

# **Battered Women's Legal Advocacy Project, Inc.**

## **Hiring and Working With an Attorney**

This technical assistance packet addresses the issue of how and when to hire and work with an attorney. It is meant to help identify circumstances where you should hire the services of an attorney. This packet gives an overview of conduct that may be considered attorney misconduct and the complaint process. It also includes the address and phone numbers for the Minnesota Office of Lawyers Professional Responsibility, and important rules from the Rules of Professional Conduct that explain proper attorney conduct.

Attachments include: Minnesota Rules of Professional Conduct 1.3, 1.4, 1.6, 1.15, 1.7, 1.8, 1.9, 3.3, 3.4, 4.1, and 8.4. Minnesota Rules on Lawyers Professional Responsibility 6. Minnesota Rules of Criminal Procedure 5.02 subs. 3. Compiled June 1997 with funding from The Bush Foundation and the McKnight Foundation.

Updated November 2005.

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## **Hiring and Working with an Attorney**

### **Should I get an attorney?**

*Choosing an attorney is perhaps the most important decision you will make. Going through any court process alone without an attorney can be very difficult. The law and the rules of court can be very complicated. You may already be dealing with upsetting facts that may make handling the issue even harder.*

Many times the advice and/or representation of an experienced attorney may make the difference between a good and bad outcome. Decisions made by the court can be permanent or very hard to change.

Even though hiring an attorney now might seem like more than you can afford, failing to get legal advice may mean you don't get the financial support you need and deserve.

There are circumstances under which you may *especially* need a lawyer if:

- Legal papers have been served on you
- An agency has taken (or has threatened to take) your children
- Confronting the abuser in the courtroom or otherwise is unsafe or intimidating
- The other side has a lawyer
- You or the abuser are immigrants or may have immigration-related problems or complications
- You may face eviction or lose your job because of the abuse
- You and the abuser live in separate states, or one of you lives on a reservation or in the military
- Your case involves property, financial issues, or child custody
- The legal issues involved are confusing
- You operate a business out of your home
- The legal matter is only one of the messes you have to deal with at this point in time and you need somebody to take it over
- Losing would drastically change your life

Note that even if you have a domestic abuse advocate, you should still consult an attorney, because attorneys and advocates serve very different roles. It is also a very good idea to have a domestic abuse advocate working with you and your lawyer.

Some people may be able to go ahead without an attorney in cases like Orders for Protection. But even if you think that you can handle the court hearing, discussing your case with an attorney may help you decide whether to hire an attorney or to represent yourself.

In some hearings, however, you may be better off representing yourself. For example, if you file a conciliation court claim to recover money from your abuser, it might not be worth the cost of hiring an attorney. Additionally, some courts do not want attorneys in conciliation court, “the people’s court,” and will not allow them to speak.

### **How do I find attorneys experienced and knowledgeable in domestic violence cases?**

#### **Best sources of information:**

- Your local domestic violence program may be able to refer you to attorneys who understand the issues faced by abuse victims and who have a history of doing a good job with other victims.
- You may contact the Minnesota Coalition for Battered Women, 1-800-289-6177, to find your local domestic violence program.
- Call women’s or social services programs like the Battered Women’s Legal Advocacy Project 1-800-313-2666, Chrysalis (612) 871-0118, or the YWCA Nationally: 1-800-992-2871, Minneapolis: (612) 332-0501, St. Paul: (651) 222-3741, Duluth: (218) 722-7425, or Mankato: (507) 345-4629.
- Contact employee assistance programs, your local legal services program, the Minnesota State Bar Association 1-800-882-6722, or Minnesota Women Lawyers (612) 338-3205.

#### **Other considerations:**

- Domestic violence is a very complex area of the law
- Lawyers who are good at one kind of law are not necessarily good at domestic abuse cases
- Most sources of attorney names are not pre-screened for experience in representing victims of domestic violence
- The Yellow Pages, most internet sites, and other advertising services often don't include information about which attorneys are knowledgeable in domestic violence

### **How can I find an attorney that I can afford?**

If you cannot afford a private attorney there are other resources that may be available to you. Your first step should be to contact the appropriate free legal services office.

If you need an attorney to represent you on a criminal matter, you can ask to have a public defender appointed to you. If you receive government benefits, you should qualify for a public defender. However; if you are involved in several cases that involve unrelated areas of law, you may need the assistance of two separate attorneys that specialize in each particular field. If you are unable to afford the services of two attorneys, you can return to the court and ask for appointment of a public defender. (Minn. Rules of Criminal Procedures 5.02, subd.3)

The Legal Rights Center in Hennepin County, (612) 337-0030, and the Neighborhood Justice Center in Ramsey County, (651) 222-4703, are community based criminal defense offices. These centers focus their representation on communities of color. They have financial eligibility as well as other case acceptance guidelines.

If you are involved in a child protection matter and there has been a Child In Need of Protection or Services (CHIPS) petition filed, you are eligible for public defender representation. If the CHIPS case involves an Indian child, the Indian Child Welfare Act Law Center might represent you, (612) 879-9165.

If you need an attorney for a family law or civil matter, legal aid offices are the main avenue for finding free attorneys. Legal aid services are available in every county. All legal aid offices screen people for financial eligibility, but just because a woman is eligible does not mean that legal aid will take her case.

If you do not qualify for a free attorney, you will need to use your personal money to hire an attorney or convince a private attorney to take your case for free or a reduced cost.

### **How do I select from the names I have?**

- Ask attorneys whom you respect whether your prospective attorney has a reputation for being on time, responsible, or knowing about domestic violence.
- Set up a consultation appointment so you can interview the attorney. The attorney may or may not charge for this consultation.
- Be clear about your goals. What do you want the attorney to do for you? What are the most important issues in your case?
- Make a list of questions ahead of time to ask the attorney.
  - What is your experience in this field?
  - Have you handled matters like mine?
  - What are the possible outcomes of my case?
  - What are my alternatives in resolving the matter?
  - Approximately how long will it take to resolve?
  - Do you recommend mediation or arbitration?
  - What are your rates and how often will you bill me?
  - What is a ballpark figure for the total bill, including fees and expenses?
  - How will you keep me informed of progress?
  - What kind of approach will you take to resolve the matter – aggressive and unyielding, or will you be more inclined to reach a reasonable settlement?
  - Who else in the office will be working on my case?
  - Can junior attorneys or paralegals in the office handle some of the substantive work at a lower rate?

- Just because an attorney is affordable does not mean that it is a good idea to hire him or her.

### **What should I do in the interview?**

**Don't start by asking about fees, but instead discuss the circumstances of your case, your concerns, and your goals.**

**In the interview pay attention to:**

- Is the attorney listening to what you are saying?
- Do you feel comfortable with him or her?
- Does he or she ask a lot of questions of you to understand what the issues are?
- Is he or she respectful?
- Does he or she have experience working with cases involving domestic abuse?
- Does he or she have experience working with domestic abuse advocates?
- Is he or she willing to work with your advocate?

Also, try to find out what is the going rate for the kind of matter you need help with (in order to be able to tell whether the person is charging a lot less than other attorneys, which could be a danger sign).

Try to be calm and direct in determining whether a particular attorney is the best one to handle your case. Some attorneys may be “put off” by being asked too many questions and might decide not to represent you if he or she believes that you may be a “difficult” client to represent. Again, try to be calm and direct during the interview.

At the end of your interview, tell the attorney that you will call tomorrow and tell them what you have decided. Do not feel rushed to make a decision about hiring him or her on the spot.

### **What should I know about Attorney Fees?**

**Types of fee arrangements:**

- **Flat Fee**—a flat fee is a set rate for a legal product. For example, an attorney may be willing to draft a simple will for \$500. No matter how long it takes the attorney to draft the will, it will cost \$500.
- **Contingency Basis**—a contingency fee means the attorney will only get paid when you recover money. The attorney will get a percentage of whatever is recovered, plus costs. The percentage that the attorney will get is negotiated up front. For example, in a personal injury case, you sue someone for injuries sustained in a car accident – the attorney will receive a percent only if you recover an award.

- An attorney cannot charge on a contingent fee basis for a family law or criminal law matter.
- **Hourly Rate**—The most common fee arrangement for divorce, OFP, and custody cases is an hourly rate. You pay the attorney a set amount per hour worked. Most attorneys ask for a retainer, which is a down payment on the hourly fee.
- **Finance Fee**—Attorneys may charge a finance fee on any past due amounts.

**Questions to ask the attorney about fees:**

If you decide that you are interested in hiring the attorney, you should first have a conversation with the prospective attorney about the fee arrangement.

- How much do you charge? If hourly, how is the hourly rate divided up? (e.g. 10 or 15 minute segments)
- How much of a retainer will you need?
- Is there any room to negotiate these amounts?
- How often am I billed?
- Is the bill itemized?
- What am I charged for (phone calls, phone calls from advocate, copying sending and receiving faxes, sending and reading emails)?
- Are there different charges for going to court?
- Can you give me an estimate on how much this will cost? What might the cost range be?
- Can I pay a flat monthly amount? Are there interest charges?
- Is there anything I can do to reduce the charges, such as putting together information for the case?
- Retainer agreement: The retainer agreement should be in writing, as it is the best way to ensure that your rights are protected. Don't feel that you have to sign the agreement on the spot – take the time to read it first and ask questions about it. If you are looking at paying a significant amount of money in attorneys fees, you may even wish to have the agreement reviewed by another lawyer. The retainer agreement should accurately describe the legal issues for which the attorney will represent you, the amount you will pay the attorney, and any other terms you discuss. The retainer agreement is a contract between you and your lawyer. This agreement benefits you and the lawyer, because it preserves the details that may be lost or forgotten over time.
  - How much is the lawyer going to charge
  - Whether it is an hourly rate, a contingency fee, a flat fee, or a statutory fee
  - Who will pay for costs such as court filing fees, sheriff's service fees, deposition fees, long distance calls, and photocopy expenses
  - What is expected of you
  - What you can expect from the lawyer

**Do not end this conversation without a clear understanding of the following:**

- What amount of money the attorney expects you to pay and when.

- Find out if you must pay any money before the attorney will begin working on your case.
- When the attorney will provide you with a *written* agreement that clearly spells out the work to be done and the amounts you are to be charged. Any agreement with the attorney should be in *writing*.

### **Ideas on how to work effectively with an attorney:**

- Be clear about why you are hiring an attorney. What is the legal question that you are asking the attorney to work on? Write out the questions.
- Give your attorney all the information. Your attorney should know all the information before showing up in court, even if the information reflects badly on you.
- Bring a support person or advocate to the meetings with your attorney. It is helpful to have someone else hear what the attorney says.
- Prepare for phone calls and meetings. Have a list of your questions and the information you want the attorney to know.
- Keep your attorney informed. Bring the attorney all the information you have on the case. You can write to your attorney or telephone him or her.
- Ask questions. If you do not understand a recommendation, ask for more information.
- Talk about fees and money up front. Get estimates on the cost and time.
- Do the leg work yourself and do your tasks in a timely fashion.
- Agree on a reporting procedure with your attorney so you know what is happening with your case.
- Know what you are signing and agreeing to.
- Keep your own file.
- Do not bring children with you to your attorney's office or to court.
- Use other resources when appropriate. Talk to an advocate or therapist. Use the attorney for legal matters not for personal support.
- Discuss the possibility of using experts. Explore your options.
- Call your attorney only when necessary, if you are being charged by the hour.
- Most importantly, if you do not understand what is going on, or why your attorney is doing what he/she is doing, just ask.

### **What do I do if I disagree with the charges?**

If you disagree with your attorney's bill, the first thing you should do is talk to your attorney. Let the attorney know that you disagree with the bill, and see if you are able to negotiate a different amount. Next, you should write a letter to your attorney restating what your agreement on the bill is and why you disagree with the amount charged.

If you cannot work out the bill disagreement with your attorney, you can try fee arbitration. Fee arbitration is a process by which an outside person(s) gathers information on the fee dispute and then decide what amount is owed. The local chapters of the Minnesota State Bar Association run legal fee arbitration programs. Each chapter structures and runs its own program, but there are similarities between the programs.

### **Fee arbitration process:**

Contact the local or state bar association (800-882-6722) and ask for information and/or forms for their fee arbitration programs. They should send you the forms to start the process.

The forms should ask you for the following types of information:

- Your name & contact information
- Your attorney's name & contact information
- Whether or not any type of collection action has happened
- Information on the type of services provided by your attorney
- Information on any fee agreements you had with the attorney
- The amount of money that is being disputed and why you dispute the amount owing

The completed form is submitted to the bar association. In some counties you need to pay a filing fee. For example, in Hennepin County there is a \$25.00 filing fee. In Ramsey County there is no fee.

The attorney must agree to participate in fee arbitration. The form is then sent to the attorney. The attorney is asked to respond to your complaint. If the attorney agrees to go into the arbitration process they have 20 days to respond to the complaint. You will receive a copy of the attorney's response. If the attorney does not respond, it is assumed that the attorney does not want to participate in arbitration and the file is closed.

After all of the forms and responses are received, the case is referred to a review panel. The panels typically consist of three arbitrators, one attorney and two non-attorneys. The panel will hold an arbitration hearing that both you and your attorney are to attend. You will be allowed to present information on why you dispute the bill and the attorney will present information on why she believes the bill is justified. The panel will decide what amount of money you owe the attorney. Any outcome from the arbitration will be binding, meaning that both sides (you and the attorney) are to follow the outcome of the arbitration process and it can be legally enforced.

### **How do I make a complaint against an attorney?**

#### **Identifying Lawyer Misconduct**

Professional responsibility problems or misconduct may take many forms. Minnesota attorneys are held to very high standards which are set down by the Minnesota Supreme Court in the Minnesota Rules of Professional Conduct. These rules can be found in most libraries in the "Court Rules" volume of the Minnesota Statutes. (Other states should have similar professional responsibility standards. You should contact the Bar Association or local professional responsibility office or board in your state to find out about their standards and procedures.) Violations of these Rules are handled by the

Office of Lawyers Professional Responsibility (OLPR), but all disputes with lawyers are not handled by this office. The OLPR is solely a disciplinary body and they will not refund money or give damages awards. Their role is strictly to discipline attorneys who violate the Rules of Professional Conduct. Misconduct that would be addressed by this office are:

- **Neglect and Delay**—Lawyers are required to act with reasonable diligence and promptness when representing a client (Rule 1.3) and to keep their clients reasonably informed about the proceedings (Rule 1.4). If you feel that your lawyer is taking far too long with your legal matter or does not respond to your phone calls or written inquiries, then she may be subject to discipline under Rule 1.3 or Rule 1.4.
- **Getting your File Back**—A client may switch lawyers for any reason. If you switch lawyers you should ask for your file first by calling the attorney and then, if they do not comply, send them a certified letter requesting your file. If the lawyer still fails to return your file to you or insists you pay for copying costs, then you should file a complaint.
- **Money and Accounting**—Often times lawyers handle money for clients. When attorneys handle client money they are required to promptly and completely account for it. (Rule 1.15). If you have any significant problems or delays in receiving money from your attorney or in getting a full accounting, you should file a complaint.
- **Conflicts of Interest**—A conflict of interest arises for an attorney when she either represents two parties in different cases with conflicting interests, or when she represents two parties involved in the same case, or when she has represented the opposing party in a previous matter. (Rules 1.7, 1.8, 1.9). The attorney may continue the representation if they do not think the conflict will adversely affect the parties and the parties consent; however, if a conflict of interest has an adverse effect, you should file a complaint.
- **Dishonesty**—Rule 3.3 requires that lawyers be truthful to the tribunal or court and Rule 4.1 requires attorneys to be truthful to others. However, lawyers are supposed to represent their client's interests which may mean that they rely on the client's version of the facts. The attorney is therefore only held to a standard of not *knowingly or intentionally* making false statements. Rule 3.4 requires that lawyers act with fairness to the opposing party and counsel by complying with court orders, discovery rules, and not obstructing access to or destroying evidence. If you suspect that an attorney has violated any of these rules, you should file a complaint.
- **Confidentiality**—Under Rule 1.6 lawyers are required to keep client attorney communications confidential with the exceptions of communications that the client has given consent to disclose, if the client intends to commit a crime, to remedy a criminal or fraudulent act by the client, or in defending themselves when misconduct has been alleged. If you feel an attorney has wrongfully disclosed information you believe should have been kept confidential, then you should file a complaint.

The general rule governing lawyer misconduct under the Rules of Professional Conduct is Rule 8.4. This rule states:

### **Rule 8.4, Misconduct**

It is professional misconduct for a lawyer to:

- 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;
- commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- engage in conduct that is prejudicial to the administration of justice;
- state or imply an ability to influence improperly a government agency or official;
- knowingly assist a judge or judicial officer in conduct that is a violation of judicial conduct or other law;
- harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or
- commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on a lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including (1) the seriousness of the act, (2) whether the lawyer knew that it was prohibited by statute or ordinance, (3) whether it was part of a pattern of prohibited conduct, and (4) whether it was committed in connection with the lawyer's professional activities.

Some examples of problems that the Office of Lawyers Professional Responsibility will not address include:

- Most fee disputes, unless the lawyer has clearly charged an excessive or illegal fee.
- Malpractice where the lawyer has made a mistake that does not rise to the level of misconduct or unethical conduct.
- Personal behavior of the attorney, outside the scope of practicing law, will not be addressed by the OLPR. However, fraud or criminal offenses will be addressed by the OLPR, as will inappropriate behavior such as sexual harassment.
- Complaints by criminal defendants that they were inadequately represented. These complaints are dealt with through the appeals process.

Some of these problems may be addressed by filing a civil lawsuit against the attorney.

### **Making a Complaint**

Complaints may be filed by filling out the complaint form included in this packet or by writing a letter that includes: the names and addresses of the person making the complaint and the attorney complained about, a statement of the alleged misconduct, copies of all important documents that support the allegations of misconduct, and the signature of the person making the complaint. The complaint should be mailed, delivered, or faxed to the Office of Lawyers Professional Responsibility (OLPR). (See enclosed checklist for filing a complaint).

Once the complaint has been received, it will be reviewed by the OLPR. **A copy of the complaint will be sent to the lawyer who is being complained about regardless of whether the complaint is investigated or not.** The OLPR will respond back to you in two weeks to inform you if the complaint will be investigated, referred to mediation for settlement, or dismissed. (See MN Rules on Lawyers Professional Responsibility Rules 6). If it is investigated, it will likely go to the local “District Ethics Committee” for further investigation. The District Ethics Committee will then make a recommendation to the OLPR about whether discipline is warranted or not.

Although only 1 in 20 complaints goes to mediation, typical complaints that are best suited to settlement by mediation according to the OLPR, include: short-term neglect of a case, lack of communication, a lawyer’s rude or insensitive behavior, failure to pay professionally incurred debts and failure to return a client’s file or property. More serious problems are excluded from mediation. The person making the complaint may opt out of the mediation/settlement procedure. However, the Office of Lawyers Professional Responsibility has informed us that the person making the complaint may be seen as uncooperative with the investigation by choosing to opt out, and the matter may be dismissed.

If the complaint is investigated, and the OLPR finds misconduct, they will then discipline the lawyer with an “admonition,” a type of reprimand for less serious offenses. If the offense is more serious, the OLPR may suspend the lawyer’s license for a period of time or the Minnesota Supreme Court may discipline the attorney by taking away their license permanently.

The OLPR will keep you informed about the investigation and proceedings if you filed the complaint. If you are complaining about your own lawyer, you will receive a copy of your lawyer’s reply to the allegations. You may also obtain the final decision with an explanation, in writing. The investigation and disciplinary process usually takes at least three months.

### **Checklist for Filing a Complaint**

- Unprofessional or unethical conduct by an attorney has been identified or suspected.
- Complaint specifically describing the alleged misconduct is in writing, or the form issued by the Office of Lawyers Professional Responsibility is completed (included in this technical assistance packet).
- Complaint includes both the names and addresses of person making the complaint and the attorney being complained about.
- Complaint is signed by person making the complaint.
- *Copies*, not originals, of documents that explain or support your allegation of misconduct are attached to the complaint.
- Complaint is mailed, faxed, or sent to the Office of Lawyers Professional Responsibility at:

Office of Lawyers Professional Responsibility  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218

Or fax it to the Office of Lawyers Professional Responsibility at: (612) 297-5801.

For more information or to order copies of their brochures on “Attorney Discipline Mediation” or “Office of Lawyers Professional Responsibility: Complaints and Investigations,” you can call the Office of Lawyers Professional Responsibility at:

(351) 296-3952, or if you are out-state at 1-800-657-3601.  
TTY users call MN Relay Service Toll Free 1-800-627-3529.

## **Minnesota Rules of Criminal Procedures**

### Rule 5.02 Appointment of Public Defender

(3) Waiver of Counsel, Misdemeanor. If a defendant appearing without counsel charged with a misdemeanor punishable upon conviction by incarceration does not request counsel and wishes to represent himself or herself, the defendant shall waive counsel in writing or on the record. The court shall not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights. The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver.

## **Minnesota Rules of Professional Conduct**

### Rule 1.3 Diligence

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

### Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

### Rule 1.6 Confidentiality of Information

(a) Except when permitted under paragraph (b), a lawyer shall not knowingly:

- (1) reveal a confidence or secret of a client;
- (2) use a confidence or secret of a client to the disadvantage of the client;
- (3) use a confidence or secret of a client for the advantage of the lawyer or a third person, unless the client consents after consultation.

(b) A lawyer may reveal:

- (1) confidences or secrets with the consent of the client or clients affected, but only after consultation with them;
- (2) confidences or secrets when permitted under the Rules of Professional Conduct or required by law or court order;
- (3) the intention of a client to commit a crime and the information necessary to prevent a crime;

(4) confidences and secrets necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used;

(5) confidences or secrets necessary to establish or collect a fee or to defend the lawyer or employees or associates against an accusation of wrongful conduct;

(6) secrets necessary to inform the Office of Lawyers Professional Responsibility of knowledge of another lawyer's 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. *See* Rule 8.3.

(c) A lawyer shall exercise reasonable care to prevent employees, associates and others whose services the lawyer utilizes from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (b) through an employee.

(d) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

#### Rule 1.15 Safekeeping Property

(a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable interest bearing trust accounts as set forth in paragraphs (d) through (g). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein.

(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount and the purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties.

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.

(4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

**(d)** Each trust account referred to in paragraph (a) shall be an interest bearing account in a bank, savings bank, trust company, savings and loan association, savings association, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.

**(e)** A lawyer who receives client or third person funds shall maintain a pooled interest bearing trust account for deposit of funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

**(f)** All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:

(1) separate interest bearing trust account for the particular third person, client or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

(2) pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client.

**(g)** In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of financial institutions described in paragraph (d) to calculate and pay interest to individual clients.

**(h)** Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

**(i)** Every lawyer subject to paragraph (h) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Clerk of the Appellate Court may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (h).

**(j)** Lawyer trust accounts shall be maintained only in financial institutions approved by the Office of Lawyers Professional Responsibility.

**(k)** A financial institution shall be approved as a depository for lawyer trust accounts if it shall file with the Office of Lawyers Professional Responsibility an agreement, in a form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon (3) days notice in writing to the Office.

**(l)** The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is

honored, then the report shall be made within (5) banking days of the date of presentation for payment against insufficient funds.

**(m)** Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

**(n)** Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

**(o) Definitions.**

"Financial Institution" includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

Rule 1.7 Conflict of Interest: General Rule

**(a)** A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

**(b)** A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.8 Conflict of Interest: Prohibited Transactions

**(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 client is notified in writing by the lawyer that independent counsel should be considered and is given a reasonable opportunity to seek the advice of independent counsel in the transaction;
  - (2) 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 to the client in a manner which can be reasonably understood by the client; and
  - (3) the client consents to the transaction in a document separate from the transaction documents that specifies:
    - (i) whether the lawyer is representing or otherwise looking out for the client's interests in the transaction;
    - (ii) the nature of the lawyer's conflicting interests, if any; and
    - (iii) the reasonably foreseeable risks for the client from any conflict.
- (b)** A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.
- (c)** A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.
- (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;
  - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and
  - (3) a lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or by another in the lawyer's behalf, prior to the employment of that lawyer by that client.
- (f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation or acceptance of compensation from another is impliedly authorized by the nature of the representation;

(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, unless each client consents after consultation, including disclosure of the existence and nature of all the claims and of the participation of each person in the settlement.

**(h)** A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

**(i)** A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

**(j)** 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 granted 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.

**(k)** A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced. For purposes of this paragraph:

(1) "Sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.

(2) if the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client. In-house attorneys while representing governmental or corporate entities are governed by Rule 1.7(b) rather than by this rule with respect to sexual relations with other employees of the entity they represent.

(3) this paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client.

(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.

Rule 1.9 Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) 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 consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Rule 3.3 Candor Towards the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) 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

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### 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.

### Rule 4.1 Truthfulness in Statements Towards Others

In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law.

### 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;

- (e) state or imply an ability to influence improperly a government agency or official;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or
- (h) commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including (1) the seriousness of the act, (2) whether the lawyer knew that it was prohibited by statute or ordinance, (3) whether it was part of a pattern of prohibited conduct, and (4) whether it was committed in connection with the lawyer's professional activities.

### **Minnesota Rules on Lawyers Professional Responsibility**

#### **Rule 6 Complaints**

**(a) Investigation.** All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules. No District Committee investigator shall investigate a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. No employee of the office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Canon 3 of the Code of Judicial Conduct.

**(b) Notification: Referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

**(c) Copies of Investigator's Report.** Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

**(d) Opportunity to respond to statements.** The District Committee or the Director's Office shall afford the complainant an opportunity to reply to the lawyer's response to the complaint.