Garden State CLE presents:

New Jersey Rules of Professional Conduct For Dummies

Lesson Plan

Table of Contents

Introduction – Authority & Enforcement

N.J. Constitution of 1947 Article VI

Article VI – Section I – para 3

The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. **The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.**

Rule 1:14

The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme Court and included as an Appendix to Part I of these Rules, and the Code of Conduct for Judiciary Employees, also included as an Appendix to Part I of these Rules, shall govern the conduct of the members of the bar and the judges and employees of all courts of this State.

[RPC's adopted in 1984]

Rule 1:18

<u>It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct</u>, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.

RPC 8.3. Reporting Professional Misconduct

- (a) **A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.**

- (b) **A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.**

- (c) **This Rule does not require disclosure of information otherwise protected by RPC 1.6 [confidentiality].**

- (d) **Paragraph (a) of this Rule shall not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program established by the Supreme Court and administered by the New Jersey State Bar Association, except as follows:**
    - (i) **if the effect of discovered ethics infractions on the practice of an impaired attorney is irremediable or poses a substantial and imminent threat to the interests of clients, then attorney volunteers, peer counselors, or program staff have a duty to disclose the infractions to the disciplinary authorities, and attorney volunteers have the obligation to apply immediately for the appointment of a conservator, who also has the obligation to report ethics infractions to disciplinary authorities; and**

- (ii) **attorney volunteers or peer counselors assisting the impaired attorney in conjunction with his or her practice have the same responsibility as any other lawyer to deal candidly with clients, but that responsibility does not include the duty to disclose voluntarily, without inquiry by the client, information of past violations or present violations that did not or do not pose a serious danger to clients.**

In re Fusco, 197 NJ 428 (2009) (Reprimand)
In re Macaluso, 197 NJ 427 (2009) (Censure)

Proofs

A violation of the *Rules of Professional Conduct* must be established by clear and convincing proofs. In re Gross, 67 N.J. 419 (1975).

Disciplinary Options [Rule 1:20-15A]

Admonition

Reprimand

Censure

Suspension (3 months to 5 years)

Indeterminate suspension

Disbarment

Sources for Research

Supreme Court

Disciplinary Review Board

Advisory Committee on Professional Conduct (Rule 1:19)

Relation between Disciplinary Review Board (DRB) and Supreme Court;

Researching precedent and published opinions. Retrieve DRB opinions from:
http://njlaw.rutgers.edu/collections/drb/search.php

Rule 1:19-1 *et seq.* Advisory Committee on Professional Ethics: http://njlaw.rutgers.edu/collections/ethics/search.php

RPC 1.1 Competence

A lawyer shall not:

- (a) **Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.**

- (b) **Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.**

Notes & Comments

747 reported decisions dealing with this RPC

A single, isolated act of negligence is not an RPC violation. Gross negligence is usually a function of harm to the client.

Generally, "a pattern" means more than two instances of gross neglect." See In re Amantia, DRB98-402 [Admonition]

Typically, discipline is reprimand – In re Tyler, 204 NJ 629 (2011)

Suspensions imposed for those with disciplinary history or multiple instances involving serious harm to a client. In re LaVergne, 168 NJ 410 (2001) [six-month suspension]

RPC 1.3. Diligence

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

Notes & Comments

831 reported decisions dealing with this RPC

Discipline for violating RPC 1.1(a) and 1.3 generally has been imposed where the attorney's conduct injured or prejudiced the interests of a client. See, e.g., In re Humen, 123 N.J. 289, 586 A.2d 237 (1991) (concluding that attorney's failure in real-estate transaction to record deed and mortgage for six years and failure to insist that seller's spouse sign deed constituted gross negligence); In re Beck, 118 N.J. 561, 573 A.2d 147 (1990) (failing to prepare for and notify client of settlement conference violated RPC 1.1(a) and 1.3); In re Yetman, 113 N.J. 556, 552 A.2d 121 (1989) (holding that attorney's failure to work actively on administration of estate, to conclude matter within three and one-half years, or to refer matter to another attorney after recognizing matter to be beyond his competence constituted gross negligence and lack of due diligence, in violation of RPC 1.1(a) and 1.3).

The leading case involves a municipal prosecutor who did not adequately prepare for trial:

In re Segal, 130 NJ 468 (1992) [reprimand]

RPC 1.4. Communication

- (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- (b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

<u>Notes & Comments</u>

867 reported decisions dealing with this RPC

Applies to prospective clients

Examples may include not communicating a settlement offer

It is invariably charged with RPC 1.1, RPC 1.3 and other infractions.

Discipline a function of history, harm and number of clients affected.

RPC 1.15. Safekeeping Property

- (a) **A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.**

- (b) **Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.**

- (c) **When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.**

- (d) **A lawyer shall comply with the provisions of R. 1:21-6 ("Record keeping") of the Court Rules.**

Notes & Comments

688 reported decisions dealing with this RPC.

Typically, it involves negligence and poor record keeping:

"It was discovered that respondent had failed to keep appropriate receipts and disbursements journals, to maintain appropriate ledger cards for each client, to maintain a running balance in the trust account checkbook and to perform quarterly reconciliations of his trust account, in violation of *R.*1:21-6." In re Gifis, 156 NJ 323 (1998) [Disbarment]

It can also involve knowing misappropriation. In re Wilson, 81 NJ 451 (1979) and In re Holldendonner, 102 NJ 21 (1985).

1:21-6. Recordkeeping; Sharing of Fees; Examination of Records

- (a) Required Trust and Business Accounts. **Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:**
-
    - (1) **a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and**
    - (2) **a business account into which all funds received for professional services shall be deposited.**

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account to an IOLTA account.

- (b) **Account Location; Financial Institution's Reporting Requirements. An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further 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; (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 attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the 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 five banking days of the date of presentation for payment against insufficient funds.**

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor.

Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by the Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(c) Required Bookkeeping Records.

- (1) **Attorneys, partnerships of attorneys and professional corporations who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record:**
-
    - (A) **appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as stated below or by check payable to a named payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and**

- (B) **an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and**

- (C) **copies of all retainer and compensation agreements with clients; and**

- (D) **copies of all statements to clients showing the disbursement of funds to them or on their behalf; and**

- (E) **copies of all bills rendered to clients; and**

- (F) **copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed;**

- **(G) originals of all checkbooks with running balances and check stubs, bank statements, pre-numbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and**

- **(H) copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and**

- **(I) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.**

- **(2) ATM or cash withdrawals from all attorney trust accounts are prohibited.**

- **(3) No attorney trust account shall have any agreement for overdraft protection.**

- **(d) Type and Availability of Bookkeeping Records. The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.**

- (e) Dissolutions. **Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.**

- (f) Attorneys Practicing With Foreign Attorneys or Firms. **All of the requirements of this rule shall be applicable to every attorney rendering legal services in this state regardless whether affiliated with or otherwise related in any way to an attorney, partnership, legal corporation, limited liability company, or limited liability partnership formed or registered in another state.**

- (g) Attorneys Associated With Out of State Attorneys. **An attorney who practices in this state shall maintain and preserve for seven years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.**

- (h) Availability of Records. **Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.**

- (i) Disciplinary Action. **An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).**

- (j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners. **When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.**

RPC 3.3. Candor Toward the Tribunal

- (a) **A lawyer shall not knowingly:**
  - (1) **make a false statement of material fact or law to a tribunal;**
  - (2) **fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, 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;**
  - (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; or**
  - (5) **fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.**

- (b) **The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 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 relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.**

Notes & Comments

688 reported decisions dealing with this RPC.

Leading case is In re Seelig, 180 NJ 234 (2004).

Mitchell v. United States, 526 US 314 (1999)

RPC 1.7. Conflict of Interest: General Rule

- **(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:**
  - **(1) the representation of one client will be directly adverse to another client; or**
  - **(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.**
- **(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:**
  - **(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;**
  - **(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
  - **(3) the representation is not prohibited by law; and**

- (4) **the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.**

Notes & Comments

265 reported decisions dealing with this RPC.

Most common serious issue is doing business with a client in any manner at all. Greed and friendship lead to disaster.

In re Guidone, 139 NJ 272, 277 (1994)

We have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline. Of course, when an attorney's conflict of interest causes serious economic injury to clients, we have not hesitated to impose a period of suspension.

RPC 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) **knowingly make a false statement of material fact; or**

(b) **fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.**

Notes & Comments

887 reported decisions dealing with this RPC

Invariably charged with other violations and often occurs during the investigation as an "add-on"

Failure to cooperate is typically an admonition if the attorney does not have a disciplinary history.

RPC 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 or to achieve results by means that violate the Rules of Professional Conduct or other law;**
- (f) **knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;**
- (g) **engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.**

Notes & Comments

2962 reported decisions dealing with this RPC.

For Criminal conduct under RPC 8.4(b), also refer to Rule 1:20-13

(a) Reporting Criminal Matters.

(1) *Duty of Attorney Charged.* An attorney who has been charged with an indictable offense in this state or with an equivalent offense in any other state, territory, commonwealth, or possession of the United States or in any federal court of the United States or the District of Columbia shall promptly inform the Director of the Office of Attorney Ethics in writing of the charge. The attorney shall thereafter promptly inform the Director of the disposition of the matter.

(2) *Cooperation of Law Enforcement.* The Director may request the principal law enforcement officer of every law enforcement agency having jurisdiction within the State of New Jersey (including municipal and county prosecutors, the Attorney General and the United States Attorney) to promptly notify the Director of the Office of Attorney Ethics of any criminal charge filed against a New Jersey attorney, including all disorderly, petty disorderly or any second or subsequent motor vehicle charges involving the use of drugs or alcohol and to provide relevant information.

c) Final Discipline.

(1) *Conclusive Evidence.* In any disciplinary proceeding instituted against an attorney based on criminal or quasi-criminal conduct, the conduct shall be deemed to be conclusively established by any of the following: a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

(2) *Procedure.* At the conclusion of all criminal matters, including disorderly persons offenses, involving findings or admissions of guilt that are not the subject of a direct appeal, or at the conclusion of all direct appeals from all such matters, the Director may file directly with the Board and serve on the respondent or counsel, if any, a motion for final discipline based on a criminal conviction or admission of guilt specifying the sanction requested. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails to file a timely brief or timely files a brief which does not disagree with the sanction requested, no oral argument is required and the Board may decide the matter on the record. In all other cases the Board shall notify the parties of a date for oral argument. Following oral argument, the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it.

A violation of RPC 8.4(c) requires an intent to misrepresent.

Also, see In re Hyderally, 208 NJ 453, 460-61 (2011)

Discipline has been imposed on the basis of RPC 8.4(c) in various settings in which the record demonstrates intentional misconduct. See, e.g., In re Prothro, 208 N.J. 340, 27 A. 3d 1210 (2011) (attorney violated RPC 8.4(c) by knowingly making a false statement to a disciplinary authority); In re Trustan, 202 N.J. 4, 993 A.2d 1211 (2010) (attorney violated RPC 8.4(c) by knowingly making false statements to a third party and offered evidence he knew was false); In re Stahl, 198 N.J. 507, 969 A.2d 1067 (2009) (attorney violated RPC 8.4(c) where he knowingly made false statements to a law tribunal and offered evidence he knew was false); In re Marshall, 196 N.J. 524, 958 A.2d 459 (2008) (attorney violated RPC 8.4(c) where she assisted her client in conduct she knew was illegal or fraudulent, and made a false statement of material fact to a third party); In re Tan, 188 N.J. 389, 908 A.2d 180 (2006) (attorney violated RPC 8.4(c) by knowingly making false statements on his bar application). Absent evidence supporting a finding of intentional misconduct, this Court has declined to impose discipline pursuant to RPC 8.4(c). See, e.g., In re Uffelman, 200 N.J. 260, 979 A.2d 329 (2009) (imposing discipline based upon RPC 1.1(a), RPC 1.3 and RPC 1.4(b) after DRB dismissed RPC 8.4(c) charge in the absence of a finding of an intent to misrepresent); In re Seelig, 180 N.J. 234, 244 n. 6, 850 A.2d 477 (2004) (noting the DRB majority's conclusion that the respondent "could not have violated RPC 8.4(c) ... because he withheld information about [his client's] indictable offense in good faith. Respondent's belief that he was acting ethically 'precluded a finding that he intended to deceive the court.')

RPC 8.4(d)

OPINION 721

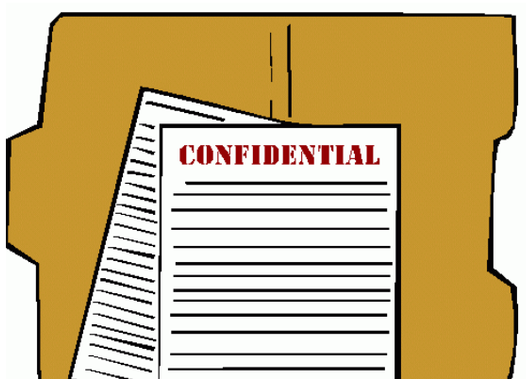
Agreement as Condition of Settlement That Client Refrain From Filing an Attorney Ethics Grievance or Withdraw a Grievance Already Filed

[A]n attorney may not seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter or withdraw a grievance already filed. Such an agreement is prejudicial to the administration of justice and, accordingly, violates *Rule of Professional Conduct* 8.4(d).

RPC 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, or 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 frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests 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.
- (g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

Notes & Comments

118 reported decisions dealing with this RPC.

In re Balliette, 217 NJ 277 (2014) (Censure).

OPINION 714

Conditioning Entry of a Plea or Entry into Pretrial Intervention on Defendant's Release from Civil Liability and Hold-Harmless Agreement

Accordingly, in response to the inquiry, the Committee confirms that *RPC* 3.4(g) prohibits a prosecutor from conditioning entry of a plea or entry into pretrial intervention in a criminal, quasi-criminal, or motor vehicle matter on the defendant's release from civil liability and agreement to hold harmless any person or entity such as the police, the prosecutor, or a governmental entity. The prohibition applies in all situations, including when the defendant's release from liability and agreement to hold harmless is initially offered by defense counsel.

Garden State CLE presents:

New Jersey Rules of Professional Conduct For Dummies

Lesson Plan