

PROFESSIONAL RESPONSIBILITY

I. General Matters (July 2012 Essay Priority = MED)

A. New York ~~Code~~ Rules of Professional Responsibility (Conduct (RPC) - a modified version of the ~~old ABA code~~)

~~Canons~~ - Broad statements of norms ABA Model Rules of Professional Conduct

= Almost all of the Rules of Professional Conduct are mandatory, not just aspirational.

B. General

1. Disciplinary Rules (DR's) - must rules (subject to discipline for a violation). - Complaints - complaints investigated by Departmental Disciplinary Committee. Filing a complaint against an attorney is privileged.
2. Penalties - degree of penalties: (a) Letter of education or caution; (b) Letter of admonition; (c) Public or Private Censure; (d) Suspension; or (e) Disbarment
3. Ethical considerations (EC's) - should rules (cannot be disciplined for a violation)

~~Complaints investigated by Departmental Disciplinary Committee. Filing a complaint against a lawyer is privileged.~~

~~Degree of penalties:~~

~~Letter of admonition~~

~~Public or Private Censure~~

~~Suspension~~

~~Disbarment~~

~~You~~ Admission of Attorneys - you can sit for the bar if you completed 1 yr law school and work in a law office ~~so you, to~~ aggregate 4 yrs experience.

NY can ~~refuse~~ decline to admit ~~you~~ if you refuse to take oath to uphold NY and Federal Constitution.

~~Reciprocity~~

~~The other state allows reciprocity~~

~~You practiced law for at least 5 of the last 7 years~~

4. Reciprocity - NY limits admission by motion to candidates from jurisdictions that reciprocate (the other state allows reciprocity). Attorney must have practiced law for at least 5 of the last 7 years in reciprocal state.
5. Application for Admission - You must truthfully disclose -
~~You~~ If giving reference as an attorney, you have an affirmative duty to report on bad character of an applicant.

a. Subject to discipline if you make a false statement of material fact about yourself or another applicant

b. Applies to applications for admission in other states.

c. Candidates for Bar admission must state clearly if relying on 5th Amendment in answering questions.

6. Unauthorized practice in another state:-

~~1.~~ a. You align with a local ~~lawyer~~ attorney

b. Ask to be admitted pro hac vice (for this one time only)

Multistate firms

C. ~~B.~~ Misconduct - ~~a lawyer or a law firm shall~~ Attorneys are prohibited from engaging in illegal, dishonest, fraudulent or deceptive conduct. Under the RPC, an attorney or law firm may not:

1. Violate ~~a DR (e.g. no contact rule - a lawyer cannot communicate with a represented party on the subject matter of representation) or attempt to violate the RPC, knowingly assist or induce another to do so, or do so through the acts of another;~~
2. ~~Circumvent a DR through actions of another (e.g. hire a non-lawyer to circumvent the no contact rule)~~
2. ~~3.~~ Engage in illegal conduct that adversely reflects on the ~~lawyer~~ attorney's honesty, trustworthiness, or fitness as ~~a lawyer (e.g. assist in perjury)~~ an attorney.

PROFESSIONAL RESPONSIBILITY – NEW YORK BAR EXAM ESSAY QUESTIONS

I. COMMUNICATIONS WITH OPPOSING PARTY

Exam: Feb 2011: Whether an attorney can communicate with a party the attorney knows is represented by a attorney.

II. COMPETENCE

Exam: July 2010: Whether the prosecution has an affirmative obligation to turn over exculpatory evidence to the defense.

III. FEES

Exam: Feb 2009: Whether an attorney who takes a case on an oral contingency fee is entitled to payment.

Exam: Feb 2008: Whether an attorney can charge contingency fees in negligent actions.

Exam: July 2005: Whether an attorney's refusal to return a non-refundable retainer is a violation of his ethical duties.

Exam: July 2003: Whether an attorney's contingency fee arrangement in a criminal case is a violation of his ethical duties and gives rise to ineffective assistance of counsel.

Exam: Feb 2002: Whether a contingency fee arrangement must be in writing.

Exam: July 2000: Whether a retainer agreement was improper.

IV. FEES-DOMESTIC RELATIONS

Exam: July 2006: Whether an attorney can secure a fee in a domestic relations matter with a mortgage on the client's property.

Exam: July 2001: Whether an attorney can secure a fee in a domestic relations matter with a mortgage on the client's property.

Exam: July 2000: Whether an oral retainer agreement is valid in a domestic relations matter.

V. INFORM CLIENT

Exam: Feb 2003: Whether an attorney has an ethical obligation to inform his client of settlement offers by the opposing party.

VI. PRIOR REPRESENTATION

Exam: July 2004: Whether an attorney acting as a mediator can represent one of the parties in a subsequent action.

VII. REFUSAL TO VIOLATE DISCIPLINARY RULES

Exam: July 2002: Whether a subordinate attorney must follow the order of a supervising attorney, even if it violates a disciplinary rule.

VIII. SIMULTANEOUS REPRESENTATION

Exam: July 2007: Whether an attorney can represent a client if it results in a conflict of interest.

Exam: Feb 2006: Whether an attorney may represent two separate defendants in a criminal case.

Exam: July 2004: Whether an attorney who is the executor of an estate may represent a party contesting the will.

Exam: Feb 2002: Whether an attorney who is the executor of an estate may represent the spouse of the decedent.

Exam: Feb 1997: Whether an attorney can undertake joint representation of a husband and wife in a separation agreement.

IX. SOLICITATION/REFERRAL FEES

Exam: Feb 2002: Whether the payment of a referral fee violates New York attorney ethical considerations.

I. QUESTION – R-1 (& DOMESTIC RELATIONS)

A. Whether an oral retainer agreement in matrimonial actions is valid

1. In matrimonial actions – must obtain a (i) signed, written retainer agreement, &
2. In domestic relations matters – must provide (ii) a statement of the client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement
3. Failure to abide by these rules results in an attorney's preclusion from collecting and recovering a legal fee for services rendered and not paid

B. Whether an attorney is entitled to retain the full amount of a paid retainer fee

1. However, where a retainer fee has already been paid, an attorney may deduct reasonable fees for services rendered and must return the balance

II. ~~I.~~ QUESTION – R-2 (& WILLS)

A. Whether a bequest made in a testamentary instrument to an *attorney draftsman* is valid

- ~~1. Lawyer~~Attorney should not suggest to client that a gift made to the ~~lawyer~~attorney for the ~~lawyer~~attorney's benefit – peculiarly susceptible to charge that he unduly influenced or overreached the client
- Beneficiary must show that he was a natural object of the decedent's bounty, such as relative or close friend
- Gift must be freely and willingly made*

III. ~~II.~~ QUESTION – R-3 (& WILLS)

A. Whether an attorney may accept employment by a prospective client whose interest present conflict of interest with a current client or with the attorney himself

- ~~1. Lawyer~~Attorney must not accept or continue employment if the exercise of his professional judgment on behalf of a client would be adversely affected by the employment or if it would be likely to involve the ~~lawyer~~attorney in representing differing interests
- ~~2. Lawyer~~Attorney must refuse employment when his professional judgment will reasonably be affected by his own financial, business, property, or personal interests
- BUT – may accept employment if
 - A disinterested ~~lawyer~~attorney would believe that the ~~lawyer~~attorney can competently represent the clients' interests &
 - Client consent after full disclosure of the potential conflict

B. Whether an attorney who drafts a will where he is named executor may receive both attorney's fees and an executor's commission

- If a will nominates the drafting attorney as a fiduciary – a disclosure statement must have been signed by testator acknowledging
 - any person, not just attorney, can be named executor
 - executors are entitled to statutory commissions
 - the attorney also will be entitled to attorney's fees for any legal services rendered to the estate
- IF NOT – only entitled to attorney's fees & only ½ of the statutory executor's commission

~~III. QUESTION – R-1 (& DOMESTIC RELATIONS)~~

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