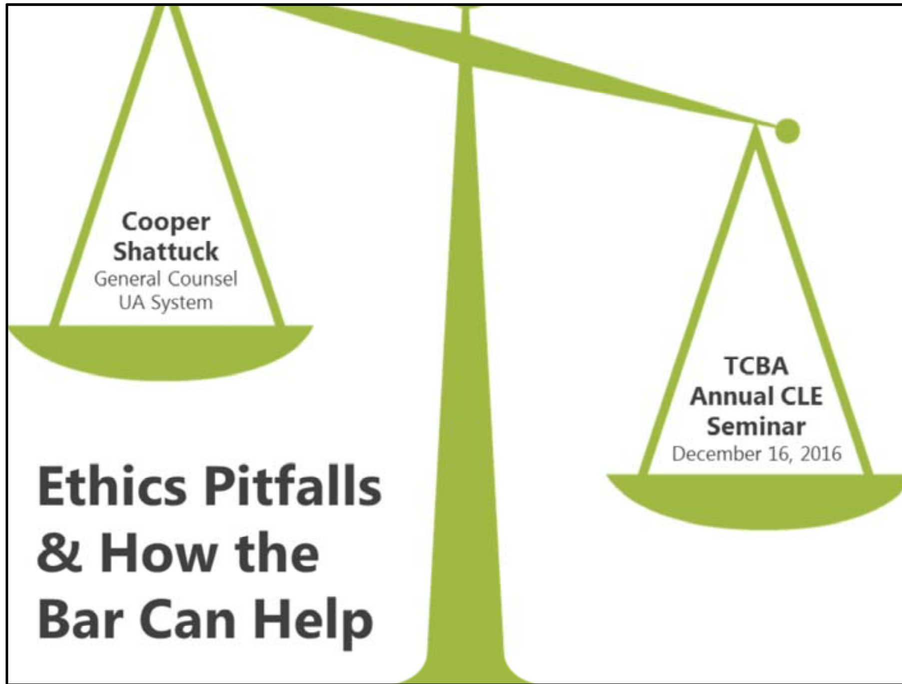
Cooper
Shattuck
General Counsel
UA System
TCBA
Annual CLE
Seminar
December 16, 2016
Ethics Pitfalls
& How the
Bar Can Help

I. Overview of Ethics and Discipline

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Grievance Flowchart

Complaint Against Lawyer Form – Alabama State Bar

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Jurisdiction

Jurisdiction applies to:

1. **Lawyers admitted to practice law in Alabama**
2. **Incumbent judges**
   - Misconduct occurring before they became judges
3. **Former judges** (who have resumed their status as lawyers)
   - Misconduct that occurred *while* they were judges, *before* they became judges, or *after resumption* of the practice of law

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Alabama Rules of Disciplinary Procedure
Rule 1.
Jurisdiction.

(a) Jurisdiction.

(1) LAWYERS. Lawyers admitted to practice law in this state, including district attorneys; assistant district attorneys; United States attorneys; assistant United States attorneys; the attorney general; assistant attorneys general; and lawyers specially admitted by any court in this state for a particular proceeding, are subject to the exclusive disciplinary jurisdiction of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar, with review by the Supreme Court of Alabama. Lawyers are subject to jurisdiction under this rule even though the misconduct occurred outside the lawyer-client relationship.

(2) INCUMBENT JUDGES. Incumbent judges are subject to the jurisdiction of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar during their terms of office for misconduct occurring before they became judges.

(3) FORMER JUDGES. Former judges who have resumed their status as

lawyers are subject to the jurisdiction of the Supreme Court of Alabama and the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar for misconduct that occurred while they were judges, before they became judges, or after the resumption of the practice of law and that would have been grounds for lawyer discipline.

(b) Power of Courts. Nothing contained in these rules shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it.

(c) Surrender of License. A lawyer's surrendering his or her license does not divest the Disciplinary Commission or a local grievance committee from investigating and bringing charges for misconduct.

[Amended eff. 4-23-2008.]

Note from the reporter of decisions: The order amending Rule 1(a)(2), Alabama Rules of Disciplinary Procedure, effective April 23, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 978 So.2d.

Surrender of License

Surrender of license does **not** divest the Disciplinary Commission or a local grievance committee from investigating and bringing charges for misconduct.

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Alabama Rules of Disciplinary Procedure
Rule 1.
Jurisdiction.

(c) Surrender of License. A lawyer's surrendering his or her license does not divest the Disciplinary Commission or a local grievance committee from investigating and bringing charges for misconduct.

Grounds for Discipline

Discipline may be imposed for any of the following:

1. **Conviction of a crime;**
2. **Violation of a rule of professional conduct** (whether or not that violation occurred in the course of the lawyer-client relationship);
3. **Discipline imposed in another jurisdiction;**
4. **Violation of Rules of Disciplinary Procedure;**
5. **Violation of or failure to comply with an order of the Disciplinary Commission or Disciplinary Board;** or
6. **Failure to respond to a request for a response or for information in a matter involving lawyer conduct**

Tuscaloosa County Bar Association

Alabama Rules of Disciplinary Procedure
Rule 2.
Grounds for discipline.

Discipline may be imposed for any of the following reasons:

(a) Conviction of a crime as set forth in Rule 22 of these rules;

(b) Violation of a rule of professional conduct contained in the Alabama Rules of Professional Conduct as from time to time shall be in effect in the state of Alabama, whether or not the violation occurred in the course of the lawyer-client relationship;

(c) Discipline imposed in another jurisdiction;

(d) Violation of these Rules of Disciplinary Procedure or violation of or failure to comply with an order of the Disciplinary Commission or the Disciplinary Board; or

(e) Failure to respond to a request for a response or for information in a matter involving lawyer conduct from the Disciplinary Commission, the Disciplinary Board, the general counsel of the Alabama State Bar, or a local grievance committee of a circuit,

county, or city bar association as approved by the Alabama State Bar pursuant to Rule 7 of these rules.

Types of Discipline

1. **Disbarment** (5 years)
2. **Suspension** (45 days to 5 years)
   - If 90 days or less, automatic reinstatement.
3. **Interim suspension**
   - "Serious crime"
   - Likely to cause immediate and serious injury to client or public
4. **Indefinite suspension** (CSF, CLE, IOLTA)
5. **Public Reprimand** (with or without general publication)
6. **Private Reprimand**
7. **Probation**
8. **Other** (Rule 8(h), A.R.D.P.)

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Alabama Rules of Disciplinary Procedure
Rule 8.
Types of discipline.

(a) Disbarment. Disbarment terminates the individual's status as a lawyer and may result from a hearing or by consent as provided in Rule 23. A person who has been disbarred may not apply for reinstatement until the expiration of at least five (5) years from the effective date of disbarment. A lawyer shall remain disbarred until reinstated to the practice of law pursuant to Rule 28. A lawyer who has been disbarred after reinstatement following a prior disbarment shall not be reinstated.

(b) Suspension. Suspension is the removal of a lawyer from the practice of law for a specified period of time not less than forty-five (45) days and not more than five (5) years, unless the suspension is conditioned upon the satisfaction of some condition, such as restitution of client funds, in which case the suspension shall continue until the condition is satisfied. Suspension may result from a hearing or by consent as provided in Rule 24. A lawyer who has been suspended for ninety (90) days or less will be automatically reinstated upon expiration of the period of suspension and the filing of an affidavit that he or she has complied with all applicable discipline or disability orders and rules. A lawyer who has been suspended for more than ninety (90) days must apply for

reinstatement pursuant to Rule 28, unless the order of suspension expressly provides otherwise, and will remain suspended until reinstated.

(c) Interim Suspension.

(1) Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. The Disciplinary Commission may, pursuant to Rule 20 of these Rules, place a lawyer on interim suspension immediately upon proof that the lawyer has been convicted of a “serious crime” or that the lawyer's continuing conduct is causing or is likely to cause immediate and serious injury to a client or to the public.

(2) A “serious crime” is defined as:

(A) A felony;
(B) A lesser crime involving moral turpitude;
(C) A lesser crime, a necessary element of which, as determined by the statutory or common-law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or
(D) An attempt, a conspiracy, or the solicitation of another to commit a “serious crime.”

(d) Indefinite Suspension. A lawyer may be suspended indefinitely from the practice of law for failing to comply with the Client Security Fund Rules, the Mandatory Continuing Legal Education Rules, and the Interest on Lawyer Trust Account Rules of the Alabama State Bar.

(e) Summary Suspension. A member who fails to pay any assessment, costs, or restitution as ordered by the Alabama Supreme Court, the Disciplinary Commission, or the Disciplinary Board within 30 days following entry of the judgment or order or a later time as fixed in the judgment or order, or who fails to participate in formal proceedings or to respond to requests for information concerning a disciplinary matter shall be summarily suspended upon order of the Disciplinary Commission of the Alabama State Bar, pursuant to Rule 20 of these Rules.

(f) Public Reprimand. Public reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice. The two versions of public reprimand are:

(1) A public reprimand with general publication requires, in accordance with Rule 33 of these Rules, publication in the official Bar publication and in a newspaper of general circulation in each judicial circuit in the State of

Alabama in which the respondent maintained or maintains an office for the practice of law.
(2) A public reprimand without general publication requires, in accordance with Rule 33 of these Rules, a publication in the official Bar publication to include the name of the respondent, but no publication in the newspaper is permitted. This type of public reprimand is nevertheless public and may be released upon request by any interested party.

(g) Private Reprimand. Private reprimand is a form of non-public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(h) Probation. Probation is a sanction that allows a lawyer to practice law under specified conditions and may be imposed alone or in conjunction with other forms of discipline. Probation shall be public unless otherwise ordered by the Disciplinary Commission or Disciplinary Board. Probation may also be imposed as a condition of reinstatement. Probation should be used only in those cases where there is little likelihood that
the respondent lawyer will harm the public during the period of probation and where the conditions of the probation can be adequately supervised. Probation may be appropriate in certain cases of disability, if the condition is capable of treatment without transfer to the disability inactive status.
Probation must be imposed for a specified period.

(i) Additional Sanctions and Remedies. In conjunction with any of the above punishments, the Disciplinary Board or the Disciplinary Commission may impose any of the following sanctions and remedies:

(1) Restitution;
(2) Assessment of cost (not including lawyer's fees);
(3) Limitation upon practice;
(4) Appointment of a receiver;
(5) Requirement that the lawyer retake and pass the State Bar examination or the professional responsibility examination, or both;
(6) Requirement that the lawyer attend continuing legal education courses approved by the Alabama State Bar; and
(7) Other requirements consistent with the purposes of lawyer discipline.

[Amended eff. 8-1-2000; Amended 9-12-2008, eff. 10-6-2008; Amended 9-20-2016, eff. 1-1-2017.]

Note from the reporter of decisions: The order adopting Rule 8(e), effective August 1, 2000, is published in that volume of Alabama Reporter that contains Alabama cases from 753 So.2d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

Note from the reporter of decisions: The order amending Rule 8(a) and (b), Rule 10(a) and (b), Rule 17(f), Rule 18, Rule 26(h)(2), Rule 28(e), and Appendix A, Ala. R. Disc. P., effective January 1, 2017, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d.

Alabama Rules of Disciplinary Procedure
Rule 20.
Interim suspension and summary suspension.

(a) Grounds for Suspension -- With and Without Notice.

(1) CONVICTION OF A SERIOUS CRIME. The Disciplinary Commission may issue an order temporarily suspending a lawyer without written or oral notice to the lawyer on petition of the General Counsel, supported by an affidavit demonstrating facts personally known to the affiant, or a verified complaint, showing that a lawyer has been convicted of a serious crime, as defined in Rule 8 of these Rules.

(2) OTHER CIRCUMSTANCES WITHOUT NOTICE. The Disciplinary Commission may issue an order temporarily suspending a lawyer without written or oral notice to the lawyer on petition of the General Counsel, only if:
(i) it clearly appears from specific facts shown by an affidavit demonstrating facts personally known to the affiant or by a verified complaint that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to a client or to the public, or showing that grounds for summary suspension as defined in Rule 8(e) exist, and
(ii) General Counsel certifies to the Disciplinary Commission in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.
Unless the Disciplinary Commission is satisfied by the showing made pursuant to subsection (ii) above that suspension without notice is warranted under the circumstances, a lawyer, other than one convicted of a serious crime, shall not be suspended without notice and an opportunity to be heard as provided in subsection (3).

(3) OTHER CIRCUMSTANCES WITH NOTICE AND PRELIMINARY HEARING. The

Disciplinary Commission may issue an order temporarily suspending a lawyer with written or oral notice to the lawyer on petition of the General Counsel if it clearly appears from specific facts shown by an affidavit demonstrating facts personally known to the affiant or by a verified complaint that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to a client or to the public. The written or oral notice required by this subsection is notice that is reasonable under the circumstances. Reasonable notice shall be presumed if written or oral notice was attempted upon the lawyer at the address, telephone or facsimile number, or e-mail address on file with the membership department of the Alabama State Bar. The Disciplinary Commission may conduct a preliminary hearing on the petition for interim suspension with forty-eight (48) hours' notice to the parties. The preliminary hearing shall not include a trial of the merits of the petition, but shall include only an inquiry into whether there is probable cause to believe that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to client or to the public. The respondent lawyer or his attorney shall be allowed to cross-examine witnesses and present evidence on his or her own behalf at the preliminary hearing. A lawyer suspended with notice and after a preliminary hearing shall not be entitled to a hearing under subsection (d) of this rule.

(b) Effect of Interim Suspension. An order suspending a lawyer under this rule immediately suspends his or her right to practice as of the effective date stated in the order. Simultaneously with the issuance of the suspension order, a trustee may be appointed pursuant to Rule 29 of these Rules to protect the interest of the lawyer and his or her clients.

(c) Termination of Interim or Summary Suspension. A suspension must be terminated by the Disciplinary Commission:

(1) Upon reversal or vacation of the judgment of conviction that gave rise to the suspension;
(2) Upon the effective date of the order of final discipline;
(3) Upon transfer to disability inactive status;
(4) Upon dissolution of the order of suspension by the Disciplinary Board, the Disciplinary Commission, or the Alabama Supreme Court; or
(5) In the case of an interim suspension, upon failure of the General Counsel to file formal charges within twenty-eight (28) days after the date of interim suspension.

(d) Dissolution or Amendment of Interim Suspension or Summary Suspension. The lawyer may request dissolution or amendment of an order of suspension or summary suspension entered without notice by filing a petition with the Disciplinary Commission, a copy of which petition shall be served on the General Counsel. The petition shall be set for hearing before the Disciplinary Commission within seven (7)

days of its filing. The scope of the hearing shall be as defined in subsection (a)(3) above. The Disciplinary Commission shall decide the petition with the utmost speed consistent with due process. The Disciplinary Commission may modify the order of suspension, if appropriate, and continue such provisions of that order as may be appropriate until final disposition of all disciplinary charges against the lawyer. An appeal may be taken from decisions of the Disciplinary Commission as provided in Rule 12(f); however, the suspension will not be stayed during the appeal process.

(e) Surrender of License. A lawyer who is suspended by action of the Disciplinary Commission pursuant to this rule shall promptly surrender his or her license to the Secretary of the Alabama State Bar within ten (10) days after issuance of the order of suspension.

(f) Notice to Clients and Court. A lawyer suspended pursuant to this rule shall immediately provide notices as required by Rule 26 of these rules.

(g) Trust Accounts. An order of suspension pursuant to this rule, when served on a bank maintaining a trust account for the suspended lawyer, shall prevent the bank from making further payments from that account.

(h) Advertising. A lawyer suspended under this rule shall, to the extent possible, immediately cancel and cease any advertising activities in which the lawyer is engaged.

[Amended eff. 8-1-2000; Amended eff. 10-14-2005; Amended 9-12-2008, eff. 10-6-2008.]

Note from the reporter of decisions: The order amending Rule 20, effective August 1, 2000, is published in that volume of Alabama Reporter that contains Alabama cases from 753 So.2d.

Note from the reporter of decisions: The order amending Rule 20(a) and Rule 20(d), Alabama Rules of Disciplinary Procedure, effective October 14, 2005, is published in that volume of Alabama Reporter that contains Alabama cases from 911 So.2d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

Alabama Rules of Disciplinary Procedure
Rule 22.

Mandatory suspension or disbarment.

(a) The Disciplinary Commission shall disbar or suspend a lawyer:

(1) When a judgment is rendered against the lawyer for money collected by him or her as a lawyer upon which judgment and execution has been issued and returned “no property found.” The record of the judgment, execution, and return, or a copy thereof certified and authenticated in the manner authorized by law, is conclusive evidence thereof, unless such judgment has been set aside, reversed, or annulled.

(2) If the lawyer's conviction for a “serious crime,” as defined in Rule 8 of these Rules, has become final, regardless of the plea, in any court of record of this state or any other state, or of the United States, or of a territory of the United States. The record of his or her conviction or a copy thereof certified and authenticated in the manner authorized by law is conclusive evidence of such conviction. Whether a lawyer's conviction involves a serious crime as defined in Rule 8(c)(2)(B), (C), and (D) shall be made by the Disciplinary Board upon petition by the General Counsel. The Disciplinary Board may conduct a hearing to assist it in making this determination. If the Disciplinary Board determines that the conviction involved a serious crime, then the Disciplinary Commission will determine the discipline, upon further petition by the General Counsel. When the conviction is not final, the General Counsel may file a petition with the Disciplinary Commission, make a showing of good cause, and request that the lawyer be suspended immediately, pursuant to Rule 20 of these Rules, irrespective of the lawyer's right to appeal the conviction.

(b) If the crime for which the lawyer is convicted does not constitute a “serious crime,” as defined in Rule 8 of these Rules, it may nevertheless constitute grounds for discipline under Rule 2(b) of these Rules.

[Amended eff. 7-1-94; Amended 9-12-2008, eff. 10-6-2008.]

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

Alabama Rules of Disciplinary Procedure
Rule 28.
Reinstatement.

(a) Prohibition of Practice. A lawyer who has been disbarred by consent or after hearing, or who has been suspended for more than ninety (90) days, or who has been placed on disability inactive status pursuant to Rule 27 of these Rules, or who has voluntarily surrendered his or her license, shall not resume the practice of law until reinstated by order of the Disciplinary Board, the effective date of which shall be established by the Alabama Supreme Court.

(b) Time of Reinstatement. A lawyer who has been suspended for more than ninety (90) days may not apply for reinstatement until the period of suspension has terminated. A lawyer who has been disbarred by consent or after hearing, or who has surrendered his or her license, may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment or surrender of license. A lawyer on disability inactive status may apply for reinstatement pursuant to Rule 27(g) of these Rules.

(c) Petitions for Reinstatement. Petitions for reinstatement shall be filed with the Disciplinary Clerk of the Alabama State Bar and served upon the General Counsel, and shall be in the form and contain the material specified in Appendix “A” to these Rules. A petition that does not substantially comply with the form specified in Appendix “A” or that does not contain the information and documents specified in Appendix “A” or that does not contain satisfactory proof of compliance with the provisions of Rule 26 of these Rules shall constitute prima facie evidence that the petitioner has not met the burden of proof required for reinstatement under this rule, and the petition shall be summarily denied. Upon receipt by the Disciplinary Board of a petition that substantially complies with Appendix “A,” a Disciplinary Hearing Officer shall promptly set the petition for a hearing. At the hearing, the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications to practice law in this state and that his or her resumption of the practice of law within the state will not be detrimental to the integrity and standing of the Bar or the administration of justice, and will not be subversive to the public interest. Proof of compliance with the provisions of Rule 26 of these Rules shall be a condition precedent to consideration of a petition for reinstatement. The Disciplinary Board shall, within seven (7) days after the hearing, issue an order granting or denying the petition.

(d) Proceedings. In all proceedings upon a petition for reinstatement, crossexamination of the petitioner's witnesses shall be conducted by the General Counsel, and evidence in opposition to the petition, if any, shall be submitted by the General Counsel.

(e) Costs. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Disciplinary Board to cover anticipated costs of the reinstatement proceedings. All costs associated with the reinstatement proceeding must be paid by the petitioner within thirty (30) days of the conclusion of the reinstatement hearing. In the event the petitioner=s reinstatement is

denied, the petitioner shall not be eligible to petition for reinstatement until all costs of the prior reinstatement proceeding have been paid.

(f) Publication of Petition. Notice that a person has applied for reinstatement may be published in a newspaper of general circulation in the city or county of residence of the petitioner or in the judicial circuit or circuits in which the petitioner last practiced, or both, and may be published to the local bar association, inviting the public and the local bar to provide any information relevant to the qualifications of the petitioner.

(g) Approval or Denial of Petition. If the petitioner is found unfit to resume the practice of law, the petition shall be denied. If the petitioner is found fit to resume the practice of law, the order of the Disciplinary Board shall reinstate him or her; provided, however, that the order may make such reinstatement conditional upon any or all of the following:

(1) Restitution (partial or complete), with or without interest, to parties harmed by the petitioner's misconduct, whether or not the obligation has been discharged in bankruptcy or by operation of law;
(2) Payment of all or part of the costs of reinstatement proceedings but not lawyer's fees;
(3) Probation or limitation upon practice as provided by Rule 8 and Rule 21 of these Rules;
(4) Appointment of a probation supervisor, monitor, or trustee or receiver;
(5) Proof of passage of the bar examination, the professional responsibility examination, or both, or any other proof of competency deemed appropriate by the Disciplinary Board;
(6) Attendance at a continuing legal education course or courses in addition to the annual mandatory continuing legal education requirement; and
(7) Any other requirement that the Disciplinary Board deems appropriate.

(h) Effective Date. No petitioner shall be reinstated to the practice of law in the State of Alabama until the effective date of reinstatement as is established by order of the Alabama Supreme Court.

(i) Reapplication. No petition for reinstatement under this rule shall be filed within one year following an adverse order of the Disciplinary Board, which has become final, on a petition for reinstatement filed by or on behalf of the same person.

(j) Appeal. Either party may appeal the decision of the Disciplinary Board pursuant to Rule 12(f). Whether the action of the Disciplinary Board will be stayed during the appeal is within the discretion of the body considering the appeal.

(k) Notice. Upon reinstatement, the Disciplinary Board shall transmit notice of such reinstatement to all parties to whom notice of discipline or transfer to disability

inactive status were sent under Rule 30 of these Rules.

[Amended eff. 8-1-97; Amended eff. 8-1-2000; Amended 9-12-2008, eff. 10-6-2008; Amended 9-20-2016, eff.1-1-2017.]

Note from the reporter of decisions: The order amending Rule 28(c) and (i), effective August 1, 2000, is published in that volume of Alabama Reporter that contains Alabama cases from 753 So.2d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

Note from the reporter of decisions: The order amending Rule 8(a) and (b), Rule 10(a) and (b), Rule 17(f), Rule 18, Rule 26(h)(2), Rule 28(e), and Appendix A, Ala. R. Disc. P., effective January 1, 2017, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d.

Disciplinary Statistics

In 2015:

Type of Hearing	Number of Hearings
Disciplinary Hearings	7
Character and Fitness Appeals	8
Reinstatement Hearings	13
Total	28

Disciplinary Statistics

In 2015:	
Complaints Received	1,317
Complaints Screened Out	969
Formal Investigation Files Opened	305
Private Reprimands	19 (out of 25)
Public Reprimands	14
Suspensions	14 (out of 21)
Disbarments	5 (out of 15)
***Consent to Disbarment**	9 (out of 12)
***Transfer to Disability Inactive**	6
Probation (with suspensions abated)	1
Formal Opinions Issued	1
Informal Opinions Issued	3,300 (approximately)

Tuscaloosa County Bar Association
Annual CLE Event
December 16, 2016

Hotspots

1. **Diligence** (Rule 1.3)
2. **Communication** (Rule 1.4)
3. **Competence** (Rule 1.1)
4. **Conduct which adversely reflects on lawyer's fitness to practice law** (Rule 8.4)
5. **Failing to respond to a request for information from a disciplinary authority** (Rule 8.1)
6. **Safeguarding a client's property** (Rule 1.15)

Tuscaloosa County Bar Association
Annual CLE Event
December 16, 2016

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.1.
Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation.

[Amended eff. 3-26-2012]

Comment
Legal Knowledge and Skill
In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to

give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

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

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

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

Thoroughness and Preparation

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

Maintaining Competence

To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education.

Comparison with Former Alabama Code of Professional Responsibility

Rule 1.1 adds a requirement, not previously existing in Alabama, that affirmatively requires a lawyer to provide competent representation and that particularizes the elements of competence.

In 1974 Alabama rejected the ABA's Model DR 6-101(A)(1), which provided that a lawyer shall not handle a matter “which he knows or should know that he is not competent to handle, without associating himself with a lawyer who is competent to handle it,” together with Model DR 6-101(A)(2), which required “preparation adequate in the circumstances,” and Model DR 6-101(A)(3), which prohibited the “[n]eglect of a legal matter.” Rather, Alabama adopted as DR 6-101 a requirement that “A lawyer shall not willfully neglect a legal matter entrusted to him.” The former DR 6-101 is carried forward in Rule 1.3.

Note from the reporter of decisions: The order amending Rule 1.1, Rule 1.2(c), Rule 4.2, and Rule 4.3, Alabama Rules of Professional Conduct, and amending Rule 11, Alabama Rules of Civil Procedure, and adopting Rule 87, Alabama Rules of Civil Procedure, is published in that volume of Alabama Reporter that contains Alabama cases from So. 3d.

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.15.
Safekeeping Property.

Definitions. As used in this rule, the terms below shall have the following meanings:

"IOLTA account" means a pooled interest- or dividend-bearing trust account benefiting the Alabama Law Foundation or the Alabama Civil Justice Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in subsection (k).

"Interest- or dividend-bearing trust account" means a federally insured checking account or a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market

fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least $250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.

"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.
"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Any funds while in the lawyer's trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.

Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(k), and the lawyer shall have no right or claim to the interest. 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 six (6) years after termination of the representation.
A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third

person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding that property.

(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 a 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 not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace the funds in the separate account.

(e) A lawyer who practices in Alabama shall maintain current financial records as provided in these Rules and as required by Rule 1.15 of these Rules and shall retain the following records for a period of six (6) years after termination of the representation:

1. Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee, and purpose of each disbursement;

2. Ledger records for all client trust accounts showing, for each separate trust client or third person, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

3. Copies of retainer and compensation agreements with clients as required by Rule 1.5 of these Rules;

4. Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

5. Copies of bills for legal fees and expenses rendered;

6. Copies of records showing disbursements on behalf of clients;

7. The physical or electronic equivalents of all trust-account checkbook registers, bank statements,
records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;

8. Records of all electronic transfers from client trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient, and confirmation from the financial institution of the trust-account number from which money was withdrawn and the date and the time the transfer was completed;

9. Copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyers; and

10. Copies of those portions of client files that are reasonably related to client trust-account transactions.

(f) With respect to client trust accounts required by Rule 1.15 of these Rules:

1. Only a lawyer admitted to practice in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or shall authorize transfers from a client trust account;

2. Receipts shall be deposited intact, and records of deposit should be sufficiently detailed to identify each item; and

3. Withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

(g) Records required by Rule 1.15 may be maintained by electronic, photographic, or other media, provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(h) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trustaccount records specified in these Rules.

(i) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or (2) if the request is honored by the financial

institution and the overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.
A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure.
Nothing in this rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this rule.
Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(j) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state, or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(k) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from

which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (k) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.
Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its nonIOLTA customers) by either using the identified product type as an IOLTA account or paying the equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.

2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.

3. A government (such as for municipal deposits) interest-bearing checking account.

4. A checking account paying preferred interest rates, such as money-market or indexed rates.

5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.
As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, that would otherwise qualify for investment options described in 1 through 4 above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be considered as comparable to IOLTA accounts in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation and Alabama Civil Justice Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundations will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as the lawyer shall designate.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation or the Alabama Civil Justice Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(l) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(k) shall be distributed by it for one or more of the following purposes:

1. To provide legal aid to the poor;

2. To provide law-student loans;

3. To provide for the administration of justice;

4. To provide law-related educational programs to the public;

5. To help maintain public law libraries; and

6. For such other programs for the benefit of the public as the Supreme Court of

the State of Alabama specifically approves from time to time.
(m) All interest or dividends transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(k) shall be distributed by it for one or more of the following purposes:(1) to provide financial assistance to organizations or groups providing aid or
assistance to:

(A) underprivileged children;
(B) traumatically injured children or adults;
(C) the needy;
(D) handicapped children or adults; or
(E) drug and alcohol rehabilitation programs;

(2) to be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(n) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

[Amended 8-21-92; Amended 8-28-92; Amended 8-1-97; Amended 4-14-2003; Amended 9-27-2007, eff. 1-1-2008; Amended 7-16-2012, eff. 1-1-2013; Amended 1-12-15.]

Comment
A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities.

Lawyers often receive funds from third parties from which the lawyers' fees will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just claims against funds or

other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

A "clients' security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

A lawyer engaged in active practice is required to maintain a separate account to hold funds of a client, unless the lawyer gives written notice to the Secretary of the Alabama State Bar. A lawyer is engaged in active practice unless the lawyer has obtained membership in the Alabama State Bar pursuant to the provisions of Alabama Code 1975, §§ 34-3-17 and 34-3-18.

A lawyer who maintains a separate account to hold funds of a client must comply with the Interest on Lawyers' Trust Accounts provisions, commonly known as IOLTA. A lawyer may maintain more than one interest-bearing account to hold clients' funds in compliance with IOLTA (commonly known as an IOLTA account) and may open an IOLTA account at any time during the year. The depository for an IOLTA account shall remit interest either to the Alabama Law Foundation or to the Alabama Civil Justice Foundation, as the lawyer designates. A lawyer may change the beneficiary of an IOLTA account at any time.

Rule 1.15(e) enumerates the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third-person funds as required by Rule 1.15. This rule requires that lawyers maintain client trust account records for a period of six (6) years after termination of each particular legal engagement or representation.
Rule 1.15(e)7 requires that the physical or electronic equivalents of all trust account checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of six (6) years after termination of each legal engagement or representation.

The "Check Clearing for the 21st Century Act" or "Check 21 Act," codified at 12 U.S.C. § 5001 et seq., recognizes
"substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002(16) as "a paper reproduction of the original check that

contains an image of the front and back of the original check; bears a MICR ('magnetic ink character recognition') line containing all the information appearing on the MICR line of the original check ...; conforms ... with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check." Banks, as defined in 12 U.S.C. § 5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on Internet-based Web sites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

The Automated Clearing House ("ACH") Network is an electronic-funds transfer or payment system that primarily provides for the interbank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments, including bill payments, business-to-business payments, and government payments (e.g., tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion ("ECC"). ECC is the process of transmitting MICR information from the bottom of check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point of purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of Rule 1.15(e)8.
There are five types of check conversions with regard to which a lawyer should be careful to comply with the requirements of Rule 1.15(e)8. First, in a "point-ofpurchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone conversion," bank-account information is provided via the telephone and the information is converted to a debit. Fifth, in a "Webinitiated
debit," an electronic payment is initiated through a secure Web environment.
Rule 1.15(e) applies to each electronic-fund transfer hereinabove described. All electronic-fund transfers shall be recorded, and a lawyer should not reuse a check number that has been previously used in an electronic-transfer transaction.The potential for these records to serve as safeguards is realized only if the
documentation set forth in Rule 1.15(e)9 is regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding

checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice, given the difficulty of identifying an error (whether by the lawyer or by the bank) among three months of transactions.

In some situations, documentation in addition to that listed in subparagraphs 1 through 9 of Rule 1.15(e) is necessary for a complete understanding of a trust-account transaction. The type of document a lawyer must retain under subparagraph 10 because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under the paragraph include correspondence between the client and the lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts, or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

Rule 1.15(f) enumerates minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or shall authorize electronic transfers from a client trust account. Although it is permissible to grant non-lawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a nondelegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See Rules 5.1, 5.2, and 5.3 of these Rules.

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.
The requirement in subparagraph (f)2 that receipts shall be deposited intact means that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a "split deposit."
Rule 1.15(g) allows the use of alternative media for the maintenance of client trust-account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or Internet-based file

storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish, reasonable procedures to protect the confidentiality of client information. See ABA Formal Ethics Opinion 398 (1995). Records required by Rule 1.15(e) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.l5, or by the official request of a disciplinary authority, including, but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or by court rule.

Rule 29 of the Alabama Rules of Disciplinary Procedure provides for the preservation of a lawyer's client trust-account records in the event the lawyer is transferred to disability-inactive status, has disappeared or died, has been suspended or disbarred, or has surrendered his or her law license.

Rule 1.15(h) provides for the preservation of a lawyer or firm's client trust account records in the event of dissolution of the law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in the Terminology section preceding these Rules.

Comparison with Former Alabama Code of Professional Responsibility

With regard to paragraph (a), DR 9-102(A) provided that “funds of clients” are to be kept in an identifiable bank account in the state in which the lawyer's office is situated. DR 9-102(B)(2) provided that a lawyer shall “identify and label securities and properties of a client... and place them in... safekeeping...” DR 9-102(B)(3) required that a lawyer “[m]aintain complete records of all funds, securities, and other properties of a client...”

Paragraph (a) extends these requirements to property of a third person that is in the lawyer's possession in connection with the representation.

Paragraph (b) is substantially similar to DR 9-102(B)(1), (3) and (4).

Paragraph (c) is similar to DR 9-102(A)(2), except that the requirement regarding disputes applies to property concerning which an interest is claimed by a third person as well as by a client.

Paragraph (d) is similar to a provision of DR 9-102, which was unique to Alabama. This provision is carried forward into the Rules.

Paragraphs (e), (f), and (g) implement the provisions of Alabama's Interest on Lawyers' Trust Accounts (IOLTA) Rules.

Comment to Rule 1.15 as Amended
Effective July 1, 1997
In addition to making stylistic changes, the amendment added the second paragraph in section (a) and added section (e) and section (k). It also added a sentence to the first paragraph of section (a) to set out the conditions under which a lawyer can deposit personal funds into a trust account.

Comment to Rule 1.15 as Amended
Effective April 14, 2003
In addition to stylistic changes, the amendment added the “Definitions” section to the rule and amended section (g) to provide that a lawyer shall hold those funds of a client or a third person that are nominal or that the lawyer expects to be held for only a short period in IOLTA accounts.

Note from the reporter of decisions: The order amending Rule 1.15 of the Alabama Rules of Professional Conduct, effective April 14, 2003, and adopting a comment to that rule, is published in that volume of Alabama Reporter that contains Alabama cases from 842 So.2d.”

Note from the reporter of decisions: The order amending Rule 1.15 of the Alabama Rules of Professional Conduct, effective January 1, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 966 So.2d.

Note from the reporter of decisions: The order amending Rule 1.15 and the Comment thereto and Rule 4.2, Alabama Rules of Professional Conduct, is published in that volume of Alabama Reporter that contains Alabama cases from So. 3d.

Note from the reporter of decisions: The order amending Rule 1.15(e), effective January 12, 2015, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d.

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.3.
Diligence.

A lawyer shall not willfully neglect a legal matter entrusted to him.

Comment
With respect to the standard of care imposed by this rule, a lawyer is only

subject to discipline for the willful neglect of a legal matter entrusted to him. This standard has been applied in the courts of this state. The mere failure of the lawyer to act with reasonable diligence and promptness is regrettable, but does not necessarily provide a basis for lawyer discipline under these rules. The failure of a lawyer to act with reasonable diligence and promptness may, however, provide a reason for a client to seek another lawyer, or, when the client is damaged, to consider a civil action against the lawyer for negligence, breach of contract, or other remedy.

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately. Inevitably, there will be times when a lawyer, through no fault of the lawyer, is unable to complete all work for the client within an optimal time frame. In these circumstances, a lawyer has professional discretion to determine that a client's legal position will not be affected by the lawyer's pursuing for the moment the work of other clients.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. In other instances, a client's legal position is unaffected by the passage of time. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. However, delays may be beyond the control of the lawyer, and the timing and pace of a matter may be determined by either courts or other parties.

The client bears ultimate responsibility for entrusting a legal matter to a lawyer. The offer to a lawyer of a legal matter for handling, and the acceptance by the lawyer of the responsibility for the matter, should constitute a clear and unambiguous undertaking by the lawyer and an entrustment by the client. Absent either, the client and the lawyer may hold differing beliefs concerning the lawyer's responsibilities.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in

a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Comparison with Former Alabama Code of Professional Responsibility
DR 6-101(A) required that a lawyer not “willfully neglect a legal matter entrusted to him.” In a footnote, DR 6-101 referred for a definition of “willful neglect to Nelson v. State, 182 Ala. 449, 62 So. 189 (1913), State v. Martin, 180 Ala. 458, 61 So. 491 (1913), and Haynes v. Alabama State Bar, 447 So.2d 675 (Ala.1984). EC 6-4 stated that a lawyer should “give appropriate attention to his legal work.” Canon 7 stated that “a lawyer should represent a client zealously within the bounds of the law.” DR 7-101(A)(1) provided that a lawyer “shall not intentionally ... fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules ....” DR 7-101(A)(3) provided that a lawyer “shall not intentionally ... [p]rejudice or damage his client during the course of the relationship

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.4.
Communication.

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

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

Comment
The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party, and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the

client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail.

The guiding principle under this Rule is that the lawyer should fulfill the reasonable expectation of the client for information. In determining what is reasonable, the lawyer must consider that the lawyer has a duty to act in the client's best interests. However, each client will have different levels of willingness, ability, and desire to participate intelligently in the representation. These levels are often dependent upon the kind of representation. Thus, the guiding principle is contingent upon the client's reasonable expectation but is limited or expanded by the client's willingness, ability and desire to participate in the particular representation, and by the practicability of the lawyer's meeting the client's expectations.

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

Withholding Information
In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Comparison with Former Alabama Code of Professional Responsibility

Rule 1.4 has no direct counterpart in the Disciplinary Rules. DR 6-101(A) provided that a lawyer shall not “willfully neglect a legal matter entrusted to him.” DR 9-102(B)(1) provided that a lawyer shall “[p]romptly notify a client of the receipt of his funds, securities, or other properties.” EC 7-8 stated that a lawyer “should exert his best efforts to ensure that decisions of his client are made only after the client has been informed of relevant considerations.” EC 9-2 stated that “a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client.”

Alabama Rules of Professional Conduct
Maintaining the Integrity of the Profession
Rule 8.1.
Bar Admission and Disciplinary Matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application 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 Rule 1.6.

Comment
The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

A lawyer representing an applicant for admission to the bar, or representing a

lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

Comparison with Alabama Code of Professional Responsibility
DR 1-101(A) provided that a lawyer is "subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar." DR 1-101(B) provided that a lawyer "shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute." With respect to paragraph (b), DR 1-102(A)(5) provided that a lawyer shall not engage in "conduct that is prejudicial to the administration of justice."

Alabama Rules of Professional Conduct
Maintaining the Integrity of the Profession
Rule 8.4.
Misconduct.

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Canons of Judicial Ethics or other law; or

(g) Engage in any other conduct that adversely reflects on his fitness to practice law.

Comment
Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the

distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

This rule does not repeal, abrogate, or modify Rule 22 of the Alabama Rules of Disciplinary Procedure (Interim), which provides for mandatory disbarment or suspension under specified circumstances.

Comparison with Former Alabama Code of Professional Responsibility
With regard to paragraphs (a) through (d), DR 1-102(A) provided that a lawyer shall not:

“(1) Violate a Disciplinary Rule.

“(2) Circumvent a Disciplinary Rule through actions of another.

“(3) Engage in illegal conduct involving moral turpitude.

“(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

“(5) Engage in conduct that is prejudicial to the administration of justice.

“(6) Engage in any other conduct that adversely reflects on his fitness to practice law.”

Former DR 7-102(A)(B) provided that “[i]n his representation of a client, a lawyer shall not... (8) Knowingly engage in other illegal conduct....”

Paragraph (e) is substantially similar to DR 9-101(C).

There is no direct counterpart to paragraph (f) in the former Alabama Code of Professional Responsibility. EC 7-34 stated in part that “[a] lawyer... is never justified in making a gift or a loan to a [judicial officer] except legitimate political campaign contributions under appropriate circumstances.” EC 9-1 stated that a lawyer “should promote public confidence in our [legal] system and in the legal profession.”

Paragraph (g) was not included within the ABA Model Rules, but was carried from the former Alabama Code of Professional Responsibility DR 1-102(A)(6).

Hotspots

7. **Fees** (Rule 1.5)
8. **Declining or terminating representation and/or failing to refund an unearned fee** (Rule 1.16)
9. **Conduct involving dishonesty, fraud, deceit, or misrepresentation** (Rule 8.4(c))
10. **Conduct prejudicial to the administration of justice** (Rule 8.4(d))

Tuscaloosa County Bar Association
Annual CLE Event
December 16, 2016

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.5.
Fees.

(a) A lawyer shall not enter into an agreement for, or charge, or collect a clearly excessive fee. In determining whether a fee is excessive the factors to be considered are the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers
performing the services;

(8) Whether the fee is fixed or contingent; and

(9) Whether there is a written fee agreement signed by the client.

(b) When the lawyer has not regularly represented the client, the basis or rate of
the fee shall be communicated to the client, preferably in writing, before or within a
reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is
rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or
other law. A contingent fee agreement shall be in writing and shall state the method by
which the fee is to be determined, including the percentage or percentages that shall
accrue to the lawyer in the event of settlement, trial or appeal, litigation and other
expenses to be deducted from the recovery, and whether such expenses are to be
deducted before or after the contingent fee is calculated. Upon conclusion of a
contingent fee matter, the lawyer shall provide the client with a written statement stating
the outcome of the matter and, if there is a recovery, showing the remittance to the client
and the method of its determination.

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

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

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

(e) A division of fee between lawyers who are not in the same firm, including a
division of fees with a referring lawyer, may be made only if:

(1) Either (a) the division is in proportion to the services performed by
each lawyer, or (b) by written agreement with the client, each lawyer assumes
joint responsibility for the representation, or (c) in a contingency fee case, the
division is between the referring or forwarding lawyer and the receiving lawyer;

(2) The client is advised of and does not object to the participation of all
the lawyers involved;

(3) The client is advised that a division of fee will occur; and

(4) The total fee is not clearly excessive.

(f) Without prior notification to and prior approval of the appointing court, no lawyer appointed to represent an indigent criminal defendant shall accept any fee in the matter from the defendant or anyone on the defendant's behalf. A lawyer appointed to represent an indigent criminal defendant may separately hold property or funds received from the defendant or on the defendant's behalf which are intended as a fee for the representation, as provided for by Rule 1.15, only if the lawyer promptly notifies the appointing court and promptly seeks its approval for accepting the property or funds as a fee.

Comment

Basis or Rate of Fee

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment

A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further

assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraphs (e)(1)(a) and (b) permit the lawyers in any type of matter to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. Paragraph (e)(1)(c) permits the lawyers in a contingency fee matter to divide the fee without restriction other than disclosure to the client. Paragraphs (e)(2) and (3) do not require disclosure to the client of the share that each lawyer is to receive. However, Rule 1.5(b) does require the extent of the division to be disclosed upon request. Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved. Paragraph (e)(4) requires that the total fee of both lawyers not be clearly excessive. That the total percentage applicable to a contingency fee arrangement is increased when a matter is referred does not indicate that the fee is excessive. Nor is excessiveness shown merely because the receiving lawyer would have accepted the matter for a lesser total fee had that lawyer been the only lawyer receiving a fee.

Disputes over Fees

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

Fees for Indigent Representation

Lawyers appointed by a court to represent indigent criminal defendants are typically paid by the government, under various state or federal programs providing for the representation of indigent criminal defendants. When a criminal defendant, upon the basis of indigency, receives representation by a lawyer through a court appointment, the lawyer may not accept any fee from the defendant or from anyone

acting on behalf of the defendant, unless the lawyer obtains the prior approval of the court. This prohibition prevents the defendant from abusing the system of court appointments. Furthermore, a lawyer who accepts a court appointment does so with the expectation that any fee in excess of the amount approved through the appointment system will be subject to further scrutiny by the court. When a criminal defendant is indigent at the time of appointment but is later able, through family, friends or other sources, to pay a fee to the lawyer, the lawyer may deposit the proffered fee, which may be kept separately in trust according to the Rules regulating the holding of property for clients or third persons. When the appointing court approves the acceptance of a fee from the defendant or on his behalf, then the Rules generally applicable to the disbursement of such property or funds apply. Otherwise the fee shall be disbursed first as the appointing court directs.

Comparison with Former Alabama Code of Professional Responsibility
Rule 1.5(a) has no counterpart in the Disciplinary Rules. In 1974, Alabama did not adopt Model DR 2-106(A) which provided that a lawyer "shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee" and Model DR 2-106(B), which provided that a fee is "clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." Instead, these considerations were included in the prior EC 2-18. The factors to be considered in determining whether a fee is excessive in Rule 1.5(a) are substantially identical to those listed in EC 2-18, with two modifications. The factor of "the responsibility, financial or otherwise, assumed by the lawyer," as previously contained in EC 2-18, is omitted. And, a new factor is added at Rule 1.5(a)(9): "Whether there is a written fee agreement signed by the client." EC 2-17 states that a lawyer "should not charge more than a reasonable fee ...."

There was no counterpart to paragraph (b) in the Disciplinary Rules. EC 2-19 stated that it is "usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent."

There was also no counterpart to paragraph (c) in the Disciplinary Rules. EC 2-20 provided that "[c]ontingent fee arrangements in civil cases have long been commonly accepted in the United States," but that "a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee ...."

With regard to paragraph (d), DR 2-107(A) prohibited "a contingent fee for representing a defendant in a criminal case." EC 2-20 provided that "contingent fee arrangements in domestic relation cases are rarely justified."

With regard to paragraph (e), DR 2-107(A) permitted division of fees only if:
"(1) The client consents to employment of the other lawyer after a full disclosure that

a division of fees will be made." Alabama had rejected the other subdivisions of the Model DR which also required that "(2) The division is in proportion to the services performed and responsibility assumed by each" and "(3) The total fee does not exceed clearly reasonable compensation ...." Further, in a provision unique to Alabama, as found in DR 2-103, it was said: "Nothing contained herein shall prohibit the division of fees with a forwarding lawyer." A similar provision was added to the Model Rule at Rule 1.5(e) by the phrase "including a division of fees with a referring lawyer."

There is no counterpart to paragraph (f) in the Disciplinary Rules. EC 2-29 stated that "[i]t is not unethical for an appointed attorney to receive a fee voluntarily paid by the defendant, or persons interested in him; but any appointed attorney receiving such payment shall forthwith advise the appointing court of such fact."

Alabama Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.16.
Declining or Terminating Representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client, if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) The client has used the lawyer's services to perpetrate a crime or fraud;

(3) The client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) Other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment
A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal
A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge
A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about

the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See Rule 1.14.

Optional Withdrawal

A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

Comparison with Former Alabama Code of Professional Responsibility

With regard to paragraph (a), DR 2-110(A) provided that a lawyer “shall not accept employment... if he knows or it is obvious that [the prospective client] wishes to... [b]ring a legal action... or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person....” DR 2-111(B) provided

that a lawyer “shall withdraw from employment... if:

“(1) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

“(2) He is discharged by his client.

“(3) He receives information that he is aiding or participating in conduct believed to be unlawful.”

With regard to paragraph (b), DR 2-111(C) permitted withdrawal regardless of the effect on the client if:

“(1) His client: (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; (b) Personally seeks to pursue an illegal course of conduct; (c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules; (d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively; (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules; (f) Fails to pay either fees or expenses.

“(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

“(3) His inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal.

“(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

“(5) His client knowingly and freely assents to termination of his employment.

“(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.”

With regard to paragraph (c), DR 2-111(A)(1) provided: “If permission for withdrawal from employment is required by the rules of a tribunal, the lawyer shall not withdraw... without its permission.”

The provisions of paragraph (d) are substantially identical to DR 2-110(A)(2) and (3).

Alabama Rules of Professional Conduct
Maintaining the Integrity of the Profession
Rule 8.4.
Misconduct.

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

II. How the Bar Can Help

Tuscaloosa County Bar Association
Annual CLE Event
December 16, 2016

1. Office of Counsel
2. Practice Management Assistance Program
3. Alabama Lawyer’s Assistance Program

Helpful Hints to Avoid Problems

1. **Communicate.**
   - Your client
   - Alabama State Bar
   - Your insurer
   - Law partners
   - Office staff

2. **Ask for help.**
   - **Call the Alabama State Bar first.**
   - Substances, etc.
   - Representation
   - Referral
   - Management

Tuscaloosa County Bar Association
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III. Questions and Answers

Tuscaloosa County Bar Association
Annual CLE Event
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