. This form of communication is not directed to a specific prospective client [known](#) to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under [Rule 7.2](#).

7.3:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 7.3](#)
- ◆ Background References: [ABA Model Rule 7.3](#),
[Other Jurisdictions](#)
- ◆ Commentary:

7.3:101 Model Rule Comparison

Rhode Island has adopted the essence of [MR 7.3](#) but has revised the form of the rule in a manner adopted by many states. The Comment makes particular reference to Florida Rule of Professional Conduct 4-7.3 which should be referred to for additional references. Although the RI Rule omits MR 7.3(d) allowing for an exception for prepaid or group legal service plans, the [Comment to RI Rule 7.3](#) incorporates that provision.

7.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 7.3](#) and other jurisdictions.

7.3:200 Prohibition of For-Profit In-Person Solicitation

- ◆ Primary Rhode Island References: [RI Rule 7.3\(a\)](#)
- ◆ Background References: [ABA Model Rule 7.3\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81:2001, Wolfram ◆
14.2.5

A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. [RI Rule 7.3\(a\)](#). A lawyer may attend a social gathering of local business people who are not his clients. The Rules do not presume to limit a lawyer's social and civic opportunities or to prohibit a lawyer from a truthful statement of his profession and his professional interest. **RI Eth. Op. 89-14 (1989)**. Announcements to members of the bar are not subject to the requirements and restrictions of [RI Rule 7.3](#). **RI Eth. Op. 89-17 (1989)**. See also **RI Eth. Op. 92-22 (1992)**. A letter advertising legal services sent to homeowners who the lawyer does not know is subject to [RI Rule 7.3\(b\)](#). See Section [7.3:300](#) *infra*. See also **RI Eth. Op. 90-18 (1990)**; **91-25(1991)**; **92-22 (1992)**; **92-57 (1992)**;

92-79 (1992); 93-22 (1993); 94-20 (1994); 94-30 (1994); 94-39 (1994); and 95-21 (1995).

An advertisement to be distributed to potential plaintiffs in a proposed class action lawsuit is subject to [RI Rule 7.3\(b\)](#). **RI Eth. Op. 91-61 (1991)**. See also **RI Eth. Op. 91-75 (1991)**. A letter from an attorney to individuals who the lawyer does not know for the purpose of advising clients and others of pending legislation and to encourage them to contact state legislatures does not violate the rules on advertisements. **RI Eth. Op. 92-53 (1992)**. The letters are to inform and not to solicit. See *id.* See also **RI Eth. Op. 96-21 (1996)**, where it was opined that telephone contacts to directors of senior centers to inquire about their interest in a lecture series on senior issues did not come within [RI Rule 7.3](#) because the communication was not directed to a specific prospective client. An attorney may promote a law related seminar by advertising in newspapers and by direct mail provided the brochures and materials received by the attendees did not promote the attorney's legal services. **RI Eth. Op. 93-30 (1993)**. The Panel opined that the seminar and brochures did not constitute solicitation even if the seminar's motivation was to generate future business. See *id.* On the other hand an unsolicited mailing or a brochure to prospective clients describing a law firm's services was held to constitute solicitation and be subject to RI Rule 7.3.

Letters to businesses with whom an attorney had no prior relationship inviting the businesses to meet with the attorney's representatives, free of charge, to discuss legal issues affecting the business was held to be a solicitation within [RI Rule 7.3](#) although the attorney alleged that the primary motivation of the letter was to obtain experience in public speaking and to inform businesses of critical legal issues. **RI Eth. Op. 95-45 (1995)**. The Panel opined that although the letter would not request employment from the business, the letter would be considered to be a prohibited solicitation. See *id.* A direct mailing to all businesses affected by a recent regulatory change to advise of the new requirements and to offer legal assistance with respect thereto was a solicitation under [RI Rule 7.3\(b\)](#). **RI Eth. Op. 96-03 (1996)**. This opinion further held that [RI Rule 7.3\(b\)\(2\)\(a\)](#), which prohibits a written communication concerning a specific matter to be sent to a person who the lawyer knows to be represented in that matter, did not apply with respect to other unrelated matters in which the person was not represented. See *id.* A notice in the newspaper for the purpose of gathering information regarding a pending matter is not a solicitation of business or clients and is not subject to RI Rule 7.3. **RI Eth. Op. 93-38 (1993)**.

Representing an incorporated non-profit association does not permit the attorney to contact its members without compliance with [RI Rule 7.3](#). **RI Eth. Op. 94-8 (1994)**. If a non-lawyer solicits business for an attorney with whom the non-lawyer is associated, the attorney, being responsible for the actions of non-lawyers associated with him/her, must see to it that there is compliance to RI Rule 7.3. **RI Eth. Op. 95-47 (1995)**. Similarly

see **RI Eth. Op. 96-01 (1996)** where RI Rule 7.3 was held to apply to prospective clients who were the employees of a client and who were informed by the employer that the attorney would offer a specific list of legal services to the employees for a pre-determined fee. On the other hand, the Panel also held that the employer may recommend the attorneys legal services to his/her employees independently of the attorney and if the employer undertakes doing so upon his/her own volition, RI Rule 7.3 does not apply. **See id.** The "professional relationship" exception in RI Rule 7.3 refers to the attorney-client relationship and not to some other business relationship. **RI Eth. Op. 96-26 (1996)**. Therefore, an attorney may not, in the course of selling insurance products, suggest to insurance customers the need for estate planning or other legal services. **See id. See also RI Eth. Op. 96-28 (1996); and RI Eth. Op. 96-31 (1996)**. An attorney may not telephone a pro se party to offer to represent the party at no fee. **RI Eth. Op. 98-03 (1998)**. The call would violate [RI Rule 7.3\(a\)](#). **See id.** An attorney on a panel of approved attorneys for a pre-paid legal service plan may not announce his/her affiliation with the plan by sending an introductory mass mailing to all plan members without complying with [RI Rule 7.3\(b\)](#). **RI Eth. Op. 98-15 (1998)**.

A telephone call or a letter from an attorney to a person who has been referred to the attorney pursuant to the Bar Association's Lawyer Referral Service was held not to be a solicitation. **RI Eth. Op. 98-16**. The prospective client has not, under these circumstances, initiated the contact for legal services through the Lawyer Referral Service. **See id.** Therefore, the attorney need not comply with the requirements and restrictions of [RI Rule 7.3](#). **See id.** In commenting on [RI Rule 7.3\(b\)](#) concerning the requirements when communicating in writing with a prospective client, the Panel, referring to various exceptions in RI Rule 7.3, not applicable to the instant opinion, stated: "The rule provides exceptions, not applicable here, for situations in which the attorney either has a pre-existing professional or familial relationship with the prospective client or *when the communication is part of an effort pro bono publico which will not result in pecuniary gain.*" **RI Eth. Op. 90-15 (1990)** (emphasis added). There is no support given for that statement and see **RI Eth. Op. 98-03**, supra, where an effort to offer pro bono services was held to be subject to RI Rule 7.3.

7.3:210 Solicitation by Non-Profit Public Interest Organization

Contacting a prospective client referred to an attorney through the Bar Association's Lawyers Referral Service is not a prohibited solicitation under [RI Rule 7.3](#). The established policies and procedures of the Bar Association's Lawyer Referral Service will be served to eliminate the potential for abuse and overreaching inherent in direct solicitation. The purpose of the Bar Association's Lawyer Referral Services is to make legal services readily available to the public. **RI Eth. Op. 98-16 (1998)**.

7.3:220 Solicitation of Firm Clients by a Departing Lawyer

There is no authority in Rhode Island on this topic.

7.3:300 Regulation of Written and Recorded Solicitation

- ◆ **Primary Rhode Island References:** [RI Rule 7.3\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 7.3\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 81:2001, Wolfram ◆
14.2.5

[RI Rule 7.3\(b\)](#) permits written communications with persons with whom the lawyer has had a family or prior professional relationship.

[RI Rule 7.3\(b\)\(1\)](#). Written communications to prospective clients with whom the lawyer has no family or prior professional relationship are subject to the following requirements: The communication shall be plainly marked "advertisement" on the face of the envelope and at the top of each page of the written communication in type one size larger than the largest type used in the written communication. In addition, a copy of the communication shall be sent to the Supreme Court Disciplinary Counsel and the lawyer shall retain another copy for 3 (three) years. If written communications identical in content are sent to 2 (two) or more prospective clients, the lawyer may comply by sending a single copy together with a list of the names and addresses of persons to whom the communication was sent to the Supreme Court Disciplinary Counsel. A lawyer is prohibited from sending a written communication to any prospective client for the purpose of obtaining professional employment if: (a) the lawyer knows that the person to whom the communication is directed is represented by a lawyer in the particular matter; (b) the lawyer knows the person does not wish to receive such communication; (c) the communication involves coercion, duress, fraud overreaching harassment, intimidation or undue influence; (d) the communication contains a false statement and/or is improper under [RI Rule 7.1](#); or (e) the lawyer knows the recipient of the communication is in a physical or mental state that makes it unlikely the person would exercise reasonable judgment in employing a lawyer. The RI Ethics Advisory Panel will not edit the form of written communications to determine compliance with [RI Rule 7.3\(b\)](#). **RI Eth. Op. 96-28 (1996) and Op. 90-15 (1990)**.

An attorney is in violation of [Rule 7.3\(b\)\(2\)](#), which prohibits a lawyer from sending a written solicitation to a person whom she reasonably believes to already have legal counsel in the matter, when that attorney sends a direct mail solicitations to employers that are represented by counsel on matters pending before the Rhode Island Commission for Human Rights or the EEOC. **RI Eth. Op. 2001-01 (2001)**.

7.3:400 Disclaimers for Written and Recorded Solicitation

- ◆ Primary Rhode Island References: [RI Rule 7.3\(c\)](#)
- ◆ Background References: [ABA Model Rule 7.3\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81:401, Wolfram ◆
14.2.5

[RI Rule 7.3\(b\)](#) does not require any disclaimers in written communications other than the requirement that the face of the envelope and each page of the written communication be plainly marked "advertisement" in type one size larger than the largest type used in the written communication. The only other "disclaimer" required by the RI Rules is [RI Rule 7.4](#), Communication of Fields of Practice. See Section [7.4:200](#), *infra*.

7.3:500 Solicitation by Prepaid and Group Legal Services Plan

- ◆ Primary Rhode Island References: [RI Rule 7.3\(d\)](#)
- ◆ Background References: [ABA Model Rule 7.3\(d\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81:2501, Wolfram ◆
16.5.5

There is no authority in Rhode Island on this topic. As noted above, the only opinion dealing with Prepaid and Group Legal Service Plans is **RI Eth. Op. 98-15 (1998)** which required compliance with [RI Rule 7.3\(b\)](#) when an approved attorney on the panel of approved attorneys wished to announce his/her affiliation with the Plan by sending an introductory and mass mailing to all Plan members. On the basis of other opinions on generally related matters reported in this section would appear that solicitation of respective plan members by the administrators of the Plan would not constitute a prohibited solicitation under [RI Rule 7.3](#). See the last paragraph of [Comment to RI Rule 7.3](#).

Rule 7.4. Communication of Fields of Practice and Specialization

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
- (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association;
 - (2) the name of the certifying organization is clearly identified in the communication; and
 - (3) the lawyer also includes, as part of the same communication, the disclaimer that: "The Rhode Island Supreme Court licenses all lawyers in the general practice of law. The court does not license or certify any lawyer as an expert or specialist in any particular field of practice."

(As amended by the court on December 16, 1997; April 15, 2007.)

Comment - [Rule 7.4](#)

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" is not permitted. Stating that the lawyer's practice is "limited to" or "concentrated in" particular fields is permitted only whether the same communication also states, either orally or in writing, that "Rhode Island does not have a procedure for certification or recognition of specialization by lawyers." These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer also communicates the fact that Rhode Island does not recognize or certify "specialists."

[2] Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

7.4 Rule 7.4 Communication of Fields of Practice

7.4:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 7.4](#)
- ◆ **Background References:** [ABA Model Rule 7.4](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

7.4:101 Model Rule Comparison

[RI Rule 7.4](#) captures the spirit of [MR 7.4](#) in that a lawyer may disclose to a client that he does or does not practice in a particular area of law. In addition, it prohibits a lawyer from indicating that he is a specialist except in the areas of patent and trademark law and admiralty. RI Rule 7.4 differs from MR 7.4 in that it requires that if an attorney puts forth that his or her practice is concentrated in a certain area of law, he or she must also indicate that "the Rhode Island Supreme Court licenses all lawyers in the general practice of law. The Court does not license or certify any lawyer as an expert or specialist in any field of practice."

7.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 7.4](#) and other jurisdictions.

7.4:200 Regulation of Claims of Certification and Specialization

- ◆ **Primary Rhode Island References:** [RI Rule 7.4](#)
- ◆ **Background References:** [ABA Model Rule 7.4](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆◆ 21:4001, 81:501,
Wolfram ◆ 14.2.4

[RI Rule 7.4](#) expressly permits an attorney to indicate the fact that she does or does not practice in particular fields of law, but also expressly prohibits a lawyer from implying that he or she is a specialist. **RI Eth. Op. 90-10 (1990)**. Therefore, in order to meet the requirements of RI Rule 7.4 an

attorney indicating the extent of his/her practice must include the disclaimer set forth in the rule to the effect that no procedure exists in Rhode Island for certification or recognition of specialization by lawyers. **Seeid. See also, e.g., RI Eth. Op. 90.18 (1990); RI Eth. Op. 90.25 (1990); RI Eth. Op. 90.30 (1990); RI Eth. Op. 92.72 (1992); RI Eth. Op. 93.103 (1993).**

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a [firm](#) name, letterhead or other professional designation that violates [Rule 7.1](#). A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of [Rule 7.1](#).

(b) A [law firm](#) with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office during any substantial period in which the lawyer is not actively and regularly practicing with the firm, and the name of a lawyer who is disbarred or suspended from the practice of law for a period of at least six (6) months, shall not be used in the name of a law firm or in communication on its behalf.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment - [Rule 7.5](#)

[1] A [firm](#) may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased [partner](#) is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact [partners](#), may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

7.5 Rule 7.5 Firm Names and Letterheads

[7.5:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 7.5](#)
- ◆ Background References: [ABA Model Rule 7.5](#),
[Other Jurisdictions](#)
- ◆ Commentary:

7.5:101 Model Rule Comparison

Rhode Island has adopted [MR 7.5](#), including the Comments thereto.

7.5:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 7.5](#) and other jurisdictions.

[7.5:200](#) Firm Names and Trade Names

- ◆ Primary Rhode Island References: [RI Rule 7.5\(a\)](#)
- ◆ Background References: [ABA Model Rule 7.5\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 81:3001, Wolfram ◆
14.2.4

When [RI Rule 7.5](#) was adopted, the Rhode Island Supreme Court did not seek to change Supreme Court Rule 41(h). **RI Eth. Op. 89-10 (1989)**. Supreme Court Rule 41(h) authorizes attorneys to practice law in the form of public professional service corporations, so long as the corporation is licensed as such and the name of one or more of its attorney-employees is used in the name of the corporation. **See id.** Additionally, the name shall end with the word "corporation" or "incorporated" or the abbreviation of either one. **See id.**

Use of firm business cards by a new associate who will be taking the Rhode Island Bar Exam in a few months, without indicating on such business cards

that he is not a member of the Rhode Island Bar, would violate [RI Rule 7.5\(a\)](#). **RI Eth. Op. 90.35 (1990)**.

Use of a trade name such as "The Woman's Law Center", that implies a connection with a charitable legal services organization is likely to be misleading to the public and is impermissible under [RI Rule 7.5\(a\)](#). **RI Eth. Op. 94.27 (1994)**. A trade name that includes a geographical term, such as "Springfield Legal Clinic", must include an express disclaimer indicating that it is not a public legal aid agency. **RI Eth. Op. 95.37 (1995)**.

A suspended attorney's name must be removed from the law firm's name during the period of suspension. **RI Eth. Op. 2001-07 (2001)**.

[7.5:300](#) Law Firms with Offices in More Than One Jurisdiction

- ◆ **Primary Rhode Island References:** [RI Rule 7.5\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 7.5\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 81:3001, Wolfram ◆
15.4

An out of state law firm may establish a firm in Rhode Island even though none of the partners of the out-of-state firm that are listed in the firm name are members of the Rhode Island Bar Association, so long as the firm follows the jurisdictional requirements of this Rule. **RI Eth. Op. 89-11 (1989)**.

It is permissible for a Rhode Island law firm, which is organized as a professional corporation to form a partnership with an out-of-state law firm, so long as the identification of lawyers complies with [RI Rule 7.5\(b\)](#). **RI Eth. Op. 91.14 (1991)**.

An attorney cannot use an out-of-state firm's name and practice under such with the designation "of counsel." **RI Eth. Op. 90-20 (1990)**. If that attorney was an associate or a partner of that firm such a practice of working individually in Rhode Island under the out-of-state firm's name would be permissible. **See id.**

7.5:400 Use of the Name of a Public Official

- ◆ **Primary Rhode Island References:** [RI Rule 7.5\(c\)](#)
- ◆ **Background References:** [ABA Model Rule 7.5\(c\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 81:3001, Wolfram ◆
14.2.4

There is no authority in Rhode Island on this topic.

7.5:500 Misleading Designation as Partnership, etc.

- ◆ **Primary Rhode Island References:** [RI Rule 7.5\(d\)](#)
- ◆ **Background References:** [ABA Model Rule 7.5\(d\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 81:3001, ALI-LGL ◆
58, Wolfram ◆ 14.2.4

Because it would tend to connote partnership, an attorney who withdraws as a partner in a firm but remains "of counsel" cannot continue to include his name in the firm name. **RI Eth. Op. 94-65 (1994)**.

To avoid the appearance of a partnership or other affiliation where none exists, individual attorneys who wish to share an office must have separate stationary, letterhead, business cards, phone numbers, pleading papers, files, bank accounts, and financial records. **RI Eth. Op. 90-16 (1990); RI Eth. Op. 94-12 (1994)**. Phones must be answered with either a single attorney's name alone or with a neutral salutation such as "Law Offices" which does not give rise to the appearance of an association. **RI Eth. Op. 90-16 1990**). Sharing a secretary and office expenses is permitted, however. **RI Eth. Op. 93-66 (1993)**. Also, placing all of the attorneys' names vertically in advertisements and on the office's sign that read "an association of independent attorneys" is permissible. **RI Eth. Op. 93-66 (1993)**.

Where independent attorneys share office space, maintaining separate insurance policies, bank accounts, and stationary so as not to confuse or mislead the public, one attorney is not disqualified under [RI Rule 1.10](#) from practicing before a municipal entity of the city in which the other attorney serves as a member of the city council. **RI Eth. Op. 92-33 (1992)**. The described office sharing is not a law firm and thus does not give rise to imputed disqualification. **See id.**

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

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

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

(As amended by the court on September 28, 1993; April 15, 2007.)

Comment - [Rule 8.1](#)

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to [knowingly](#) make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

8.1 Rule 8.1 Bar Admission and Disciplinary Matters

8.1:100 Comparative Analysis of Rhode Island Rule

- ◆ **Primary Rhode Island References:** [RI Rule 8.1](#)
- ◆ **Background References:** [ABA Model Rule 8.1](#),
[Other Jurisdictions](#)
- ◆ **Commentary:**

8.1:101 Model Rule Comparison

[RI Rule 8.1](#), while not following [MR 8.1](#) verbatim, is substantially similar to the Model Rule.

8.1:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 8.1](#) and other jurisdictions.

8.1:200 Bar Admission

- ◆ **Primary Rhode Island References:** [RI Rule 8.1](#)
- ◆ **Background References:** [ABA Model Rule 8.1](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆◆ 21:101, 10l:1, ALI-
LGL ◆ 2, Wolfram ◆◆ 15.2, 15.3

8.1:210 Bar Admission Agency

There is no authority in Rhode Island on this topic.

8.1:220 Bar Admission Requirements

[RI Rule 8.1\(a\)](#) dictates, "the duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers."

8.1:230 Admission on Motion

There is no authority in Rhode Island on this topic.

8.1:240 Admission Pro Hac Vice

There is no authority in Rhode Island on this topic.

8.1:300 False Statements of Material Fact in Connection with Admission or Discipline

- ◆ Primary Rhode Island References: [RI Rule 8.1\(a\)](#)
- ◆ Background References: [ABA Model Rule 8.1\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆◆ 21:301, 101:201,
Wolfram ◆ 15.3.1

[RI Rule 8.1\(a\)](#) provides that a lawyer in disciplinary matters or an applicant for admission to the bar is prohibited from knowingly making a false statement of material fact. **See *In re Press*, 627 A.2d 842 (R.I. 1993)** (holding that an applicant for the bar who knowingly made false statements in connection with admission to the bar and lack of candor with regard to testimony in front of the Committee on Character and Fitness warranted a 90-day suspension).

It constitutes professional misconduct for a lawyer in a disciplinary proceeding to fail to respond to a disciplinary complaint or knowingly to make a false statement of material fact in responding to such a complaint. **See *In re Mosca*, 686 A.2d 927 (R.I. 1996)**.

Where an attorney failed to exercise diligence by failing to provide his clients with documents, to communicate with them to resolve the matter, and to respond during disciplinary investigations, and when he had a history of receiving admonishments and reprimands, the proper disciplinary action was indefinite suspension. **In re Cozzolino, 774 A.2d 891 (R.I. 2001)**.

Where, *inter alia*, an attorney failed to respond to four additional pending petitions for disciplinary action and failed to maintain appropriate contact with health care provider treating him for depression and panic disorder, the proper disciplinary action was suspension until the attorney could prove to the court that he was capable of resuming the practice of law and attending to representing his clients. **In re MacLean, 774 A.2d 888 (R.I. 2001)**.

8.1:400 Duty to Volunteer Information to Correct a Misapprehension

- ◆ Primary Rhode Island References: [RI Rule 8.1\(b\)](#)
- ◆ Background References: [ABA Model Rule 8.1\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary:

Separate from a lawyer making false statements in connection with admission or discipline, it is an additional offense for a lawyer to "knowingly fail to respond to a lawful demand for information from an admissions, disciplinary or education authority" or to knowingly misrepresent or omit material facts in connection with a disciplinary matter regarding the lawyer's own conduct. **See Lisi v. Biafore, 615 A.2d 473 (R.I. 1992).** **See also In re Grochowski, 687 A.2d 77 (R.I. 1996)** (holding that failure to timely respond to requests from the disciplinary counsel violated [RI Rule 8.1\(b\)](#)).

There is no authority in Rhode Island on this topic.

8.1:410 Protecting Client Confidential Information

[RI Rule 8.1](#) does not require that an attorney disclose information that is otherwise protected. In addition, the comment to RI Rule 8.1 proscribes that "a lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship."

There is no authority in Rhode Island on this topic.

8.1:500 Application of Rule 8.1 to Reinstatement Proceedings

- ◆ Primary Rhode Island References: [RI Rule 8.1\(b\)](#)
- ◆ Background References: [ABA Model Rule 8.1\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary:

[The discussion of this topic has not yet been written.]

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer [knows](#) to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment - [Rule 8.2](#)

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

8.2 Rule 8.2 Judicial and Legal Officials

[8.2:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 8.2](#)
- ◆ Background References: [ABA Model Rule 8.2](#),
[Other Jurisdictions](#)
- ◆ Commentary:

8.2:101 Model Rule Comparison

Rhode Island has adopted [MR 8.2](#) including the Comments thereto.

8.2:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 8.2](#) and other jurisdictions.

[8.2:200](#) False Statements About Judges or Other Legal Officials

- ◆ **Primary Rhode Island References:** [RI Rule 8.2\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 8.2\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:601, ALI-LGL ◆
114, Wolfram ◆ 11.3.2

[RI Rule 8.2\(a\)](#) is identical to the [MR 8.2\(a\)](#). The comment provides that Lawyers are called upon to assess both the professional and personal fitness of those being considered for appointment to the bench or public legal office. Lawyers are obligated to be honest in expressing their opinions and assessments of judges or other legal officials because false statements can unfairly jeopardize public confidence in the judicial system.

There is no authority in Rhode Island on this topic.

[8.2:300](#) Lawyer Candidates for Judicial Office

- ◆ **Primary Rhode Island References:** [RI Rule 8.2\(b\)](#)
- ◆ **Background References:** [ABA Model Rule 8.2\(b\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:601, ALI-LGL ◆
114, Wolfram ◆ 17.2

The comment states that a lawyer seeking judicial office is bound by applicable limitations on political activity. Furthermore, as an officer of the court, lawyers are encouraged to defend judges and the courts in order to maintain the impartial and independent administration of justice.

There is no authority in Rhode Island on this topic.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a [substantial](#) question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a [substantial](#) question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by [Rule 1.6](#).

(d) This rule shall not apply to members of the Confidential Assistance Committee ("the Committee") of the Rhode Island Bar Association ("the Association") regarding information received in their capacity as Committee members, acting in good faith, unless it appears to the members that the attorney in question is failing to desist from the violation or is failing to cooperate with a program of assistance to which the attorney has agreed, or is engaged in the perpetration of [fraud](#) or embezzlement, or when disclosure is required to protect the public from [substantial](#) harm.

(e) Except as provided by the preceding subsection (d), no information received, gathered or maintained by the Committee, or by an employee of the Association in connection with the work of the Committee, may be disclosed to any person or be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject attorney, or by order of a court of competent jurisdiction. However, the Committee may refer any attorney to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee or an employee of the Association gives rise to reasonable suspicion of a direct threat to the health or safety of the subject attorney or other person, then the obligation of confidentiality set forth in this subsection (e) shall not apply, and the Committee member or Association employee may make such communications as are necessary for the purpose of avoiding or preventing the threat.

(f) Members of the Committee shall be immune from civil liability for actions taken in good faith in the course of performing their duties.

(As amended by the court on May 31, 1991; September 15, 1995; April 15, 2007.)

Comment - [Rule 8.3](#)

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they [know](#) of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of [Rule 1.6](#). However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "[substantial](#)" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

8.3 Rule 8.3 Reporting Professional Misconduct

[8.3:100](#) Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 8.3](#)
- ◆ Background References: [ABA Model Rule 8.3](#),
[Other Jurisdictions](#)
- ◆ Commentary:

8.3:101 Model Rule Comparison

Rhode Island has adopted the first three sections of [MR 8.3](#). However, it has expanded upon when the duty to report commences, as well as who is required to report a violation.

8.3:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 8.3](#) and other jurisdictions.

[8.3:200](#) Mandatory Duty to Report Serious Misconduct

- ◆ **Primary Rhode Island References:** [RI Rule 8.3\(a\)](#)
- ◆ **Background References:** [ABA Model Rule 8.3\(a\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:201, ALI-LGL ◆ 5,
Wolfram ◆ 12.10

Like the Model Rules, a lawyer who has knowledge that another lawyer has violated the rules of professional conduct is required to report that person. The commentary stresses the importance of the self-regulation of the legal profession to report disciplinary infractions. It further states that reporting a violation is crucial because although the reporter may view it as an isolated incident, it may in fact be one in a long history of misconduct. Furthermore, although a lawyer is obligated to report every violation, a measure of judgment is necessary to comply with the rule. Reports should be made to the bar disciplinary committee, unless another agency is more suitable.

[RI Rule 8.3](#) simply outlines the scope of mandatory reporting on one's fellow attorney; attorneys may report lesser infractions as they see fit. **RI Eth. Op. 90-4 (1990)**. If an attorney reasonably believes the conduct of another lawyer rises to **RI Rule 8.3**'s level of seriousness, he or she must report it. If he or she does not reasonably believe it rises to that level of seriousness, he or she is under no obligation to report the conduct. **See id.** **See also RI Eth. Op. 90-8 (1990)**.

A Rhode Island attorney who is also a member of another state's bar does not have a duty under [RI Rule 8.3](#) to report a violation of the other state's Code of Professional Conduct where that state's Code does not require mandatory reporting. **RI Eth. Op. 93-63 (1993)**.

8.3:300 Reporting the Serious Misconduct of a Judge

- ◆ Primary Rhode Island References: [RI Rule 8.3\(b\)](#)
- ◆ Background References: [ABA Model Rule 8.3\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:201, ALI-LGL ◆ 5,
Wolfram ◆ 12.10

A lawyer is obligated under [RI Rule 8.3](#) to report a judge to the proper authorities if that lawyer has knowledge that the judge has violated a rule of judicial conduct. As mentioned above, lawyers are under the same obligation to report infractions committed by judges.

8.3:400 Exception Protecting Confidential Information

- ◆ Primary Rhode Island References: [RI Rule 8.3\(c\)](#)
- ◆ Background References: [ABA Model Rule 8.3\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:201, ALI-LGL ◆◆
61-66, Wolfram ◆ 12.10

[RI Rule 8.3](#) does not require disclosure of information protected by [RI Rule 1.6](#), however lawyers are encouraged to urge consent to disclose where prosecution for the infraction would not seriously jeopardize the clients interests. **RI Eth. Op. 94-54 (1994), RI Eth. Op. 94-62 (1994)**.

A lawyer who is representing a lawyer charged with misconduct need not disclose information, because the relationship is governed by the attorney-client privilege. **In re Ethics Advisory Panel Opinion No. 92-1, 627 A.2d 317 (RI 1993)**. The Court will not limit the scope of the confidentiality rule in order to strengthen the rule governing the duty to report misconduct of other attorneys." **See id.** The Court also enumerated that "the duty of confidentiality prohibit[s] [the] inquiring attorney from reporting misconduct of another attorney without client's consent, where [the] inquiring attorney learned of the misconduct during the misrepresentation of a client." **See id.** Where one lawyer confesses his misconduct to another, the admission is not protected under [RI Rule 1.6](#) and therefore there is a duty to report the misconduct. **R.I. Eth. Op. 95-10 (1995)**.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, [knowingly](#) assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, [fraud](#), deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) [knowingly](#) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment - [Rule 8.4](#)

[1] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving [fraud](#) and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[2] A lawyer may refuse to comply with an obligation imposed by law upon a good faith [belief](#) that no valid obligation exists. The provisions of [Rule 1.2\(d\)](#) concerning a good faith challenge to the validity, scope, meaning or

application of the law apply to challenges of legal regulation of the practice of law.

[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

8.4 Rule 8.4 Misconduct

8.4:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 8.4](#)
- ◆ Background References: [ABA Model Rule 8.4](#),
[Other Jurisdictions](#)
- ◆ Commentary:

8.4:101 Model Rule Comparison

Rhode Island has adopted [MR 8.4](#), with the exception that the RI Rule expands upon the forms of discrimination that constitute conduct that is prejudicial to the administration of justice. [RI Rule 8.4](#) provides areas that constitute professional misconduct.

8.4:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 8.4](#) and other jurisdictions.

8.4:200 Violation of a Rule of Professional Conduct

- ◆ Primary Rhode Island References: [RI Rule 8.4\(a\)](#)
- ◆ Background References: [ABA Model Rule 8.4\(a\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:101, ALI-LGL ◆ 2,
Wolfram ◆ 3.3

A lawyer may not violate or attempt to violate the Rules of Professional Conduct. Additionally, a lawyer may not knowingly assist or induce a person to act in violation of the Rules. The commentary illustrates that offenses that constitute a violation of the Rules are those that involve moral turpitude; however, the acts must be connected to the practice of law. A "good-faith" exception is provided, allowing a lawyer to refuse compliance

with a legal obligation if he or she has a valid belief that no obligation exists.

Attorneys are bound by the Rules of Professional Conduct whether or not they are acting in professional capacity; thus, an attorney/investment advisor may not pay another attorney a referral fee from the proceeds of a commission received in the "investment advisor" capacity without violating [RI Rule 8.4\(a\)](#). **RI Eth. Op. 93-94 (1993)**.

8.4:300 Commission of a Crime

- ◆ Primary Rhode Island References: [RI Rule 8.4\(b\)](#)
- ◆ Background References: [ABA Model Rule 8.4\(b\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:301, ALI-LGL ◆ 8,
Wolfram ◆ 3.3.2

A lawyer may not commit a crime that impedes the lawyer's honesty, trustworthiness, or fitness as a lawyer in any regard. A lawyer need not be convicted of a crime in order to be charged with misconduct. **Carter v. Cole, 577 A.2d 669 (R.I. 1990)**. Reciprocal discipline applies if a lawyer has been subject to disciplinary action in a state other than Rhode Island. **See Carter, 577 A.2d at 671**, holding that a suspension from the state of Florida warranted identical suspension under the reciprocal discipline statute.

8.4:400 Dishonesty, Fraud, Deceit, and Misrepresentation

- ◆ Primary Rhode Island References: [RI Rule 8.4\(c\)](#)
- ◆ Background References: [ABA Model Rule 8.4\(c\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:401, ALI-LGL ◆ 2,
Wolfram ◆ 3.3.3

A lawyer may not participate in any conduct that involves dishonesty, fraud, deceit or misrepresentation.

False signing of clients' names and notarization on interrogatories is similar to perjury and warranted a one-year suspension from the practice of law. **Lisi v. Resmini, 603 A.2d 321 (R.I. 1992)**.

Delaying the forwarding of client funds to successor counsel and appropriating the funds for the attorney's own use warrants disbarment.

Lisi v. Hines, 610 A.2d 113 (R.I. 1992). See also In re Watt, 701 A.2d 319 (R.I. 1997) (converting and commingling of client funds supported a one-years suspension).

An attorney was disbarred after he had received a number of complaints with varying degrees of disciplinary action, thus evidencing the court's attempt to combat repeat offenders. **Lisi v. Biafore, 615 A.2d 473 (R.I. 1992).**

Knowingly making false statements of material fact on bar application and when testifying before the committee on character and fitness resulted in suspension for ninety days. **In re Press, 627 A.2d 842 (R.I. 1993).**

Settling a case without client consent after representing to opposing counsel that client had consented resulted in suspension for sixty days. **In re Nugent, 624 A.2d 291 (R.I. 1993).**

An attorney who left the scene of a fatal car accident without making a concentrated search effort for the victim was disbarred. **In re Souls, 669 A.2d 532 (R.I. 1996).**

Engaging in a sexual relationship with a client as well as certifying said client's false statements warranted a three-month suspension. **In re DiPippo, 678 A.2d 454 (R.I. 1996).**

An attorney was disbarred during a reciprocal disciplinary process after being convicted of 35 counts of bank fraud. **In re Concemi, 706 A.2d 1318 (R.I. 1998).**

Refusing to return retainer on the grounds that the remaining money was a minimum, nonrefundable fee, in contradiction to the written client fee agreement providing that the retainer would be used toward hourly charges, is a misrepresentation justifying public censure and the return of the disputed retainer. **In re Pearlman, 627 A.2d 314 (R.I. 1993).**

An attorney who intentionally lies to his or her client about the status of the client's claim violates his or her fiduciary duty of honesty to the client and frustrates the very purpose for which the attorney has been retained. **See In re Brousseau, 697 A.2d 1079 (R.I. 1997).**

Attorney's withdrawal of money as fees from ward's funds without the court's permission and failure to comply with court order directing attorney to reimburse excess fees to estate for which attorney was appointed guardian constituted conversion of funds in violation of [Rule 8.4\(c\)](#), which prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. **In the Matter of Krause, 737 A.2d 874 (R.I. 1999).**

The conversion of funds is "fraud" and "dishonesty" as proscribed by [Rule 8.4](#). **In Re Dipippo, 745 A.2d 736 (R.I. 2000).**

Attorneys acceptance of settlement offer against his client's expressed directive, failure to advise client of settlement, and a receipt of settlement monies, commingling of client and personal funds in same bank account, and failure to forward to client monies received on client's behalf for more than one year, while deceiving client as to status of case, violated [Rule 8.4\(c\)](#), which prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and warranted 90-day suspension from practice of law, in light of significant mitigating factors, including attorney's clean disciplinary record, cooperation, contrition, and repayment of client's funds in full before client filed disciplinary complaint. **In the Matter of A. Indeglia, 765 A.2d 444 (R.I. 2001).**

Where an attorney misled her client to believe that she filed a civil action on her client's behalf and was attempting to resolve the case, failed to respond to her client's inquiries, and delayed the return of her client's file and fees, the attorney violated [Rule 8.4\(c\)](#), and the proper disciplinary action was public censure. **In re Veiga, 783 A.2d 911 (R.I. 2001).**

When an attorney fails to exercise diligence by neglecting to pursue the legal matters of his clients, fails to keep his clients reasonably informed of the state of their legal matters, and fails to provide either an accounting or refund of unearned portions of fees to his clients when requested upon termination of his representation, he should be publicly censured. **In re Foster, 826 A.2d 94 (R.I. 2003).**

Attorney is disbarred for his wrongful conversion of client funds. While disbarment is only a presumptive sanction for a misappropriation of client funds, attorney here engaged in no mitigating activity that might otherwise rebut such a presumption. **In re Coningford, 815 A.2d 54 (R.I. 2003).**

Attorney is punished with a 60-day suspension for misappropriation of funds from his law firm. Factors that the Court considered included the attorney's cessation of misappropriating funds and commitment, later achieved, to make restitution before his partners discovered his misdeeds. **In re O'Leary, 818 A.2d 676 (R.I. 2003).**

When defense counsel filed a motion to disqualify the judge from the case based in part on a false and misleading affidavit and on other allegations that were unsupported, they violated the Rhode Island Rules of Professional Conduct causing their pro hac vice status to be revoked. **Obert v. Republic Western Ins. Co., 264 F.Supp.2d 106 (R.I. 2003).**

8.4:500 Conduct Prejudicial to the Administration of Justice

- ◆ **Primary Rhode Island References:** [RI Rule 8.4\(d\)](#)
- ◆ **Background References:** [ABA Model Rule 8.4\(d\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:501, ALI-LGL ◆ 2,
Wolfram ◆ 3.3.2

Hiring as a legal assistant to perform paralegal duties a lawyer who was suspended from the practice of law as a result of a felony conviction would violate a Provisional Order of the Supreme Court and therefore would violate [RI Rule 8.4\(d\)](#). **R.I. Eth. Op. 90-12 (1990)**.

Because an attorney is bound by applicable rules of professional conduct whether or not he or she is acting in a professional capacity, for an attorney to act as an administrator represented by counsel or as an unrepresented co-executor of an estate during his suspension from the practice of law would violate [RI Rule 8.4\(d\)](#). **R.I. Eth. Op. 90-22 (1990)**.

8.4:600 Implying Ability to Influence Public Officials

- ◆ **Primary Rhode Island References:** [RI Rule 8.4\(e\)](#)
- ◆ **Background References:** [ABA Model Rule 8.4\(e\)](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:701, ALI-LGL ◆
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An attorney who married the clerk of a judge before whom the attorney and his firm frequently appear does not violate [RI Rule 8.3\(e\)](#) where the clerk's duties are ministerial and the clerk does not have the ability to influence the judge on legal issues, so long as the attorney and the firm do not imply that they have the ability to improperly influence the judge. **R.I. Eth. Op. 92-78 (1992)**.

An attorney-wife, serving as a chief hearing officer, must take great caution to insulate and recuse herself from any situation where the attorney-husband, a private practitioner, is involved so as to avoid violating [RI Rules 1.8](#), (Conflict of Interest), [8.4\(e\)](#), and [8.4\(f\)](#). **R.I. Eth. Op. 92-56 (1992)**.

8.4:700 Assisting Judge or Official in Violation of Duty

- ◆ Primary Rhode Island References: [RI Rule 8.4\(f\)](#)
- ◆ Background References: [ABA Model Rule 8.4\(f\)](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ , ALI-LGL ◆ 113

It is ethically appropriate for an attorney to invite members of the judiciary to a holiday party; because the value is minimal, such parties are customary, and the party will be hosted by the bench/bar committee, and not one attorney or firm, the invitation does not violate canon 21 of Rhode Island Judicial Ethics and therefore does not violate [RI Rule 8.4\(f\)](#). **R.I. Eth. Op. 92-90 (1992)**. Making loans to a judge has been held to warrant disciplinary sanctions. **Lisi v. Several Attorneys, 596 A.2d 313 (R.I. 1991)** (Murray, J., Weisberger, J., dissenting) (enumerating the factors to be considered in determining the appropriate discipline for an ethical violation of making a loan to a judge).

An attorney-wife, serving as a chief hearing officer, must take great caution to insulate and recuse herself from any situation where the attorney-husband, a private practitioner, is involved so as to avoid violating [RI Rules 1.8](#), (Conflict of Interest), [8.4\(e\)](#), and [8.4\(f\)](#). **R.I. Eth. Op. 92-56 (1992)**.

8.4:800 Discrimination in the Practice of Law

- ◆ Primary Rhode Island References: [RI Rule 8.4](#)
- ◆ Background References: [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 1:801, 61:601

Rhode Island has not adopted a comparable provision for Discrimination in the Practice of Law.

8.4:900 Threatening Prosecution

- ◆ Primary Rhode Island References: [RI Rule 8.4](#)
- ◆ Background References: [Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 1:801, 61:601

Rhode Island has not adopted a comparable provision for Threatening Prosecution.

Rule 8.5. Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment - [Rule 8.5](#)

[1] In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is [substantial](#) and continuous, it may constitute practice of law in that jurisdiction. See [Rule 5.5](#).

[2] If the rules of professional conduct in the two jurisdictions impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal, where the general authority of the states to regulate the practice of

law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

8.5 Rule 8.5 Jurisdiction

8.5:100 Comparative Analysis of Rhode Island Rule

- ◆ Primary Rhode Island References: [RI Rule 8.5](#)
- ◆ Background References: [ABA Model Rule 8.5](#),
[Other Jurisdictions](#)
- ◆ Commentary:

8.5:101 Model Rule Comparison

[RI Rule 8.5](#) is substantially similar to [MR 8.5](#), with the exception that the Model Rule is more sweeping in nature. Although the language is more concise than that of the Model Rule, it encompasses the essential points for determining the governing jurisdiction.

8.5:102 Model Code Comparison

Rhode Island has not adopted a Model Code comparison. See [MR 8.5](#) and other jurisdictions.

8.5:200 Disciplinary Authority

- ◆ Primary Rhode Island References: [RI Rule 8.5](#)
- ◆ Background References: [ABA Model Rule 8.5](#),
[Other Jurisdictions](#)
- ◆ Commentary: ABA/BNA ◆ 101:2001, ALI-LGL ◆
5, Wolfram ◆ 3.2

A lawyer admitted to practice in the State of Rhode Island is subject to the disciplinary authority of Rhode Island although involved in the practice of law elsewhere. In order to constitute practice in a jurisdiction, it must be substantial and continuous.

There is no authority in Rhode Island on this topic.

8.5:300 Choice of Law

- ◆ **Primary Rhode Island References:** [RI Rule 8.5](#)
- ◆ **Background References:** [ABA Model Rule 8.5](#),
[Other Jurisdictions](#)
- ◆ **Commentary:** ABA/BNA ◆ 101:2101, ALI-LGL ◆
2, Wolfram ◆ 2.6.1

There is no authority in Rhode Island on this topic.