Chapter 1 : California Legal Ethics

See Rule for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule (c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules (b) and (c)(1) for the lawyer's duties with respect to the use of such information to.

ABA Model Rule 1. It is also actionable malpractice for an attorney to breach the ethical duties of good faith and fidelity. In addition, a plaintiff can premise a malpractice action on an intentional tort theory or a breach of contract theory. In order to prove that an attorney has committed professional negligence, a plaintiff must establish: See also Smith v. Lewis 13 Cal. The controlling test invokes a two-pronged inquiry: If the area of law was unsettled, and the attorney made an informed judgment, he will not be held liable for malpractice, even if his advice ultimately proves to be wrong. In order to hold an attorney liable for breach of fiduciary duty, a plaintiff must show: California, unlike other states, does not view violations of the ethics code as negligence per se. Rules can be looked to for guidance. Code may reflect public policy in those areas where California courts have not spoken. However, in Mirabito v. See also Younger v. Effect of CRPC in Criminal Proceedings A violation of the CRPC cannot be used to prove that a defendant lawyer possessed specific criminal intent, since a violation of the rules can occur without any criminal intent. The duty to provide competent representation includes the duty to refer the client to a specialist where reasonably necessary. CRPC regulates sexual relations between lawyers and clients. Prior to the enactment of this rule, the consequences for the lawyer included only recusal or disqualification for conflict of interest, a civil action for breach of fiduciary duty, legal malpractice or other torts or reversal of the criminal or civil judgment. Other duties to the client include: The duty to honor the secrets and confidences of a client, under subsection e , also applies to former clients. Only the client can release the lawyer from this duty. Subsection i requires lawyers to respond in some fashion to letters from State Bar investigators. The duty to cooperate does not require a lawyer to waive valid statutory or constitutional privileges by providing information; it does require the lawyer, at a minimum, to assert those privileges to the State Bar, rather than simply ignoring a State Bar investigation. Subdivision m was enacted in Branscombe 64 Cal. Expert testimony may be necessary in a malpractice action to prove that the attorney committed negligence as a matter of law. Expert testimony has also been used to show an attorney breached her fiduciary duty to her client. The same rules of causation apply whether the malpractice claim is premised on negligence, breach of contract, or breach of fiduciary duty. Ordinarily, the plaintiff bears the burden of proving causation, as in any other tort claim. However, in Galanek v. Hismar 68 Cal. Superior Court 6th Dist. To prove that the claim could have been collected, the plaintiff must prove that the debtor was solvent. See also Arciniega v. Bank of San Bernardino 4th Dist. A legal malpractice plaintiff may recover only those amounts to which it was actually entitled in the underlying matter. Loube 64 Cal. Emotional distress damages are ordinarily not recoverable in legal malpractice cases. Menezes 21 Cal. Agreements to arbitrate malpractice claims must be unambiguous and must give the client notice of possible consequences of agreement. This rule does not bar a member from settling a claim for professional malpractice with the client, as long as the client is advised in writing to seek independent counsel and is given an opportunity to do so. The rule does not prohibit a lawyer from reasonably limiting the scope of his or her representation or employment when initially retained. Cases Following the termination of a lawyer-client relationship, the former client threatened to sue for malpractice. The lawyer offered a cash settlement and mutual releases were signed which prevented client from bringing a malpractice action. The court held that this rule did not apply to the release, which was signed after the termination of the lawyer-client relationship. Threatening a plaintiff with criminal prosecution to obtain an advantage in a civil case in violation of this rule is a sufficient legal basis to state a cause of action for intentional infliction of emotional distress and to seek monetary damages. It was not improper for a lawyer to request a written confirmation of his discharge as counsel. This was not an improper release from liability under this rule. In the Matter of Bach Review Dept. It merely selects the forum in which liability will be determined. Duryea 21 Cal. Superior Court 9 Cal. But the statute does not govern non-legal services provided by an attorney unless legal

and non-legal work is inextricably intertwined. Mannerino 62 Cal. State Bar 18 Cal. State Bar 14 Cal. A formal agreement is not required to create the fiduciary relationship between lawyer and client. In re Marriage of Zimmerman 1st. State Bar 43 Cal. To hold an attorney liable for breach of fiduciary duty a plaintiff must show: See also Mosier v. Southern California Physicians Ins. Exchange , 63 Cal. Superior Court 49 Cal. See also Moore v. Tillamook County Creamery Assoc. Superior Court 4th Dist. Kennedy 18 Cal. An attorney owes no duty of care to an adversary. Likewise, legal malpractice claims are not assignable. In order for an attorney to be liable to a third party for malpractice, it must first be established that the attorney owed the third party a duty of care. Hamm 56 Cal. Flaig 70 Cal. Attorneys also have been held liable to third parties for their negligence in other transactions which were intended to directly benefit the third party. Imposition of a duty of care to a third party was both reasonable and expected. Similarly, an attorney does not have a duty to protect the interests of an adverse party. Irving 49 Cal. This approach was extended to lawyers in Lucas v. However, courts rarely discuss this factor. It is often difficult for plaintiffs to prove that the challenged transaction was intended to affect them. Levy and Van Bourg 4th Dist. As a corollary to Lucas, when making a representation or issuing an opinion with the intent that it will be relied upon by a third party in dealing with the client, an attorney must exercise due care. The court held that the attorney owed both the client and his wife a duty to advise of the loss of consortium claim. The court analyzed the facts under the Lucas factors and reached the same result. Arthur Young and Co. The Bily court analyzed the accounting profession extensively and recognized that it is foreseeable that non-privity parties may be harmed by an audit report. Nonetheless, the court limited such parties to recovery only for negligent misrepresentation because to allow recovery for general negligence would create liability out of proportion to: See also Soderberg v. Legal malpractice claims are not assignable. State Bar 53 Cal. State Bar 23 Cal.

Chapter 2 : Fiduciary - Wikipedia

The duty is sourced from a combination of contract law and equity arising from the distinctive relationship between lawyer and client. The solicitor or attorney is an agent of the client under the law of agency.

Perhaps there was a time when ethics rules for lawyers were straightforward and following them was largely a matter of professional common sense. But it probably ended before your grandfather took down his shingle. As law practice has become more complex, so have professional conduct rulesâ€”at least in their practical application. Some of these traps might seem a bit arcane, others obvious. But according to our experts, lawyers in all practice fields fall into them regularlyâ€—sometimes with disastrous effects. Lawyers should consult the specific professional conduct rules that apply in their own jurisdictions. Irish represented Motorola Inc. Dean Corley, a retired Motorola employee who had managed the shop, believed that Irish and his firm, Lewis and Roca, also represented him. When Motorola threatened to sue Corley for talking to the prospective buyer about working with the company after the sale, he tried to disqualify Irish and his firm from representing Motorola. Irish responded that he had never represented Corley, but by then it was too late. Magistrate Judge Lawrence O. While the ABA Model Rules of Professional Conduct are silent on the formation of a lawyer-client relationship, the Restatement Third of the Law Governing Lawyers provides in section 14 that the relationship is formed when a person manifests an intent that a lawyer provide legal services, and the lawyer either a manifests consent or b fails to manifest lack of consent and knows or reasonably should know the person reasonably relied on the lawyer to provide the services. In other words, if a person asks a legal question, and a lawyer answers or says he or she will look into it, a lawyer-client relationship may result. Once a person becomes a clientâ€—even inadvertentlyâ€—it triggers all the obligations of the attorney-client relationship: The court ruled that an inadvertent lawyer-client relationship had been created, and thus the firm should have advised the plaintiff about the statute of limitations that governed her original claim. Overlooking the Marketing Rules A North Carolina lawyer who markets and provides legal services over the Internet under the name Virtual Law Firm sought the advice of the state bar on how certain professional conduct rules applied to it. Lawyers who appear to be soliciting clients from other states may be asking for trouble. That means the site must list an actual office address, identify the lawyer or lawyers primarily responsible for the Web site, and identify the jurisdictional limits of the practice. State Bar of Arizona, U. Supreme Court laid out the fundamentals of acceptable lawyer advertising: It must not be false, deceptive or misleading. From these three simple ideas, all 50 states have crafted increasingly byzantine rules. It is nearly impossible to comply, especially on the Internet. States have different retention policies, label requirements and even rules for type size. Recently New York attempted to prohibit pop-ups in electronic advertising. These advertising rules for lawyers were designed for print media and never anticipated YouTube or Second Life. Half the lawyer ads on YouTube spoof the profession. Reportedly, the Internet is the first place people look for lawyers. How can you take advantage of that amazing marketing potential? Include whatever disclaimers should appear. But see Barton v. Remember that Bates acknowledges a public need to be able to find a lawyer, obtain accurate information and make informed decisions about legal services. You can truthfully communicate facts about your professional services and still have a sense of humor. The father of commercial spamâ€—a lawyer named Laurence Canterâ€—was disbarred for using the technique for among other things promoting his immigration practice. You can check it out on the Internet. Bowden discovered that the firm was inflating government recording fees on settlement statements for HUD-1 real estate transactions. When he asked his boss in the Charlotte, N. Even worse, Forquer was apparently using excess fees to cover office expenses and make various payments to himself, according to a ruling by the South Carolina Supreme Court in a disciplinary action against Bowden. But in an agreement with the ODC that resulted in a reprimand by the court, Bowden acknowledged that it was his duty to tell clients that their bills were inflated and to assure that HUD-1 forms were accurate in closings he supervised. He also acknowledged an ethical duty to assure that other lawyers in his office complied with state ethics rules. In the Matter of John B. And Model Rule 8. Thus, in reporting the conduct of a supervisor to a disciplinary authority, the lawyer has to take into

account what information must be revealed to support the charge. If the information is confidential for purposes of Model Rule 1. To complicate matters, the standard of disclosure may vary from state to state. A recent ethics opinion in Ohio held that a lawyer had a duty to report any misconduct stemming from unprivileged information. By contrast, the broader scope of Model Rule 1. This much is certain: Subordinate lawyers who are dragged into the fray when their bosses flout the ethics rules cannot assume their second-chair status excuses them from their professional obligations. The appellate court noted that lawyers may use lists of clients expected to leave a firm to help obtain financing for their new practice. But who gets custody of the clients? There is no prohibition in the ABA Model Rules against a departing lawyer advising clients that he or she intends to leave the firm. The nature of the communication is the major concern. The communications should not urge the client to sever a relationship with the original firm or disparage that firm. The requirement under Rule 7. Ideally, a departing lawyer and the firm can agree on the content of a joint announcement. Whether the lawyer can take client lists, continuing legal education materials, practice forms or computer files may turn on principles of property and trade secret law. Communicating by E-Mail A law firm in Massachusetts maintained a Web site that contained a link allowing visitors to send e-mails directly to lawyers at the firm. But the site contained no warning or disclaimer regarding the confidentiality of the information sent. So when a companyâ€”call it ABC Corp. Opinion May 23, First, because the firm failed to provide necessary disclaimers, the committee said the lawyer who received the e-mail must maintain the confidentiality of the information furnished by ABC Corp. And second, the firm may not continue representing XYZ Corp. In this case, a marketing tool intended to help attract clients appears to have lost a firm two of them. The greatest of modern conveniences. You can write three while billing someone else. The bane of our existence. Step away from your desk or ignore your BlackBerry for an hour, and 15 more have arrivedâ€”all demanding instant responses. For further proof of this mixed blessing, consider these e-mail ethics traps waiting for lawyers and clients. Of course, most of us automatically label every e-mail we send that way, just to make sure. Even the order to the deli for five corned beef sandwiches with Russian dressing. Label the message itself. Then a judge will know you actually thought about it. E-mails permit instantaneous communication. They can forward a message on to hundreds more through long strings that add but rarely subtract addressees. So share e-mails only with client representatives who need to know. Watch where your privileged message is going, and make sure your clients do, too. E-mails accumulate by the millions. As a result, companies institute policies for discarding the damned things. The consequences of post-threat destruction are severe indeed, for both client and lawyer. Marland dropped his suit after agreeing to accept a percentage of any fees Thelen Reid got from the California suit. Thelen Reid filed its own action in U. District Court seeking to enjoin Marland from pursuing his action. In February, a district judge ruled that Thelen Reid must produce documents the firm had sought to protect on grounds that they related to its representation of the insurance department. District Judge Vaughn R. Trinity Health Systems Inc. Statewide Grievance Committee, A. Remember to initiate communications on six key occasions: The duty to communicate with clients is simple enough. Martyn is a professor at the University of Toledo College of Law. Eke-Nweke drew up a lease for a building on Staten Island. It had some problemsâ€”enough for the document to come under the scrutiny of a U. But contrary to New York requirements, Eke-Nweke never advised the client to seek independent counsel, nor was the lease written or explained in terms she could reasonably understand. Weinstein in his Aug. First, the terms of the transaction must be fair and reasonable for the client; and the lawyer must explain them, in writing, in a way that is reasonably comprehensible to the client. Third, the client must sign an informed consent to the transaction disclosing that the lawyer is representing the client in the deal. Doing business with a client includes such things as loaning money a particularly bad idea , obtaining an ownership interest in a corporate client, joining in a business venture for a client, and receiving a security interest in client property to protect your fees. In McMahon, the attorney should have provided the Rule 1. A lawyer may also be required by Model Rule 5.

Chapter 3 : Illinois Legal Ethics

Lawyers do not have the option of looking out for number one. As an attorney, you have a fiduciary duty to your clients; you have to act in their best interests, not your own. The attorney-client relationship is special since clients have to place a lot of trust you. Living up to your duty ensures.

Table of Contents a A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph b. Lawyer assistance means assistance provided to a lawyer, judge, other legal professional, or law student by a lawyer participating in an organized nonprofit effort to provide assistance in the form of a counseling as to practice matters which shall not include counseling a law student in a law school clinical program or b education as to personal health matters, such as the treatment and rehabilitation from a mental, emotional, or psychological disorder, alcoholism, substance abuse, or other addiction, or both. A lawyer named in an order of the Supreme Judicial Court or the Board of Bar Overseers concerning the monitoring or terms of probation of another attorney shall treat that other attorney as a client for the purposes of this Rule. Nothing in this paragraph d shall require a bar association-sponsored ethics advisory committee, the Office of Bar Counsel, or any other governmental agency advising on questions of professional responsibility to treat persons so assisted as clients for the purpose of this Rule. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. The attorney-client privilege and work-product doctrine apply 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 also applies in situations other than those where evidence is sought from the lawyer through compulsion of law. A lawyer may not disclose confidential information except as authorized or required by the Rules of Professional Conduct or other law. Information about a client contained in a public record that has received widespread publicity would fall within this category. The accumulation of legal knowledge that a lawyer gains through practice ordinarily is not client information protected by this Rule. In addition, the factual information acquired about the structure and operation of an entire industry during the representation of one entity within the industry would not ordinarily prevent an attorney from undertaking a successive representation of another entity in a matter when the attorney had no other relevant confidential information from the earlier representation and there was no other conflict of interest at issue. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Before accepting or continuing representation on such a basis, the lawyers to whom such restricted confidential information will be communicated must assure themselves that the restriction will not contravene firm governance rules or prevent them from discovering disqualifying conflicts of interests. Paragraph b 1 recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. The reference to bodily harm in paragraph b 1 is not meant to require physical injury as a prerequisite. Acts of statutory rape, for example, fall within the concept of bodily harm. This language has been included to permit disclosure of confidential information in these circumstances where the failure to disclose may not involve the commission of a crime. The lawyer should not ignore facts that would lead a reasonable person to conclude that disclosure is permissible. Although paragraph b 2 does not require the lawyer to reveal the misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. Although the client no

longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose confidential information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph b 3 does not apply when a person who has committed a crime or fraud thereafter consults or employs a lawyer for the purpose of representation concerning that offense. Disclosure is permitted only when the harm constitutes substantial injury to property, financial, or other significant interests of another. Unlike the corresponding ABA Model Rule, this rule permits disclosure to prevent or ameliorate harm to non-financial interests as well as to property or financial interests. For example, the kidnapping of a child by a non-custodial parent may result in substantial injury to the vital interest of the other parent in maintaining custody of or even contact with his or her child. A criminal trespasser might invade a significant privacy interest of another. A person by crime or fraud might deprive someone of the right to vote or some other significant right of participation in the political process. These interests are not financial interests, but are sufficiently important that lawyers should have the discretion to disclose client confidential information to prevent or ameliorate crimes and frauds that substantially injure those interests. In most situations, disclosing confidential information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other 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. Paragraph b 5 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 also applies, of course, where a proceeding has been commenced. 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. If, however, the other law supersedes this Rule and requires disclosure, paragraph b 6 permits the lawyer to make such disclosures as are necessary to comply with the law. Under these circumstances, lawyers and law firms are permitted to disclose limited confidential information, but only once substantive discussions regarding the new relationship have occurred. Even this limited confidential information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any such information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client e. Under those circumstances, paragraph a prohibits disclosure unless the client or former client gives informed consent. Paragraph b 7 does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph b 7. Paragraph b 7 also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment 5, such as when a lawyer in a firm discloses confidential information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the confidential information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the confidential 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. In exercising the discretion conferred by this Rule, the lawyer may consider such factors as: Some of these factors may also be relevant to the exercise of discretion under paragraphs b 4 through b 7. In any instance, disclosure should be no greater than the lawyer reasonably believes necessary to prevent the harm. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure

would be permitted by paragraph b. In some cases, it may be impractical or even dangerous for the lawyer to advise the client of the intent to reveal confidential information either before or even after the fact. Indeed, such revelation might thwart the reason for creation of the exception. It might hasten the commission of a dangerous act by a client or it might enable clients to prevent lawyers from defending themselves against accusations of lawyer misconduct. But there will be instances, such as the intended delivery of whole files to prosecutors to convince them not to indict the lawyer, where the failure to give notice would prevent the client from making timely objection to the revelation of too much confidential information. Lawyers will have to weigh the various factors and make reasonable judgments about the demands of loyalty, the requirements of competent practice, and the policy reasons for creating the exception to confidentiality in order to decide whether they should give advance notice to clients of the intended disclosure. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information relating to the representation of a client does not constitute a violation of paragraph c if the lawyer has made reasonable efforts to prevent the access or disclosure. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Chapter 4 : Top 10 Ethics Traps

Client and Lawyer Relationship by Lawrence S. Pascoe A good working relationship between the client and the lawyer, especially in family law matters, will result in a better outcome, a smoother process, a lower account and a satisfied client.

Client and Lawyer Relationship by Lawrence S. Pascoe A good working relationship between the client and the lawyer, especially in family law matters, will result in a better outcome, a smoother process, a lower account and a satisfied client. To help achieve this I am setting forth what I believe are the respective roles of the client and the lawyer. As the law is not an exact science, the advice will include the range of possible outcomes if the matter is litigated and a judge has to decide the case. The lawyer will advise the client on the different arguments that can be made for and against the client and assess the probability of success as well as on the best strategy and legal procedure to obtain the desired outcome. That strategy may range from doing nothing to taking the case to the court of appeal, if need be. The advice will originally be based on the facts first given, and the law at that time. The law is also changing as new cases interpret the Family Law Act. Those new cases might result in a change of advice also. During the negotiating process the client will be consulted and will be expected to give instructions to the lawyer as to the terms of the settlement that are acceptable to the client. To Draft the Appropriate Documents If the matter settles without commencing court proceedings the lawyer will draft a separation agreement. If court proceedings are needed the lawyer will draft the Petition for Divorce or Statement of Claim and all other documents that are required to commence and continue a court action. To Advocate If the parties cannot settle the matter then the lawyer will argue the case at all levels â€" the interim motion, the trial, and the appeal. The lawyer will conduct the appropriate cross examinations and discoveries, prepare the necessary documents and appear at the pre-trial conference. Conduct the Client is Entitled to from the Lawyer To Provide Good Service This includes returning phone calls the same day they are received or by the next day if the lawyer is out of the office. Good service also includes receiving copies of all court documents and important correspondence. Communication of major developments in the case should be made as soon as possible. The prompt and courteous service also must be extended by all the office staff to the client. The lawyer should not be overly optimistic to make the client feels better about the case. That feeling may fuel a court battle that cannot be realistically won. This unwarranted optimistic approach also will result in a big letdown if that outcome is not achieved either through negotiations or through the court system. However, the lawyer should not be overly pessimistic either. Being pessimistic is not fair to the client as it does not allow him to assess the case properly. To Provide Financial Accountability The lawyer should at the first interview explain how the fee will be determined and when it is expected to be paid. If the fee is to be on a time basis then the account should detail the date the work was performed, the work done and the time taken. The account also will detail the disbursements. As best the lawyer can, there should be estimates of what the case will cost if it is being charged on a time basis. Interim bills should be sent to the client so the client knows the amount due to the lawyer. The lawyer should not try to force the client into taking a position the client does not want. On occasion a lawyer believes the client is willing to settle for far less than a court would order. To Give Best Efforts The lawyer should treat each client and each file as very important and try his best. This does not mean spending a lot of time on each file because the resulting cost may be much more than the matter is worth to the client. The lawyer must be sensitive in asking the client questions the client may be reluctant to talk about. The client must remember that the lawyer is still on their side even though the client does not like the advice given. Just telling the lawyer their story will be therapeutic to many clients. However, if counselling is needed the client should seek a qualified health professional. The lawyer can help guide a client to the appropriate specialist. The cost of these professionals are usually covered by a drug plan or OHIP. A lawyer is an officer of the court and owes a duty to the system to be realistic. Some lawyers will disagree with this position. The client can then hire those lawyers if the client so wishes but the result is usually disastrous. A Miracle Worker If the relief requested is not something the other party will accept or a court would probably order then it will just not be obtained. As

the law is not an exact science, vague and uncertain in many areas and as there is a wide discretion with a judge, it is true that the range of possibilities is wide. However, the probability range of what the result will be is usually much smaller. Clients must understand that if the client and the other party cannot agree on the terms of a settlement then a judge must decide the case. This means going to court to argue the case. This results in much higher costs, however, there is no alternative if there is no settlement. This may involve extensive work by the client. Old records will have to found, time and energy will be needed to detail all the assets in a marriage and their costs and to prepare a budget. A client may have to interview relatives and friends to confirm certain events. This work is very necessary for the success of the case. To Give Instructions After the lawyer has given advice and has explained the alternatives, the client must tell the lawyer what to do. The client cannot let the lawyer make the decisions. To Pay the Lawyer At the first interview the lawyer will have discussed fees with the client. If the client cannot pay the fee requested in the manner requested then the client should say so. If the client does not live up to their obligation to pay the bills that are rendered as the file progresses, then the lawyer has the right to stop work on the file. However, discussing the matter with the lawyer will usually result in alternate arrangements being made if the facts warrant it. Lies are almost always discovered by the other party and their lawyer. When that discovery occurs the client will lose credibility with the court so that even truthful assertions will be suspect. Often the lying is about irrelevant or minor matters but the loss of credibility will apply to all the issues including the major ones. If the truth is told from the beginning the lawyer can properly build the case and develop the strategy. However, when the lying is discovered it may be too late to switch the strategy. Besides perhaps destroying his own case, the lying client may be charged with the criminal offence of perjury. To Provide the Facts in an Orderly Fashion and on a Timely Basis A lawyer cannot complete the file on a timely basis or file appropriate documents on behalf of the client if the client does not provide the facts when asked. It is also hard to conduct the case, though not impossible if the client is continually telling the lawyer of facts he just remembered. To Act Rationally Family Law matters can be very emotional. The client must try to take the emotional aspect out of their behaviour and decision making process. To Advise the Lawyer as to How He is Handling the Case If the client is dissatisfied with any aspect of the handling of the case the client must so advise the lawyer. The lawyer will then be able to resolve the complaint. If the client waits until the case is over it may be too late for both the client and the lawyer. To Show Appreciation Lawyers are human beings too and therefore like to be appreciated. If the lawyer did a good job then the client should express this satisfaction. A satisfied client can best show appreciation by referring relatives and friends to the lawyer. If that were so, the lawyer would be out of business. The client should therefore not feel embarrassed to ask the lawyer any question concerning the law or to provide any facts that they are uncertain are relevant. Conclusion This article sets out my beliefs as to how lawyers and clients should conduct themselves. I try to adhere to my own rules as the lawyer and would hope that you the client can do your best to follow your rules. If you have any questions concerning this information please do not hesitate to discuss them with me.

Chapter 5 : "Attorney-Client Relationship" Defined & Explained

In order for a lawyer to be liable for malpractice to a non-client, a duty of care must be established to a non-client by showing that the primary purpose of the attorney/client relationship was to benefit the plaintiff.

Under Roman law a woman could arrange a fictitious sale called a fiduciary coemption in order to change her guardian or gain legal capacity to make a will. The fiduciary of a fideicommissum is a fideicommissioner and one that receives property from a fiduciary heir is a fideicommissary heir. Similarly, ordinary commercial transactions in themselves are not presumed to but can give rise to fiduciary duties, should the appropriate circumstances arise. These are usually circumstances where the contract specifies a degree of trust and loyalty or it can be inferred by the court. Moreover, the existence of remedies in contract and tort made the Court reluctant in recognising the fiduciary relationship. Recently, in an insider trading case, the U. Securities and Exchange Commission brought charges against a boyfriend of a Disney intern, alleging he had a fiduciary duty to his girlfriend and breached it. Although terminologies like duty of good faith, or loyalty, or the mutual duty of trust and confidence are frequently used to describe employment relationships, such concepts usually denote situations where "a party merely has to take into consideration the interests of another, but does not have to act in the interests of that other. A protector of a trust may owe fiduciary duties to the beneficiaries , although there is no case law establishing this to be the case. In , the United States Department of Labor issued a proposed rule that if finalized would extend the fiduciary duty relationship to investment advisory and some brokers including insurance brokers. Let us imagine it is a serious, successful band and that a court would declare that the two members are equal partners in a business. One day, X takes some demos made cooperatively by the duo to a recording label, where an executive expresses interest. Y is unaware of the encounter until reading it in the paper the next week. This situation represents a conflict of interest and duty. By signing an individual contract and taking all the money, X has put personal interest above the fiduciary duty. Therefore, a court will find that X has breached his fiduciary duty. The judicial remedy here will be that X holds both the contract and the money in a constructive trust for the duo. Note, X will not be punished or totally denied of the benefit; both X and Y will receive a half share in the contract and the money. Elements of duty[edit] A fiduciary, such as the administrator, executor or guardian of an estate, may be legally required to file with a probate court or judge a surety bond , called a fiduciary bond or probate bond, to guarantee faithful performance of his duties. Accountability[edit] A fiduciary will be liable to account if proven to have acquired a profit, benefit or gain from the relationship by one of three means: A fiduciary cannot have a conflict of interest. Duty to Timely Inform Principal. Therefore, the conflict of duty and duty rule is really an extension of the conflict of interest and duty rules. No-profit rule[edit] A fiduciary must not profit from the fiduciary position. If the principal provides fully informed consent , then the fiduciary may keep the benefit and be absolved of any liability for what would be a breach of fiduciary duty. The person who made the bribe cannot recover it, since he has committed a crime. Similarly, the fiduciary, who received the bribe, has committed a crime. Fiduciary duties are an aspect of equity and, in accordance with the equitable principles, or maxims, equity serves those with clean hands. Therefore, the bribe is held on constructive trust for the principal, the only innocent party. Bribes were initially considered not to be held on constructive trust, but were considered to be held as a debt by the fiduciary to the principal. If a fiduciary takes a bribe and that bribe is considered a debt then if the fiduciary goes bankrupt the debt will be left in his pool of assets to be paid to creditors and the principal may miss out on recovery because other creditors were more secured. If the bribe is treated as held on a constructive trust then it will remain in the possession of the fiduciary, despite bankruptcy, until such time as the principal recovers it. Avoiding these accountabilities[edit] The landmark Australian decision ASIC v Citigroup noted that the "informed consent" on behalf of the beneficiary to breaches of either the no-profit and no-conflict rule will allow the fiduciary to get around these rules. The decision in Armitage v Nurse has been applied in Australian. Breach of fiduciary duty by a lawyer with regard to a client, if negligent, may be a form of legal malpractice ; if intentional, it may be remedied in equity. They are usually distinguished between proprietary remedies, dealing with property, and personal remedies, dealing with

pecuniary monetary compensation. The courts will clearly distinguish the relationship and determine the nature in which the breach occurred. The idea of an account of profits is that the fiduciary profited unconscionably by virtue of the fiduciary position, so any profit made should be transferred to the principal. It may sound like a constructive trust at first, but it is not. The fiduciary in breach may however receive an allowance for effort and ingenuity expended in making the profit. Compensatory damages[edit] Compensatory damages are also available. Courts of equity initially had no power to award compensatory damages, which traditionally were a remedy at common law, but legislation and case law has changed the situation so compensatory damages may now be awarded for a purely equitable action. Fiduciary duty and pension governance[edit] The Fiduciary Duty in the 21st Century Programme, led by the United Nations Environment Programme Finance Initiative , the Principles for Responsible Investment , and the Generation Foundation, aims to end the debate on whether fiduciary duty is a legitimate barrier to the integration of environmental, social and governance ESG issues in investment practice and decision-making. The programme also published roadmaps which set out recommendations to fully embed the consideration of ESG factors in the fiduciary duties of investors across more than eight capital markets.

Chapter 6 : Project MUSE - The lawyer as fiduciary: Defining private law duties in public law relations

The relationship of client and attorney is one of trust, binding an attorney to the utmost good faith in dealing with his client. In the discharge of that trust, an attorney must act with complete fairness, honor, honesty, loyalty, and fidelity in all his dealings with his client.

What are the duties? A fiduciary relationship creates many legal duties for the person in whom the trust has been placed. The major components are explained below. For more information, see: Other duties of solicitors. Disclosure Your solicitor must tell you in writing how much they will charge you and about other expenses before they start working for you. This is known as disclosure. Once you have agreed to use a particular solicitor, they should also send you regular bills for their services, setting out the work performed and the charges for each service. For more information see: What your solicitor must tell you. Confidentiality Conversations, correspondence and documentation between you and your solicitor are confidential and can only be revealed in limited situations. Solicitors must also follow strict rules in the maintenance of client files. Conflicts of interest Your solicitor must not allow their own interests, or the interests of an associate, to conflict with those of a client. A solicitor generally cannot act for you if they have previously provided legal advice to a person you are in dispute with. If you believe that your solicitor may have a conflict you should raise this with them. Following instructions Your solicitor cannot make any decisions without your instructions. They must carry out your instructions promptly and efficiently in accordance with the law. Clear communication As the client, you should receive regular updates on the progress of your matter, preferably in writing. Your solicitor must provide advice about all your options, including the best course of action, which may be alternative forms of dispute resolution. Your solicitor must also treat you with respect, be polite and assist in your understanding of the law. Handling your money Your solicitor may ask you to pay some of their fees in advance to cover any expenses they incur during their work for you. This money must be held in trust and cannot be paid to anybody for any expenses without your specific permission, which you may provide in your original costs agreement. Trust and controlled money accounts. The Office of the Legal Services Commissioner enforces breaches by solicitors.

Chapter 7 : Attorney Malpractice Liability to Non-Client

into an actual client relationship a lawyer must make fair disclosure of the basis on which fees will be assessed. A corollary of the obligation to disclose the basis for future billing is a duty to render statements to the.

It is expected that guidance will be issued by the U. There are many open issues for which guidance is needed. The conclusions in this analysis are our initial conclusions and are subject to change as guidance is released. Based on the American Communities Survey from the Census Bureau, there are 31, population census tracts that are eligible to be a QOZ and an additional 9, that can be designated as a QOZ by being adjacent to a QOZ, as further described below. QOZ designations last for 10 years. States with less than low-income communities can designate up to 25 tracts as QOZs. The Designation Period for Governors to notify the Secretary of the Treasury of the nominated tracts lasts until March 21, , although a one-time day extension is available. The Treasury will then have 30 days to certify and designate such tracts as QOZs. Under a special rule, all low-income communities in Puerto Rico are automatically considered to be QOZs. QOZ nominations will be known by March 21, for most states and possessions or within 30 days for those that request an extension. Confirmation from the Treasury will then come within 30 days. Gain will be triggered at the earlier of the sale or exchange of the QOZ Fund or on December 31, The gain triggered is the lesser of the deferred gain or the fair market value of the investment in the QOZ Fund as of such date. The requirement to invest the gain within days will create significant pressure to find an investment before the deadline. Investors that regularly generate gains would have an easier time finding investments and timing their investment with a normal LIHTC or HTC capital contribution schedule. There does not appear to be any actual tracing of the cash gain proceeds into a QOZ investment. This could lead to leveraging opportunities where the taxpayer puts in cash that equals a portion of the deferred gain and then borrows money that is invested for the balance of the deferred gain. This could be especially useful for NMTC transactions, but also other transactions. In contrast, Section Exchanges require that the entire value of the original property be reinvested in a new property in order to defer taxation. Section Exchanges have a day identification period and a day exchange period. Example 2 â€" Investment â€" Assume the same facts as above. It only requires that the gain stem from a sale or exchange to an unrelated person. Real estate, personal property, intangibles assets, vehicles and virtually any other asset can qualify. In contrast, under the new Tax Reform law, eligibility for treatment has been restricted to only gains from the sale of real estate. The deferred gain will become taxable at the earlier of the date the QOZ Fund investment is sold or December 31, Note, if the fair market value of the QOZ investment is less than the deferred gain, then gain is only triggered up to such fair market value. The permanent avoidance of tax results in a corporate tax savings for Invest Corp. The savings for individuals could be even higher, depending on their tax rate. This is because the taxpayer has not yet paid tax on these funds due to the deferral described above. This increase is linked to the reduction in gain on the Existing Gain that occurs after 5 years. This increase is linked to the reduction in gain on the Existing Gain that occurs after 7 years. Any gain recognized on the deferred gain also increases the basis in the QOZ Fund by a like amount. Therefore, no later than December 31, , the basis in the QOZ Fund will increase up to the lesser of the basis amount of the original deferred gain or the fair market value of the QOZ Fund Investment. The same facts as in Example 3. Same facts as Example 3. In this case, Invest Corp. What is a QOZ Fund? This purpose requirement can likely be satisfied by having fund organizational documents provide for such a purpose. While the Joint Explanation that accompanied the Tax Reform bill indicated that there would be a similar certification process as with New Markets Tax Credits, the actual statute does not indicate such a process is required. Informal discussions with Treasury personnel also indicate that the Treasury certification process will not be extensive. This could allow for fund level reserves which could be available if needed for the QOZP investment. Or it could be invested in other income producing investments that do not qualify as QOZP. A strict reading of the rules would seem to require a calendar year QOZ Fund to measure itself on June 30 and December 31st. Such investments are tracked separately and the non-gain investment does not receive any of the special tax benefits described above. If a taxpayer wants to make an investment that exceeds any gain that it can defer, this is accomplished

by having the fund track the gain investment separately from the non-gain investment. Alternatively, a fund which does not have enough QOZ investors with deferred gains can choose to get additional investments from non-gain investors. Instead they would tend to be heavier rehabilitations such that the cost of the rehabilitation exceeds the cost of acquiring the building. In addition, the following rules apply: Will the operation of real estate be considered an active conduct of a trade or business? Our best guess is that they will follow the NMTC approach and that the operation of real estate could qualify. NQFP includes debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities and other similar property. NQFP does not include reasonable amounts of working capital held as cash, cash equivalents, debt instruments with a term of 18 months or less or accounts receivable generated in the ordinary course of business. For NMTC transactions there is also an exception for funds that will be expended for construction of real property within 12 months. Will the IRS allow an exception for funds that will be expended on a substantial improvement within 30 months? Please contact us for specific guidance related to your issues.

Chapter 8 : Duty of confidentiality - Wikipedia

Lawyer-Client Relationship 9 law world. The regulatory and trade association functions of bar associations sit uncomfortably in the one body.

Rationales for the duty[edit] The maintenance of full and frank disclosure between lawyers and their clients is the main justification for the duty of confidentiality. The basis for this rationale is utilitarianism , in that it works to promote the work of solicitors, who are officers of the court. It allows clients to freely discuss intimate details without fear that such information could be subsequently disclosed to the general public. In turn, public confidence in lawyers and the legal system is maintained and promoted. Further, the duty of confidentiality is a constant reminder to lawyers of the loyalty they owe to their clients. Another rationale is to protect the human dignity of the client. In criminal cases, confidentiality is also justified to prevent the use of tricked confessions or admissions. Source of the duty[edit] The duty is sourced from a combination of contract law and equity arising from the distinctive relationship between lawyer and client. The solicitor or attorney is an agent of the client under the law of agency. In contract, the duty arises from terms contained in the retainer agreement. Complementarily, equity prohibits unauthorised use or disclosure of confidential information. In most jurisdictions, the duty is codified in the terms of legal professional rules, such as the Model Code of Professional Responsibility. Although the duty of confidentiality and fiduciary duties have common origins, they cannot be equated as not all fiduciary duties attract duties of confidentiality and vice versa. Scope of the duty[edit] In contract[edit] As the lawyer-client duty of confidentiality is primarily sourced in contract law, the wording of implied terms in the retainer agreement determines its scope of operation. Despite its importance, there have been few judicial attempts to resolve the extent of the implied term. In equity[edit] In equity, protection is attached to information that is capable of meeting the test of confidentiality - whether the information was already public knowledge and whether its communication was for a limited purpose. While this test may indicate a more limited scope of confidentiality under equity, by requiring information to be deemed confidential before falling under the scope, on another level equity may secure a broader temporal protection for confidential information. The duty under contract expires on termination of the legal retainer, whereas the duty under equity remains intact until the information is no longer confidential, which may occur long after the expiration of the contractual retainer. In professional rules[edit] Legal professional rules have tended to adopt the broad view of the scope of duty recognised in contract law. The obligation to retain information in confidence, according to the professional rules in Australian jurisdictions is premised on its connection with the legal retainer rather than the source of the information. Hence, the professional rules seem to imply that information gained in connection with the legal retainer is deemed confidential. However, though the rules emphasise the importance of the duty of confidentiality, this is not a hard rule. Not all information connected with the retainer meets the legal test of confidentiality. Firstly, privilege is not dependent on a contractual, equitable or professional duty to clients. Rather, it is based upon arguments of public policy. Secondly, communications protected by confidentiality are more numerous than those protected by privilege. Privileged communications are a subset of confidential communication. Nonetheless, loss of privilege does not necessarily automatically destroy the duty to confidentiality if it has arisen independently of the privilege. Finally, privileged information is protected from compulsory disclosure, unless abrogated by statute or waived. Non-privileged confidential information on the other hand must be disclosed to judicial, statutory, or other legal compulsion. In particular, the public interest in discovering the truth trumps private duties to respect confidence. Limits and exceptions to the duty[edit] Though the duty to confidentiality is often expressed in absolute terms in professional rules, there are circumstances where the duty can be breached. Hence, the lawyer can reveal confidential information to third parties where the client allows such an action. However, consent to allow the disclosure of confidential information does not entitle the lawyer to disclose or use the information for other purposes than those specified by the client. The authorization does not necessarily have to be explicit. It can be inferred from the terms or nature of the retainer agreement. The idea that all information imparted within a retainer is confidential is impracticable. Often,

much of that information is communicated so that it can be disclosed to dispose of a matter, claim, or legal issue. Hence, where information is incidental to the conduct of a retainer, client authorisation can be generally taken as given. Nonetheless, where there is uncertainty, express authority should be sought from the client. Disclosure compelled by law[edit] Where expressly provided for in statute, lawyers must comply with any parliamentary requirement necessitating breach of the duty to confidentiality. Requirements are never blanket decrees for the revelation of confidential information. Rather they are based on upholding the public interest, where such interests override client interests in maintaining confidentiality. This is justified on policy grounds. If lawyers were unable to disclose such information, many would undertake legal work only where payment is made in advance. Lawyers may also breach the duty where they are defending themselves against disciplinary or legal proceedings. A client who initiates proceedings against a lawyer effectively waives rights to confidentiality. This is justified on grounds of procedural fairness - a lawyer unable to reveal information relating to the retainer would be unable to defend themselves against such actions. Disclosure of information that is not confidential[edit] Clearly, information that is not confidential does not fall under the duty of confidentiality. Disclosure of information that is already in the public domain does not breach the duty. Further, information that was not in the public knowledge at the time of the retainer agreement, is not subject to the duty if it subsequently enters the public domain. The purpose served by maintaining the confidence - the protection of the client - is arguably extinguished. Nonetheless, the lawyer still owes a duty of loyalty, and clients may feel betrayed if such information is disclosed, even if it becomes public knowledge. Though there are no legal ramifications for disclosure, discretion on part of the lawyer may be in the long term interests of maintaining the propriety of the legal profession. Disclosure for the purpose of probate[edit] See also: Previously confidential communications between the lawyer and testator are no longer secret for the purpose of proving the Will is the intent of the now deceased decedent. In certain cases, the client may desire or consent to revelation of personal or family secrets only after his or her death; for example, the Will may leave a legacy to a paramour or a natural child.

Chapter 9 : Lawyer-Client Relationship | Encyclopedia of Canadian Laws

The scope of a lawyer's fiduciary duty may be determined as a matter of law based on the CRPC, which together with statutes and general principles relating to other fiduciary relationships, all help define the duty component of the fiduciary duty that a lawyer owes to his or her client.

It seems like the most obvious of questions for a lawyer to ask: The answer is crucial, however, to establishing whether a lawyer-client relationship exists. And the creation of that relationship triggers a series of legal and ethical duties that the lawyer owes to the client on such vital matters as confidentiality and conflicts of interest. Sarbanes-Oxley provided for tougher regulations issued by the U. The Model Rules serve as the basis for the majority of state codes of professional conduct for lawyers. The revisions to Model Rules 1. Many states already follow rules incorporating provisions of the revised Model Rules. In particular, the articles focus on issues that arise in creating the client-attorney relationship, and for lawyers working in corporate, government and insurance defense settings. Moore The consensus in U. The ethics rules are not so clear, however, in the case of a person who contacts a lawyer to discuss the possibility of hiring the lawyer but never actually forms the client- lawyer relationship. A new rule that addresses duties to a prospective client was adopted in as part of a package of revisions to the ABA Model Rules of Professional Conduct developed by the Ethics Commission. It was less clear how conflict-of-interest rules applied to would-be clients. Moreover, with the increasing use of e-mails and fax machines, it was unclear whether unsolicited communications to a lawyer might force the lawyer to assume duties adverse to an existing client. Unlike the approach that Rule 1. Of course, as with former clients, adverse representation by either the lawyer or the firm is permissible if the appropriate parties give their informed consent. Recognizing that possibility, Rule 1. Moore is a professor at Boston University School of Law. Peter Moser Ethics rules offer a deceptively simple answer to the question of who the client really is when a lawyer represents a corporation. When conflicts of interest are apparent, informed consent of each affected client under Model Rule 1. Current Clients is required to permit the same lawyer to represent adverse interests. Lawyers also must reassess who it is they represent when control of the corporation changes. Recent corporate scandals put a new focus on the duties of a lawyer representing a company when wrongdoing occurs. As amended, Model Rule 1. This change would raise additional conflicts issues. Nearly as problematic is an alternative proposal that would require the lawyer to withdraw and the corporation but not the lawyer to disclose the withdrawal. Lawyers representing corporations must take care in determining who is actually the client. Lawyers also must remain alert to changed circumstances that alter their representational obligations. Bragg Insurance liability claims occur so frequently that one would think all the underlying legal and ethics issues involved in defending them would have been resolved long ago. Here is a typical scenario: Blue car and red car collide. Driver of blue car sues driver of red car. Most often, the defense lawyer takes direction from the insurance company and settles the lawsuit to the mutual satisfaction of the insurance company and its insured driver. Nevertheless, courts and scholars continue to grapple with a most fundamental question: Whom does the defense lawyer actually represent? Is it only the driver or is it also the insurance company? Most insurance defense lawyers warn against tinkering with practices that seem to have worked well for decades. In counterpoint, ethics scholars question whether such long-standing practices square fully with modern ethical rules. And they are reluctant to fashion special rules that would distinguish insurance companies from other third-party payors. Only when the legal status of the relationship has been defined do ethics issues crystallize. There is general agreement on one aspect of the relationship: The insured is a client of the lawyer. But at this point the road divides. Most decisions, however, have found that, absent a conflict of interest, the lawyer ordinarily represents both the insured and the insurance company. Jurisdictions that have adopted the single-client view must wrestle with a number of related questions. If, for example, the insurance company is not a client of the lawyer: And regardless of whether the jurisdiction recognizes the insurance company as a client, insurance defense lawyers should inform insureds about the relationship in accordance with Rule 1. From the moment the insurance company asks the lawyer to defend a lawsuit, the lawyer has to consider ethical obligations and to whom they are owed. But later on, in policy and management

positions, I struggled with it almost daily. I found it particularly hard to reconcile my duties to the client whoever it was under legal ethics rules with the statutory duties imposed on me as a government employee. Looking back, I can see that my difficulty was in confusing the ethics obligations of a government lawyer with the legal obligations of a government client. This confusion, unfortunately memorialized in the scope section of the ABA Model Rules of Professional Conduct, is a common source of trouble for government lawyers. The tendency to blur roles in public sector lawyering causes particular problems in deciding whether to disclose confidential information, how to resolve conflicts of interest, and what latitude government lawyers have to bring personal values to bear on their work. Government lawyers are not their own clients. Like all lawyers, they have an ethical duty to maintain a certain distance from their clients. And, like lawyers in the private sector, they have an ethical duty to know who the client is. Wolfenbarger, and the reasoning seems to apply as well to government. In short, the identity of the government client is a matter of law independent of any ethics precept or evidentiary rule. In the end, the government lawyers who had advised the president and Mrs. Clinton were compelled to disclose information that had been given to them in expectation of confidence because, under the applicable statutory scheme, the independent counsel had the final authority to speak for the United States in that criminal matter. Yet it provides a constant reminder that government lawyers are bound by the same ethics norms as lawyers representing private clients in deciding how to conduct themselves in an adversary setting and in making choices on behalf of the government client. The superseding role of statutes is recognized in the commentary to Model Rule 1. But government lawyers, as lawyers, do not have that duty. We need to focus our higher expectations on the government client, and let government lawyers find common ground with their private sector brothers and sisters. Identification of the government client is a civic duty for each of us. Margaret Colgate Love of Washington, D.