

IN THE SUPREME COURT OF IOWA

O R D E R

**IN THE MATTER OF IOWA
COURT RULES CHAPTER 32**

Effective July 1, 2005, the Iowa Code of Professional Responsibility (Iowa Court Rules chapter 32) is rescinded in its entirety and replaced with the Iowa Rules of Professional Conduct, as shown in attached exhibit "A."

Dated this _20th day of April, 2005.

THE SUPREME COURT OF IOWA

By_/s/ Louis A. Lavorato____
Louis A. Lavorato, Chief Justice

1 representation of a client except so far as disclosure is
2 required or permitted by the Iowa Rules of Professional
3 Conduct or other law.

4 [5] A lawyer's conduct should conform to the
5 requirements of the law, both in professional service to
6 clients and in the lawyer's business and personal affairs. A
7 lawyer should use the law's procedures only for legitimate
8 purposes and not to harass or intimidate others. A lawyer
9 should demonstrate respect for the legal system and for
10 those who serve it, including judges, other lawyers, and
11 public officials. While it is a lawyer's duty, when necessary,
12 to challenge the rectitude of official action, it is also a
13 lawyer's duty to uphold legal process.

14 [6] As a public citizen, a lawyer should seek
15 improvement of the law, access to the legal system, the
16 administration of justice, and the quality of service rendered
17 by the legal profession. As a member of a learned profession,
18 a lawyer should cultivate knowledge of the law beyond its
19 use for clients, employ that knowledge in reform of the law,
20 and work to strengthen legal education. In addition, a lawyer
21 should further the public's understanding of and confidence
22 in the rule of law and the justice system because legal
23 institutions in a constitutional democracy depend on
24 popular participation and support to maintain their
25 authority. A lawyer should be mindful of deficiencies in the
26 administration of justice and of the fact that the poor, and
27 sometimes persons who are not poor, cannot afford adequate
28 legal assistance. Therefore, all lawyers should devote
29 professional time and resources and use civic influence to
30 ensure equal access to our system of justice for all those who
31 because of economic or social barriers cannot afford or
32 secure adequate legal counsel. A lawyer should aid the legal
33 profession in pursuing these objectives and should help the
34 bar regulate itself in the public interest.

35 [7] Many of a lawyer's professional responsibilities are
36 prescribed in the Iowa Rules of Professional Conduct, as well
37 as substantive and procedural law. However, a lawyer is also
38 guided by personal conscience and the approbation of
39 professional peers. A lawyer should strive to attain the
40 highest level of skill, to improve the law and the legal
41 profession, and to exemplify the legal profession's ideals of
42 public service.

1 [8] A lawyer's responsibilities as a representative of
2 clients, an officer of the legal system, and a public citizen are
3 usually harmonious. Thus, when an opposing party is well
4 represented, a lawyer can be a zealous advocate on behalf of
5 a client and at the same time assume that justice is being
6 done. So also, a lawyer can be sure that preserving client
7 confidences ordinarily serves the public interest because
8 people are more likely to seek legal advice, and thereby heed
9 their legal obligations, when they know their
10 communications will be private.

11 [9] In the nature of law practice, however, conflicting
12 responsibilities are encountered. Virtually all difficult ethical
13 problems arise from conflict between a lawyer's
14 responsibilities to clients, to the legal system, and to the
15 lawyer's own interest in remaining an ethical person while
16 earning a satisfactory living. The Iowa Rules of Professional
17 Conduct often prescribe terms for resolving such conflicts.
18 Within the framework of these rules, however, many difficult
19 issues of professional discretion can arise. Such issues must
20 be resolved through the exercise of sensitive professional and
21 moral judgment guided by the basic principles underlying
22 the rules. These principles include the lawyer's obligation
23 zealously to protect and pursue a client's legitimate
24 interests, within the bounds of the law, while maintaining a
25 professional, courteous, and civil attitude toward all persons
26 involved in the legal system.

27 [10] The legal profession is largely self-governing.
28 Although other professions also have been granted powers of
29 self-government, the legal profession is unique in this
30 respect because of the close relationship between the
31 profession and the processes of government and law
32 enforcement. This connection is manifested in the fact that
33 ultimate authority over the legal profession is vested largely
34 in the courts.

35 [11] To the extent that lawyers meet the obligations of
36 their professional calling, the occasion for government
37 regulation is obviated. Self-regulation also helps maintain
38 the legal profession's independence from government
39 domination. An independent legal profession is an important
40 force in preserving government under law, for abuse of legal
41 authority is more readily challenged by a profession whose
42 members are not dependent on government for the right to
43 practice.

1 [12] The legal profession's relative autonomy carries
2 with it special responsibilities of self-government. The
3 profession has a responsibility to ensure that its regulations
4 are conceived in the public interest and not in furtherance of
5 parochial or self-interested concerns of the bar. Every lawyer
6 is responsible for observance of the Iowa Rules of
7 Professional Conduct. A lawyer should also aid in securing
8 their observance by other lawyers. Neglect of these
9 responsibilities compromises the independence of the
10 profession and the public interest which it serves.

11 [13] Lawyers play a vital role in the preservation of
12 society. The fulfillment of this role requires an
13 understanding by lawyers of their relationship to our legal
14 system. The Iowa Rules of Professional Conduct, when
15 properly applied, serve to define that relationship.

16 **SCOPE**

17
18 [14] The Iowa Rules of Professional Conduct are rules
19 of reason. They should be interpreted with reference to the
20 purposes of legal representation and of the law itself. Some
21 of the rules are imperatives, cast in the terms "shall" or
22 "shall not." These define proper conduct for purposes of
23 professional discipline. Others, generally cast in the term
24 "may," are permissive and define areas under the rules in
25 which the lawyer has discretion to exercise professional
26 judgment. No disciplinary action should be taken when the
27 lawyer chooses not to act or acts within the bounds of such
28 discretion. Other rules define the nature of relationships
29 between the lawyer and others. The rules are thus partly
30 obligatory and disciplinary and partly constitutive and
31 descriptive in that they define a lawyer's professional role.
32 Many of the comments use the term "should." Comments do
33 not add obligations to the rules but provide guidance for
34 practicing in compliance with the rules.
35

36 [15] The rules presuppose a larger legal context
37 shaping the lawyer's role. That context includes court rules
38 and statutes relating to matters of licensure, laws defining
39 specific obligations of lawyers, and substantive and
40 procedural law in general. The comments are sometimes
41 used to alert lawyers to their responsibilities under such
42 other law.
43

1 [16] Compliance with the rules, as with all law in an
2 open society, depends primarily upon understanding and
3 voluntary compliance, secondarily upon reinforcement by
4 peer and public opinion, and finally, when necessary, upon
5 enforcement through disciplinary proceedings. The rules do
6 not, however, exhaust the moral and ethical considerations
7 that should inform a lawyer, for no worthwhile human
8 activity can be completely defined by legal rules. The rules
9 simply provide a framework for the ethical practice of law.

10
11 [17] Furthermore, for purposes of determining the
12 lawyer's authority and responsibility, principles of
13 substantive law external to these rules determine whether a
14 client-lawyer relationship exists. Most of the duties flowing
15 from the client-lawyer relationship attach only after the
16 client has requested the lawyer to render legal services and
17 the lawyer has agreed to do so. But there are some duties,
18 such as that of confidentiality under rule 32:1.6, that attach
19 when the lawyer agrees to consider whether a client-lawyer
20 relationship shall be established. See rule 32:1.18. Whether
21 a client-lawyer relationship exists for any specific purpose
22 can depend on the circumstances and may be a question of
23 fact.

24 [18] Under various legal provisions, including
25 constitutional, statutory, and common law, the
26 responsibilities of government lawyers may include authority
27 concerning legal matters that ordinarily reposes in the client
28 in private client-lawyer relationships. For example, a lawyer
29 for a government agency may have authority on behalf of the
30 government to decide upon settlement or whether to appeal
31 from an adverse judgment. Such authority in various
32 respects is generally vested in the attorney general and the
33 state's attorney in state government, and their federal
34 counterparts, and the same may be true of other government
35 law officers. Also, lawyers under the supervision of these
36 officers may be authorized to represent several government
37 agencies in intragovernmental legal controversies in
38 circumstances where a private lawyer could not represent
39 multiple private clients. These rules do not abrogate any
40 such authority.

41 [19] Failure to comply with an obligation or prohibition
42 imposed by a rule is a basis for invoking the disciplinary
43 process. The rules presuppose that disciplinary assessment
44 of a lawyer's conduct will be made on the basis of the facts

1 and circumstances as they existed at the time of the conduct
2 in question and in recognition of the fact that a lawyer often
3 has to act upon uncertain or incomplete evidence of the
4 situation. Moreover, the rules presuppose that whether or
5 not discipline should be imposed for a violation, and the
6 severity of a sanction, depend on all the circumstances, such
7 as the willfulness and seriousness of the violation,
8 extenuating factors, and whether there have been previous
9 violations.

10
11 [20] Violation of a rule should not itself give rise to a
12 cause of action against a lawyer nor should it create any
13 presumption in such a case that a legal duty has been
14 breached. In addition, violation of a rule does not necessarily
15 warrant any other nondisciplinary remedy, such as
16 disqualification of a lawyer in pending litigation. The rules
17 are designed to provide guidance to lawyers and to provide a
18 structure for regulating conduct through disciplinary
19 agencies. They are not designed to be a basis for civil
20 liability. Furthermore, the purpose of the rules can be
21 subverted when they are invoked by opposing parties as
22 procedural weapons. The fact that a rule is a just basis for a
23 lawyer's self-assessment, or for sanctioning a lawyer under
24 the administration of a disciplinary authority, does not imply
25 that an antagonist in a collateral proceeding or transaction
26 has standing to seek enforcement of the rule. Nevertheless,
27 since the rules do establish standards of conduct by lawyers,
28 a lawyer's violation of a rule may be evidence of breach of the
29 applicable standard of conduct.

30 [21] The comment accompanying each rule explains
31 and illustrates the meaning and purpose of the rule. The
32 Preamble and this note on Scope provide general orientation.
33 The comments are intended as guides to interpretation, but
34 the text of each rule is authoritative.

35
36 **RULE 32:1.0: TERMINOLOGY**

37 (a) "Belief" or "believes" denotes that the person
38 involved actually supposed the fact in question to be true. A
39 person's belief may be inferred from circumstances.

40 (b) "Confirmed in writing," when used in reference to
41 the informed consent of a person, denotes informed consent
42 that is given in writing by the person or a writing that a

1 lawyer promptly transmits to the person confirming an oral
2 informed consent. See paragraph (e) for the definition of
3 "informed consent." If it is not feasible to obtain or transmit
4 the writing at the time the person gives informed consent,
5 then the lawyer must obtain or transmit it within a
6 reasonable time thereafter.

7 (c) "Firm" or "law firm" denotes a lawyer or lawyers in a
8 law partnership, professional corporation, sole
9 proprietorship, or other association authorized to practice
10 law; or lawyers employed in a legal services organization or
11 the legal department of a corporation or other organization.

12 (d) "Fraud" or "fraudulent" denotes conduct that is
13 fraudulent under the substantive or procedural law of the
14 applicable jurisdiction and has a purpose to deceive.

15 (e) "Informed consent" denotes the agreement by a
16 person to a proposed course of conduct after the lawyer has
17 communicated adequate information and explanation about
18 the material risks of and reasonably available alternatives to
19 the proposed course of conduct.

20 (f) "Knowingly," "known," or "knows" denotes actual
21 knowledge of the fact in question. A person's knowledge may
22 be inferred from circumstances.

23 (g) "Partner" denotes a member of a partnership, a
24 shareholder in a law firm organized as a professional
25 corporation, or a member of an association authorized to
26 practice law.

27 (h) "Reasonable" or "reasonably" when used in relation
28 to conduct by a lawyer denotes the conduct of a reasonably
29 prudent and competent lawyer.

30 (i) "Reasonable belief" or "reasonably believes" when
31 used in reference to a lawyer denotes that the lawyer believes
32 the matter in question and that the circumstances are such
33 that the belief is reasonable.

34 (j) "Reasonably should know" when used in reference
35 to a lawyer denotes that a lawyer of reasonable prudence
36 and competence would ascertain the matter in question.

1 (k) "Screened" denotes the isolation of a lawyer from
2 any participation in a matter through the timely imposition
3 of procedures within a firm that are reasonably adequate
4 under the circumstances to protect information that the
5 isolated lawyer is obligated to protect under these rules or
6 other law.

7 (l) "Substantial" when used in reference to degree or
8 extent denotes a material matter of clear and weighty
9 importance.

10 (m) "Tribunal" denotes a court, an arbitrator in a
11 binding arbitration proceeding, or a legislative body,
12 administrative agency, or other body acting in an
13 adjudicative capacity. A legislative body, administrative
14 agency, or other body acts in an adjudicative capacity when
15 a neutral official, after the presentation of evidence or legal
16 argument by a party or parties, will render a binding legal
17 judgment directly affecting a party's interests in a particular
18 matter.

19
20 (n) "Writing" or "written" denotes a tangible or
21 electronic record of a communication or representation,
22 including handwriting, typewriting, printing, photostating,
23 photography, audio or videorecording, and e-mail. A "signed"
24 writing includes an electronic sound, symbol, or process
25 attached to or logically associated with a writing and
26 executed or adopted by a person with the intent to sign the
27 writing.

28
29 **Comment**

30 *Confirmed in Writing*

31 [1] If it is not feasible to obtain or transmit a written
32 confirmation at the time the client gives informed consent,
33 then the lawyer must obtain or transmit it within a
34 reasonable time thereafter. If a lawyer has obtained a client's
35 informed consent, the lawyer may act in reliance on that
36 consent so long as it is confirmed in writing within a
37 reasonable time thereafter.

38 *Firm*

39 [2] Whether two or more lawyers constitute a firm
40 within paragraph (c) can depend on the specific facts. For

1 example, two practitioners who share office space and
2 occasionally consult or assist each other ordinarily would
3 not be regarded as constituting a firm. However, if they
4 present themselves to the public in a way that suggests that
5 they are a firm or conduct themselves as a firm, they should
6 be regarded as a firm for purposes of the rules. The terms of
7 any formal agreement between associated lawyers are
8 relevant in determining whether they are a firm, as is the
9 fact that they have mutual access to information concerning
10 the clients they serve. Furthermore, it is relevant in doubtful
11 cases to consider the underlying purpose of the rule that is
12 involved. A group of lawyers could be regarded as a firm for
13 purposes of the rule that the same lawyer should not
14 represent opposing parties in litigation, while it might not be
15 so regarded for purposes of the rule that information
16 acquired by one lawyer is attributed to another.

17 [3] With respect to the law department of an
18 organization, including the government, there is ordinarily
19 no question that the members of the department constitute a
20 firm within the meaning of the Iowa Rules of Professional
21 Conduct. There can be uncertainty, however, as to the
22 identity of the client. For example, it may not be clear
23 whether the law department of a corporation represents a
24 subsidiary or an affiliated corporation, as well as the
25 corporation by which the members of the department are
26 directly employed. A similar question can arise concerning
27 an unincorporated association and its local affiliates.

28 [4] Similar questions can also arise with respect to
29 lawyers in legal aid and legal services organizations.
30 Depending upon the structure of the organization, the entire
31 organization or different components of it may constitute a
32 firm or firms for purposes of these rules.

33 *Fraud*

34 [5] When used in these rules, the terms "fraud" or
35 "fraudulent" refer to conduct that is characterized as such
36 under the substantive or procedural law of the applicable
37 jurisdiction and has a purpose to deceive. This does not
38 include merely negligent misrepresentation or negligent
39 failure to apprise another of relevant information. For
40 purposes of these rules, it is not necessary that anyone has
41 suffered damages or relied on the misrepresentation or
42 failure to inform.

1 *Informed Consent*

2 [6] Many of the Iowa Rules of Professional Conduct
3 require the lawyer to obtain the informed consent of a client
4 or other person (e.g., a former client or, under certain
5 circumstances, a prospective client) before accepting or
6 continuing representation or pursuing a course of conduct.
7 See, e.g., rules 32:1.2(c), 32:1.6(a), 32:1.7(b), 32:1.9(a),
8 32:1.11(a), 32:1.12(a), and 32:1.18(d). The communication
9 necessary to obtain such consent will vary according to the
10 rule involved and the circumstances giving rise to the need
11 to obtain informed consent. The lawyer must make
12 reasonable efforts to ensure that the client or other person
13 possesses information reasonably adequate to make an
14 informed decision. Ordinarily, this will require
15 communication that includes a disclosure of the facts and
16 circumstances giving rise to the situation, any explanation
17 reasonably necessary to inform the client or other person of
18 the material advantages and disadvantages of the proposed
19 course of conduct, and a discussion of the client's or other
20 person's options and alternatives. In some circumstances it
21 may be appropriate for a lawyer to advise a client or other
22 person to seek the advice of other counsel. A lawyer need not
23 inform a client or other person of facts or implications
24 already known to the client or other person; nevertheless, a
25 lawyer who does not personally inform the client or other
26 person assumes the risk that the client or other person is
27 inadequately informed and the consent is invalid. In
28 determining whether the information and explanation
29 provided are reasonably adequate, relevant factors include
30 whether the client or other person is experienced in legal
31 matters generally and in making decisions of the type
32 involved, and whether the client or other person is
33 independently represented by other counsel in giving the
34 consent. Normally, such persons need less information and
35 explanation than others, and generally a client or other
36 person who is independently represented by other counsel in
37 giving the consent should be assumed to have given
38 informed consent.

39 [7] Obtaining informed consent will usually require an
40 affirmative response by the client or other person. In general,
41 a lawyer may not assume consent from a client's or other
42 person's silence. Consent may be inferred, however, from the
43 conduct of a client or other person who has reasonably
44 adequate information about the matter. A number of rules

1 require that a person's consent be confirmed in writing. See
2 rules 32:1.7(b), 32:1.9(a), 32:1.11(a), 32:1.12(a), and
3 32:1.18(d). For a definition of "writing" and "confirmed in
4 writing," see paragraphs (n) and (b). Other rules require that
5 a client's consent be obtained in a writing signed by the
6 client. See, e.g., rules 32:1.8(a) and (g). For a definition of
7 "signed," see paragraph (n).

8 *Screened*

9 [8] This definition applies to situations where
10 screening of a personally disqualified lawyer is permitted to
11 remove imputation of a conflict of interest under rule
12 32:1.11, 32:1.12, or 32:1.18.

13 [9] The purpose of screening is to assure the affected
14 parties that confidential information known by the
15 personally disqualified lawyer remains protected. The
16 personally disqualified lawyer should acknowledge the
17 obligation not to communicate with any of the other lawyers
18 in the firm with respect to the matter. Similarly, other
19 lawyers in the firm who are working on the matter should be
20 informed that the screening is in place and that they may
21 not communicate with the personally disqualified lawyer
22 with respect to the matter. Additional screening measures
23 that are appropriate for the particular matter will depend on
24 the circumstances. To implement, reinforce, and remind all
25 affected lawyers of the presence of the screening, it may be
26 appropriate for the firm to undertake such procedures as a
27 written undertaking by the screened lawyer to avoid any
28 communication with other firm personnel and any contact
29 with any firm files or other materials relating to the matter,
30 written notice and instructions to all other firm personnel
31 forbidding any communication with the screened lawyer
32 relating to the matter, denial of access by the screened
33 lawyer to firm files or other materials relating to the matter,
34 and periodic reminders of the screen to the screened lawyer
35 and all other firm personnel.

36 [10] In order to be effective, screening measures must
37 be implemented as soon as practical after a lawyer or law
38 firm knows or reasonably should know that there is a need
39 for screening.

40

1
2
3 **CLIENT-LAWYER RELATIONSHIP**

4
5 **RULE 32:1.1: COMPETENCE**

6 **A lawyer shall provide competent representation to**
7 **a client. Competent representation requires the legal**
8 **knowledge, skill, thoroughness, and preparation**
9 **reasonably necessary for the representation.**

10 **Comment**

11
12 *Legal Knowledge and Skill*

13
14 [1] In determining whether a lawyer employs the
15 requisite knowledge and skill in a particular matter, relevant
16 factors include the relative complexity and specialized nature
17 of the matter, the lawyer's general experience, the lawyer's
18 training and experience in the field in question, the
19 preparation and study the lawyer is able to give the matter,
20 and whether it is feasible to refer the matter to, or associate
21 or consult with, a lawyer of established competence in the
22 field in question. In many instances, the required proficiency
23 is that of a general practitioner. Expertise in a particular
24 field of law may be required in some circumstances.

25
26 [2] A lawyer need not necessarily have special training
27 or prior experience to handle legal problems of a type with
28 which the lawyer is unfamiliar. A newly admitted lawyer can
29 be as competent as a practitioner with long experience. Some
30 important legal skills, such as the analysis of precedent, the
31 evaluation of evidence, and legal drafting, are required in all
32 legal problems. Perhaps the most fundamental legal skill
33 consists of determining what kind of legal problems a
34 situation may involve, a skill that necessarily transcends any
35 particular specialized knowledge. A lawyer can provide
36 adequate representation in a wholly novel field through
37 necessary study. Competent representation can also be
38 provided through the association of a lawyer of established
39 competence in the field in question.

40
41 [3] In an emergency a lawyer may give advice or
42 assistance in a matter in which the lawyer does not have the
43 skill ordinarily required where referral to or consultation or
44 association with another lawyer would be impractical. Even
45 in an emergency, however, assistance should be limited to

1 that reasonably necessary in the circumstances, for ill-
2 considered action under emergency conditions can
3 jeopardize the client's interest.
4

5 [4] A lawyer may accept representation where the
6 requisite level of competence can be achieved by reasonable
7 preparation. This applies as well to a lawyer who is
8 appointed as counsel for an unrepresented person. *See also*
9 rule 32:6.2.
10

11 *Thoroughness and Preparation*

12
13 [5] Competent handling of a particular matter includes
14 inquiry into and analysis of the factual and legal elements of
15 the problem, and use of methods and procedures meeting
16 the standards of competent practitioners. It also includes
17 adequate preparation. The required attention and
18 preparation are determined in part by what is at stake;
19 major litigation and complex transactions ordinarily require
20 more extensive treatment than matters of lesser complexity
21 and consequence. An agreement between the lawyer and the
22 client regarding the scope of the representation may limit the
23 matters for which the lawyer is responsible. *See* rule
24 32:1.2(c).

25 *Maintaining Competence*

26 [6] To maintain the requisite knowledge and skill, a
27 lawyer should keep abreast of changes in the law and its
28 practice, engage in continuing study and education, and
29 comply with all continuing legal education requirements to
30 which the lawyer is subject.

31 **RULE 32:1.2: SCOPE OF REPRESENTATION AND** 32 **ALLOCATION OF AUTHORITY BETWEEN CLIENT** 33 **AND LAWYER** 34

35
36 **(a) Subject to paragraphs (c) and (d), a lawyer shall**
37 **abide by a client's decisions concerning the objectives of**
38 **representation and, as required by rule 32:1.4, shall**
39 **consult with the client as to the means by which they**
40 **are to be pursued. A lawyer may take such action on**
41 **behalf of the client as is impliedly authorized to carry**
42 **out the representation. A lawyer shall abide by a client's**
43 **decision whether to settle a matter. In a criminal case,**

1 **the lawyer shall abide by the client's decision, after**
2 **consultation with the lawyer, as to a plea to be entered,**
3 **whether to waive jury trial, and whether the client will**
4 **testify.**

5
6 **(b) A lawyer's representation of a client, including**
7 **representation by appointment, does not constitute an**
8 **endorsement of the client's political, economic, social,**
9 **or moral views or activities.**

10 **(c) A lawyer may limit the scope of the**
11 **representation if the limitation is reasonable under the**
12 **circumstances and the client gives informed consent.**

13 **(d) A lawyer shall not counsel a client to engage, or**
14 **assist a client, in conduct that the lawyer knows is**
15 **criminal or fraudulent, but a lawyer may discuss the**
16 **legal consequences of any proposed course of conduct**
17 **with a client and may counsel or assist a client to make**
18 **a good faith effort to determine the validity, scope,**
19 **meaning, or application of the law.**

20
21 **Comment**

22
23 *Allocation of Authority between Client and Lawyer*

24 [1] Paragraph (a) confers upon the client the ultimate
25 authority to determine the purposes to be served by legal
26 representation, within the limits imposed by law and the
27 lawyer's professional obligations. The decisions specified in
28 paragraph (a), such as whether to settle a civil matter, must
29 also be made by the client. See rule 32:1.4(a)(1) for the
30 lawyer's duty to communicate with the client about such
31 decisions. With respect to the means by which the client's
32 objectives are to be pursued, the lawyer shall consult with
33 the client as required by rule 32:1.4(a)(2) and may take such
34 action as is impliedly authorized to carry out the
35 representation.

36 [2] On occasion, however, a lawyer and a client may
37 disagree about the means to be used to accomplish the
38 client's objectives. Clients normally defer to the special
39 knowledge and skill of their lawyer with respect to the means
40 to be used to accomplish their objectives, particularly with
41 respect to technical, legal, and tactical matters. Conversely,
42 lawyers usually defer to the client regarding such questions

1 as the expense to be incurred and concern for third persons
2 who might be adversely affected. Because of the varied
3 nature of the matters about which a lawyer and client might
4 disagree and because the actions in question may implicate
5 the interests of a tribunal or other persons, this rule does
6 not prescribe how such disagreements are to be resolved.
7 Other law, however, may be applicable and should be
8 consulted by the lawyer. The lawyer should also consult with
9 the client and seek a mutually acceptable resolution of the
10 disagreement. If such efforts are unavailing and the lawyer
11 has a fundamental disagreement with the client, the lawyer
12 may withdraw from the representation. See rule
13 32:1.16(b)(4). Conversely, the client may resolve the
14 disagreement by discharging the lawyer. See rule
15 32:1.16(a)(3).

16 [3] At the outset of a representation, the client may
17 authorize the lawyer to take specific action on the client's
18 behalf without further consultation. Absent a material
19 change in circumstances and subject to rule 32:1.4, a lawyer
20 may rely on such an advance authorization. The client may,
21 however, revoke such authority at any time.

22 [4] In a case in which the client appears to be suffering
23 diminished capacity, the lawyer's duty to abide by the
24 client's decisions is to be guided by reference to rule 32:1.14.

25 *Independence from Client's Views or Activities*

26 [5] Legal representation should not be denied to people
27 who are unable to afford legal services, or whose cause is
28 controversial or the subject of popular disapproval. By the
29 same token, representing a client does not constitute
30 approval of the client's views or activities.

31 *Agreements Limiting Scope of Representation*

32 [6] The scope of services to be provided by a lawyer
33 may be limited by agreement with the client or by the terms
34 under which the lawyer's services are made available to the
35 client. When a lawyer has been retained by an insurer to
36 represent an insured, for example, the representation may
37 be limited to matters related to the insurance coverage. A
38 limited representation may be appropriate because the client
39 has limited objectives for the representation. In addition, the
40 terms upon which representation is undertaken may exclude

1 specific means that might otherwise be used to accomplish
2 the client's objectives. Such limitations may exclude actions
3 that the client thinks are too costly or that the lawyer
4 regards as repugnant or imprudent.

5 [7] Although this rule affords the lawyer and client
6 substantial latitude to limit the representation, the limitation
7 must be reasonable under the circumstances. If, for
8 example, a client's objective is limited to securing general
9 information about the law the client needs in order to handle
10 a common and typically uncomplicated legal problem, the
11 lawyer and client may agree that the lawyer's services will be
12 limited to a brief telephone consultation. Such a limitation,
13 however, would not be reasonable if the time allotted was not
14 sufficient to yield advice upon which the client could rely.
15 Although an agreement for a limited representation does not
16 exempt a lawyer from the duty to provide competent
17 representation, the limitation is a factor to be considered
18 when determining the legal knowledge, skill, thoroughness,
19 and preparation reasonably necessary for the representation.
20 See rule 32:1.1.

21 [8] All agreements concerning a lawyer's representation
22 of a client must accord with the Iowa Rules of Professional
23 Conduct and other law. See, e.g., rules 32:1.1, 32:1.8, and
24 32:5.6.

25 *Criminal, Fraudulent, and Prohibited Transactions*

26 [9] Paragraph (d) prohibits a lawyer from knowingly
27 counseling or assisting a client to commit a crime or fraud.
28 This prohibition, however, does not preclude the lawyer from
29 giving an honest opinion about the actual consequences that
30 appear likely to result from a client's conduct. Nor does the
31 fact that a client uses advice in a course of action that is
32 criminal or fraudulent of itself make a lawyer a party to the
33 course of action. There is a critical distinction between
34 presenting an analysis of legal aspects of questionable
35 conduct and recommending the means by which a crime or
36 fraud might be committed with impunity.

37 [10] When the client's course of action has already
38 begun and is continuing, the lawyer's responsibility is
39 especially delicate. The lawyer is required to avoid assisting
40 the client, for example, by drafting or delivering documents
41 that the lawyer knows are fraudulent or by suggesting how

1 the wrongdoing might be concealed. A lawyer may not
2 continue assisting a client in conduct that the lawyer
3 originally supposed was legally proper but then discovers is
4 criminal or fraudulent. The lawyer must, therefore, withdraw
5 from the representation of the client in the matter. See rule
6 32:1.16(a). In some cases, withdrawal alone might be
7 insufficient. It may be necessary for the lawyer to give notice
8 of the fact of withdrawal and to disaffirm any opinion,
9 document, affirmation, or the like. See rule 32:4.1.

10 [11] Where the client is a fiduciary, the lawyer may be
11 charged with special obligations in dealings with a
12 beneficiary.

13 [12] Paragraph (d) applies whether or not the
14 defrauded party is a party to the transaction. Hence, a
15 lawyer must not participate in a transaction to effectuate
16 criminal or fraudulent avoidance of tax liability. Paragraph
17 (d) does not preclude undertaking a criminal defense
18 incident to a general retainer for legal services to a lawful
19 enterprise. The last clause of paragraph (d) recognizes that
20 determining the validity or interpretation of a statute or
21 regulation may require a course of action involving
22 disobedience of the statute or regulation or of the
23 interpretation placed upon it by governmental authorities.

24 [13] If a lawyer comes to know or reasonably should
25 know that a client expects assistance not permitted by the
26 Iowa Rules of Professional Conduct or other law or if the
27 lawyer intends to act contrary to the client's instructions, the
28 lawyer must consult with the client regarding the limitations
29 on the lawyer's conduct. See rule 32:1.4(a)(5).

30
31 **RULE 32:1.3: DILIGENCE**

32
33 **A lawyer shall act with reasonable diligence and**
34 **promptness in representing a client.**

35
36 **Comment**

37
38 [1] A lawyer should pursue a matter on behalf of a
39 client despite opposition, obstruction, or personal
40 inconvenience to the lawyer, and take whatever lawful and
41 ethical measures are required to vindicate a client's cause or
42 endeavor. A lawyer must also act with commitment and

1 dedication to the interests of the client and with zeal in
2 advocacy upon the client's behalf. A lawyer is not bound,
3 however, to press for every advantage that might be realized
4 for a client. For example, a lawyer may have authority to
5 exercise professional discretion in determining the means by
6 which a matter should be pursued. See rule 32:1.2. The
7 lawyer's duty to act with reasonable diligence does not
8 require the use of offensive tactics or preclude the treating of
9 all persons involved in the legal process with courtesy and
10 respect. See Iowa Ct. R. ch. 33.

11 [2] A lawyer's work load must be controlled so that
12 each matter can be handled competently.

13 [3] Perhaps no professional shortcoming is more widely
14 resented than procrastination. A client's interests often can
15 be adversely affected by the passage of time or the change of
16 conditions; in extreme instances, as when a lawyer overlooks
17 a statute of limitations, the client's legal position may be
18 destroyed. Even when the client's interests are not affected
19 in substance, however, unreasonable delay can cause a
20 client needless anxiety and undermine confidence in the
21 lawyer's trustworthiness. A lawyer's duty to act with
22 reasonable promptness, however, does not preclude the
23 lawyer from agreeing to a reasonable request for a
24 postponement that will not prejudice the lawyer's client.

25 [4] Unless the relationship is terminated as provided in
26 rule 32:1.16, a lawyer should carry through to conclusion all
27 matters undertaken for a client. If a lawyer's employment is
28 limited to a specific matter, the relationship terminates when
29 the matter has been resolved. If a lawyer has served a client
30 over a substantial period in a variety of matters, the client
31 sometimes may assume that the lawyer will continue to
32 serve on a continuing basis unless the lawyer gives notice of
33 withdrawal. Doubt about whether a client-lawyer
34 relationship still exists should be clarified by the lawyer,
35 preferably in writing, so that the client will not mistakenly
36 suppose the lawyer is looking after the client's affairs when
37 the lawyer has ceased to do so. For example, if a lawyer has
38 handled a judicial or administrative proceeding that
39 produced a result adverse to the client and the lawyer and
40 the client have not agreed that the lawyer will handle the
41 matter on appeal, the lawyer must consult with the client
42 about the possibility of appeal before relinquishing
43 responsibility for the matter. See rule 32:1.4(a)(2). Whether

1 the lawyer is obligated to prosecute the appeal for the client
2 depends on the scope of the representation the lawyer has
3 agreed to provide to the client or other applicable law. See
4 rule 32:1.2. See, e.g., Iowa R. Crim. P. 2.29(6); Iowa Rs. App.
5 P. 6.6(4), 6.32.
6

7 [5] To prevent neglect of client matters in the event of a
8 sole practitioner's death or disability, the duty of diligence
9 may require that each sole practitioner prepare a plan, in
10 conformity with applicable rules, that designates another
11 competent lawyer to review client files, notify each client of
12 the lawyer's death or disability, and determine whether there
13 is a need for immediate protective action. See Iowa Ct. Rs.
14 35.16(5), 35.17 (where reasonable necessity exists, the local
15 chief judge shall appoint a lawyer to serve as trustee to
16 inventory files, sequester client funds, and take any other
17 appropriate action to protect the interests of the clients and
18 other affected persons of a deceased, suspended, or disabled
19 lawyer).
20

21 **RULE 32:1.4: COMMUNICATION**

22 **(a) A lawyer shall:**

23
24
25 **(1) promptly inform the client of any decision**
26 **or circumstance with respect to which the client's**
27 **informed consent, as defined in rule 32:1.0(e), is**
28 **required by these rules;**

29 **(2) reasonably consult with the client about**
30 **the means by which the client's objectives are to**
31 **be accomplished;**

32 **(3) keep the client reasonably informed about**
33 **the status of the matter;**

34 **(4) promptly comply with reasonable requests**
35 **for information; and**

36 **(5) consult with the client about any relevant**
37 **limitation on the lawyer's conduct when the lawyer**
38 **knows that the client expects assistance not**
39 **permitted by the Iowa Rules of Professional**
40 **Conduct or other law.**

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

4 **Comment**

5 [1] Reasonable communication between the lawyer and
6 the client is necessary for the client effectively to participate
7 in the representation.

8 *Communicating with Client*

9 [2] If these rules require that a particular decision
10 about the representation be made by the client, paragraph
11 (a)(1) requires that the lawyer promptly consult with and
12 secure the client's consent prior to taking action unless prior
13 discussions with the client have resolved what action the
14 client wants the lawyer to take. For example, a lawyer who
15 receives from opposing counsel an offer of settlement in a
16 civil controversy or a proffered plea bargain in a criminal
17 case must promptly inform the client of its substance unless
18 the client has previously indicated that the proposal will be
19 acceptable or unacceptable or has authorized the lawyer to
20 accept or to reject the offer. *See* rule 32:1.2(a).

21 [3] Paragraph (a)(2) requires the lawyer to reasonably
22 consult with the client about the means to be used to
23 accomplish the client's objectives. The lawyer should also
24 discuss relevant provisions of the Standards for Professional
25 Conduct and indicate the lawyer's intent to follow those
26 Standards whenever possible. *See* Iowa Ct. R. ch. 33. In
27 some situations — depending on both the importance of the
28 action under consideration and the feasibility of consulting
29 with the client — this duty will require consultation prior to
30 taking action. In other circumstances, such as during a trial
31 when an immediate decision must be made, the exigency of
32 the situation may require the lawyer to act without prior
33 consultation. In such cases the lawyer must nonetheless act
34 reasonably to inform the client of actions the lawyer has
35 taken on the client's behalf. Additionally, paragraph (a)(3)
36 requires that the lawyer keep the client reasonably informed
37 about the status of the matter, such as significant
38 developments affecting the timing or the substance of the
39 representation.

1 [4] A lawyer's regular communication with clients will
2 minimize the occasions on which a client will need to request
3 information concerning the representation. When a client
4 makes a reasonable request for information, however,
5 paragraph (a)(4) requires prompt compliance with the
6 request, or if a prompt response is not feasible, that the
7 lawyer, or a member of the lawyer's staff, acknowledge
8 receipt of the request and advise the client when a response
9 may be expected. Client telephone calls should be promptly
10 returned or acknowledged.

11 *Explaining Matters*

12 [5] The client should have sufficient information to
13 participate intelligently in decisions concerning the
14 objectives of the representation and the means by which they
15 are to be pursued, to the extent the client is willing and able
16 to do so. Adequacy of communication depends in part on the
17 kind of advice or assistance that is involved. For example,
18 when there is time to explain a proposal made in a
19 negotiation, the lawyer should review all important
20 provisions with the client before proceeding to an agreement.
21 In litigation a lawyer should explain the general strategy and
22 prospects of success and ordinarily should consult the client
23 on tactics that are likely to result in significant expense or to
24 injure or coerce others. On the other hand, a lawyer
25 ordinarily will not be expected to describe trial or negotiation
26 strategy in detail. The guiding principle is that the lawyer
27 should fulfill reasonable client expectations for information
28 consistent with the duty to act in the client's best interests,
29 and the client's overall requirements as to the character of
30 representation. In certain circumstances, such as when a
31 lawyer asks a client to consent to a representation affected
32 by a conflict of interest, the client must give informed
33 consent, as defined in rule 32:1.0(e).

34 [6] Ordinarily, the information to be provided is that
35 appropriate for a client who is a comprehending and
36 responsible adult. However, fully informing the client
37 according to this standard may be impracticable, for
38 example, where the client is a child or suffers from
39 diminished capacity. See rule 32:1.14. When the client is an
40 organization or group, it is often impossible or inappropriate
41 to inform every one of its members about its legal affairs;
42 ordinarily, the lawyer should address communications to the
43 appropriate officials of the organization. See rule 32:1.13.

1 Where many routine matters are involved, a system of
2 limited or occasional reporting may be arranged with the
3 client.

4 *Withholding Information*

5 [7] In some circumstances, a lawyer may be justified in
6 delaying transmission of information when the client would
7 be likely to react imprudently to an immediate
8 communication. Thus, a lawyer might withhold a psychiatric
9 diagnosis of a client when the examining psychiatrist
10 indicates that disclosure would harm the client. A lawyer
11 may not withhold information to serve the lawyer's own
12 interest or convenience or the interests or convenience of
13 another person. Rules or court orders governing litigation
14 may provide that information supplied to a lawyer may not
15 be disclosed to the client. Rule 32:3.4(c) directs compliance
16 with such rules or orders.

17
18 **RULE 32:1.5: FEES**
19

20 **(a) A lawyer shall not make an agreement for,**
21 **charge, or collect an unreasonable fee or an**
22 **unreasonable amount for expenses, or violate any**
23 **restrictions imposed by law. The factors to be considered**
24 **in determining the reasonableness of a fee include the**
25 **following:**

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

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

32 **(3) the fee customarily charged in the locality**
33 **for similar legal services;**

34 **(4) the amount involved and the results**
35 **obtained;**

36 **(5) the time limitations imposed by the client**
37 **or by the circumstances;**

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

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

5 (8) whether the fee is fixed or contingent.

6 (b) The scope of the representation and the basis or
7 rate of the fee and expenses for which the client will be
8 responsible shall be communicated to the client,
9 preferably in writing, before or within a reasonable time
10 after commencing the representation, except when the
11 lawyer will charge a regularly represented client on the
12 same basis or rate. Any changes in the basis or rate of
13 the fee or expenses shall also be communicated to the
14 client.

15
16 (c) A fee may be contingent on the outcome of the
17 matter for which the service is rendered, except in a
18 matter in which a contingent fee is prohibited by
19 paragraph (d) or other law. A contingent fee agreement
20 shall be in a writing signed by the client and shall state
21 the method by which the fee is to be determined,
22 including the percentage or percentages that shall
23 accrue to the lawyer in the event of settlement, trial, or
24 appeal; litigation and other expenses to be deducted
25 from the recovery; and whether such expenses are to be
26 deducted before or after the contingent fee is calculated.
27 The agreement must clearly notify the client of any
28 expenses for which the client will be liable whether or
29 not the client is the prevailing party. Upon conclusion of
30 a contingent fee matter, the lawyer shall provide the
31 client with a written statement stating the outcome of
32 the matter and, if there is a recovery, showing the
33 remittance to the client and the method of its
34 determination.

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

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

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

3 **(e) A division of a fee between lawyers who are not in**
4 **the same firm may be made only if:**

5 **(1) the division is in proportion to the**
6 **services performed by each lawyer or each lawyer**
7 **assumes joint responsibility for the representation;**

8 **(2) the client agrees to the arrangement,**
9 **including the share each lawyer will receive, and**
10 **the agreement is confirmed in writing; and**

11 **(3) the total fee is reasonable.**

12 **Comment**

13
14 *Reasonableness and Legality of Fee and Expenses*

15
16 [1] Paragraph (a) requires that lawyers charge fees that
17 are reasonable under the circumstances. The factors
18 specified in (1) through (8) are not exclusive. Nor will each
19 factor be relevant in each instance. Paragraph (a) also
20 requires that expenses for which the client will be charged
21 must be reasonable. A lawyer may seek reimbursement for
22 the cost of services performed in-house, such as copying, or
23 for other expenses incurred in-house, such as telephone
24 charges, either by charging a reasonable amount to which
25 the client has agreed in advance or by charging an amount
26 that reasonably reflects the cost incurred by the lawyer. A fee
27 that is otherwise reasonable may be subject to legal
28 limitations, of which the lawyer should be aware. For
29 example, a lawyer must comply with restrictions imposed by
30 statute or court rule on the timing and amount of fees in
31 probate.

32
33 *Basis or Rate of Fee*

34
35 [2] When the lawyer has regularly represented a client,
36 they ordinarily will have evolved an understanding
37 concerning the basis or rate of the fee and the expenses for
38 which the client will be responsible. In a new client-lawyer
39 relationship, however, an understanding as to fees and
40 expenses must be promptly established. Generally, it is
41 desirable to furnish the client with at least a simple

1 memorandum or copy of the lawyer's customary fee
2 arrangements that states the general nature of the legal
3 services to be provided, the basis, rate, or total amount of
4 the fee, and whether and to what extent the client will be
5 responsible for any costs, expenses, or disbursements in the
6 course of the representation. A written statement concerning
7 the terms of the engagement reduces the possibility of
8 misunderstanding.
9

10 [3] Contingent fees, like any other fees, are subject to
11 the reasonableness standard of paragraph (a) of this rule. In
12 determining whether a particular contingent fee is
13 reasonable, or whether it is reasonable to charge any form of
14 contingent fee, a lawyer must consider the factors that are
15 relevant under the circumstances. Applicable law may
16 impose limitations on contingent fees, such as a ceiling on
17 the percentage allowable, or may require a lawyer to offer
18 clients an alternative basis for the fee. Applicable law also
19 may apply to situations other than a contingent fee, for
20 example, government regulations regarding fees in certain
21 tax matters.
22

23 *Terms of Payment* 24

25 [4] A lawyer may require advance payment of a fee, but
26 is obliged to return any unearned portion. See rule
27 32:1.16(d). A lawyer may accept property in payment for
28 services, such as an ownership interest in an enterprise,
29 providing this does not involve acquisition of a proprietary
30 interest in the cause of action or subject matter of the
31 litigation contrary to rule 32:1.8(i). However, a fee paid in
32 property instead of money may be subject to the
33 requirements of rule 32:1.8(a) because such fees often have
34 the essential qualities of a business transaction with the
35 client.

36 [5] An agreement may not be made whose terms might
37 induce the lawyer improperly to curtail services for the client
38 or perform them in a way contrary to the client's interest.
39 For example, a lawyer should not enter into an agreement
40 whereby services are to be provided only up to a stated
41 amount when it is foreseeable that more extensive services
42 probably will be required, unless the situation is adequately
43 explained to the client. Otherwise, the client might have to
44 bargain for further assistance in the midst of a proceeding or
45 transaction. However, it is proper to define the extent of

1 services in light of the client's ability to pay. A lawyer should
2 not exploit a fee arrangement based primarily on hourly
3 charges by using wasteful procedures.

4 *Prohibited Contingent Fees*
5

6 [6] Paragraph (d) prohibits a lawyer from charging a
7 contingent fee in a domestic relations matter when payment
8 is contingent upon the securing of a divorce or upon the
9 amount of alimony or support or property settlement to be
10 obtained. This provision does not preclude a contract for a
11 contingent fee for legal representation in connection with the
12 recovery of post-judgment balances due under support,
13 alimony, or other financial orders because such contracts do
14 not implicate the same policy concerns.

15 *Division of Fee*

16 [7] A division of fee is a single billing to a client
17 covering the fee of two or more lawyers who are not in the
18 same firm. A division of fee facilitates association of more
19 than one lawyer in a matter in which neither alone could
20 serve the client as well, and most often is used when the fee
21 is contingent and the division is between a referring lawyer
22 and a trial specialist. Paragraph (e) permits the lawyers to
23 divide a fee either on the basis of the proportion of services
24 they render or if each lawyer assumes responsibility for the
25 representation as a whole. In addition, the client must agree
26 to the arrangement, including the share that each lawyer is
27 to receive, and the agreement must be confirmed in writing.
28 Contingent fee agreements must be in a writing signed by
29 the client and must otherwise comply with paragraph (c) of
30 this rule. Joint responsibility for the representation entails
31 financial and ethical responsibility for the representation as
32 if the lawyers were associated in a partnership. A lawyer
33 should only refer a matter to a lawyer whom the referring
34 lawyer reasonably believes is competent to handle the
35 matter. See rule 32:1.1.

36 [8] Paragraph (e) does not prohibit or regulate division
37 of fees to be received in the future for work done when
38 lawyers were previously associated in a law firm.

39 *Disputes over Fees*

1 [9] If a procedure has been established for resolution of
2 fee disputes, such as an arbitration or mediation procedure
3 established by the bar, the lawyer must comply with the
4 procedure when it is mandatory, and, even when it is
5 voluntary, the lawyer should conscientiously consider
6 submitting to it. Law may prescribe a procedure for
7 determining a lawyer's fee, for example, in representation of
8 an executor or administrator, a class or a person entitled to
9 a reasonable fee as part of the measure of damages. The
10 lawyer entitled to such a fee and a lawyer representing
11 another party concerned with the fee should comply with the
12 prescribed procedure.

13
14 **RULE 32:1.6: CONFIDENTIALITY OF INFORMATION**

15
16 **(a) A lawyer shall not reveal information relating to**
17 **the representation of a client unless the client gives**
18 **informed consent, the disclosure is impliedly authorized**
19 **in order to carry out the representation, or the**
20 **disclosure is permitted by paragraph (b) or required by**
21 **paragraph (c).**

22
23 **(b) A lawyer may reveal information relating to the**
24 **representation of a client to the extent the lawyer**
25 **reasonably believes necessary:**

26
27 **(1) to prevent reasonably certain death or**
28 **substantial bodily harm;**

29
30 **(2) to prevent the client from committing a**
31 **crime or fraud that is reasonably certain to result**
32 **in substantial injury to the financial interests or**
33 **property of another and in furtherance of which**
34 **the client has used or is using the lawyer's**
35 **services;**

36
37 **(3) to prevent, mitigate, or rectify substantial**
38 **injury to the financial interests or property of**
39 **another that is reasonably certain to result or has**
40 **resulted from the client's commission of a crime or**
41 **fraud in furtherance of which the client has used**
42 **the lawyer's services;**

43
44 **(4) to secure legal advice about the lawyer's**
45 **compliance with these rules;**

1
2 **(5) to establish a claim or defense on behalf**
3 **of the lawyer in a controversy between the lawyer**
4 **and the client, to establish a defense to a criminal**
5 **charge or civil claim against the lawyer based upon**
6 **conduct in which the client was involved, or to**
7 **respond to allegations in any proceeding**
8 **concerning the lawyer's representation of the**
9 **client; or**

10
11 **(6) to comply with other law or a court order.**

12
13 **(c) A lawyer shall reveal information relating to the**
14 **representation of a client to the extent the lawyer**
15 **reasonably believes necessary to prevent imminent**
16 **death or substantial bodily harm.**

17
18 **Comment**

19
20 [1] This rule governs the disclosure by a lawyer of
21 information relating to the representation of a client during
22 the lawyer's representation of the client. See rule 32:1.18 for
23 the lawyer's duties with respect to information provided to
24 the lawyer by a prospective client, rule 32:1.9(c)(2) for the
25 lawyer's duty not to reveal information relating to the
26 lawyer's prior representation of a former client, and rules
27 32:1.8(b) and 32:1.9(c)(1) for the lawyer's duties with respect
28 to the use of such information to the disadvantage of clients
29 and former clients.

30
31 [2] A fundamental principle in the client-lawyer
32 relationship is that, in the absence of the client's informed
33 consent, the lawyer must not reveal information relating to
34 the representation. See rule 32:1.0(e) for the definition of
35 informed consent. This contributes to the trust that is the
36 hallmark of the client-lawyer relationship. The client is
37 thereby encouraged to seek legal assistance and to
38 communicate fully and frankly with the lawyer even as to
39 embarrassing or legally damaging subject matter. The lawyer
40 needs this information to represent the client effectively and,
41 if necessary, to advise the client to refrain from wrongful
42 conduct. Almost without exception, clients come to lawyers
43 in order to determine their rights and what is, in the complex
44 of laws and regulations, deemed to be legal and correct.
45 Based upon experience, lawyers know that almost all clients
46 follow the advice given, and the law is upheld.

1
2 [3] The principle of client-lawyer confidentiality is given
3 effect by related bodies of law: the attorney-client privilege,
4 the work product doctrine, and the rule of confidentiality
5 established in professional ethics. The attorney-client
6 privilege and work-product doctrine apply in judicial and
7 other proceedings in which a lawyer may be called as a
8 witness or otherwise required to produce evidence
9 concerning a client. The rule of client-lawyer confidentiality
10 applies in situations other than those where evidence is
11 sought from the lawyer through compulsion of law. The
12 confidentiality rule, for example, applies not only to matters
13 communicated in confidence by the client but also to all
14 information relating to the representation, whatever its
15 source. A lawyer may not disclose such information except
16 as authorized or required by the Iowa Rules of Professional
17 Conduct or other law. *See also* Scope.

18
19 [4] Paragraph (a) prohibits a lawyer from revealing
20 information relating to the representation of a client. This
21 prohibition also applies to disclosures by a lawyer that do
22 not in themselves reveal protected information but could
23 reasonably lead to the discovery of such information by a
24 third person. A lawyer's use of a hypothetical to discuss
25 issues relating to the representation is permissible so long as
26 there is no reasonable likelihood that the listener will be able
27 to ascertain the identity of the client or the situation
28 involved.

29
30 *Authorized Disclosure*

31
32 [5] Except to the extent that the client's instructions or
33 special circumstances limit that authority, a lawyer is
34 impliedly authorized to make disclosures about a client
35 when appropriate in carrying out the representation. In some
36 situations, for example, a lawyer may be impliedly
37 authorized to admit a fact that cannot properly be disputed
38 or to make a disclosure that facilitates a satisfactory
39 conclusion to a matter. Lawyers in a firm may, in the course
40 of the firm's practice, disclose to each other information
41 relating to a client of the firm, unless the client has
42 instructed that particular information be confined to
43 specified lawyers.

44
45 *Permissive Disclosure Adverse to Client*

1 [6] Although the public interest is usually best served
2 by a strict rule requiring lawyers to preserve the
3 confidentiality of information relating to the representation of
4 their clients, the confidentiality rule is subject to limited
5 exceptions. Paragraph (b)(1) recognizes the overriding value
6 of life and physical integrity and permits disclosure
7 reasonably necessary to prevent reasonably certain death or
8 substantial bodily harm. Such harm is reasonably certain to
9 occur if it will be suffered in the near future or if there is a
10 present and substantial threat that a person will suffer such
11 harm at a later date if the lawyer fails to take action
12 necessary to eliminate the threat. Thus, a lawyer who knows
13 that a client has accidentally discharged toxic waste into a
14 town's water supply may reveal this information to the
15 authorities if there is a present and substantial risk that a
16 person who drinks the water will contract a life-threatening
17 or debilitating disease and the lawyer's disclosure is
18 necessary to eliminate the threat or reduce the number of
19 victims.

20
21 [7] Paragraph (b)(2) is a limited exception to the rule of
22 confidentiality that permits the lawyer to reveal information
23 to the extent necessary to enable affected persons or
24 appropriate authorities to prevent the client from committing
25 a crime or fraud, as defined in rule 32:1.0(d), that is
26 reasonably certain to result in substantial injury to the
27 financial or property interests of another and in furtherance
28 of which the client has used or is using the lawyer's services.
29 Such a serious abuse of the client-lawyer relationship by the
30 client forfeits the protection of this rule. The client can, of
31 course, prevent such disclosure by refraining from the
32 wrongful conduct. Although paragraph (b)(2) does not
33 require the lawyer to reveal the client's misconduct, the
34 lawyer may not counsel or assist the client in conduct the
35 lawyer knows is criminal or fraudulent. See rule 32:1.2(d).
36 See also rule 32:1.16 with respect to the lawyer's obligation
37 or right to withdraw from the representation of the client in
38 such circumstances, and rule 32:1.13(c), which permits the
39 lawyer, where the client is an organization, to reveal
40 information relating to the representation in limited
41 circumstances.

42
43 [8] Paragraph (b)(3) addresses the situation in which
44 the lawyer does not learn of the client's crime or fraud until
45 after it has been consummated. Although the client no
46 longer has the option of preventing disclosure by refraining

1 from the wrongful conduct, there will be situations in which
2 the loss suffered by the affected person can be prevented,
3 rectified, or mitigated. In such situations, the lawyer may
4 disclose information relating to the representation to the
5 extent necessary to enable the affected persons to prevent or
6 mitigate reasonably certain losses or to attempt to recoup
7 their losses. Paragraph (b)(3) does not apply when a person
8 who has committed a crime or fraud thereafter employs a
9 lawyer for representation concerning that offense.

10
11 [9] A lawyer's confidentiality obligations do not
12 preclude a lawyer from securing confidential legal advice
13 about the lawyer's personal responsibility to comply with
14 these rules. In most situations, disclosing information to
15 secure such advice will be impliedly authorized for the
16 lawyer to carry out the representation. Even when the
17 disclosure is not impliedly authorized, paragraph (b)(4)
18 permits such disclosure because of the importance of a
19 lawyer's compliance with the Iowa Rules of Professional
20 Conduct.

21
22 [10] Where a legal claim or disciplinary charge alleges
23 complicity of the lawyer in a client's conduct or other
24 misconduct of the lawyer involving representation of the
25 client, the lawyer may respond to the extent the lawyer
26 reasonably believes necessary to establish a defense. The
27 same is true with respect to a claim involving the conduct or
28 representation of a former client. Such a charge can arise in
29 a civil, criminal, disciplinary, or other proceeding and can be
30 based on a wrong allegedly committed by the lawyer against
31 the client or on a wrong alleged by a third person, for
32 example, a person claiming to have been defrauded by the
33 lawyer and client acting together. The lawyer's right to
34 respond arises when an assertion of such complicity has
35 been made. Paragraph (b)(5) does not require the lawyer to
36 await the commencement of an action or proceeding that
37 charges such complicity, so that the defense may be
38 established by responding directly to a third party who has
39 made such an assertion. The right to defend also applies, of
40 course, where a proceeding has been commenced.

41
42 [11] A lawyer entitled to a fee is permitted by
43 paragraph (b)(5) to prove the services rendered in an action
44 to collect it. This aspect of the rule expresses the principle
45 that the beneficiary of a fiduciary relationship may not
46 exploit it to the detriment of the fiduciary.

1
2 [12] Other law may require that a lawyer disclose
3 information about a client. Whether such a law supersedes
4 rule 32:1.6 is a question of law beyond the scope of these
5 rules. When disclosure of information relating to the
6 representation appears to be required by other law, the
7 lawyer must discuss the matter with the client to the extent
8 required by rule 32:1.4. If, however, the other law
9 supersedes this rule and requires disclosure, paragraph
10 (b)(6) permits the lawyer to make such disclosures as are
11 necessary to comply with the law.
12

13 [13] A lawyer may be ordered to reveal information
14 relating to the representation of a client by a court or by
15 another tribunal or governmental entity claiming authority
16 pursuant to other law to compel the disclosure. Absent
17 informed consent of the client to do otherwise, the lawyer
18 should assert on behalf of the client all nonfrivolous claims
19 that the order is not authorized by other law or that the
20 information sought is protected against disclosure by the
21 attorney-client privilege or other applicable law. In the event
22 of an adverse ruling, the lawyer must consult with the client
23 about the possibility of appeal to the extent required by rule
24 32:1.4. Unless review is sought, however, paragraph (b)(6)
25 permits the lawyer to comply with the court's order.
26

27 [14] Paragraph (b) permits disclosure only to the extent
28 the lawyer reasonably believes the disclosure is necessary to
29 accomplish one of the purposes specified. Where practicable,
30 the lawyer should first seek to persuade the client to take
31 suitable action to obviate the need for disclosure. In any
32 case, a disclosure adverse to the client's interest should be
33 no greater than the lawyer reasonably believes necessary to
34 accomplish the purpose. If the disclosure will be made in
35 connection with a judicial proceeding, the disclosure should
36 be made in a manner that limits access to the information to
37 the tribunal or other persons having a need to know it and
38 appropriate protective orders or other arrangements should
39 be sought by the lawyer to the fullest extent practicable.
40

41 [15] Paragraph (b) permits but does not require the
42 disclosure of information relating to a client's representation
43 to accomplish the purposes specified in paragraphs (b)(1)
44 through (b)(6). In exercising the discretion conferred by this
45 rule, the lawyer may consider such factors as the nature of
46 the lawyer's relationship with the client and with those who

1 might be injured by the client, the lawyer's own involvement
2 in the transaction, and factors that may extenuate the
3 conduct in question. A lawyer's decision not to disclose as
4 permitted by paragraph (b) does not violate this rule.
5 Disclosure may be required, however, by other rules. Some
6 rules require disclosure only if such disclosure would be
7 permitted by paragraph (b). See rules 32:1.2(d), 32:4.1(b),
8 32:8.1, and 32:8.3. Rule 32:3.3, on the other hand, requires
9 disclosure in some circumstances regardless of whether
10 such disclosure is permitted by this rule. See rule 32:3.3(c).

11
12 *Acting Competently to Preserve Confidentiality*

13
14 [16] A lawyer must act competently to safeguard
15 information relating to the representation of a client against
16 inadvertent or unauthorized disclosure by the lawyer or
17 other persons who are participating in the representation of
18 the client or who are subject to the lawyer's supervision. See
19 rules 32:1.1, 32:5.1, and 32:5.3.

20
21 [17] When transmitting a communication that includes
22 information relating to the representation of a client, the
23 lawyer must take reasonable precautions to prevent the
24 information from coming into the hands of unintended
25 recipients. This duty, however, does not require that the
26 lawyer use special security measures if the method of
27 communication affords a reasonable expectation of privacy.
28 Special circumstances, however, may warrant special
29 precautions. Factors to be considered in determining the
30 reasonableness of the lawyer's expectation of confidentiality
31 include the sensitivity of the information and the extent to
32 which the privacy of the communication is protected by law
33 or by a confidentiality agreement. A client may require the
34 lawyer to implement special security measures not required
35 by this rule or may give informed consent to the use of a
36 means of communication that would otherwise be prohibited
37 by this rule.

38
39 *Former Client*

40
41 [18] The duty of confidentiality continues after the
42 client-lawyer relationship has terminated. See rule
43 32:1.9(c)(2). See rule 32:1.9(c)(1) for the prohibition against
44 using such information to the disadvantage of the former
45 client.

1 *Required Disclosure Adverse to Client*

2
3 [19] Rule 32:1.6(c) requires a lawyer to reveal
4 information relating to the representation of a client to the
5 extent the lawyer reasonably believes necessary to prevent
6 imminent death or substantial bodily harm. Rule 32:1.6(c)
7 differs from rule 32:1.6(b)(1) in that rule 32:1.6(b)(1) permits,
8 but does not require, disclosure in situations where death or
9 substantial bodily harm is deemed to be reasonably certain
10 rather than imminent. For purposes of rule 32:1.6,
11 “reasonably certain” includes situations where the lawyer
12 knows or reasonably believes the harm will occur, but there
13 is still time for independent discovery and prevention of the
14 harm without the lawyer’s disclosure. For purposes of this
15 rule, death or substantial bodily harm is “imminent” if the
16 lawyer knows or reasonably believes it is unlikely that the
17 death or harm can be prevented unless the lawyer
18 immediately discloses the information.
19

20 **RULE 32:1.7: CONFLICT OF INTEREST: CURRENT**
21 **CLIENTS**

22 **(a) Except as provided in paragraph (b), a lawyer**
23 **shall not represent a client if the representation involves**
24 **a concurrent conflict of interest. A concurrent conflict of**
25 **interest exists if:**

26 **(1) the representation of one client will be**
27 **directly adverse to another client; or**

28 **(2) there is a significant risk that the**
29 **representation of one or more clients will be**
30 **materially limited by the lawyer's responsibilities**
31 **to another client, a former client, or a third person**
32 **or by a personal interest of the lawyer.**

33 **(b) Notwithstanding the existence of a concurrent**
34 **conflict of interest under paragraph (a), a lawyer may**
35 **represent a client if:**

36 **(1) the lawyer reasonably believes that the**
37 **lawyer will be able to provide competent and**
38 **diligent representation to each affected client;**

1 **(2) the representation is not prohibited by**
2 **law;**

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

7 **(4) each affected client gives informed**
8 **consent, confirmed in writing.**

9 **(c) In no event shall a lawyer represent both parties**
10 **in dissolution of marriage proceedings.**

11 **Comment**

12 *General Principles*

13 [1] Loyalty and independent judgment are essential
14 elements in the lawyer's relationship to a client. Concurrent
15 conflicts of interest can arise from the lawyer's
16 responsibilities to another client, a former client or a third
17 person, or from the lawyer's own interests. For specific rules
18 regarding certain concurrent conflicts of interest, see rule
19 32:1.8. For former client conflicts of interest, see rule 32:1.9.
20 For conflicts of interest involving prospective clients, see rule
21 32:1.18. For definitions of "informed consent" and
22 "confirmed in writing," see rule 32:1.0(e) and (b).

23 [2] Resolution of a conflict of interest problem under
24 this rule requires the lawyer to: 1) clearly identify the client
25 or clients; 2) determine whether a conflict of interest exists;
26 3) decide whether the representation may be undertaken
27 despite the existence of a conflict, i.e., whether the conflict is
28 consentable; and 4) if so, consult with the clients affected
29 under paragraph (a) and obtain their informed consent,
30 confirmed in writing. The clients affected under paragraph
31 (a) include both of the clients referred to in paragraph (a)(1)
32 and the one or more clients whose representation might be
33 materially limited under paragraph (a)(2).

34 [3] A conflict of interest may exist before
35 representation is undertaken, in which event the
36 representation must be declined, unless the lawyer obtains
37 the informed consent of each client under the conditions of
38 paragraph (b). To determine whether a conflict of interest

1 exists, a lawyer should adopt reasonable procedures,
2 appropriate for the size and type of firm and practice, to
3 determine in both litigation and non-litigation matters the
4 persons and issues involved. *See also* comment to rule
5 32:5.1. Ignorance caused by a failure to institute such
6 procedures will not excuse a lawyer's violation of this rule.
7 As to whether a client-lawyer relationship exists or, having
8 once been established, is continuing, see comment to rule
9 32:1.3 and Scope.

10 [4] If a conflict arises after representation has been
11 undertaken, the lawyer ordinarily must withdraw from the
12 representation, unless the lawyer has obtained the informed
13 consent of the client under the conditions of paragraph (b).
14 *See* rule 32:1.16. Where more than one client is involved,
15 whether the lawyer may continue to represent any of the
16 clients is determined both by the lawyer's ability to comply
17 with duties owed to the former client and by the lawyer's
18 ability to represent adequately the remaining client or
19 clients, given the lawyer's duties to the former client. *See*
20 rule 32:1.9. *See also* comments [5] and [29].

21 [5] Unforeseeable developments, such as changes in
22 corporate and other organizational affiliations or the addition
23 or realignment of parties in litigation, might create conflicts
24 in the midst of a representation, as when a company sued by
25 the lawyer on behalf of one client is bought by another client
26 represented by the lawyer in an unrelated matter. Depending
27 on the circumstances, the lawyer may have the option to
28 withdraw from one of the representations in order to avoid
29 the conflict. The lawyer must seek court approval where
30 necessary and take steps to minimize harm to the clients.
31 *See* rule 32:1.16. The lawyer must continue to protect the
32 confidences of the client from whose representation the
33 lawyer has withdrawn. *See* rule 32:1.9(c).

34 *Identifying Conflicts of Interest: Directly Adverse*

35 [6] Loyalty to a current client prohibits undertaking
36 representation directly adverse to that client without that
37 client's informed consent. Thus, absent consent, a lawyer
38 may not act as an advocate in one matter against a person
39 the lawyer represents in some other matter, even when the
40 matters are wholly unrelated. The client as to whom the
41 representation is directly adverse is likely to feel betrayed,
42 and the resulting damage to the client-lawyer relationship is

1 likely to impair the lawyer's ability to represent the client
2 effectively. In addition, the client on whose behalf the
3 adverse representation is undertaken reasonably may fear
4 that the lawyer will pursue that client's case less effectively
5 out of deference to the other client, i.e., that the
6 representation may be materially limited by the lawyer's
7 interest in retaining the current client. Similarly, a directly
8 adverse conflict may arise when a lawyer is required to
9 cross-examine a client who appears as a witness in a lawsuit
10 involving another client, as when the testimony will be
11 damaging to the client who is represented in the lawsuit. On
12 the other hand, simultaneous representation in unrelated
13 matters of clients whose interests are only economically
14 adverse, such as representation of competing economic
15 enterprises in unrelated litigation, does not ordinarily
16 constitute a conflict of interest and thus may not require
17 consent of the respective clients.

18 [7] Directly adverse conflicts can also arise in
19 transactional matters. For example, if a lawyer is asked to
20 represent the seller of a business in negotiations with a
21 buyer represented by the lawyer, not in the same transaction
22 but in another, unrelated matter, the lawyer could not
23 undertake the representation without the informed consent
24 of each client.

25 *Identifying Conflicts of Interest: Material Limitation*

26 [8] Even where there is no direct adverseness, a
27 conflict of interest exists if there is a significant risk that a
28 lawyer's ability to consider, recommend, or carry out an
29 appropriate course of action for the client will be materially
30 limited as a result of the lawyer's other responsibilities or
31 interests. For example, a lawyer asked to represent several
32 individuals seeking to form a joint venture is likely to be
33 materially limited in the lawyer's ability to recommend or
34 advocate all possible positions that each might take because
35 of the lawyer's duty of loyalty to the others. The conflict in
36 effect forecloses alternatives that would otherwise be
37 available to the client. The mere possibility of subsequent
38 harm does not itself require disclosure and consent. The
39 critical questions are the likelihood that a difference in
40 interests will eventuate and, if it does, whether it will
41 materially interfere with the lawyer's independent
42 professional judgment in considering alternatives or

1 foreclose courses of action that reasonably should be
2 pursued on behalf of the client.

3 *Lawyer's Responsibilities to Former Clients and Other Third*
4 *Persons*

5 [9] In addition to conflicts with other current clients, a
6 lawyer's duties of loyalty and independence may be
7 materially limited by responsibilities to former clients under
8 rule 32:1.9 or by the lawyer's responsibilities to other
9 persons, such as fiduciary duties arising from a lawyer's
10 service as a trustee, executor, or corporate director.

11 *Personal Interest Conflicts*

12 [10] The lawyer's own interests should not be
13 permitted to have an adverse effect on representation of a
14 client. For example, if the probity of a lawyer's own conduct
15 in a transaction is in serious question, it may be difficult or
16 impossible for the lawyer to give a client detached advice.
17 Similarly, when a lawyer has discussions concerning
18 possible employment with an opponent of the lawyer's client,
19 or with a law firm representing the opponent, such
20 discussions could materially limit the lawyer's representation
21 of the client. In addition, a lawyer may not allow related
22 business interests to affect representation, for example, by
23 referring clients to an enterprise in which the lawyer has an
24 undisclosed financial interest. See rule 32:1.8 for specific
25 rules pertaining to a number of personal interest conflicts,
26 including business transactions with clients. *See also* rule
27 32:1.10 (personal interest conflicts under rule 32:1.7
28 ordinarily are not imputed to other lawyers in a law firm).

29 [11] When lawyers representing different clients in the
30 same matter or in substantially related matters are closely
31 related by blood or marriage, there may be a significant risk
32 that client confidences will be revealed and that the lawyer's
33 family relationship will interfere with both loyalty and
34 independent professional judgment. As a result, each client
35 is entitled to know of the existence and implications of the
36 relationship between the lawyers before the lawyer agrees to
37 undertake the representation. Thus, a lawyer related to
38 another lawyer, e.g., a parent, child, sibling, spouse,
39 cohabiting partner, or lawyer related in any other familial or
40 romantic capacity, ordinarily may not represent a client in a
41 matter where that lawyer is representing another party,

1 unless each client gives informed consent. The
2 disqualification arising from a close family relationship is
3 personal and ordinarily is not imputed to members of firms
4 with whom the lawyers are associated. See rule 32:1.10.

5 [12] A lawyer is prohibited from engaging in sexual
6 relationships with a client unless the sexual relationship
7 predates the formation of the client-lawyer relationship. See
8 rule 32:1.8(j).

9 *Interest of Person Paying for a Lawyer's Service*

10 [13] A lawyer may be paid from a source other than the
11 client, including a co-client, if the client is informed of that
12 fact and consents and the arrangement does not compromise
13 the lawyer's duty of loyalty or independent judgment to the
14 client. See rule 32:1.8(f). If acceptance of the payment from
15 any other source presents a significant risk that the lawyer's
16 representation of the client will be materially limited by the
17 lawyer's own interest in accommodating the person paying
18 the lawyer's fee or by the lawyer's responsibilities to a payer
19 who is also a co-client, then the lawyer must comply with the
20 requirements of paragraph (b) before accepting the
21 representation, including determining whether the conflict is
22 consentable and, if so, that the client has adequate
23 information about the material risks of the representation.

24 [13a] Where a lawyer has been retained by an insurer
25 to represent the insured pursuant to the insurer's
26 obligations under a liability insurance policy, the lawyer may
27 comply with reasonable cost-containment litigation
28 guidelines proposed by the insurer if such guidelines do not
29 materially interfere with the lawyer's duty to exercise
30 independent professional judgment to protect the reasonable
31 interests of the insured, do not regulate the details of the
32 lawyer's performance, and do not materially limit the
33 professional discretion and control of the lawyer. The lawyer
34 may provide the insurer with a description of the services
35 rendered and time spent, but the lawyer may not agree to
36 provide detailed information that would undermine the
37 protection of confidential client-lawyer information, if the
38 insurer will share such information with a third party. If the
39 lawyer believes that guidelines proposed by the insurer
40 prevent the lawyer from exercising independent professional
41 judgment or from protecting confidential client information,
42 the lawyer shall identify and explain the conflict of interest to

1 the insurer and insured and also advise the insured of the
2 right to seek independent legal counsel. If the conflict is not
3 eliminated but the insured wants the lawyer to continue the
4 representation, the lawyer may proceed if the lawyer
5 reasonably believes that the lawyer will be able to provide
6 competent and diligent representation and the insured's
7 informed consent is obtained pursuant to paragraph (b)(4).

8 *Prohibited Representations*

9 [14] Ordinarily, clients may consent to representation
10 notwithstanding a conflict. However, as indicated in
11 paragraph (b), some conflicts are nonconsentable, meaning
12 that the lawyer involved cannot properly ask for such
13 agreement or provide representation on the basis of the
14 client's consent. When the lawyer is representing more than
15 one client, the question of consentability must be resolved as
16 to each client.

17 [15] Consentability is typically determined by
18 considering whether the interests of the clients will be
19 adequately protected if the clients are permitted to give their
20 informed consent to representation burdened by a conflict of
21 interest. Thus, under paragraph (b)(1), representation is
22 prohibited if in the circumstances the lawyer cannot
23 reasonably conclude that the lawyer will be able to provide
24 competent and diligent representation. See rule 32:1.1
25 (competence) and rule 32:1.3 (diligence).

26 [16] Paragraph (b)(2) describes conflicts that are
27 nonconsentable because the representation is prohibited by
28 applicable law.

29 [17] Paragraph (b)(3) describes conflicts that are
30 nonconsentable because of the institutional interest in
31 vigorous development of each client's position when the
32 clients are aligned directly against each other in the same
33 litigation or other proceeding before a tribunal. Whether
34 clients are aligned directly against each other within the
35 meaning of this paragraph requires examination of the
36 context of the proceeding. Paragraph (c) provides a specific
37 example of such a nonconsentable conflict, that is, where a
38 lawyer is asked to represent both parties in a marriage
39 dissolution proceeding. Although this paragraph does not
40 preclude a lawyer's multiple representation of adverse
41 parties to a mediation (because mediation is not a

1 proceeding before a "tribunal" under rule 32:1.0(m)), such
2 representation may be precluded by paragraph (b)(1).

3 *Informed Consent*

4 [18] Informed consent requires that each affected
5 client be aware of the relevant circumstances and of the
6 material and reasonably foreseeable ways that the conflict
7 could have adverse effects on the interests of that client. *See*
8 rule 32:1.0(e) (informed consent). The information required
9 depends on the nature of the conflict and the nature of the
10 risks involved. When representation of multiple clients in a
11 single matter is undertaken, the information must include
12 the implications of the common representation, including
13 possible effects on loyalty, confidentiality, and the attorney-
14 client privilege and the advantages and risks involved. *See*
15 comments [30] and [31] (effect of common representation on
16 confidentiality).

17 [19] Under some circumstances it may be impossible
18 to make the disclosure necessary to obtain consent. For
19 example, when the lawyer represents different clients in
20 related matters and one of the clients refuses to consent to
21 the disclosure necessary to permit the other client to make
22 an informed decision, the lawyer cannot properly ask the
23 latter to consent. In some cases the alternative to common
24 representation can be that each party may have to obtain
25 separate representation with the possibility of incurring
26 additional costs. These costs, along with the benefits of
27 securing separate representation, are factors that may be
28 considered by the affected client in determining whether
29 common representation is in the client's interests.

30 *Consent Confirmed in Writing*

31 [20] Paragraph (b) requires the lawyer to obtain the
32 informed consent of the client, confirmed in writing. Such a
33 writing may consist of a document executed by the client or
34 one that the lawyer promptly records and transmits to the
35 client following an oral consent. *See* rule 32:1.0(b). *See also*
36 rule 32:1.0(n) (writing includes electronic transmission). If it
37 is not feasible to obtain or transmit the writing at the time
38 the client gives informed consent, then the lawyer must
39 obtain or transmit it within a reasonable time thereafter. *See*
40 rule 32:1.0(b). The requirement of a writing does not
41 supplant the need in most cases for the lawyer to talk with

1 the client, to explain the risks and advantages, if any, of
2 representation burdened with a conflict of interest, as well as
3 reasonably available alternatives, and to afford the client a
4 reasonable opportunity to consider the risks and alternatives
5 and to raise questions and concerns. Rather, the writing is
6 required in order to impress upon clients the seriousness of
7 the decision the client is being asked to make and to avoid
8 disputes or ambiguities that might later occur in the absence
9 of a writing.

10 *Revoking Consent*

11 [21] A client who has given consent to a conflict may
12 revoke the consent and, like any other client, may terminate
13 the lawyer's representation at any time. Whether revoking
14 consent to the client's own representation precludes the
15 lawyer from continuing to represent other clients depends on
16 the circumstances, including the nature of the conflict,
17 whether the client revoked consent because of a material
18 change in circumstances, the reasonable expectations of the
19 other clients, and whether material detriment to the other
20 clients or the lawyer would result.

21 *Consent to Future Conflict*

22 [22] Whether a lawyer may properly request a client to
23 waive conflicts that might arise in the future is subject to the
24 test of paragraph (b). The effectiveness of such waivers is
25 generally determined by the extent to which the client
26 reasonably understands the material risks that the waiver
27 entails. The more comprehensive the explanation of the types
28 of future representations that might arise and the actual and
29 reasonably foreseeable adverse consequences of those
30 representations, the greater the likelihood that the client will
31 have the requisite understanding. Thus, if the client agrees
32 to consent to a particular type of conflict with which the
33 client is already familiar, then the consent ordinarily will be
34 effective with regard to that type of conflict. If the consent is
35 general and open-ended, then the consent ordinarily will be
36 ineffective, because it is not reasonably likely that the client
37 will have understood the material risks involved. On the
38 other hand, if the client is an experienced user of the legal
39 services involved and is reasonably informed regarding the
40 risk that a conflict may arise, such consent is more likely to
41 be effective, particularly if, e.g., the client is independently
42 represented by other counsel in giving consent and the

1 consent is limited to future conflicts unrelated to the subject
2 of the representation. In any case, advance consent cannot
3 be effective if the circumstances that materialize in the
4 future are such as would make the conflict nonconsentable
5 under paragraph (b).

6 *Conflicts in Litigation*

7 [23] Paragraphs (b)(3) and (c) prohibit representation of
8 opposing parties in the same litigation, regardless of the
9 clients' consent. On the other hand, simultaneous
10 representation of parties whose interests in litigation may
11 conflict, such as coplaintiffs or codefendants, is governed by
12 paragraph (a)(2). A conflict may exist by reason of
13 substantial discrepancy in the parties' testimony,
14 incompatibility in positions in relation to an opposing party
15 or the fact that there are substantially different possibilities
16 of settlement of the claims or liabilities in question. Such
17 conflicts can arise in criminal cases as well as civil. The
18 potential for conflict of interest in representing multiple
19 defendants in a criminal case is so grave that ordinarily a
20 lawyer should decline to represent more than one
21 codefendant. On the other hand, common representation of
22 persons having similar interests in civil litigation is proper if
23 the requirements of paragraph (b) are met.

24 [24] Ordinarily a lawyer may take inconsistent legal
25 positions in different tribunals at different times on behalf of
26 different clients. The mere fact that advocating a legal
27 position on behalf of one client might create precedent
28 adverse to the interests of a client represented by the lawyer
29 in an unrelated matter does not create a conflict of interest.
30 A conflict of interest exists, however, if there is a significant
31 risk that a lawyer's action on behalf of one client will
32 materially limit the lawyer's effectiveness in representing
33 another client in a different case; for example, when a
34 decision favoring one client will create a precedent likely to
35 seriously weaken the position taken on behalf of the other
36 client. Factors relevant in determining whether the clients
37 need to be advised of the risk include: where the cases are
38 pending, whether the issue is substantive or procedural, the
39 temporal relationship between the matters, the significance
40 of the issue to the immediate and long-term interests of the
41 clients involved, and the clients' reasonable expectations in
42 retaining the lawyer. If there is significant risk of material
43 limitation, then absent informed consent of the affected

1 clients, the lawyer must refuse one of the representations or
2 withdraw from one or both matters.

3 [25] When a lawyer represents or seeks to represent a
4 class of plaintiffs or defendants in a class-action lawsuit,
5 unnamed members of the class are ordinarily not considered
6 to be clients of the lawyer for purposes of applying paragraph
7 (a)(1) of this rule. Thus, the lawyer does not typically need to
8 get the consent of such a person before representing a client
9 suing the person in an unrelated matter. Similarly, a lawyer
10 seeking to represent an opponent in a class action does not
11 typically need the consent of an unnamed member of the
12 class whom the lawyer represents in an unrelated matter.

13 *Nonlitigation Conflicts*

14 [26] Conflicts of interest under paragraphs (a)(1) and
15 (a)(2) arise in contexts other than litigation. For a discussion
16 of directly adverse conflicts in transactional matters, see
17 comment [7]. Relevant factors in determining whether there
18 is significant potential for material limitation include the
19 duration and intimacy of the lawyer's relationship with the
20 client or clients involved, the functions being performed by
21 the lawyer, the likelihood that disagreements will arise, and
22 the likely prejudice to the client from the conflict. The
23 question is often one of proximity and degree. *See* comment
24 [8].

25 [27] For example, conflict questions may arise in estate
26 planning and estate administration. A lawyer may be called
27 upon to prepare wills for several family members, such as
28 husband and wife, and, depending upon the circumstances,
29 a conflict of interest may be present. In order to comply with
30 conflict of interest rules, the lawyer should make clear the
31 lawyer's relationship to the parties involved.

32 [28] Whether a conflict is consentable depends on the
33 circumstances. For example, a lawyer may not represent
34 multiple parties to a negotiation whose interests are
35 fundamentally antagonistic to each other, but common
36 representation is permissible where the clients are generally
37 aligned in interest even though there is some difference in
38 interest among them. Thus, a lawyer may seek to establish
39 or adjust a relationship between clients on an amicable and
40 mutually advantageous basis; for example, in helping to
41 organize a business in which two or more clients are

1 entrepreneurs, working out the financial reorganization of an
2 enterprise in which two or more clients have an interest, or
3 arranging a property distribution in settlement of an estate.
4 The lawyer seeks to resolve potentially adverse interests by
5 developing the parties' mutual interests. Otherwise, each
6 party might have to obtain separate representation, with the
7 possibility of incurring additional cost, complication, or even
8 litigation. Given these and other relevant factors, the clients
9 may prefer that the lawyer act for all of them.

10 *Special Considerations in Common Representation*

11 [29] In considering whether to represent multiple
12 clients in the same matter, a lawyer should be mindful that
13 if the common representation fails because the potentially
14 adverse interests cannot be reconciled, the result can be
15 additional cost, embarrassment, and recrimination.
16 Ordinarily, the lawyer will be forced to withdraw from
17 representing all of the clients if the common representation
18 fails. In some situations, the risk of failure is so great that
19 multiple representation is plainly impossible. For example, a
20 lawyer cannot undertake common representation of clients
21 where contentious litigation or negotiations between them
22 are imminent or contemplated. Moreover, because the lawyer
23 is required to be impartial between commonly represented
24 clients, representation of multiple clients is improper when it
25 is unlikely that impartiality can be maintained. Generally, if
26 the relationship between the parties has already assumed
27 antagonism, the possibility that the clients' interests can be
28 adequately served by common representation is not very
29 good. Other relevant factors are whether the lawyer
30 subsequently will represent both parties on a continuing
31 basis and whether the situation involves creating or
32 terminating a relationship between the parties.

33 [30] A particularly important factor in determining the
34 appropriateness of common representation is the effect on
35 client-lawyer confidentiality and the attorney-client privilege.
36 With regard to the attorney-client privilege, the prevailing
37 rule is that, as between commonly represented clients, the
38 privilege does not attach. Hence, it must be assumed that if
39 litigation eventuates between the clients, the privilege will
40 not protect any such communications, and the clients
41 should be so advised.

1 [31] As to the duty of confidentiality, continued
2 common representation will almost certainly be inadequate if
3 one client asks the lawyer not to disclose to the other client
4 information relevant to the common representation. This is
5 so because the lawyer has an equal duty of loyalty to each
6 client, and each client has the right to be informed of
7 anything bearing on the representation that might affect that
8 client's interests and the right to expect that the lawyer will
9 use that information to that client's benefit. See rule 32:1.4.
10 The lawyer should, at the outset of the common
11 representation and as part of the process of obtaining each
12 client's informed consent, advise each client that information
13 will be shared and that the lawyer will have to withdraw if
14 one client decides that some matter material to the
15 representation should be kept from the other. In limited
16 circumstances, it may be appropriate for the lawyer to
17 proceed with the representation when the clients have
18 agreed, after being properly informed, that the lawyer will
19 keep certain information confidential. For example, the
20 lawyer may reasonably conclude that failure to disclose one
21 client's trade secrets to another client will not adversely
22 affect representation involving a joint venture between the
23 clients and agree to keep that information confidential with
24 the informed consent of both clients.

25 [32] When seeking to establish or adjust a relationship
26 between clients, the lawyer should make clear that the
27 lawyer's role is not that of partisanship normally expected in
28 other circumstances and, thus, that the clients may be
29 required to assume greater responsibility for decisions than
30 when each client is separately represented. Any limitations
31 on the scope of the representation made necessary as a
32 result of the common representation should be fully
33 explained to the clients at the outset of the representation.
34 See rule 32:1.2(c).

35 [33] Subject to the above limitations, each client in the
36 common representation has the right to loyal and diligent
37 representation and the protection of rule 32:1.9 concerning
38 the obligations to a former client. The client also has the
39 right to discharge the lawyer as stated in rule 32:1.16.

40 *Organizational Clients*

41 [34] A lawyer who represents a corporation or other
42 organization does not, by virtue of that representation,

1 necessarily represent any constituent or affiliated
2 organization, such as a parent or subsidiary. See rule
3 32:1.13(a). Thus, the lawyer for an organization is not barred
4 from accepting representation adverse to an affiliate in an
5 unrelated matter, unless the circumstances are such that
6 the affiliate should also be considered a client of the lawyer,
7 there is an understanding between the lawyer and the
8 organizational client that the lawyer will avoid representation
9 adverse to the client's affiliates, or the lawyer's obligations to
10 either the organizational client or the new client are likely to
11 limit materially the lawyer's representation of the other
12 client.

13 [35] A lawyer for a corporation or other organization
14 who is also a member of its board of directors should
15 determine whether the responsibilities of the two roles may
16 conflict. The lawyer may be called on to advise the
17 corporation in matters involving actions of the directors.
18 Consideration should be given to the frequency with which
19 such situations may arise, the potential intensity of the
20 conflict, the effect of the lawyer's resignation from the board,
21 and the possibility of the corporation's obtaining legal advice
22 from another lawyer in such situations. If there is material
23 risk that the dual role will compromise the lawyer's
24 independence of professional judgment, the lawyer should
25 not serve as a director or should cease to act as the
26 corporation's lawyer when conflicts of interest arise. The
27 lawyer should advise the other members of the board that in
28 some circumstances matters discussed at board meetings
29 while the lawyer is present in the capacity of director might
30 not be protected by the attorney-client privilege and that
31 conflict of interest considerations might require the lawyer's
32 recusal as a director or might require the lawyer and the
33 lawyer's firm to decline representation of the corporation in a
34 matter.

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**RULE 32:1.8: CONFLICT OF INTEREST:
CURRENT CLIENTS: SPECIFIC RULES**

38 **(a) A lawyer shall not enter into a business**
39 **transaction with a client or knowingly acquire an**
40 **ownership, possessory, security, or other pecuniary**
41 **interest adverse to a client unless:**

1 (1) the transaction and terms on which the
2 lawyer acquires the interest are fair and reasonable
3 to the client and are fully disclosed and
4 transmitted in writing in a manner that can be
5 reasonably understood by the client;

6 (2) the client is advised in writing of the
7 desirability of seeking and is given a reasonable
8 opportunity to seek the advice of independent
9 legal counsel on the transaction; and

10 (3) the client gives informed consent, in a
11 writing signed by the client, to the essential terms
12 of the transaction and the lawyer's role in the
13 transaction, including whether the lawyer is
14 representing the client in the transaction.

15 (b) A lawyer shall not use information relating to
16 representation of a client to the disadvantage of the
17 client unless the client gives informed consent, except
18 as permitted or required by these rules.

19 (c) A lawyer shall not solicit any substantial gift
20 from a client, including a testamentary gift, or prepare
21 on behalf of a client an instrument giving the lawyer or a
22 person related to the lawyer any substantial gift unless
23 the lawyer or other recipient of the gift is related to the
24 client. For purposes of this paragraph, related persons
25 include a spouse, child, sibling, grandchild, parent,
26 grandparent, or other relative or individual with whom
27 the lawyer or the client maintains a close, familial
28 relationship.

29 (d) Prior to the conclusion of representation of a
30 client, a lawyer shall not make or negotiate an
31 agreement giving the lawyer literary or media rights to a
32 portrayal or account based in substantial part on
33 information relating to the representation.

34 (e) A lawyer shall not provide financial assistance
35 to a client in connection with pending or contemplated
36 litigation, except that:

37 (1) a lawyer may advance court costs and
38 expenses of litigation, the repayment of which may
39 be contingent on the outcome of the matter; and

1 **(2) a lawyer representing an indigent client**
2 **may pay court costs and expenses of litigation on**
3 **behalf of the client.**

4 **(f) A lawyer shall not accept compensation for**
5 **representing a client from one other than the client**
6 **unless:**

7 **(1) the client gives informed consent;**

8 **(2) there is no interference with the lawyer's**
9 **independence of professional judgment or with the**
10 **client-lawyer relationship; and**

11 **(3) information relating to representation of a**
12 **client is protected as required by rule 32:1.6.**

13 **(g) A lawyer who represents two or more clients**
14 **shall not participate in making an aggregate settlement**
15 **of the claims of or against the clients, or in a criminal**
16 **case an aggregated agreement as to guilty or nolo**
17 **contendere pleas, unless each client gives informed**
18 **consent, in a writing signed by the client. The lawyer's**
19 **disclosure shall include the existence and nature of all**
20 **the claims or pleas involved and of the participation of**
21 **each person in the settlement.**

22 **(h) A lawyer shall not:**

23 **(1) make an agreement prospectively limiting**
24 **the lawyer's liability to a client for malpractice; or**

25 **(2) settle a claim or potential claim for such**
26 **liability with an unrepresented client or former**
27 **client unless that person is advised in writing of**
28 **the desirability of seeking and is given a reasonable**
29 **opportunity to seek the advice of independent**
30 **legal counsel in connection therewith.**

31 **(i) A lawyer shall not acquire a proprietary interest**
32 **in the cause of action or subject matter of litigation the**
33 **lawyer is conducting for a client, except that the lawyer**
34 **may:**

35 **(1) acquire a lien authorized by law to secure**
36 **the lawyer's fee or expenses; and**

1 (2) contract with a client for a reasonable
2 contingent fee in a civil case.

3 (j) A lawyer shall not have sexual relations with a
4 client, or a representative of a client, unless the person
5 is the spouse of the lawyer or the sexual relationship
6 predates the initiation of the client-lawyer relationship.
7 Even in these provisionally exempt relationships, the
8 lawyer should strictly scrutinize the lawyer's behavior
9 for any conflicts of interest to determine if any harm
10 may result to the client or to the representation. If there
11 is any reasonable possibility that the legal
12 representation of the client may be impaired, or the
13 client harmed by the continuation of the sexual
14 relationship, the lawyer should immediately withdraw
15 from the legal representation.

16
17 (k) While lawyers are associated in a firm, a
18 prohibition in the foregoing paragraphs (a) through (i)
19 that applies to any one of them shall apply to all of
20 them.

21
22 (l) A lawyer related to another lawyer shall not
23 represent a client whose interests are directly adverse to
24 a person whom the lawyer knows is represented by the
25 related lawyer except upon the client's informed
26 consent, confirmed in a writing signed by the client.
27 Even if the clients' interests do not appear to be directly
28 adverse, the lawyer should not undertake the
29 representation of a client if there is a significant risk
30 that the related lawyer's involvement will interfere with
31 the lawyer's loyalty and exercise of independent
32 judgment, or will create a significant risk that client
33 confidences will be revealed. For purposes of this
34 paragraph, "related lawyer" includes a parent, child,
35 sibling, spouse, cohabiting partner, or lawyer related in
36 any other familial or romantic capacity.

37 **Comment**

38 *Business Transactions Between Client and Lawyer*

39 [1] A lawyer's legal skill and training, together with the
40 relationship of trust and confidence between lawyer and
41 client, create the possibility of overreaching when the lawyer
42 participates in a business, property, or financial transaction

1 with a client, for example, a loan or sales transaction or a
2 lawyer investment on behalf of a client. The requirements of
3 paragraph (a) must be met even when the transaction is not
4 closely related to the subject matter of the representation, as
5 when a lawyer drafting a will for a client learns that the
6 client needs money for unrelated expenses and offers to
7 make a loan to the client. The rule applies to lawyers
8 engaged in the sale of goods or services related to the
9 practice of law, for example, the sale of investment services
10 to existing clients of the lawyer's legal practice. See rule
11 32:5.7. It also applies to lawyers purchasing property from
12 estates they represent. It does not apply to ordinary fee
13 arrangements between client and lawyer, which are governed
14 by rule 32:1.5, although its requirements must be met when
15 the lawyer accepts an interest in the client's business or
16 other nonmonetary property as payment of all or part of a
17 fee. In addition, the rule does not apply to standard
18 commercial transactions between the lawyer and the client
19 for products or services that the client generally markets to
20 others, for example, banking or brokerage services, medical
21 services, products manufactured or distributed by the client,
22 and utilities' services. In such transactions, the lawyer has
23 no advantage in dealing with the client, and the restrictions
24 in paragraph (a) are unnecessary and impracticable.

25 [2] Paragraph (a)(1) requires that the transaction itself
26 be fair to the client and that its essential terms be
27 communicated to the client, in writing, in a manner that can
28 be reasonably understood. Paragraph (a)(2) requires that the
29 client also be advised, in writing, of the desirability of
30 seeking the advice of independent legal counsel. It also
31 requires that the client be given a reasonable opportunity to
32 obtain such advice. Paragraph (a)(3) requires that the lawyer
33 obtain the client's informed consent, in a writing signed by
34 the client, both to the essential terms of the transaction and
35 to the lawyer's role. When necessary, the lawyer should
36 discuss both the material risks of the proposed transaction,
37 including any risk presented by the lawyer's involvement,
38 and the existence of reasonably available alternatives and
39 should explain why the advice of independent legal counsel
40 is desirable. See rule 32:1.0(e) (definition of informed
41 consent).

42 [3] The risk to a client is greatest when the client
43 expects the lawyer to represent the client in the transaction
44 itself or when the lawyer's financial interest otherwise poses

1 a significant risk that the lawyer's representation of the
2 client will be materially limited by the lawyer's financial
3 interest in the transaction. Here the lawyer's role requires
4 that the lawyer must comply, not only with the requirements
5 of paragraph (a), but also with the requirements of rule
6 32:1.7. Under that rule, the lawyer must disclose the risks
7 associated with the lawyer's dual role as both legal adviser
8 and participant in the transaction, such as the risk that the
9 lawyer will structure the transaction or give legal advice in a
10 way that favors the lawyer's interests at the expense of the
11 client. Moreover, the lawyer must obtain the client's
12 informed consent. In some cases, the lawyer's interest may
13 be such that rule 32:1.7 will preclude the lawyer from
14 seeking the client's consent to the transaction.

15 [4] If the client is independently represented in the
16 transaction, paragraph (a)(2) of this rule is inapplicable, and
17 the paragraph (a)(1) requirement for full disclosure is
18 satisfied either by a written disclosure by the lawyer involved
19 in the transaction or by the client's independent counsel.
20 The fact that the client was independently represented in the
21 transaction is relevant in determining whether the
22 agreement was fair and reasonable to the client as paragraph
23 (a)(1) further requires.

24 *Use of Information Related to Representation*

25 [5] Use of information relating to the representation to
26 the disadvantage of the client violates the lawyer's duty of
27 loyalty. Paragraph (b) applies when the information is used
28 to benefit either the lawyer or a third person, such as
29 another client or business associate of the lawyer. For
30 example, if a lawyer learns that a client intends to purchase
31 and develop several parcels of land, the lawyer may not use
32 that information to purchase one of the parcels in
33 competition with the client or to recommend that another
34 client make such a purchase. The rule does not prohibit
35 uses that do not disadvantage the client. For example, a
36 lawyer who learns a government agency's interpretation of
37 trade legislation during the representation of one client may
38 properly use that information to benefit other clients.
39 Paragraph (b) prohibits disadvantageous use of client
40 information unless the client gives informed consent, except
41 as permitted or required by these rules. See rules 32:1.2(d),
42 32:1.6, 32:1.9(c), 32:3.3, 32:4.1(b), 32:8.1, and 32:8.3.

1 *Gifts to Lawyers*

2 [6] A lawyer may accept a gift from a client, if the
3 transaction meets general standards of fairness. For
4 example, a simple gift such as a present given at a holiday or
5 as a token of appreciation is permitted. If a client offers the
6 lawyer a more substantial gift, paragraph (c) does not
7 prohibit the lawyer from accepting it, although such a gift
8 may be voidable by the client under the doctrine of undue
9 influence, which treats client gifts as presumptively
10 fraudulent. In any event, due to concerns about overreaching
11 and imposition on clients, a lawyer may not suggest that a
12 substantial gift be made to the lawyer or for the lawyer's
13 benefit, except where the lawyer is related to the client as set
14 forth in paragraph (c).

15 [7] If effectuation of a substantial gift requires
16 preparing a legal instrument such as a will or conveyance
17 the client should have the detached advice that another
18 lawyer can provide. The sole exception to this rule is where
19 the client is a relative of the donee.

20 [8] This rule does not prohibit a lawyer from seeking to
21 have the lawyer or a partner or associate of the lawyer
22 named as executor of the client's estate or to another
23 potentially lucrative fiduciary position. Nevertheless, such
24 appointments will be subject to the general conflict of
25 interest provision in rule 32:1.7 when there is a significant
26 risk that the lawyer's interest in obtaining the appointment
27 will materially limit the lawyer's independent professional
28 judgment in advising the client concerning the choice of an
29 executor or other fiduciary. In obtaining the client's informed
30 consent to the conflict, the lawyer should advise the client
31 concerning the nature and extent of the lawyer's financial
32 interest in the appointment, as well as the availability of
33 alternative candidates for the position.

34 *Literary Rights*

35 [9] An agreement by which a lawyer acquires literary or
36 media rights concerning the conduct of the representation
37 creates a conflict between the interests of the client and the
38 personal interests of the lawyer. Measures suitable in the
39 representation of the client may detract from the publication
40 value of an account of the representation. Paragraph (d) does
41 not prohibit a lawyer representing a client in a transaction

1 concerning literary property from agreeing that the lawyer's
2 fee shall consist of a share in ownership in the property, if
3 the arrangement conforms to rule 32:1.5 and paragraphs (a)
4 and (i).

5 *Financial Assistance*

6 [10] Lawyers may not subsidize lawsuits or
7 administrative proceedings brought on behalf of their clients,
8 including making or guaranteeing loans to their clients for
9 living expenses, because to do so would encourage clients to
10 pursue lawsuits that might not otherwise be brought and
11 because such assistance gives lawyers too great a financial
12 stake in the litigation. These dangers do not warrant a
13 prohibition on a lawyer lending a client court costs and
14 litigation expenses, including the expenses of medical
15 examination and the costs of obtaining and presenting
16 evidence, because these advances are virtually
17 indistinguishable from contingent fees and help ensure
18 access to the courts. Similarly, an exception allowing lawyers
19 representing indigent clients to pay court costs and litigation
20 expenses regardless of whether these funds will be repaid is
21 warranted.

22 *Person Paying for a Lawyer's Services*

23 [11] Lawyers are frequently asked to represent a client
24 under circumstances in which a third person will
25 compensate the lawyer, in whole or in part. The third person
26 might be a relative or friend, an indemnitor (such as a
27 liability insurance company), or a co-client (such as a
28 corporation sued along with one or more of its employees).
29 Because third-party payers frequently have interests that
30 differ from those of the client, including interests in
31 minimizing the amount spent on the representation and in
32 learning how the representation is progressing, lawyers are
33 prohibited from accepting or continuing such
34 representations unless the lawyer determines that there will
35 be no interference with the lawyer's independent professional
36 judgment and there is informed consent from the client. *See*
37 also rule 32:5.4(c) (prohibiting interference with a lawyer's
38 professional judgment by one who recommends, employs, or
39 pays the lawyer to render legal services for another).

40 [12] Sometimes, it will be sufficient for the lawyer to
41 obtain the client's informed consent regarding the fact of the

1 payment and the identity of the third-party payer. If,
2 however, the fee arrangement creates a conflict of interest for
3 the lawyer, then the lawyer must comply with rule 32:1.7.
4 The lawyer must also conform to the requirements of rule
5 32:1.6 concerning confidentiality. Under rule 32:1.7(a), a
6 conflict of interest exists if there is significant risk that the
7 lawyer's representation of the client will be materially limited
8 by the lawyer's own interest in the fee arrangement or by the
9 lawyer's responsibilities to the third-party payer (for
10 example, when the third-party payer is a co-client). Under
11 rule 32:1.7(b), the lawyer may accept or continue the
12 representation with the informed consent of each affected
13 client, unless the conflict is nonconsentable under that
14 paragraph. Under rule 32:1.7(b), the informed consent must
15 be confirmed in writing.

16 [12a] When the lawyer is publicly-compensated, such
17 as in the case of a public defender in a criminal case or a
18 guardian appointed in a civil case or when civil legal services
19 are provided by a legal aid organization, the fee arrangement
20 ordinarily does not pose the same risk of interference with
21 the lawyer's independent professional judgment that exists
22 in other contexts. Under paragraph (f), such a lawyer must
23 disclose the fact that the lawyer is being compensated
24 through public funding or that legal services are being
25 provided as part of a legal aid organization; however, formal
26 consent by the client to the fee arrangement is not required
27 under such circumstances given the limited ability of an
28 indigent client as a practical matter to refuse the services of
29 the lawyer being compensated through public funding or
30 through legal aid.

31 *Aggregate Settlements*

32 [13] Differences in willingness to make or accept an
33 offer of settlement are among the risks of common
34 representation of multiple clients by a single lawyer. Under
35 rule 32:1.7, this is one of the risks that should be discussed
36 before undertaking the representation, as part of the process
37 of obtaining the clients' informed consent. In addition, rule
38 32:1.2(a) protects each client's right to have the final say in
39 deciding whether to accept or reject an offer of settlement
40 and in deciding whether to enter a guilty or nolo contendere
41 plea in a criminal case. The rule stated in this paragraph is a
42 corollary of both these rules and provides that, before any
43 settlement offer or plea bargain is made or accepted on

1 behalf of multiple clients, the lawyer must inform each of
2 them about all the material terms of the settlement,
3 including what the other clients will receive or pay if the
4 settlement or plea offer is accepted. *See also* rule 32:1.0(e)
5 (definition of informed consent). Lawyers representing a class
6 of plaintiffs or defendants, or those proceeding derivatively,
7 may not have a full client-lawyer relationship with each
8 member of the class; nevertheless, such lawyers must
9 comply with applicable rules regulating notification of class
10 members and other procedural requirements designed to
11 ensure adequate protection of the entire class.

12 *Limiting Liability and Settling Malpractice Claims*

13 [14] Agreements prospectively limiting a lawyer's
14 liability for malpractice are prohibited because they are likely
15 to undermine competent and diligent representation. Also,
16 many clients are unable to evaluate the desirability of
17 making such an agreement before a dispute has arisen,
18 particularly if they are then represented by the lawyer
19 seeking the agreement. This paragraph does not, however,
20 prohibit a lawyer from entering into an agreement with the
21 client to arbitrate legal malpractice claims, provided such
22 agreements are enforceable and the client is fully informed of
23 the scope and effect of the agreement. Nor does this
24 paragraph limit the ability of lawyers to practice in the form
25 of a limited-liability entity, where permitted by law, provided
26 that each lawyer remains personally liable to the client for
27 his or her own conduct and the firm complies with any
28 conditions required by law, such as provisions requiring
29 client notification or maintenance of adequate liability
30 insurance. Nor does it prohibit an agreement in accordance
31 with rule 32:1.2 that defines the scope of the representation,
32 although a definition of scope that makes the obligations of
33 representation illusory will amount to an attempt to limit
34 liability.

35 [15] Agreements settling a claim or a potential claim
36 for malpractice are not prohibited by this rule. Nevertheless,
37 in view of the danger that a lawyer will take unfair advantage
38 of an unrepresented client or former client, the lawyer must
39 first advise such a person in writing of the appropriateness
40 of independent representation in connection with such a
41 settlement. In addition, the lawyer must give the client or
42 former client a reasonable opportunity to find and consult
43 independent counsel.

1 *Acquiring Proprietary Interest in Litigation*

2 [16] Paragraph (i) states the traditional general rule
3 that lawyers are prohibited from acquiring a proprietary
4 interest in litigation. Like paragraph (e), the general rule has
5 its basis in common law champerty and maintenance and is
6 designed to avoid giving the lawyer too great an interest in
7 the representation. In addition, when the lawyer acquires an
8 ownership interest in the subject of the representation, it will
9 be more difficult for a client to discharge the lawyer if the
10 client so desires. The rule is subject to specific exceptions
11 developed in decisional law and continued in these rules.
12 The exception for certain advances of the costs of litigation is
13 set forth in paragraph (e). In addition, paragraph (i) sets
14 forth exceptions for liens authorized by law to secure the
15 lawyer's fees or expenses and contracts for reasonable
16 contingent fees. Iowa law determines which liens are
17 authorized. These may include liens granted by statute and
18 liens acquired by contract with the client. When a lawyer
19 acquires by contract a security interest in property other
20 than that recovered through the lawyer's efforts in the
21 litigation, such an acquisition is a business or financial
22 transaction with a client and is governed by the
23 requirements of paragraph (a). Contracts for contingent fees
24 in civil cases are governed by rule 32:1.5.

25 *Client-Lawyer Sexual Relationships*

26 [17] The relationship between lawyer and client is a
27 fiduciary one in which the lawyer occupies the highest
28 position of trust and confidence. The relationship is almost
29 always unequal; thus, a sexual relationship between lawyer
30 and client can involve unfair exploitation of the lawyer's
31 fiduciary role, in violation of the lawyer's basic ethical
32 obligation not to use the trust of the client to the client's
33 disadvantage. In addition, such a relationship presents a
34 significant danger that, because of the lawyer's emotional
35 involvement, the lawyer will be unable to represent the client
36 without impairment of the exercise of independent
37 professional judgment. Moreover, a blurred line between the
38 professional and personal relationships may make it difficult
39 to predict to what extent client confidences will be protected
40 by the attorney-client evidentiary privilege, since client
41 confidences are protected by privilege only when they are
42 imparted in the context of the client-lawyer relationship.
43 Because of the significant danger of harm to client interests

1 and because the client's own emotional involvement renders
2 it unlikely that the client could give adequate informed
3 consent, this rule prohibits the lawyer from having sexual
4 relations with a client regardless of whether the relationship
5 is consensual and regardless of the absence of prejudice to
6 the client.

7 [18] Sexual relationships that predate the client-lawyer
8 relationship are not prohibited. Issues relating to the
9 exploitation of the fiduciary relationship and client
10 dependency are diminished when the sexual relationship
11 existed prior to the commencement of the client-lawyer
12 relationship. However, before proceeding with the
13 representation in these circumstances, the lawyer should
14 consider whether the lawyer's ability to represent the client
15 will be materially limited by the relationship. See rule
16 32:1.7(a)(2).

17 [19] When the client is an organization, paragraph (j)
18 of this rule prohibits a lawyer for the organization (whether
19 inside counsel or outside counsel) from having a sexual
20 relationship with a constituent of the organization who
21 supervises, directs, or regularly consults with that lawyer
22 concerning the organization's legal matters.

23 *Imputation of Prohibitions*

24 [20] Under paragraph (k), a prohibition on conduct by
25 an individual lawyer in paragraphs (a) through (i) also
26 applies to all lawyers associated in a firm with the personally
27 prohibited lawyer. For example, one lawyer in a firm may not
28 enter into a business transaction with a client of another
29 member of the firm without complying with paragraph (a),
30 even if the first lawyer is not personally involved in the
31 representation of the client. The prohibitions set forth in
32 paragraphs (j) and (l) are personal and are not applied to
33 associated lawyers.

34 35 **RULE 32:1.9: DUTIES TO FORMER CLIENTS**

36
37
38 **(a) A lawyer who has formerly represented a client**
39 **in a matter shall not thereafter represent another person**
40 **in the same or a substantially related matter in which**

1 **that person's interests are materially adverse to the**
2 **interests of the former client unless the former client**
3 **gives informed consent, confirmed in writing.**

4
5 **(b) A lawyer shall not knowingly represent a person**
6 **in the same or a substantially related matter in which a**
7 **firm with which the lawyer formerly was associated had**
8 **previously represented a client**

9
10 **(1) whose interests are materially adverse to**
11 **that person, and**

12
13 **(2) about whom the lawyer had acquired**
14 **information protected by rules 32:1.6 and 32:1.9(c)**
15 **that is material to the matter, unless the former**
16 **client gives informed consent, confirmed in**
17 **writing.**

18
19 **(c) A lawyer who has formerly represented a client**
20 **in a matter or whose present or former firm has formerly**
21 **represented a client in a matter shall not thereafter:**

22
23 **(1) use information relating to the**
24 **representation to the disadvantage of the former**
25 **client except as these rules would permit or require**
26 **with respect to a client, or when the information**
27 **has become generally known; or**

28
29 **(2) reveal information relating to the**
30 **representation except as these rules would permit**
31 **or require with respect to a client.**

32
33 **Comment**

34
35 [1] After termination of a client-lawyer relationship, a
36 lawyer has certain continuing duties with respect to
37 confidentiality and conflicts of interest and thus may not
38 represent another client except in conformity with this rule.
39 Under this rule, for example, a lawyer could not properly
40 seek to rescind on behalf of a new client a contract drafted
41 on behalf of the former client. So also a lawyer who has
42 prosecuted an accused person could not properly represent
43 the accused in a subsequent civil action against the
44 government concerning the same transaction. Nor could a
45 lawyer who has represented multiple clients in a matter
46 represent one of the clients against the others in the same or

1 a substantially related matter after a dispute arose among
2 the clients in that matter, unless all affected clients give
3 informed consent. See comment [9]. Current and former
4 government lawyers must comply with this rule to the extent
5 required by rule 32:1.11.

6 [2] The scope of a "matter" for purposes of this rule
7 depends on the facts of a particular situation or transaction.
8 The lawyer's involvement in a matter can also be a question
9 of degree. When a lawyer has been directly involved in a
10 specific transaction, subsequent representation of other
11 clients with materially adverse interests in that transaction
12 clearly is prohibited. On the other hand, a lawyer who
13 recurrently handled a type of problem for a former client is
14 not precluded from later representing another client in a
15 factually distinct problem of that type even though the
16 subsequent representation involves a position adverse to the
17 prior client. Similar considerations can apply to the
18 reassignment of military lawyers between defense and
19 prosecution functions within the same military jurisdictions.
20 The underlying question is whether the lawyer was so
21 involved in the matter that the subsequent representation
22 can be justly regarded as a changing of sides in the matter in
23 question.

24 [3] Matters are "substantially related" for purposes of
25 this rule if they involve the same transaction or legal dispute
26 or if there otherwise is a substantial risk that confidential
27 factual information as would normally have been obtained in
28 the prior representation would materially advance the
29 client's position in the subsequent matter. For example, a
30 lawyer who has represented a businessperson and learned
31 extensive private financial information about that person
32 may not then represent that person's spouse in seeking a
33 divorce. Similarly, a lawyer who has previously represented a
34 client in securing environmental permits to build a shopping
35 center would be precluded from representing neighbors
36 seeking to oppose rezoning of the property on the basis of
37 environmental considerations; however, the lawyer would not
38 be precluded, on the grounds of substantial relationship,
39 from defending a tenant of the completed shopping center in
40 resisting eviction for nonpayment of rent. Information that
41 has been disclosed to the public or to other parties adverse
42 to the former client ordinarily will not be disqualifying.
43 Information acquired in a prior representation may have
44 been rendered obsolete by the passage of time, a

1 circumstance that may be relevant in determining whether
2 two representations are substantially related. In the case of
3 an organizational client, general knowledge of the client's
4 policies and practices ordinarily will not preclude a
5 subsequent representation; on the other hand, knowledge of
6 specific facts gained in a prior representation that are
7 relevant to the matter in question ordinarily will preclude
8 such a representation. A former client is not required to
9 reveal the confidential information learned by the lawyer in
10 order to establish a substantial risk that the lawyer has
11 confidential information to use in the subsequent matter. A
12 conclusion about the possession of such information may be
13 based on the nature of the services the lawyer provided the
14 former client and information that would in ordinary practice
15 be learned by a lawyer providing such services.

16 *Lawyers Moving Between Firms*

17 [4] When lawyers have been associated within a firm
18 but then end their association, the question of whether a
19 lawyer should undertake representation is more complicated.
20 There are several competing considerations. First, the client
21 previously represented by the former firm must be
22 reasonably assured that the principle of loyalty to the client
23 is not compromised. Second, the rule should not be so
24 broadly cast as to preclude other persons from having
25 reasonable choice of legal counsel. Third, the rule should not
26 unreasonably hamper lawyers from forming new associations
27 and taking on new clients after having left a previous
28 association. In this connection, it should be recognized that
29 today many lawyers practice in firms, that many lawyers to
30 some degree limit their practice to one field or another, and
31 that many move from one association to another several
32 times in their careers. If the concept of imputation were
33 applied with unqualified rigor, the result would be radical
34 curtailment of the opportunity of lawyers to move from one
35 practice setting to another and of the opportunity of clients
36 to change counsel.

37 [5] Paragraph (b) operates to disqualify the lawyer only
38 when the lawyer involved has actual knowledge of
39 information protected by rules 32:1.6 and 32:1.9(c). Thus, if
40 a lawyer while with one firm acquired no knowledge or
41 information relating to a particular client of the firm, and
42 that lawyer later joined another firm, neither the lawyer
43 individually nor the second firm is disqualified from

1 representing another client in the same or a related matter
2 even though the interests of the two clients conflict. See rule
3 32:1.10(b) for the restrictions on a firm once a lawyer has
4 terminated association with the firm.

5 [6] Application of paragraph (b) depends on a
6 situation's particular facts, aided by inferences, deductions,
7 or working presumptions that reasonably may be made
8 about the way in which lawyers work together. A lawyer may
9 have general access to files of all clients of a law firm and
10 may regularly participate in discussions of their affairs; it
11 should be inferred that such a lawyer in fact is privy to all
12 information about all the firm's clients. In contrast, another
13 lawyer may have access to the files of only a limited number
14 of clients and participate in discussions of the affairs of no
15 other clients; in the absence of information to the contrary, it
16 should be inferred that such a lawyer in fact is privy to
17 information about the clients actually served but not those of
18 other clients. In such an inquiry, the burden of proof should
19 rest upon the firm whose disqualification is sought.

20 [7] Independent of the question of disqualification of a
21 firm, a lawyer changing professional association has a
22 continuing duty to preserve confidentiality of information
23 about a client formerly represented. See rules 32:1.6 and
24 32:1.9(c).

25 [8] Paragraph (c) provides that information acquired by
26 the lawyer in the course of representing a client may not
27 subsequently be used or revealed by the lawyer to the
28 disadvantage of the client. However, the fact that a lawyer
29 has once served a client does not preclude the lawyer from
30 using generally known information about that client when
31 later representing another client.

32 [9] The provisions of this rule are for the protection of
33 former clients and can be waived if the client gives informed
34 consent, which consent must be confirmed in writing under
35 paragraphs (a) and (b). See rule 32:1.0(e). With regard to the
36 effectiveness of an advance waiver, see comment [22] to rule
37 32:1.7. With regard to disqualification of a firm with which a
38 lawyer is or was formerly associated, see rule 32:1.10.

39

40

1 **RULE 32:1.10: IMPUTATION OF**
2 **CONFLICTS OF INTEREST:**
3 **GENERAL RULE**

4 **(a) While lawyers are associated in a firm, none of**
5 **them shall knowingly represent a client when any one of**
6 **them practicing alone would be prohibited from doing so**
7 **by rule 32:1.7 or 32:1.9, unless the prohibition is based**
8 **on a personal interest of the prohibited lawyer and does**
9 **not present a significant risk of materially limiting the**
10 **representation of the client by the remaining lawyers in**
11 **the firm.**

12 **(b) When a lawyer has terminated an association**
13 **with a firm, the firm is not prohibited from thereafter**
14 **representing a person with interests materially adverse**
15 **to those of a client represented by the formerly**
16 **associated lawyer and not currently represented by the**
17 **firm, unless:**

18 **(1) the matter is the same or substantially**
19 **related to that in which the formerly associated**
20 **lawyer represented the client; and**

21 **(2) any lawyer remaining in the firm has**
22 **information protected by rules 32:1.6 and 32:1.9(c)**
23 **that is material to the matter.**

24 **(c) A disqualification prescribed by this rule may be**
25 **waived by the affected client under the conditions stated**
26 **in rule 32:1.7.**

27 **(d) The disqualification of lawyers associated in a**
28 **firm with former or current government lawyers is**
29 **governed by rule 32:1.11.**

30 **Comment**

31 *Definition of "Firm"*

32 [1] For purposes of the Iowa Rules of Professional
33 Conduct, the term "firm" denotes lawyers in a law
34 partnership, professional corporation, sole proprietorship, or
35 other association authorized to practice law; or lawyers
36 employed in a legal services organization or the legal
37 department of a corporation or other organization. See rule

1 32:1.0(c). Whether two or more lawyers constitute a firm
2 within this definition can depend on the specific facts. See
3 rule 32:1.0, comments [2] - [4].

4 *Principles of Imputed Disqualification*

5 [2] The rule of imputed disqualification stated in
6 paragraph (a) gives effect to the principle of loyalty to the
7 client as it applies to lawyers who practice in a law firm.
8 Such situations can be considered from the premise that a
9 firm of lawyers is essentially one lawyer for purposes of the
10 rules governing loyalty to the client, or from the premise that
11 each lawyer is vicariously bound by the obligation of loyalty
12 owed by each lawyer with whom the lawyer is associated.
13 Paragraph (a) operates only among the lawyers currently
14 associated in a firm. When a lawyer moves from one firm to
15 another, the situation is governed by rules 32:1.9(b) and
16 32:1.10(b).

17 [3] The rule in paragraph (a) does not prohibit
18 representation where neither questions of client loyalty nor
19 protection of confidential information are presented. Where
20 one lawyer in a firm could not effectively represent a given
21 client because of strong political beliefs, for example, but
22 that lawyer will do no work on the case and the personal
23 beliefs of the lawyer will not materially limit the
24 representation by others in the firm, the firm should not be
25 disqualified. On the other hand, if an opposing party in a
26 case were owned by a lawyer in the law firm, and others in
27 the firm would be materially limited in pursuing the matter
28 because of loyalty to that lawyer, the personal
29 disqualification of the lawyer would be imputed to all others
30 in the firm.

31 [4] The rule in paragraph (a) also does not prohibit
32 representation by others in the law firm where the person
33 prohibited from involvement in a matter is a nonlawyer, such
34 as a paralegal or legal secretary. Nor does paragraph (a)
35 prohibit representation if the lawyer is prohibited from acting
36 because of events before the person became a lawyer, for
37 example, work that the person did while a law student. Such
38 persons, however, ordinarily must be screened from any
39 personal participation in the matter to avoid communication
40 to others in the firm of confidential information that both the
41 nonlawyers and the firm have a legal duty to protect. In
42 addition, written notice must be promptly given to any

1 affected former client to enable the former client to ascertain
2 compliance with the provisions of this rule. See rules
3 32:1.0(k) and 32:5.3.

4 [5] Rule 32:1.10(b) operates to permit a law firm,
5 under certain circumstances, to represent a person with
6 interests directly adverse to those of a client represented by a
7 lawyer who formerly was associated with the firm. The rule
8 applies regardless of when the formerly associated lawyer
9 represented the client. However, the law firm may not
10 represent a person with interests adverse to those of a
11 present client of the firm, which would violate rule 32:1.7.
12 Moreover, the firm may not represent the person where the
13 matter is the same or substantially related to that in which
14 the formerly associated lawyer represented the client and
15 any other lawyer currently in the firm has material
16 information protected by rules 32:1.6 and 32:1.9(c).

17 [6] Rule 32:1.10(c) removes imputation with the
18 informed consent of the affected client or former client under
19 the conditions stated in rule 32:1.7. The conditions stated in
20 rule 32:1.7 require the lawyer to determine that the
21 representation is not prohibited by rule 32:1.7(b) and that
22 each affected client or former client has given informed
23 consent to the representation, confirmed in writing. In some
24 cases, the risk may be so severe that the conflict may not be
25 cured by client consent. For a discussion of the effectiveness
26 of client waivers of conflicts that might arise in the future,
27 see rule 32:1.7, comment [22]. For a definition of informed
28 consent, see rule 32:1.0(e).

29 [7] Where a lawyer has joined a private firm after
30 having represented the government, imputation is governed
31 by rule 32:1.11(b) and (c), not this rule. Under rule
32 32:1.11(d), where a lawyer represents the government after
33 having served clients in private practice, nongovernmental
34 employment, or in another government agency, former-client
35 conflicts are not imputed to government lawyers associated
36 with the individually disqualified lawyer.

37 [8] Where a lawyer is prohibited from engaging in
38 certain transactions under rule 32:1.8, paragraph (k) of that
39 rule, and not this rule, determines whether that prohibition
40 also applies to other lawyers associated in a firm with the
41 personally prohibited lawyer.

1
2 **RULE 32:1.11: SPECIAL CONFLICTS OF INTEREST**
3 **FOR FORMER AND CURRENT**
4 **GOVERNMENT OFFICERS AND EMPLOYEES**

5 (a) Except as law may otherwise expressly permit, a
6 lawyer who has formerly served as a public officer or
7 employee of the government:

8 (1) is subject to rule 32:1.9(c); and

9 (2) shall not otherwise represent a client in
10 connection with a matter in which the lawyer
11 participated personally and substantially as a
12 public officer or employee, unless the appropriate
13 government agency gives its informed consent,
14 confirmed in writing, to the representation.

15 (b) When a lawyer is disqualified from
16 representation under paragraph (a), no lawyer in a firm
17 with which that lawyer is associated may knowingly
18 undertake or continue representation in such a matter
19 unless:

20 (1) the disqualified lawyer is timely screened
21 from any participation in the matter and is
22 apportioned no part of the fee therefrom; and

23 (2) written notice is promptly given to the
24 appropriate government agency to enable it to
25 ascertain compliance with the provisions of this
26 rule.

27 (c) Except as law may otherwise expressly permit, a
28 lawyer having information that the lawyer knows is
29 confidential government information about a person,
30 acquired when the lawyer was a public officer or
31 employee, may not represent a private client whose
32 interests are adverse to that person in a matter in which
33 the information could be used to the material
34 disadvantage of that person. As used in this rule, the
35 term "confidential government information" means
36 information that has been obtained under governmental
37 authority and which, at the time this rule is applied, the
38 government is prohibited by law from disclosing to the
39 public or has a legal privilege not to disclose and which

1 is not otherwise available to the public. A firm with
2 which that lawyer is associated may undertake or
3 continue representation in the matter only if the
4 disqualified lawyer is timely screened from any
5 participation in the matter and is apportioned no part of
6 the fee therefrom.

7 (d) Except as law may otherwise expressly permit, a
8 lawyer currently serving as a public officer or employee:

9 (1) is subject to rules 32:1.7 and 32:1.9; and

10 (2) shall not:

11 (i) participate in a matter in which the
12 lawyer participated personally and
13 substantially while in private practice or
14 nongovernmental employment, unless the
15 appropriate government agency gives its
16 informed consent, confirmed in writing; or

17 (ii) negotiate for private employment
18 with any person who is involved as a party or
19 as lawyer for a party in a matter in which the
20 lawyer is participating personally and
21 substantially, except that a lawyer serving as
22 a law clerk to a judge, other adjudicative
23 officer, or arbitrator may negotiate for
24 private employment as permitted by rule
25 32:1.12(b) and subject to the conditions
26 stated in rule 32:1.12(b).

27 (e) As used in this rule, the term "matter" includes:

28 (1) any judicial or other proceeding,
29 application, request for a ruling or other
30 determination, contract, claim, controversy,
31 investigation, charge, accusation, arrest, or other
32 particular matter involving a specific party or
33 parties, and

34 (2) any other matter covered by the conflict
35 of interest rules of the appropriate government
36 agency.

1 **(f) Prosecutors for the state or county shall not**
2 **engage in the defense of an accused in any criminal**
3 **matter during the time they are engaged in such public**
4 **responsibilities. However, this paragraph does not apply**
5 **to a lawyer not regularly employed as a prosecutor for**
6 **the state or county who serves as a special prosecutor**
7 **for a specific criminal case, provided that the**
8 **employment does not create a conflict of interest or the**
9 **lawyer complies with the requirements of rule 32:1.7(b).**

10 **Comment**

11 [1] A lawyer who has served or is currently serving as a
12 public officer or employee is personally subject to the Iowa
13 Rules of Professional Conduct, including the prohibition
14 against concurrent conflicts of interest stated in rule 32:1.7.
15 In addition, such a lawyer may be subject to statutes and
16 government regulations regarding conflict of interest. Such
17 statutes and regulations may circumscribe the extent to
18 which the government agency may give consent under this
19 rule. See rule 32:1.0(e) for the definition of informed consent.

20 [2] Paragraphs (a)(1), (a)(2), and (d)(1) restate the
21 obligations of an individual lawyer who has served or is
22 currently serving as an officer or employee of the government
23 toward a former government or private client. Rule 32:1.10 is
24 not applicable to the conflicts of interest addressed by this
25 rule. Rather, paragraph (b) sets forth a special imputation
26 rule for former government lawyers that provides for
27 screening and notice. Because of the special problems raised
28 by imputation within a government agency, paragraph (d)
29 does not impute the conflicts of a lawyer currently serving as
30 an officer or employee of the government to other associated
31 government officers or employees, although ordinarily it will
32 be prudent to screen such lawyers.

33 [3] Paragraphs (a)(2) and (d)(2) apply regardless of
34 whether a lawyer is adverse to a former client and are thus
35 designed not only to protect the former client, but also to
36 prevent a lawyer from exploiting public office for the
37 advantage of another client. For example, a lawyer who has
38 pursued a claim on behalf of the government may not
39 pursue the same claim on behalf of a later private client after
40 the lawyer has left government service, except when
41 authorized to do so by the government agency under
42 paragraph (a). Similarly, a lawyer who has pursued a claim

1 on behalf of a private client may not pursue the claim on
2 behalf of the government, except when authorized to do so
3 by paragraph (d). As with paragraphs (a)(1) and (d)(1), rule
4 32:1.10 is not applicable to the conflicts of interest
5 addressed by these paragraphs.

6 [4] This rule represents a balancing of interests. On
7 the one hand, where the successive clients are a government
8 agency and another client, public or private, the risk exists
9 that power or discretion vested in that agency might be used
10 for the special benefit of the other client. A lawyer should not
11 be in a position where benefit to the other client might affect
12 performance of the lawyer's professional functions on behalf
13 of the government. Also, unfair advantage could accrue to
14 the other client by reason of access to confidential
15 government information about the client's adversary
16 obtainable only through the lawyer's government service. On
17 the other hand, the rules governing lawyers presently or
18 formerly employed by a government agency should not be so
19 restrictive as to inhibit transfer of employment to and from
20 the government. The government has a legitimate need to
21 attract qualified lawyers as well as to maintain high ethical
22 standards. Thus a former government lawyer is disqualified
23 only from particular matters in which the lawyer participated
24 personally and substantially. The provisions for screening
25 and waiver in paragraph (b) are necessary to prevent the
26 disqualification rule from imposing too severe a deterrent
27 against entering public service. The limitation of
28 disqualification in paragraphs (a)(2) and (d)(2) to matters
29 involving a specific party or parties, rather than extending
30 disqualification to all substantive issues on which the lawyer
31 worked, serves a similar function.

32 [5] When a lawyer has been employed by one
33 government agency and then moves to a second government
34 agency, it may be appropriate to treat that second agency as
35 another client for purposes of this rule, as when a lawyer is
36 employed by a city and subsequently is employed by a
37 federal agency. However, because the conflict of interest is
38 governed by paragraph (d), the latter agency is not required
39 to screen the lawyer as paragraph (b) requires a law firm to
40 do. The question of whether two government agencies should
41 be regarded as the same or different clients for conflict of
42 interest purposes is beyond the scope of these rules. See rule
43 32:1.13 comment [9].

1 [6] Paragraphs (b) and (c) contemplate a screening
2 arrangement. See rule 32:1.0(k) (requirements for screening
3 procedures). These paragraphs do not prohibit a lawyer from
4 receiving a salary or partnership share established by prior
5 independent agreement, but that lawyer may not receive
6 compensation directly relating the lawyer's compensation to
7 the fee in the matter in which the lawyer is disqualified.

8 [7] Notice, including a description of the screened
9 lawyer's prior representation and of the screening
10 procedures employed, generally should be given as soon as
11 practicable after the need for screening becomes apparent.

12 [8] Paragraph (c) operates only when the lawyer in
13 question has knowledge of the information, which means
14 actual knowledge; it does not operate with respect to
15 information that merely could be imputed to the lawyer.

16 [9] Paragraphs (a) and (d) do not prohibit a lawyer from
17 jointly representing a private party and a government agency
18 when doing so is permitted by rule 32:1.7 and is not
19 otherwise prohibited by law.

20 [10] For purposes of paragraph (e) of this rule, a
21 "matter" may continue in another form. In determining
22 whether two particular matters are the same, the lawyer
23 should consider the extent to which the matters involve the
24 same basic facts, the same or related parties, and the time
25 elapsed.

26
27 **RULE 32:1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR,**
28 **OR OTHER THIRD-PARTY NEUTRAL**
29

30 **(a) Except as stated in paragraph (d), a lawyer shall**
31 **not represent anyone in connection with a matter in**
32 **which the lawyer participated personally and**
33 **substantially as a judge or other adjudicative officer or**
34 **law clerk to such a person or as an arbitrator, mediator,**
35 **or other third-party neutral, unless all parties to the**
36 **proceeding give informed consent, confirmed in writing.**
37

38 **(b) A lawyer shall not negotiate for employment**
39 **with any person who is involved as a party or as lawyer**
40 **for a party in a matter in which the lawyer is**
41 **participating personally and substantially as a judge or**

1 **other adjudicative officer or as an arbitrator, mediator,**
2 **or other third-party neutral. A lawyer serving as a law**
3 **clerk to a judge or other adjudicative officer may**
4 **negotiate for employment with a party or lawyer**
5 **involved in a matter in which the law clerk is**
6 **participating personally and substantially, but only after**
7 **the law clerk has notified the judge or other adjudicative**
8 **officer.**
9

10 **(c) If a lawyer is disqualified by paragraph (a), no**
11 **lawyer in a firm with which that lawyer is associated**
12 **may knowingly undertake or continue representation in**
13 **the matter unless:**
14

15 **(1) the disqualified lawyer is timely screened**
16 **from any participation in the matter and is**
17 **apportioned no part of the fee therefrom; and**
18

19 **(2) written notice is promptly given to the**
20 **parties and any appropriate tribunal to enable**
21 **them to ascertain compliance with the provisions**
22 **of this rule.**
23

24 **(d) An arbitrator selected as a partisan of a party in**
25 **a multimember arbitration panel is not prohibited from**
26 **subsequently representing that party.**
27

28 **Comment**

29
30 [1] This rule generally parallels rule 32:1.11. The term
31 “personally and substantially” signifies that a judge who was
32 a member of a multimember court, and thereafter left
33 judicial office to practice law, is not prohibited from
34 representing a client in a matter pending in the court, but in
35 which the former judge did not participate. So also the fact
36 that a former judge exercised administrative responsibility in
37 a court does not prevent the former judge from acting as a
38 lawyer in a matter where the judge had previously exercised
39 remote or incidental administrative responsibility that did
40 not affect the merits. Compare the comment to rule 32:1.11.
41 The term “adjudicative officer” includes such officials as
42 judges pro tempore, referees, special masters, hearing
43 officers, and other parajudicial officers, and also lawyers who
44 serve as part-time judges. Compliance Canons A(2) and C of
45 the Iowa Code of Judicial Conduct provide that a part-time
46 judge or retired judge recalled to active service “shall not

1 practice law in the court on which the judge serves.”
2 Although phrased differently from this rule, those rules
3 correspond in meaning.
4

5 [2] Like former judges, lawyers who have served as
6 arbitrators, mediators, or other third-party neutrals may be
7 asked to represent a client in a matter in which the lawyer
8 participated personally and substantially. This rule forbids
9 such representation unless all of the parties to the
10 proceedings give their informed consent, confirmed in
11 writing. See rule 32:1.0(e) and (b). Other law or codes of
12 ethics governing third-party neutrals may impose more
13 stringent standards of personal or imputed disqualification.
14 See rule 32:2.4.
15

16 [3] Although lawyers who serve as third-party neutrals
17 do not have information concerning the parties that is
18 protected under rule 32:1.6, they typically owe the parties an
19 obligation of confidentiality under law or codes of ethics
20 governing third-party neutrals. Thus, paragraph (c) provides
21 that conflicts of the personally disqualified lawyer will be
22 imputed to other lawyers in a law firm unless the conditions
23 of this paragraph are met.
24

25 [4] Requirements for screening procedures are stated
26 in rule 32:1.0(k). Paragraph (c)(1) does not prohibit the
27 screened lawyer from receiving a salary or partnership share
28 established by prior independent agreement, but that lawyer
29 may not receive compensation directly related to the matter
30 in which the lawyer is disqualified.
31

32 [5] Notice, including a description of the screened
33 lawyer’s prior representation and of the screening
34 procedures employed, generally should be given as soon as
35 practicable after the need for screening becomes apparent.
36

37 **RULE 32:1.13: ORGANIZATION AS CLIENT**

38 **(a) A lawyer employed or retained by an**
39 **organization represents the organization acting through**
40 **its duly authorized constituents.**

41 **(b) If a lawyer for an organization knows that an**
42 **officer, employee, or other person associated with the**

1 organization is engaged in action, intends to act, or
2 refuses to act in a matter related to the representation
3 that is a violation of a legal obligation to the
4 organization, or a violation of law that reasonably might
5 be imputed to the organization, and that is likely to
6 result in substantial injury to the organization, then the
7 lawyer shall proceed as is reasonably necessary in the
8 best interest of the organization. Unless the lawyer
9 reasonably believes that it is not necessary in the best
10 interest of the organization to do so, the lawyer shall
11 refer the matter to higher authority in the organization,
12 including, if warranted by the circumstances to the
13 highest authority that can act on behalf of the
14 organization as determined by applicable law.

15 (c) Except as provided in paragraph (d), if

16 (1) despite the lawyer's efforts in accordance
17 with paragraph (b) the highest authority that can
18 act on behalf of the organization insists upon or
19 fails to address in a timely and appropriate manner
20 an action, or a refusal to act, that is clearly a
21 violation of law, and

22 (2) the lawyer reasonably believes that the
23 violation is reasonably certain to result in
24 substantial injury to the organization,

25 then the lawyer may reveal information relating to the
26 representation whether or not rule 32:1.6 permits such
27 disclosure, but only if and to the extent the lawyer
28 reasonably believes necessary to prevent substantial
29 injury to the organization.

30 (d) Paragraph (c) shall not apply with respect to
31 information relating to a lawyer's representation of an
32 organization to investigate an alleged violation of law, or
33 to defend the organization or an officer, employee, or
34 other constituent associated with the organization
35 against a claim arising out of an alleged violation of law.

36 (e) A lawyer who reasonably believes that the
37 lawyer has been discharged because of the lawyer's
38 actions taken pursuant to paragraphs (b) or (c), or who
39 withdraws under circumstances that require or permit
40 the lawyer to take action under either of those

1 paragraphs, shall proceed as the lawyer reasonably
2 believes necessary to ensure that the organization's
3 highest authority is informed of the lawyer's discharge or
4 withdrawal.

5 (f) In dealing with an organization's directors,
6 officers, employees, members, shareholders, or other
7 constituents, a lawyer shall explain the identity of the
8 client when the lawyer knows or reasonably should know
9 that the organization's interests are adverse to those of
10 the constituents with whom the lawyer is dealing.

11 (g) A lawyer representing an organization may also
12 represent any of its directors, officers, employees,
13 members, shareholders, or other constituents, subject to
14 the provisions of rule 32:1.7. If the organization's
15 consent to the dual representation is required by rule
16 32:1.7, the consent shall be given by an appropriate
17 official of the organization other than the individual who
18 is to be represented, or by the shareholders.

19 **Comment**

20 *The Entity as the Client*

21 [1] An organizational client is a legal entity, but it
22 cannot act except through its officers, directors, employees,
23 shareholders, and other constituents. Officers, directors,
24 employees, and shareholders are the constituents of the
25 corporate organizational client. The duties defined in this
26 comment apply equally to unincorporated associations.
27 "Other constituents" as used in this comment means the
28 positions equivalent to officers, directors, employees, and
29 shareholders held by persons acting for organizational
30 clients that are not corporations.

31 [2] When one of the constituents of an organizational
32 client communicates with the organization's lawyer in that
33 person's organizational capacity, the communication is
34 protected by rule 32:1.6. Thus, by way of example, if an
35 organizational client requests its lawyer to investigate
36 allegations of wrongdoing, interviews made in the course of
37 that investigation between the lawyer and the client's
38 employees or other constituents are covered by rule 32:1.6.
39 This does not mean, however, that constituents of an
40 organizational client are the clients of the lawyer. The lawyer

1 may not disclose to such constituents information relating to
2 the representation except for disclosures explicitly or
3 impliedly authorized by the organizational client in order to
4 carry out the representation or as otherwise permitted by
5 rule 32:1.6.

6 [3] When constituents of the organization make
7 decisions for it, the decisions ordinarily must be accepted by
8 the lawyer even if their utility or prudence is doubtful.
9 Decisions concerning policy and operations, including ones
10 entailing serious risk, are not as such in the lawyer's
11 province. Paragraph (b) makes clear, however, that when the
12 lawyer knows that the organization is likely to be
13 substantially injured by action of an officer or other
14 constituent that violates a legal obligation to the organization
15 or is in violation of law that might be imputed to the
16 organization, the lawyer must proceed as is reasonably
17 necessary in the best interest of the organization. As defined
18 in rule 32:1.0(f), knowledge can be inferred from
19 circumstances, and a lawyer cannot ignore the obvious.

20 [4] In determining how to proceed under paragraph (b),
21 the lawyer should give due consideration to the seriousness
22 of the violation and its consequences, the responsibility in
23 the organization and the apparent motivation of the person
24 involved, the policies of the organization concerning such
25 matters, and any other relevant considerations. Ordinarily,
26 referral to a higher authority would be necessary. In some
27 circumstances, however, it may be appropriate for the lawyer
28 to ask the constituent to reconsider the matter; for example,
29 if the circumstances involve a constituent's innocent
30 misunderstanding of law and subsequent acceptance of the
31 lawyer's advice, the lawyer may reasonably conclude that the
32 best interest of the organization does not require that the
33 matter be referred to higher authority. If a constituent
34 persists in conduct contrary to the lawyer's advice, it will be
35 necessary for the lawyer to take steps to have the matter
36 reviewed by a higher authority in the organization. If the
37 matter is of sufficient seriousness and importance or
38 urgency to the organization, referral to higher authority in
39 the organization may be necessary even if the lawyer has not
40 communicated with the constituent. Any measures taken
41 should, to the extent practicable, minimize the risk of
42 revealing information relating to the representation to
43 persons outside the organization. Even in circumstances
44 where a lawyer is not obligated by rule 32:1.13 to proceed, a

1 lawyer may bring to the attention of an organizational client,
2 including its highest authority, matters that the lawyer
3 reasonably believes to be of sufficient importance to warrant
4 doing so in the best interest of the organization.

5 [5] Paragraph (b) also makes clear that when it is
6 reasonably necessary to enable the organization to address
7 the matter in a timely and appropriate manner, the lawyer
8 must refer the matter to higher authority, including, if
9 warranted by the circumstances, the highest authority that
10 can act on behalf of the organization under applicable law.
11 The organization's highest authority to whom a matter may
12 be referred ordinarily will be the board of directors or similar
13 governing body. However, applicable law may prescribe that
14 under certain conditions the highest authority reposes
15 elsewhere, for example, in the independent directors of a
16 corporation.

17 *Relation to Other Rules*

18 [6] The authority and responsibility provided in this
19 rule are concurrent with the authority and responsibility
20 provided in other rules. In particular, this rule does not limit
21 or expand the lawyer's responsibility under rule 32:1.8,
22 32:1.16, 32:3.3, or 32:4.1. Paragraph (c) of this rule
23 supplements rule 32:1.6(b) by providing an additional basis
24 upon which the lawyer may reveal information relating to the
25 representation, but does not modify, restrict, or limit the
26 provisions of rule 32:1.6(b)(1) - (6). Under paragraph (c) the
27 lawyer may reveal such information only when the
28 organization's highest authority insists upon or fails to
29 address threatened or ongoing action that is clearly a
30 violation of law, and then only to the extent the lawyer
31 reasonably believes necessary to prevent reasonably certain
32 substantial injury to the organization. It is not necessary
33 that the lawyer's services be used in furtherance of the
34 violation, but it is required that the matter be related to the
35 lawyer's representation of the organization. If the lawyer's
36 services are being used by an organization to further a crime
37 or fraud by the organization, rules 32:1.6(b)(2) and
38 32:1.6(b)(3) may permit the lawyer to disclose confidential
39 information. In such circumstances rule 32:1.2(d) may also
40 be applicable, in which event, withdrawal from the
41 representation under rule 32:1.16(a)(1) may be required.

1 [7] Paragraph (d) makes clear that the authority of a
2 lawyer to disclose information relating to a representation in
3 circumstances described in paragraph (c) does not apply
4 with respect to information relating to a lawyer's engagement
5 by an organization to investigate an alleged violation of law
6 or to defend the organization or an officer, employee, or other
7 person associated with the organization against a claim
8 arising out of an alleged violation of law. This is necessary in
9 order to enable organizational clients to enjoy the full
10 benefits of legal counsel in conducting an investigation or
11 defending against a claim.

12 [8] A lawyer who reasonably believes that the lawyer
13 has been discharged because of the lawyer's actions taken
14 pursuant to paragraph (b) or (c), or who withdraws in
15 circumstances that require or permit the lawyer to take
16 action under either of these paragraphs, must proceed as the
17 lawyer reasonably believes necessary to assure that the
18 organization's highest authority is informed of the lawyer's
19 discharge or withdrawal.

20 *Government Agency*

21 [9] The duty defined in this rule applies to
22 governmental organizations. Defining precisely the identity of
23 the client and prescribing the resulting obligations of such
24 lawyers may be more difficult in the government context and
25 is a matter beyond the scope of these rules. *See Scope [18]*.
26 Although in some circumstances the client may be a specific
27 agency, it may also be a branch of government, such as the
28 executive branch, or the government as a whole. For
29 example, if the action or failure to act involves the head of a
30 bureau, either the department of which the bureau is a part
31 or the relevant branch of government may be the client for
32 purposes of this rule. Moreover, in a matter involving the
33 conduct of government officials, a government lawyer may
34 have authority under applicable law to question such
35 conduct more extensively than that of a lawyer for a private
36 organization in similar circumstances. Thus, when the client
37 is a governmental organization, a different balance may be
38 appropriate between maintaining confidentiality and
39 ensuring that the wrongful act is prevented or rectified, for
40 public business is involved. In addition, duties of lawyers
41 employed by the government or lawyers in military service
42 may be defined by statutes and regulation. This rule does
43 not limit that authority. *See Scope*.

1 *Clarifying the Lawyer's Role*

2 [10] There are times when the organization's interest
3 may be or become adverse to those of one or more of its
4 constituents. In such circumstances the lawyer should
5 advise any constituent, whose interest the lawyer finds
6 adverse to that of the organization, of the conflict or potential
7 conflict of interest, that the lawyer cannot represent such
8 constituent, and that such person may wish to obtain
9 independent representation. Care must be taken to ensure
10 that the individual understands that, when there is such
11 adversity of interest, the lawyer for the organization cannot
12 provide legal representation for that constituent individual,
13 and that discussions between the lawyer for the organization
14 and the individual may not be privileged.

15 [11] Whether such a warning should be given by the
16 lawyer for the organization to any constituent individual may
17 turn on the facts of each case.

18 *Dual Representation*

19 [12] Paragraph (g) recognizes that a lawyer for an
20 organization may also represent a principal officer or major
21 shareholder.

22 *Derivative Actions*

23 [13] Under generally prevailing law, the shareholders
24 or members of a corporation may bring suit to compel the
25 directors to perform their legal obligations in the supervision
26 of the organization. Members of unincorporated associations
27 have essentially the same right. Such an action may be
28 brought nominally by the organization, but usually is, in
29 fact, a legal controversy over management of the
30 organization.

31 [14] The question can arise whether counsel for the
32 organization may defend such an action. The proposition
33 that the organization is the lawyer's client does not alone
34 resolve the issue. Most derivative actions are a normal
35 incident of an organization's affairs, to be defended by the
36 organization's lawyer like any other suit. However, if the
37 claim involves serious charges of wrongdoing by those in
38 control of the organization, a conflict may arise between the
39 lawyer's duty to the organization and the lawyer's

1 relationship with the board. In those circumstances, rule
2 32:1.7 governs who should represent the directors and the
3 organization.

4
5 **RULE 32:1.14: CLIENT WITH DIMINISHED CAPACITY**

6
7 **(a) When a client's capacity to make adequately**
8 **considered decisions in connection with a representation**
9 **is diminished, whether because of minority, mental**
10 **impairment, or for some other reason, the lawyer shall,**
11 **as far as reasonably possible, maintain a normal client-**
12 **lawyer relationship with the client.**

13
14 **(b) When the lawyer reasonably believes that the**
15 **client has diminished capacity, is at risk of substantial**
16 **physical, financial, or other harm unless action is taken,**
17 **and cannot adequately act in the client's own interest,**
18 **the lawyer may take reasonably necessary protective**
19 **action, including consulting with individuals or entities**
20 **that have the ability to take action to protect the client**
21 **and, in appropriate cases, seeking the appointment of a**
22 **guardian ad litem, conservator, or guardian.**

23
24 **(c) Information relating to the representation of a**
25 **client with diminished capacity is protected by rule**
26 **32:1.6. When taking protective action pursuant to**
27 **paragraph (b), the lawyer is impliedly authorized under**
28 **rule 32:1.6 to reveal information about the client, but**
29 **only to the extent reasonably necessary to protect the**
30 **client's interests.**

31
32 **Comment**

33
34 [1] The normal client-lawyer relationship is based on
35 the assumption that the client, when properly advised and
36 assisted, is capable of making decisions about important
37 matters. When the client is a minor or suffers from a
38 diminished mental capacity, however, maintaining the
39 ordinary client-lawyer relationship may not be possible in all
40 respects. In particular, a severely incapacitated person may
41 have no power to make legally binding decisions.
42 Nevertheless, a client with diminished capacity often has the
43 ability to understand, deliberate upon, and reach
44 conclusions about matters affecting the client's own well-

1 being. For example, children as young as five or six years of
2 age, and certainly those of ten or twelve, are regarded as
3 having opinions that are entitled to weight in legal
4 proceedings concerning their custody. So also, it is
5 recognized that some persons of advanced age can be quite
6 capable of handling routine financial matters while needing
7 special legal protection concerning major transactions.
8

9 [2] The fact that a client suffers a disability does not
10 diminish the lawyer's obligation to treat the client with
11 attention and respect. Even if the person has a legal
12 representative, the lawyer should as far as possible accord
13 the represented person the status of client, particularly in
14 maintaining communication.
15

16 [3] The client may wish to have family members or
17 other persons participate in discussions with the lawyer.
18 When necessary to assist in the representation, the presence
19 of such persons generally does not affect the applicability of
20 the attorney-client evidentiary privilege. Nevertheless, the
21 lawyer must keep the client's interests foremost and, except
22 for protective action authorized under paragraph (b), must
23 look to the client, and not family members, to make
24 decisions on the client's behalf.
25

26 [4] If a legal representative has already been appointed
27 for the client, the lawyer should ordinarily look to the
28 representative for decisions on behalf of the client. In
29 matters involving a minor, whether the lawyer should look to
30 the parents as natural guardians may depend on the type of
31 proceeding or matter in which the lawyer is representing the
32 minor. If the lawyer represents the guardian as distinct from
33 the ward, and is aware that the guardian is acting adversely
34 to the ward's interest, the lawyer may have an obligation to
35 prevent or rectify the guardian's misconduct. See rule
36 32:1.2(d).
37

38 *Taking Protective Action* 39

40 [5] If a lawyer reasonably believes that a client is at
41 risk of substantial physical, financial, or other harm unless
42 action is taken, and that a normal client-lawyer relationship
43 cannot be maintained as provided in paragraph (a) because
44 the client lacks sufficient capacity to communicate or to
45 make adequately considered decisions in connection with the
46 representation, then paragraph (b) permits the lawyer to take

1 protective measures deemed necessary. Such measures
2 could include: consulting with family members, using a
3 reconsideration period to permit clarification or improvement
4 of circumstances, using voluntary surrogate decisionmaking
5 tools such as durable powers of attorney, or consulting with
6 support groups, professional services, adult-protective
7 agencies, or other individuals or entities that have the ability
8 to protect the client. In taking any protective action, the
9 lawyer should be guided by such factors as the wishes and
10 values of the client to the extent known, the client's best
11 interests, and the goals of intruding into the client's
12 decisionmaking autonomy to the least extent feasible,
13 maximizing client capacities, and respecting the client's
14 family and social connections.

15
16 [6] In determining the extent of the client's diminished
17 capacity, the lawyer should consider and balance such
18 factors as: the client's ability to articulate reasoning leading
19 to a decision, variability of state of mind, and ability to
20 appreciate consequences of a decision; the substantive
21 fairness of a decision; and the consistency of a decision with
22 the known long-term commitments and values of the client.
23 In appropriate circumstances, the lawyer may seek guidance
24 from an appropriate diagnostician.

25
26 [7] If a legal representative has not been appointed, the
27 lawyer should consider whether appointment of a guardian
28 ad litem, conservator, or guardian is necessary to protect the
29 client's interests. Thus, if a client with diminished capacity
30 has substantial property that should be sold for the client's
31 benefit, effective completion of the transaction may require
32 appointment of a legal representative. In addition, rules of
33 procedure in litigation sometimes provide that minors or
34 persons with diminished capacity must be represented by a
35 guardian or next friend if they do not have a general
36 guardian. In many circumstances, however, appointment of
37 a legal representative may be more expensive or traumatic
38 for the client than circumstances in fact require. Evaluation
39 of such circumstances is a matter entrusted to the
40 professional judgment of the lawyer. In considering
41 alternatives, however, the lawyer should be aware of any law
42 that requires the lawyer to advocate the least restrictive
43 action on behalf of the client.
44

1 *Disclosure of the Client's Condition*

2
3 [8] Disclosure of the client's diminished capacity could
4 adversely affect the client's interests. For example, raising
5 the question of diminished capacity could, in some
6 circumstances, lead to proceedings for involuntary
7 commitment. Information relating to the representation is
8 protected by rule 32:1.6. Therefore, unless authorized to do
9 so, the lawyer may not disclose such information. When
10 taking protective action pursuant to paragraph (b), the
11 lawyer is impliedly authorized to make the necessary
12 disclosures, even when the client directs the lawyer to the
13 contrary. Nevertheless, given the risks of disclosure,
14 paragraph (c) limits what the lawyer may disclose in
15 consulting with other individuals or entities or seeking the
16 appointment of a legal representative. At the very least, the
17 lawyer should determine whether it is likely that the person
18 or entity consulted with will act adversely to the client's
19 interests before discussing matters related to the client. The
20 lawyer's position in such cases is an unavoidably difficult
21 one.

22
23 *Emergency Legal Assistance*

24
25 [9] In an emergency where the health, safety, or a
26 financial interest of a person with seriously diminished
27 capacity is threatened with imminent and irreparable harm,
28 a lawyer may take legal action on behalf of such a person
29 even though the person is unable to establish a client-lawyer
30 relationship or to make or express considered judgments
31 about the matter, when the person or another acting in good
32 faith on that person's behalf has consulted with the lawyer.
33 Even in such an emergency, however, the lawyer should not
34 act unless the lawyer reasonably believes that the person
35 has no other lawyer, agent, or other representative available.
36 The lawyer should take legal action on behalf of the person
37 only to the extent reasonably necessary to maintain the
38 status quo or otherwise avoid imminent and irreparable
39 harm. A lawyer who undertakes to represent a person in
40 such an exigent situation has the same duties under these
41 rules as the lawyer would with respect to a client.

42
43 [10] A lawyer who acts on behalf of a person with
44 seriously diminished capacity in an emergency should keep
45 the confidences of the person as if dealing with a client,
46 disclosing them only to the extent necessary to accomplish

1 the intended protective action. The lawyer should disclose to
2 any tribunal involved and to any other counsel involved the
3 nature of his or her relationship with the person. The lawyer
4 should take steps to regularize the relationship or implement
5 other protective solutions as soon as possible. Normally, a
6 lawyer would not seek compensation for such emergency
7 actions taken.
8
9

10 **RULE 32:1.15: SAFEKEEPING PROPERTY**

11 **(a) A lawyer shall hold property of clients or third**
12 **persons that is in a lawyer's possession in connection**
13 **with a representation separate from the lawyer's own**
14 **property. Funds shall be kept in a separate account.**
15 **Other property shall be identified as such and**
16 **appropriately safeguarded. Complete records of such**
17 **account funds and other property shall be kept by the**
18 **lawyer and shall be preserved for a period of six years**
19 **after termination of the representation.**

20 **(b) A lawyer may deposit the lawyer's own funds in**
21 **a client trust account for the sole purpose of paying**
22 **bank service charges on that account, but only in an**
23 **amount necessary for that purpose.**

24 **(c) A lawyer shall deposit into a client trust**
25 **account legal fees and expenses that have been paid in**
26 **advance, to be withdrawn by the lawyer only as fees are**
27 **earned or expenses incurred.**

28 **(d) Upon receiving funds or other property in which**
29 **a client or third person has an interest, a lawyer shall**
30 **promptly notify the client or third person. Except as**
31 **stated in this rule or otherwise permitted by law or by**
32 **agreement with the client, a lawyer shall promptly**
33 **deliver to the client or third person any funds or other**
34 **property that the client or third person is entitled to**
35 **receive and, upon request by the client or third person,**
36 **shall promptly render a full accounting regarding such**
37 **property.**

38 **(e) When in the course of representation a lawyer is**
39 **in possession of property in which two or more persons**
40 **(one of whom may be the lawyer) claim interests, the**
41 **property shall be kept separate by the lawyer until the**

1 **dispute is resolved. The lawyer shall promptly distribute**
2 **all portions of the property as to which the interests are**
3 **not in dispute.**

4 **(f) All client trust accounts shall be governed by**
5 **chapter 45 of the Iowa Court Rules.**

6
7 **Comment**

8 [1] A lawyer should hold property of others with the
9 care required of a professional fiduciary. Securities should
10 be kept in a safe deposit box, except when some other form
11 of safekeeping is warranted by special circumstances. All
12 property that is the property of clients or third persons,
13 including prospective clients, must be kept separate from the
14 lawyer's business and personal property and, if monies, in
15 one or more trust accounts. Separate trust accounts may be
16 warranted when administering estate monies or acting in
17 similar fiduciary capacities. A lawyer should maintain on a
18 current basis books and records in accordance with
19 generally accepted accounting practice and comply with any
20 recordkeeping rules established by law or court order. *See,*
21 *Iowa Ct. R. ch 45.*

22 [2] While normally it is impermissible to commingle the
23 lawyer's own funds with client funds, paragraph (b) provides
24 that it is permissible when necessary to pay bank service
25 charges on that account. Accurate records must be kept
26 regarding which part of the funds are the lawyer's.

27 [3] Lawyers often receive funds from which the lawyer's
28 fee will be paid. The lawyer is not required to remit to the
29 client funds that the lawyer reasonably believes represent
30 fees owed. However, a lawyer may not hold funds to coerce a
31 client into accepting the lawyer's contention. The disputed
32 portion of the funds must be kept in a trust account and the
33 lawyer should suggest means for prompt resolution of the
34 dispute, such as arbitration. The undisputed portion of the
35 funds shall be promptly distributed.

36 [4] Paragraph (e) also recognizes that third parties may
37 have lawful claims against specific funds or other property in
38 a lawyer's custody, such as a client's creditor who has a lien
39 on funds recovered in a personal injury action. A lawyer may
40 have a duty under applicable law to protect such third-party

1 claims against wrongful interference by the client. In such
2 cases, when the third-party claim is not frivolous under
3 applicable law, the lawyer must refuse to surrender the
4 property to the client until the claims are resolved. A lawyer
5 should not unilaterally assume to arbitrate a dispute
6 between the client and the third party; but when there are
7 substantial grounds for dispute as to the person entitled to
8 the funds, the lawyer may file an action to have a court
9 resolve the dispute.

10 [5] The obligations of a lawyer under this rule are
11 independent of those arising from activity other than
12 rendering legal services. For example, a lawyer who serves
13 only as an escrow agent is governed by the applicable law
14 relating to fiduciaries even though the lawyer does not
15 render legal services in the transaction and is not governed
16 by this rule.

17 [6] A lawyers' fund for client protection provides a
18 means through the collective efforts of the bar to reimburse
19 persons who have lost money or property as a result of
20 dishonest conduct of a lawyer. Such a fund has been
21 established in Iowa, and lawyer participation is mandatory to
22 the extent required by chapter 39 of the Iowa Court Rules.

23
24 **RULE 32:1.16: DECLINING OR TERMINATING**
25 **REPRESENTATION**
26

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

31
32 **(1) the representation will result in violation**
33 **of the Iowa Rules of Professional Conduct or other**
34 **law;**

35
36 **(2) the lawyer's physical or mental condition**
37 **materially impairs the lawyer's ability to represent**
38 **the client; or**

39
40 **(3) the lawyer is discharged.**

41
42 **(b) Except as stated in paragraph (c), a lawyer may**
43 **withdraw from representing a client if:**

1
2 **(1) withdrawal can be accomplished without**
3 **material adverse effect on the interests of the**
4 **client;**
5

6 **(2) the client persists in a course of action**
7 **involving the lawyer's services that the lawyer**
8 **reasonably believes is criminal or fraudulent;**
9

10 **(3) the client has used the lawyer's services**
11 **to perpetrate a crime or fraud;**
12

13 **(4) the client insists upon taking action that**
14 **the lawyer considers repugnant or with which the**
15 **lawyer has a fundamental disagreement;**
16

17 **(5) the client fails substantially to fulfill an**
18 **obligation to the lawyer regarding the lawyer's**
19 **services and has been given reasonable warning**
20 **that the lawyer will withdraw unless the obligation**
21 **is fulfilled;**
22

23 **(6) the representation will result in an**
24 **unreasonable financial burden on the lawyer or has**
25 **been rendered unreasonably difficult by the client;**
26 **or**
27

28 **(7) other good cause for withdrawal exists.**
29

30 **(c) A lawyer must comply with applicable law**
31 **requiring notice to or permission of a tribunal when**
32 **terminating a representation. When ordered to do so by a**
33 **tribunal, a lawyer shall continue representation**
34 **notwithstanding good cause for terminating the**
35 **representation.**
36

37 **(d) Upon termination of representation, a lawyer**
38 **shall take steps to the extent reasonably practicable to**
39 **protect a client's interests, such as giving reasonable**
40 **notice to the client, allowing time for employment of**
41 **other counsel, surrendering papers and property to**
42 **which the client is entitled, and refunding any advance**
43 **payment of fee or expense that has not been earned or**
44 **incurred. The lawyer may retain papers relating to the**
45 **client to the extent permitted by law.**
46

1 **Comment**
2

3 [1] A lawyer should not accept representation in a
4 matter unless it can be performed competently, promptly,
5 without improper conflict of interest, and to completion.
6 Ordinarily, a representation in a matter is completed when
7 the agreed-upon assistance has been concluded. See rules
8 32:1.2(c) and 32:6.5. See also rule 32:1.3, comment [4].
9

10 *Mandatory Withdrawal*
11

12 [2] A lawyer ordinarily must decline or withdraw from
13 representation if the client demands that the lawyer engage
14 in conduct that is illegal or violates the Iowa Rules of
15 Professional Conduct or other law. The lawyer is not obliged
16 to decline or withdraw simply because the client suggests
17 such a course of conduct; a client may make such a
18 suggestion in the hope that a lawyer will not be constrained
19 by a professional obligation.
20

21 [3] When a lawyer has been appointed to represent a
22 client, withdrawal ordinarily requires approval of the
23 appointing authority. See also rule 32:6.2. Similarly, court
24 approval or notice to the court is often required by applicable
25 law before a lawyer withdraws from pending litigation.
26 Difficulty may be encountered if withdrawal is based on the
27 client's demand that the lawyer engage in unprofessional
28 conduct. The court may request an explanation for the
29 withdrawal, while the lawyer may be bound to keep
30 confidential the facts that would constitute such an
31 explanation. The lawyer's statement that professional
32 considerations require termination of the representation
33 ordinarily should be accepted as sufficient. Lawyers should
34 be mindful of their obligations to both clients and the court
35 under rules 32:1.6 and 32:3.3.
36

37 *Discharge*
38

39 [4] A client has a right to discharge a lawyer at any
40 time, with or without cause, subject to liability for payment
41 for the lawyer's services. Where future dispute about the
42 withdrawal may be anticipated, it may be advisable to
43 prepare a written statement reciting the circumstances.
44

45 [5] Whether a client can discharge appointed counsel
46 may depend on applicable law. A client seeking to do so

1 should be given a full explanation of the consequences.
2 These consequences may include a decision by the
3 appointing authority that appointment of successor counsel
4 is unjustified, thus requiring self-representation by the
5 client.
6

7 [6] If the client has severely diminished capacity, the
8 client may lack the legal capacity to discharge the lawyer,
9 and in any event the discharge may be seriously adverse to
10 the client's interests. The lawyer should make special effort
11 to help the client consider the consequences and may take
12 reasonably necessary protective action as provided in rule
13 32:1.14.
14

15 *Optional Withdrawal*

16
17 [7] A lawyer may withdraw from representation in
18 some circumstances. The lawyer has the option to withdraw
19 if the withdrawal can be accomplished without material
20 adverse effect on the client's interests. Withdrawal is also
21 justified if the client persists in a course of action that the
22 lawyer reasonably believes is criminal or fraudulent, for a
23 lawyer is not required to be associated with such conduct
24 even if the lawyer does not further it. Withdrawal is also
25 permitted if the lawyer's services were misused in the past
26 even if that would materially prejudice the client. The lawyer
27 may also withdraw where the client insists on taking action
28 that the lawyer considers repugnant or with which the
29 lawyer has a fundamental disagreement.
30

31 [8] A lawyer may withdraw if the client refuses to abide
32 by the terms of an agreement relating to the representation,
33 such as an agreement concerning fees or court costs or an
34 agreement limiting the objectives of the representation.
35

36 *Assisting the Client upon Withdrawal*

37
38 [9] Even if the lawyer has been unfairly discharged by
39 the client, a lawyer must take all reasonable steps to
40 mitigate the consequences to the client. The lawyer may
41 retain papers as security for a fee to the extent permitted by
42 Iowa Code section 602.10116 or other law. See rule 32:1.15.
43
44
45

RULE 32:1.17: SALE OF LAW PRACTICE

1
2 **A lawyer or a law firm may sell or purchase a law**
3 **practice, or an area of law practice, including good will,**
4 **if the following conditions are satisfied:**
5

6 **(a) The seller ceases to engage in the private**
7 **practice of law, or in the area of practice that has been**
8 **sold, in the geographic area in which the practice has**
9 **been conducted;**

10
11 **(b) The entire practice, or the entire area of**
12 **practice, is sold to one or more lawyers or law firms;**

13
14 **(c) The seller gives written notice to each of the**
15 **seller's clients regarding:**

16 **(1) the proposed sale;**

17 **(2) the client's right to retain other counsel**
18 **or to take possession of the file; and**

19 **(3) the fact that the client's consent to the**
20 **transfer of the client's files will be presumed if the**
21 **client does not take any action or does not**
22 **otherwise object within 90 days of receipt of the**
23 **notice.**

24 **If a client cannot be given notice, the**
25 **representation of that client may be transferred to the**
26 **purchaser only upon entry of an order so authorizing by**
27 **a court having jurisdiction. The seller may disclose to**
28 **the court in camera information relating to the**
29 **representation only to the extent necessary to obtain an**
30 **order authorizing the transfer of a file.**

31 **(d) The fees charged clients shall not be increased**
32 **by reason of the sale.**

33
34 **Comment**

35
36 [1] The practice of law is a profession, not merely a
37 business. Clients are not commodities that can be purchased
38 and sold at will. Pursuant to this rule, when a lawyer or an
39 entire firm ceases to practice, or ceases to practice in an area
40 of law, and other lawyers or firms take over the
41 representation, the selling lawyer or firm may obtain

1 compensation for the reasonable value of the practice as may
2 withdrawing partners of law firms. See rules 32:5.4 and
3 32:5.6.

4
5 *Termination of Practice by the Seller*
6

7 [2] The requirement that all of the private practice, or
8 all of an area of practice, be sold is satisfied if the seller in
9 good faith makes the entire practice, or the area of practice,
10 available for sale to the purchasers. The fact that a number
11 of the seller's clients decide not to be represented by the
12 purchasers but take their matters elsewhere, therefore, does
13 not result in a violation. Return to private practice as a
14 result of an unanticipated change in circumstances does not
15 necessarily result in a violation. For example, a lawyer who
16 has sold the practice to accept an appointment to judicial
17 office does not violate the requirement that the sale be
18 attendant to cessation of practice if the lawyer later resumes
19 private practice upon being defeated in a retention election
20 for the office or resigns from a judiciary position.
21

22 [3] The requirement that the seller cease to engage in
23 the private practice of law does not prohibit employment as a
24 lawyer on the staff of a public agency or a legal services
25 entity that provides legal services to the poor, or as in-house
26 counsel to a business.
27

28 [4] This rule contemplates that a lawyer who sells an
29 entire practice may continue in the practice of law in Iowa
30 provided that the lawyer practices in another geographic
31 area of the state.
32

33 [5] This rule also permits a lawyer or law firm to sell an
34 area of practice. If an area of practice is sold and the lawyer
35 remains in the active practice of law, the lawyer must cease
36 accepting any matters in the area of practice that has been
37 sold, either as counsel or co-counsel or by assuming joint
38 responsibility for a matter in connection with the division of
39 a fee with another lawyer as would otherwise be permitted by
40 rule 32:1.5(e). For example, a lawyer with a substantial
41 number of estate planning matters and a substantial
42 number of probate administration cases may sell the estate
43 planning portion of the practice but remain in the practice of
44 law by concentrating on probate administration; however,
45 that practitioner may not thereafter accept any estate
46 planning matters. Although a lawyer who leaves a

1 geographical area typically would sell the entire practice, this
2 rule permits the lawyer to limit the sale to one or more areas
3 of the practice, thereby preserving the lawyer's right to
4 continue practice in the areas of the practice that were not
5 sold.

6
7 *Sale of Entire Practice or Entire Area of Practice*
8

9 [6] The rule requires that the seller's entire practice, or
10 an entire area of practice, be sold. The prohibition against
11 sale of less than an entire practice area protects those clients
12 whose matters are less lucrative and who might find it
13 difficult to secure other counsel if a sale could be limited to
14 substantial fee-generating matters. The purchasers are
15 required to undertake all client matters in the practice or
16 practice area, subject to client consent. This requirement is
17 satisfied, however, even if a purchaser is unable to
18 undertake a particular client matter because of a conflict of
19 interest.

20
21 *Client Confidences, Consent, and Notice*
22

23 [7] Negotiations between seller and prospective
24 purchaser prior to disclosure of information relating to a
25 specific representation of an identifiable client no more
26 violate the confidentiality provisions of rule 32:1.6 than do
27 preliminary discussions concerning the possible association
28 of another lawyer or mergers between firms, with respect to
29 which client consent is not required. Providing the purchaser
30 access to client-specific information relating to the
31 representation and to the file, however, requires client
32 consent. The rule provides that before such information can
33 be disclosed by the seller to the purchaser the client must be
34 given actual written notice of the contemplated sale,
35 including the identity of the purchaser, and must be told
36 that the decision to consent or make other arrangements
37 must be made within 90 days. If nothing is heard from the
38 client within that time, consent to the sale is presumed.

39
40 [8] A lawyer or law firm ceasing to practice cannot be
41 required to remain in practice because some clients cannot
42 be given actual notice of the proposed purchase. Since these
43 clients cannot themselves consent to the purchase or direct
44 any other disposition of their files, the rule requires an order
45 from a court having jurisdiction authorizing their transfer or
46 other disposition. The court can be expected to determine

1 whether reasonable efforts to locate the client have been
2 exhausted, and whether the absent client's legitimate
3 interests will be served by authorizing the transfer of the file
4 so that the purchaser may continue the representation.
5 Preservation of client confidences requires that the petition
6 for a court order be considered in camera.

7
8 [9] All elements of client autonomy, including the
9 client's absolute right to discharge a lawyer and transfer the
10 representation to another, survive the sale of the practice or
11 area of practice.

12 *Fee Arrangements Between Client and Purchaser*

13
14
15 [10] The sale may not be financed by increases in fees
16 charged the clients of the practice. Existing arrangements
17 between the seller and the client as to fees and the scope of
18 the work must be honored by the purchaser.

19 *Other Applicable Ethical Standards*

20
21
22 [11] Lawyers participating in the sale of a law practice
23 or a practice area are subject to the ethical standards
24 applicable to involving another lawyer in the representation
25 of a client. These include, for example, the seller's obligation
26 to exercise competence in identifying a purchaser qualified to
27 assume the practice and the purchaser's obligation to
28 undertake the representation competently (see rule 32:1.1);
29 the obligation to avoid disqualifying conflicts, and to secure
30 the client's informed consent for those conflicts that can be
31 agreed to (see rule 32:1.7 regarding conflicts and rule
32 32:1.0(e) for the definition of informed consent); and the
33 obligation to protect information relating to the
34 representation (see rules 32:1.6 and 32:1.9).

35
36 [12] If approval of the substitution of the purchasing
37 lawyer for the selling lawyer is required by the rules of any
38 tribunal in which a matter is pending, such approval must
39 be obtained before the matter can be included in the sale
40 (see rule 32:1.16).

41 *Applicability of the Rule*

42
43
44 [13] This rule applies to the sale of a law practice of a
45 deceased, disabled, or disappeared lawyer. Thus, the seller
46 may be represented by a non-lawyer representative not

1 subject to these rules. Since, however, no lawyer may
2 participate in a sale of a law practice which does not conform
3 to the requirements of this rule, the representatives of the
4 seller as well as the purchasing lawyer can be expected to
5 see to it that they are met.
6

7 [14] Admission to or retirement from a law partnership
8 or professional association, retirement plans and similar
9 arrangements, and a sale of tangible assets of a law practice,
10 do not constitute a sale or purchase governed by this rule.
11

12 [15] This rule does not apply to the transfers of legal
13 representation between lawyers when such transfers are
14 unrelated to the sale of a practice or an area of practice.
15

16
17 **RULE 32:1.18: DUTIES TO A PROSPECTIVE CLIENT**
18

19 **(a) A person who discusses with a lawyer the**
20 **possibility of forming a client-lawyer relationship with**
21 **respect to a matter is a prospective client.**
22

23 **(b) Even when no client-lawyer relationship ensues,**
24 **a lawyer who has had discussions with a prospective**
25 **client shall not use or reveal information learned in the**
26 **consultation, except as rule 32:1.9 would permit with**
27 **respect to information of a former client.**
28

29 **(c) A lawyer subject to paragraph (b) shall not**
30 **represent a client with interests materially adverse to**
31 **those of a prospective client in the same or a**
32 **substantially related matter if the lawyer received**
33 **information from the prospective client that could be**
34 **significantly harmful to that person in the matter,**
35 **except as provided in paragraph (d). If a lawyer is**
36 **disqualified from representation under this paragraph,**
37 **no lawyer in a firm with which that lawyer is associated**
38 **may knowingly undertake or continue representation in**
39 **such a matter, except as provided in paragraph (d).**
40

41 **(d) When the lawyer has received disqualifying**
42 **information as defined in paragraph (c), representation is**
43 **permissible if:**

1 **(1) both the affected client and the**
2 **prospective client have given informed consent,**
3 **confirmed in writing, or:**

4 **(2) the lawyer who received the information**
5 **took reasonable measures to avoid exposure to**
6 **more disqualifying information than was**
7 **reasonably necessary to determine whether to**
8 **represent the prospective client; and**

9 **(i) the disqualified lawyer is timely**
10 **screened from any participation in the**
11 **matter and is apportioned no part of the fee**
12 **therefrom; and**

13 **(ii) written notice is promptly given to**
14 **the prospective client.**

15 **Comment**

16
17 [1] Prospective clients, like clients, may disclose
18 information to a lawyer, place documents or other property
19 in the lawyer's custody, or rely on the lawyer's advice. A
20 lawyer's discussions with a prospective client usually are
21 limited in time and depth and leave both the prospective
22 client and the lawyer free (and sometimes required) to
23 proceed no further. Hence, prospective clients should receive
24 some but not all of the protection afforded clients.
25

26 [2] Not all persons who communicate information to a
27 lawyer are entitled to protection under this rule. A person
28 who communicates information unilaterally to a lawyer,
29 without any reasonable expectation that the lawyer is willing
30 to discuss the possibility of forming a client-lawyer
31 relationship, is not a "prospective client" within the meaning
32 of paragraph (a).
33

34 [3] It is often necessary for a prospective client to
35 reveal information to the lawyer during an initial
36 consultation prior to the decision about formation of a client-
37 lawyer relationship. The lawyer often must learn such
38 information to determine whether there is a conflict of
39 interest with an existing client and whether the matter is one
40 that the lawyer is willing to undertake. Paragraph (b)
41 prohibits the lawyer from using or revealing that
42 information, except as permitted by rule 32:1.9, even if the

1 client or lawyer decides not to proceed with the
2 representation. The duty exists regardless of how brief the
3 initial conference may be.

4
5 [4] In order to avoid acquiring disqualifying
6 information from a prospective client, a lawyer considering
7 whether or not to undertake a new matter should limit the
8 initial interview to only such information as reasonably
9 appears necessary for that purpose. Where the information
10 indicates that a conflict of interest or other reason for non-
11 representation exists, the lawyer should so inform the
12 prospective client or decline the representation. If the
13 prospective client wishes to retain the lawyer, and if consent
14 is possible under rule 32:1.7, then consent from all affected
15 present or former clients must be obtained before accepting
16 the representation.

17
18 [5] A lawyer may condition conversations with a
19 prospective client on the person's informed consent that no
20 information disclosed during the consultation will prohibit
21 the lawyer from representing a different client in the matter.
22 See rule 32:1.0(e) for the definition of informed consent. If
23 the agreement expressly so provides, the prospective client
24 may also consent to the lawyer's subsequent use of
25 information received from the prospective client.

26
27 [6] Even in the absence of an agreement, under
28 paragraph (c), the lawyer is not prohibited from representing
29 a client with interests adverse to those of the prospective
30 client in the same or a substantially related matter unless
31 the lawyer has received from the prospective client
32 information that could be significantly harmful if used in the
33 matter.

34
35 [7] Under paragraph (c), the prohibition in this rule is
36 imputed to other lawyers as provided in rule 32:1.10, but,
37 under paragraph (d)(1), imputation may be avoided if the
38 lawyer obtains the informed consent, confirmed in writing, of
39 both the prospective and affected clients. In the alternative,
40 imputation may be avoided if the conditions of paragraph
41 (d)(2) are met and all disqualified lawyers are timely screened
42 and written notice is promptly given to the prospective client.
43 See rule 32:1.0(k) (requirements for screening procedures).
44 Paragraph (d)(2)(i) does not prohibit the screened lawyer from
45 receiving a salary or partnership share established by prior
46 independent agreement, but that lawyer may not receive

1 compensation directly related to the matter in which the
2 lawyer is disqualified.

3
4 [8] Notice, including a general description of the
5 subject matter about which the lawyer was consulted and of
6 the screening procedures employed, should be given as soon
7 as practicable after the need for screening becomes
8 apparent.

9
10 [9] For the duty of competence of a lawyer who gives
11 assistance on the merits of a matter to a prospective client,
12 see rule 32:1.1. For a lawyer's duties when a prospective
13 client entrusts valuables or papers to the lawyer's care, see
14 rule 32:1.15.

15 16 17 *COUNSELOR*

18 19 **RULE 32:2.1: ADVISOR**

20
21 **In representing a client, a lawyer shall exercise**
22 **independent professional judgment and render candid**
23 **advice. In rendering advice, a lawyer may refer not only**
24 **to law but to other considerations such as moral,**
25 **economic, social, and political factors, that may be**
26 **relevant to the client's situation.**

27 28 **Comment**

29 30 *Scope of Advice*

31
32 [1] A client is entitled to straightforward advice
33 expressing the lawyer's honest assessment. Legal advice
34 often involves unpleasant facts and alternatives that a client
35 may be disinclined to confront. In presenting advice, a
36 lawyer endeavors to sustain the client's morale and may put
37 advice in as acceptable a form as honesty permits. However,
38 a lawyer should not be deterred from giving candid advice by
39 the prospect that the advice will be unpalatable to the client.

40 [2] Advice couched in narrow legal terms may be of
41 little value to a client, especially where practical
42 considerations, such as cost or effects on other people, are
43 predominant. Purely technical legal advice, therefore, can
44 sometimes be inadequate. It is proper for a lawyer to refer to

1 relevant moral and ethical considerations in giving advice.
2 Although a lawyer is not a moral advisor as such, moral and
3 ethical considerations impinge upon most legal questions
4 and may decisively influence how the law will be applied. In
5 the final analysis, the lawyer should always remember that
6 the decision whether to pursue or forgo legally available
7 objectives or methods because of nonlegal factors is
8 ultimately for the client and not for the lawyer.

9 [3] A client may expressly or impliedly ask the lawyer
10 for purely technical advice. When such a request is made by
11 a client experienced in legal matters, the lawyer may accept
12 it at face value. When such a request is made by a client
13 inexperienced in legal matters, however, the lawyer's
14 responsibility as advisor may include indicating that more
15 may be involved than strictly legal considerations.
16

17 [4] Matters that go beyond strictly legal questions may
18 also be in the domain of another profession. Family matters
19 can involve problems within the professional competence of
20 psychiatry, clinical psychology, or social work; business
21 matters can involve problems within the competence of the
22 accounting profession or of financial specialists. Where
23 consultation with a professional in another field is itself
24 something a competent lawyer would recommend, the lawyer
25 should make such a recommendation. At the same time, a
26 lawyer's advice at its best often consists of recommending a
27 course of action in the face of conflicting recommendations of
28 experts.

29 *Offering Advice*

30 [5] In general, a lawyer is not expected to give advice
31 until asked by the client. However, when a lawyer knows
32 that a client proposes a course of action that is likely to
33 result in substantial adverse legal consequences to the
34 client, the lawyer's duty to the client under rule 32:1.4 may
35 require that the lawyer offer advice if the client's course of
36 action is related to the representation. Similarly, when a
37 matter is likely to involve litigation, it may be necessary
38 under rule 32:1.4 to inform the client of forms of dispute
39 resolution that might constitute reasonable alternatives to
40 litigation. A lawyer ordinarily has no duty to initiate
41 investigation of a client's affairs or to give advice that the
42 client has indicated is unwanted, but a lawyer may initiate

1 advice to a client when doing so appears to be in the client's
2 interest.

3
4 **RULE 32:2.2 (Reserved)**

5 **RULE 32:2.3: EVALUATION FOR USE BY THIRD**
6 **PERSONS**

7 **(a) A lawyer may provide an evaluation of a matter**
8 **affecting a client for the use of someone other than the**
9 **client if the lawyer reasonably believes that making the**
10 **evaluation is compatible with other aspects of the**
11 **lawyer's relationship with the client.**

12 **(b) When the lawyer knows or reasonably should**
13 **know that the evaluation is likely to affect the client's**
14 **interests materially and adversely, the lawyer shall not**
15 **provide the evaluation unless the client gives informed**
16 **consent.**

17 **(c) Except as disclosure is authorized in connection**
18 **with a report of an evaluation, information relating to**
19 **the evaluation is otherwise protected by rule 32:1.6.**

20 **Comment**

21 *Definition*

22
23
24 [1] An evaluation may be performed at the client's
25 direction or when impliedly authorized in order to carry out
26 the representation. See rule 32:1.2. Such an evaluation may
27 be for the primary purpose of establishing information for
28 the benefit of third parties; for example, an opinion
29 concerning the title of property rendered at the behest of a
30 vendor for the information of a prospective purchaser, or at
31 the behest of a borrower for the information of a prospective
32 lender. In some situations, the evaluation may be required
33 by a government agency; for example, an opinion concerning
34 the legality of the securities registered for sale under the
35 securities laws. In other instances, the evaluation may be
36 required by a third person, such as a purchaser of a
37 business.

1 [2] A legal evaluation should be distinguished from an
2 investigation of a person with whom the lawyer does not
3 have a client-lawyer relationship. For example, a lawyer
4 retained by a purchaser to analyze a vendor's title to
5 property does not have a client-lawyer relationship with the
6 vendor. So also, an investigation into a person's affairs by a
7 government lawyer, or by special counsel employed by the
8 government, is not an evaluation as that term is used in this
9 rule. The question is whether the lawyer is retained by the
10 person whose affairs are being examined. When the lawyer is
11 retained by that person, the general rules concerning loyalty
12 to client and preservation of confidences apply, which is not
13 the case if the lawyer is retained by someone else. For this
14 reason, it is essential to identify the person by whom the
15 lawyer is retained. This should be made clear not only to the
16 person under examination, but also to others to whom the
17 results are to be made available.

18 *Duties Owed to Third Person and Client*

19 [3] When the evaluation is intended for the information
20 or use of a third person, a legal duty to that person may or
21 may not arise. That legal question is beyond the scope of this
22 rule. However, since such an evaluation involves a departure
23 from the normal client-lawyer relationship, careful analysis
24 of the situation is required. The lawyer must be satisfied as a
25 matter of professional judgment that making the evaluation
26 is compatible with other functions undertaken in behalf of
27 the client. For example, if the lawyer is acting as advocate in
28 defending the client against charges of fraud, it would
29 normally be incompatible with that responsibility for the
30 lawyer to perform an evaluation for others concerning the
31 same or a related transaction. Assuming no such
32 impediment is apparent, however, the lawyer should advise
33 the client of the implications of the evaluation, particularly
34 the lawyer's responsibilities to third persons and the duty to
35 disseminate the findings.

36 *Access to and Disclosure of Information*

37 [4] The quality of an evaluation depends on the
38 freedom and extent of the investigation upon which it is
39 based. Ordinarily a lawyer should have whatever latitude of
40 investigation seems necessary as a matter of professional
41 judgment. Under some circumstances, however, the terms of
42 the evaluation may be limited. For example, certain issues or

1 sources may be categorically excluded, or the scope of search
2 may be limited by time constraints or the noncooperation of
3 persons having relevant information. Any such limitations
4 that are material to the evaluation should be described in
5 the report. If after a lawyer has commenced an evaluation,
6 the client refuses to comply with the terms upon which it
7 was understood the evaluation was to have been made, the
8 lawyer's obligations are determined by law, having reference
9 to the terms of the client's agreement and the surrounding
10 circumstances. In no circumstances is the lawyer permitted
11 to knowingly make a false statement of material fact or law
12 in providing an evaluation under this rule. See rule 32:4.1.

13 *Obtaining Client's Informed Consent*

14 [5] Information relating to an evaluation is protected
15 by rule 32:1.6. In many situations, providing an evaluation
16 to a third party poses no significant risk to the client; thus,
17 the lawyer may be impliedly authorized to disclose
18 information to carry out the representation. See rule
19 32:1.6(a). Where, however, it is reasonably likely that
20 providing the evaluation will affect the client's interests
21 materially and adversely, the lawyer must first obtain the
22 client's consent after the client has been adequately
23 informed concerning the important possible effects on the
24 client's interests. See rules 32:1.6(a) and 32:1.0(e).

25 *Financial Auditor's Requests for Information*

26 [6] When a question concerning the legal situation of a
27 client arises at the instance of the client's financial auditor
28 and the question is referred to the lawyer, the lawyer's
29 response may be made in accordance with procedures
30 recognized in the legal profession. Such a procedure is set
31 forth in the American Bar Association Statement of Policy
32 Regarding Lawyers' Responses to Auditors' Requests for
33 Information, adopted in 1975.
34

35 **RULE 32:2.4: LAWYER SERVING AS THIRD-PARTY** 36 **NEUTRAL**

37 **(a) A lawyer serves as a third-party neutral when**
38 **the lawyer assists two or more persons who are not**
39 **clients of the lawyer to reach a resolution of a dispute or**
40 **other matter that has arisen between them. Service as a**

1 **third-party neutral may include service as an arbitrator,**
2 **a mediator, or in such other capacity as will enable the**
3 **lawyer to assist the parties to resolve the matter.**
4

5 **(b) A lawyer serving as a third-party neutral shall**
6 **inform unrepresented parties that the lawyer is not**
7 **representing them. When the lawyer knows or reasonably**
8 **should know that a party does not understand the**
9 **lawyer's role in the matter, the lawyer shall explain the**
10 **difference between the lawyer's role as a third-party**
11 **neutral and a lawyer's role as one who represents a**
12 **client.**
13

14 **Comment**

15
16 [1] Alternative dispute resolution has become a
17 substantial part of the civil justice system. Aside from
18 representing clients in dispute-resolution processes, lawyers
19 often serve as third-party neutrals. A third-party neutral is a
20 person, such as a mediator, arbitrator, conciliator, or
21 evaluator, who assists the parties, represented or
22 unrepresented, in the resolution of a dispute or in the
23 arrangement of a transaction. Whether a third-party neutral
24 serves primarily as a facilitator, evaluator, or decisionmaker
25 depends on the particular process that is either selected by
26 the parties or mandated by a court.
27

28 [2] The role of a third-party neutral is not unique to
29 lawyers, although, in some court-connected contexts, only
30 lawyers are allowed to serve in this role or to handle certain
31 types of cases. In performing this role, the lawyer may be
32 subject to court rules or other laws that apply either to third-
33 party neutrals generally or to lawyers serving as third-party
34 neutrals. Lawyer-neutrals may also be subject to various
35 codes of ethics, such as the Code of Ethics for Arbitration in
36 Commercial Disputes prepared by a joint committee of the
37 American Bar Association and the American Arbitration
38 Association or the Model Standards of Conduct for Mediators
39 jointly prepared by the American Bar Association, the
40 American Arbitration Association, and the Society of
41 Professionals in Dispute Resolution. In 1987, the supreme
42 court adopted the Rules Governing Standards of Practice for
43 Lawyer Mediators in Family Disputes, chapter 11 of the Iowa
44 Court Rules. Lawyers engaged in family law mediation
45 should carefully review these rules because they address

1 matters of special concern and state different and more
2 restrictive rules on conflicts of interest.
3

4 [3] Unlike nonlawyers who serve as third-party
5 neutrals, lawyers serving in this role may experience unique
6 problems as a result of differences between the role of a
7 third-party neutral and a lawyer's service as a client
8 representative. The potential for confusion is significant
9 when the parties are unrepresented in the process. Thus,
10 paragraph (b) requires a lawyer-neutral to inform
11 unrepresented parties that the lawyer is not representing
12 them. For some parties, particularly parties who frequently
13 use dispute-resolution processes, this information will be
14 sufficient. For others, particularly those who are using the
15 process for the first time, more information will be required.
16 Where appropriate, the lawyer should inform unrepresented
17 parties of the important differences between the lawyer's role
18 as third-party neutral and a lawyer's role as a client
19 representative, including the inapplicability of the attorney-
20 client evidentiary privilege. The extent of disclosure required
21 under this paragraph will depend on the particular parties
22 involved and the subject matter of the proceeding, as well as
23 the particular features of the dispute-resolution process
24 selected.

25 [4] A lawyer who serves as a third-party neutral
26 subsequently may be asked to serve as a lawyer representing
27 a client in the same matter. The conflicts of interest that
28 arise for both the individual lawyer and the lawyer's law firm
29 are addressed in rule 32:1.12.

30 [5] Lawyers who represent clients in alternative
31 dispute-resolution processes are governed by the Iowa Rules
32 of Professional Conduct. When the dispute-resolution
33 process takes place before a tribunal, as in binding
34 arbitration (*see* rule 32:1.0(m)), the lawyer's duty of candor
35 is governed by rule 32:3.3. Otherwise, the lawyer's duty of
36 candor toward both the third-party neutral and other parties
37 is governed by rule 32:4.1.
38
39

40 ***ADVOCATE***

41 **RULE 32:3.1: MERITORIOUS CLAIMS AND** 42 **CONTENTIONS** 43

1 **A lawyer shall not bring or defend a proceeding, or**
2 **assert or controvert an issue therein, unless there is a**
3 **basis in law and fact for doing so that is not frivolous,**
4 **which includes a good faith argument for an extension,**
5 **modification, or reversal of existing law. A lawyer for the**
6 **defendant in a criminal proceeding, or the respondent in**
7 **a proceeding that could result in incarceration, may**
8 **nevertheless so defend the proceeding as to require that**
9 **every element of the case be established.**

10 **Comment**

11
12 [1] The advocate has a duty to use legal procedure for
13 the fullest benefit of the client's cause, but also a duty not to
14 abuse legal procedure. The law, both procedural and
15 substantive, establishes the limits within which an advocate
16 may proceed. However, the law is not always clear and never
17 is static. Accordingly, in determining the proper scope of
18 advocacy, account must be taken of the law's ambiguities
19 and potential for change.

20 [2] The filing of an action, defense, or similar action
21 taken for a client is not frivolous merely because the facts
22 have not first been fully substantiated or because the lawyer
23 expects to develop vital evidence only by discovery. What is
24 required of lawyers, however, is that they inform themselves
25 about the facts of their clients' cases and the applicable law
26 and determine that they can make good faith arguments in
27 support of their clients' positions. Such action is not
28 frivolous even though the lawyer believes that the client's
29 position ultimately will not prevail. The action is frivolous,
30 however, if the lawyer is unable either to make a good faith
31 argument on the merits of the action taken or to support the
32 action taken by a good faith argument for an extension,
33 modification, or reversal of existing law.

34 [3] The lawyer's obligations under this rule are
35 subordinate to federal or state constitutional law that
36 entitles a defendant in a criminal matter to the assistance of
37 counsel in presenting a claim or contention that otherwise
38 would be prohibited by this rule.

39
40 **RULE 32:3.2: EXPEDITING LITIGATION**
41

1 **A lawyer shall make reasonable efforts to expedite**
2 **litigation consistent with the interests of the client.**

3
4 **Comment**

5
6 [1] Dilatory practices bring the administration of
7 justice into disrepute. Although there will be occasions when
8 a lawyer may properly seek a postponement for personal
9 reasons, it is not proper for a lawyer to routinely fail to
10 expedite litigation solely for the convenience of the
11 advocates. Nor will a failure to expedite be reasonable if done
12 for the purpose of frustrating an opposing party's attempt to
13 obtain rightful redress or repose. It is not a justification that
14 similar conduct is often tolerated by the bench and bar. The
15 question is whether a competent lawyer acting in good faith
16 would regard the course of action as having some
17 substantial purpose other than delay. Realizing financial or
18 other benefit from otherwise improper delay in litigation is
19 not a legitimate interest of the client.
20

21 **RULE 32:3.3: CANDOR TOWARD THE TRIBUNAL**

22 **(a) A lawyer shall not knowingly:**

23 **(1) make a false statement of fact or law to a**
24 **tribunal or fail to correct a false statement of**
25 **material fact or law previously made to the**
26 **tribunal by the lawyer;**

27 **(2) fail to disclose to the tribunal legal**
28 **authority in the controlling jurisdiction known to**
29 **the lawyer to be directly adverse to the position of**
30 **the client and not disclosed by opposing counsel;**
31 **or**

32 **(3) offer evidence that the lawyer knows to be**
33 **false. If a lawyer, the lawyer's client, or a witness**
34 **called by the lawyer, has offered material evidence**
35 **and the lawyer comes to know of its falsity, the**
36 **lawyer shall take reasonable remedial measures,**
37 **including, if necessary, disclosure to the tribunal.**
38 **A lawyer may refuse to offer evidence, other than**
39 **the testimony of a defendant in a criminal matter,**
40 **that the lawyer reasonably believes is false.**

1 **(b) A lawyer who represents a client in an**
2 **adjudicative proceeding and who knows that a person**
3 **intends to engage, is engaging, or has engaged in**
4 **criminal or fraudulent conduct related to the proceeding**
5 **shall take reasonable remedial measures, including, if**
6 **necessary, disclosure to the tribunal.**

7 **(c) The duties stated in paragraphs (a) and (b)**
8 **continue to the conclusion of the proceeding, and apply**
9 **even if compliance requires disclosure of information**
10 **otherwise protected by rule 32:1.6.**

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

15 **Comment**

16 [1] This rule governs the conduct of a lawyer who is
17 representing a client in the proceedings of a tribunal. See
18 rule 32:1.0(m) for the definition of "tribunal." It also applies
19 when the lawyer is representing a client in an ancillary
20 proceeding conducted pursuant to the tribunal's adjudicative
21 authority, such as a deposition. Thus, for example,
22 paragraph (a)(3) requires a lawyer to take reasonable
23 remedial measures if the lawyer comes to know that a client
24 who is testifying in a deposition has offered evidence that is
25 false.

26 [2] This rule sets forth the special duties of lawyers as
27 officers of the court to avoid conduct that undermines the
28 integrity of the adjudicative process. A lawyer acting as an
29 advocate in an adjudicative proceeding has an obligation to
30 present the client's case with persuasive force. Performance
31 of that duty while maintaining confidences of the client,
32 however, is qualified by the advocate's duty of candor to the
33 tribunal. Consequently, although a lawyer in an adversary
34 proceeding is not required to present an impartial exposition
35 of the law or to vouch for the evidence submitted in a cause,
36 the lawyer must not allow the tribunal to be misled by false
37 statements of law or fact or evidence that the lawyer knows
38 to be false.

39 *Representations by a Lawyer*

1 [3] An advocate is responsible for pleadings and other
2 documents prepared for litigation, but is usually not
3 required to have personal knowledge of matters asserted
4 therein, for litigation documents ordinarily present
5 assertions by the client, or by someone on the client's behalf,
6 and not assertions by the lawyer. *Compare* rule 32:3.1.
7 However, an assertion purporting to be on the lawyer's own
8 knowledge, as in an affidavit by the lawyer or in a statement
9 in open court, may properly be made only when the lawyer
10 knows the assertion is true or believes it to be true on the
11 basis of a reasonably diligent inquiry. There are
12 circumstances where failure to make a disclosure is the
13 equivalent of an affirmative misrepresentation. The
14 obligation prescribed in rule 32:1.2(d) not to counsel a client
15 to commit or assist the client in committing a fraud applies
16 in litigation. Regarding compliance with rule 32:1.2(d), see
17 the comment to that rule. See also the comment to rule
18 32:8.4(b).

19 *Legal Argument*

20 [4] Legal argument based on a knowingly false
21 representation of law constitutes dishonesty toward the
22 tribunal. A lawyer is not required to make a disinterested
23 exposition of the law, but must recognize the existence of
24 pertinent legal authorities. Furthermore, as stated in
25 paragraph (a)(2), an advocate has a duty to disclose directly
26 adverse authority in the controlling jurisdiction that has not
27 been disclosed by the opposing party. The underlying
28 concept is that legal argument is a discussion seeking to
29 determine the legal premises properly applicable to the case.

30 *Offering Evidence*

31 [5] Paragraph (a)(3) requires that the lawyer refuse to
32 offer evidence that the lawyer knows to be false, regardless of
33 the client's wishes. This duty is premised on the lawyer's
34 obligation as an officer of the court to prevent the trier of fact
35 from being misled by false evidence. A lawyer does not
36 violate this rule if the lawyer offers the evidence for the
37 purpose of establishing its falsity.

38 [6] If a lawyer knows that the client intends to testify
39 falsely or wants the lawyer to introduce false evidence, the
40 lawyer should seek to persuade the client that the evidence
41 should not be offered. If the persuasion is ineffective and the

1 lawyer continues to represent the client, the lawyer must
2 refuse to offer the false evidence. If only a portion of a
3 witness's testimony will be false, the lawyer may call the
4 witness to testify but may not elicit or otherwise permit the
5 witness to present the testimony that the lawyer knows is
6 false.

7 [7] The duties stated in paragraphs (a) and (b) apply to
8 all lawyers, including defense counsel in criminal cases. An
9 advocate's obligation under the Iowa Rules of Professional
10 Conduct is subordinate to a court's directive requiring
11 counsel to present the accused as a witness or to allow the
12 accused to give a narrative statement if the accused so
13 desires. *See also* comment [9].

14 [8] The prohibition against offering false evidence only
15 applies if the lawyer knows that the evidence is false. A
16 lawyer's reasonable belief that evidence is false does not
17 preclude its presentation to the trier of fact. A lawyer's
18 knowledge that evidence is false, however, can be inferred
19 from the circumstances. *See* rule 32:1.0(f). Thus, although a
20 lawyer should resolve doubts about the veracity of testimony
21 or other evidence in favor of the client, the lawyer cannot
22 ignore an obvious falsehood.

23 [9] Although paragraph (a)(3) only prohibits a lawyer
24 from offering evidence the lawyer knows to be false, it
25 permits the lawyer to refuse to offer testimony or other proof
26 that the lawyer reasonably believes is false. Offering such
27 proof may reflect adversely on the lawyer's ability to
28 discriminate in the quality of evidence and thus impair the
29 lawyer's effectiveness as an advocate. Because of the special
30 protections historically provided criminal defendants,
31 however, this rule does not permit a lawyer to refuse to offer
32 the testimony of such a client where the lawyer reasonably
33 believes but does not know that the testimony will be false.
34 Unless the lawyer knows the testimony will be false, the
35 lawyer must honor the client's decision to testify. *See also*
36 comment [7].

37 *Remedial Measures*

38 [10] Having offered material evidence in the belief that
39 it was true, a lawyer may subsequently come to know that
40 the evidence is false. Or, a lawyer may be surprised when the
41 lawyer's client, or another witness called by the lawyer, offers

1 testimony the lawyer knows to be false, either during the
2 lawyer's direct examination or in response to cross-
3 examination by the opposing lawyer. In such situations or if
4 the lawyer knows of the falsity of testimony elicited from the
5 client during a deposition, the lawyer must take reasonable
6 remedial measures. In such situations, the advocate's proper
7 course is to remonstrate with the client confidentially, advise
8 the client of the lawyer's duty of candor to the tribunal, and
9 seek the client's cooperation with respect to the withdrawal
10 or correction of the false statements or evidence. If that fails,
11 the advocate must take further remedial action. If
12 withdrawal from the representation is not permitted or will
13 not undo the effect of the false evidence, the advocate must
14 make such disclosure to the tribunal as is reasonably
15 necessary to remedy the situation, even if doing so requires
16 the lawyer to reveal information that otherwise would be
17 protected by rule 32:1.6. It is for the tribunal then to
18 determine what should be done—making a statement about
19 the matter to the trier of fact, ordering a mistrial, or perhaps
20 nothing.

21 [11] The disclosure of a client's false testimony can
22 result in grave consequences to the client, including not only
23 a sense of betrayal, but also loss of the case, and perhaps a
24 prosecution for perjury. But the alternative is that the lawyer
25 cooperate in deceiving the court, thereby subverting the
26 truth-finding process which the adversary system is
27 designed to implement. See rule 32:1.2(d). Furthermore,
28 unless it is clearly understood that the lawyer will act upon
29 the duty to disclose the existence of false evidence, the client
30 can simply reject the lawyer's advice to reveal the false
31 evidence and insist that the lawyer keep silent. Thus the
32 client could in effect coerce the lawyer into being a party to
33 fraud on the court.

34 *Preserving Integrity of Adjudicative Process*

35 [12] Lawyers have a special obligation to protect a
36 tribunal against criminal or fraudulent conduct that
37 undermines the integrity of the adjudicative process, such as
38 bribing, intimidating, or otherwise unlawfully
39 communicating with a witness, juror, court official, or other
40 participant in the proceeding, unlawfully destroying or
41 concealing documents or other evidence, or failing to disclose
42 information to the tribunal when required by law to do so.
43 Thus, paragraph (b) requires a lawyer to take reasonable

1 remedial measures, including disclosure if necessary,
2 whenever the lawyer knows that a person, including the
3 lawyer's client, intends to engage, is engaging, or has
4 engaged in criminal or fraudulent conduct related to the
5 proceeding.

6 *Duration of Obligation*

7 [13] A proceeding has concluded within the meaning of
8 this rule when it is beyond the power of a tribunal to correct,
9 modify, reverse, or vacate a final judgment, or to grant a new
10 trial.

11 *Ex Parte Proceedings*

12 [14] Ordinarily, an advocate has the limited
13 responsibility of presenting one side of the matters that a
14 tribunal should consider in reaching a decision; the
15 conflicting position is expected to be presented by the
16 opposing party. However, in any ex parte proceeding, such
17 as an application for a temporary restraining order, there is
18 no balance of presentation by opposing advocates. The object
19 of an ex parte proceeding is nevertheless to yield a
20 substantially just result. The judge has an affirmative
21 responsibility to accord the absent party just consideration.
22 The lawyer for the represented party has the correlative duty
23 to make disclosures of material facts known to the lawyer
24 and that the lawyer reasonably believes are necessary to an
25 informed decision.

26 *Withdrawal*

27 [15] Normally, a lawyer's compliance with the duty of
28 candor imposed by this rule does not require that the lawyer
29 withdraw from the representation of a client whose interests
30 will be or have been adversely affected by the lawyer's
31 disclosure. The lawyer may, however, be required by rule
32 32:1.16(a) to seek permission of the tribunal to withdraw if
33 the lawyer's compliance with this rule's duty of candor
34 results in such an extreme deterioration of the client-lawyer
35 relationship that the lawyer can no longer competently
36 represent the client. Also see rule 32:1.16(b) for the
37 circumstances in which a lawyer will be permitted to seek a
38 tribunal's permission to withdraw. In connection with a
39 request for permission to withdraw that is premised on a
40 client's misconduct, a lawyer may reveal information relating

1 to the representation only to the extent reasonably necessary
2 to comply with this rule or as otherwise permitted by rule
3 32:1.6.

4
5
6
7
8 **RULE 32:3.4: FAIRNESS TO OPPOSING PARTY**
9 **AND COUNSEL**

10 **A lawyer shall not:**

11 **(a) unlawfully obstruct another party's access to**
12 **evidence or unlawfully alter, destroy, or conceal a**
13 **document or other material having potential evidentiary**
14 **value. A lawyer shall not counsel or assist another**
15 **person to do any such act;**

16 **(b) falsify evidence, counsel or assist a witness to**
17 **testify falsely, or offer an inducement to a witness that**
18 **is prohibited by law;**

19 **(c) knowingly disobey an obligation under the rules**
20 **of a tribunal except for an open refusal based on an**
21 **assertion that no valid obligation exists;**

22 **(d) in pretrial procedure, make a frivolous**
23 **discovery request or fail to make a reasonably diligent**
24 **effort to comply with a legally proper discovery request**
25 **by an opposing party;**

26 **(e) in trial, allude to any matter that the lawyer**
27 **does not reasonably believe is relevant or that will not be**
28 **supported by admissible evidence, assert personal**
29 **knowledge of facts in issue except when testifying as a**
30 **witness, or state a personal opinion as to the justness of**
31 **a cause, the credibility of a witness, the culpability of a**
32 **civil litigant, or the guilt or innocence of an accused; or**

33 **(f) request a person other than a client to refrain**
34 **from voluntarily giving relevant information to another**
35 **party unless:**

36 **(1) the person is a relative or an employee or**
37 **other agent of a client; and**

1 **(2) the lawyer reasonably believes that the**
2 **person's interests will not be adversely affected by**
3 **refraining from giving such information.**

4 **Comment**

5
6 [1] The procedure of the adversary system
7 contemplates that the evidence in a case is to be marshaled
8 competitively by the contending parties. Fair competition in
9 the adversary system is secured by prohibitions against
10 destruction or concealment of evidence, improperly
11 influencing witnesses, obstructive tactics in discovery
12 procedure, and the like.

13 [2] Documents and other items of evidence are often
14 essential to establish a claim or defense. Subject to
15 evidentiary privileges, the right of an opposing party,
16 including the government, to obtain evidence through
17 discovery or subpoena is an important procedural right. The
18 exercise of that right can be frustrated if relevant material is
19 altered, concealed, or destroyed. The law may make it an
20 offense to destroy material for the purpose of impairing its
21 availability in a pending proceeding or one whose
22 commencement can be foreseen. Falsifying evidence is also
23 generally a criminal offense. Paragraph (a) applies to
24 evidentiary material generally, including computerized
25 information. The law may permit a lawyer to take temporary
26 possession of physical evidence of client crimes for the
27 purpose of conducting a limited examination that will not
28 alter or destroy material characteristics of the evidence. In
29 such a case, the law may require the lawyer to turn the
30 evidence over to the police or other prosecuting authority,
31 depending on the circumstances.

32 [3] With regard to paragraph (b), it is not improper to
33 pay a witness's expenses, including loss of time in attending
34 or testifying, or to compensate an expert witness on terms
35 permitted by law. It is improper to pay an occurrence
36 witness any fee other than as authorized by law for testifying
37 and it is improper to pay an expert witness a contingent fee.

38 [4] Paragraph (f) permits a lawyer to advise employees
39 of a client to refrain from giving information to another party,
40 for the employees may identify their interests with those of
41 the client. *See also* rule 32:4.2.
42

1
2 **RULE 32:3.5: IMPARTIALITY AND DECORUM**
3 **OF THE TRIBUNAL**
4

5 **A lawyer shall not:**
6

7 **(a) seek to influence a judge, juror, prospective**
8 **juror, or other official by means prohibited by law;**
9

10 **(b) communicate ex parte with such a person**
11 **during the proceeding unless authorized to do so by law**
12 **or court order;**

13 **(c) communicate with a juror or prospective juror**
14 **after discharge of the jury if:**

15 **(1) the communication is prohibited by law or**
16 **court order;**

17 **(2) the juror has made known to the lawyer a**
18 **desire not to communicate; or**

19 **(3) the communication involves**
20 **misrepresentation, coercion, duress, or**
21 **harassment; or**

22 **(d) engage in conduct intended to disrupt a**
23 **tribunal.**
24

25 **Comment**
26

27 [1] Many forms of improper influence upon a tribunal
28 are proscribed by criminal law. Others are specified in the
29 Iowa Code of Judicial Conduct, with which an advocate
30 should be familiar. A lawyer is required to avoid contributing
31 to a violation of such provisions.
32

33 [2] During a proceeding a lawyer may not
34 communicate ex parte with persons serving in an official
35 capacity in the proceeding, such as judges, masters, or
36 jurors, unless authorized to do so by law or court order.
37

38 [3] A lawyer may on occasion want to communicate
39 with a juror or prospective juror after the jury has been
40 discharged. The lawyer may do so unless the communication

1 is prohibited by law or a court order but must respect the
2 desire of the juror not to talk with the lawyer. The lawyer
3 may not engage in improper conduct during the
4 communication.
5

6 [4] The advocate's function is to present evidence and
7 argument so that the cause may be decided according to law.
8 Refraining from abusive or obstreperous conduct is a
9 corollary of the advocate's right to speak on behalf of
10 litigants. A lawyer may stand firm against abuse by a judge
11 but should avoid reciprocation; the judge's default is no
12 justification for similar dereliction by an advocate. An
13 advocate can present the cause, protect the record for
14 subsequent review, and preserve professional integrity by
15 patient firmness no less effectively than by belligerence or
16 theatrics.
17

18 [5] The duty to refrain from disruptive conduct applies
19 to any proceeding of a tribunal, including a deposition. See
20 rule 32:1.0(m).
21

22 **RULE 32:3.6: TRIAL PUBLICITY**

23
24
25 **(a) A lawyer who is participating or has participated**
26 **in the investigation or litigation of a matter shall not**
27 **make an extrajudicial statement that the lawyer knows**
28 **or reasonably should know will be disseminated by**
29 **means of public communication and will have a**
30 **substantial likelihood of materially prejudicing an**
31 **adjudicative proceeding in the matter.**
32

33 **(b) Notwithstanding paragraph (a), a lawyer may**
34 **state:**
35

36 **(1) the claim, offense, or defense involved**
37 **and, except when prohibited by law, the identity of**
38 **the persons involved;**
39

40 **(2) information contained in a public record;**
41

42 **(3) that an investigation of a matter is in**
43 **progress;**
44

45 **(4) the scheduling or result of any step in**
46 **litigation;**

1
2 **(5) a request for assistance in obtaining**
3 **evidence and information necessary thereto;**
4

5 **(6) a warning of danger concerning the**
6 **behavior of a person involved, when there is reason**
7 **to believe that there exists the likelihood of**
8 **substantial harm to an individual or to the public**
9 **interest; and**
10

11 **(7) in a criminal case, in addition to**
12 **subparagraphs (1) through (6):**
13

14 **(i) the identity, residence, occupation,**
15 **and family status of the accused;**
16

17 **(ii) if the accused has not been**
18 **apprehended, information necessary to aid in**
19 **apprehension of that person;**
20

21 **(iii) the fact, time, and place of arrest; and**
22

23 **(iv) the identity of investigating and**
24 **arresting officers or agencies and the length**
25 **of the investigation.**
26

27 **(c) Notwithstanding paragraph (a), a lawyer may**
28 **make a statement that a reasonable lawyer would believe**
29 **is required to protect a client from the substantial undue**
30 **prejudicial effect of recent publicity not initiated by the**
31 **lawyer or the lawyer's client. A statement made pursuant**
32 **to this paragraph shall be limited to such information as**
33 **is necessary to mitigate the recent adverse publicity.**
34

35 **(d) No lawyer associated in a firm or government**
36 **agency with a lawyer subject to paragraph (a) shall make**
37 **a statement prohibited by paragraph (a).**
38

39 **(e) Any communication made under paragraph (b)**
40 **that includes information that a defendant will be or has**
41 **been charged with a crime must also include a statement**
42 **explaining that a criminal charge is merely an**
43 **accusation and the defendant is presumed innocent until**
44 **and unless proven guilty.**

45 **Comment**

1 [1] It is difficult to strike a balance between protecting
2 the right to a fair trial and safeguarding the right of free
3 expression. Preserving the right to a fair trial necessarily
4 entails some curtailment of the information that may be
5 disseminated about a party prior to trial, particularly where
6 trial by jury is involved. If there were no such limits, the
7 result would be the practical nullification of the protective
8 effect of the rules of forensic decorum and the exclusionary
9 rules of evidence. On the other hand, there are vital social
10 interests served by the free dissemination of information
11 about events having legal consequences and about legal
12 proceedings themselves. The public has a right to know
13 about threats to its safety and measures aimed at ensuring
14 its security. It also has a legitimate interest in the conduct of
15 judicial proceedings, particularly in matters of general public
16 concern. Furthermore, the subject matter of legal
17 proceedings is often of direct significance in debate and
18 deliberation over questions of public policy.
19

20 [2] Special rules of confidentiality may validly govern
21 proceedings in juvenile, domestic relations, and mental
22 disability proceedings, and perhaps other types of litigation.
23 Rule 32:3.4(c) requires compliance with such rules.
24

25 [3] The rule sets forth a basic general prohibition
26 against a lawyer's making statements that the lawyer knows
27 or should know will have a substantial likelihood of
28 materially prejudicing an adjudicative proceeding.
29 Recognizing that the public value of informed commentary is
30 great and the likelihood of prejudice to a proceeding by the
31 commentary of a lawyer who is not involved in the
32 proceeding is small, the rule applies only to lawyers who are,
33 or who have been involved in the investigation or litigation of
34 a case, and their associates.
35

36 [4] Paragraph (b) identifies specific matters about
37 which a lawyer's statements would not ordinarily be
38 considered to present a substantial likelihood of material
39 prejudice, and should not in any event be considered
40 prohibited by the general prohibition of paragraph (a).
41 Paragraph (b) is not intended to be an exhaustive listing of
42 the subjects upon which a lawyer may make a statement,
43 but statements on other matters may be subject to
44 paragraph (a).
45

1 [5] There are, on the other hand, certain subjects that
2 are more likely than not to have a material prejudicial effect
3 on a proceeding, particularly when they refer to a civil matter
4 triable to a jury, a criminal matter, or any other proceeding
5 that could result in incarceration. These subjects relate to:

6 (1) the character, credibility, reputation, or
7 criminal record of a party, suspect in a criminal
8 investigation or witness, or the identity of a witness, or
9 the expected testimony of a party or witness;

10 (2) in a criminal case or proceeding that could
11 result in incarceration, the possibility of a plea of
12 guilty to the offense or the existence or contents of any
13 confession, admission, or statement given by a
14 defendant or suspect or that person's refusal or failure
15 to make a statement;

16 (3) the performance or results of any
17 examination or test or the refusal or failure of a person
18 to submit to an examination or test, or the identity or
19 nature of physical evidence expected to be presented;

20 (4) any opinion as to the guilt or innocence of a
21 defendant or suspect in a criminal case or proceeding
22 that could result in incarceration;

23 (5) information that the lawyer knows or
24 reasonably should know is likely to be inadmissible as
25 evidence in a trial and that would, if disclosed, create a
26 substantial risk of prejudicing an impartial trial; or

27 (6) the fact that a defendant has been charged
28 with a crime, unless there is included therein a
29 statement explaining that the charge is merely an
30 accusation and that the defendant is presumed
31 innocent until and unless proven guilty.

32 [6] Another relevant factor in determining prejudice is
33 the nature of the proceeding involved. Criminal jury trials
34 will be most sensitive to extrajudicial speech. Civil trials may
35 be less sensitive. Non-jury hearings and arbitration
36 proceedings may be even less affected. The rule will still
37 place limitations on prejudicial comments in these cases, but
38 the likelihood of prejudice may be different depending on the
39 type of proceeding.

1
2 [7] Finally, extrajudicial statements that might
3 otherwise raise a question under this rule may be
4 permissible when they are made in response to statements
5 made publicly by another party, another party's lawyer, or
6 third persons, where a reasonable lawyer would believe a
7 public response is required in order to avoid prejudice to the
8 lawyer's client. When prejudicial statements have been
9 publicly made by others, responsive statements may have
10 the salutary effect of lessening any resulting adverse impact
11 on the adjudicative proceeding. Such responsive statements
12 should be limited to contain only such information as is
13 necessary to mitigate undue prejudice created by the
14 statements made by others.

15
16 [8] See rule 32:3.8(f) for additional duties of
17 prosecutors in connection with extrajudicial statements
18 about criminal proceedings.
19

20 21 **RULE 32:3.7: LAWYER AS WITNESS**

22
23 **(a) A lawyer shall not act as advocate at a trial in**
24 **which the lawyer is likely to be a necessary witness**
25 **unless:**

26
27 **(1) the testimony relates to an uncontested**
28 **issue;**

29
30 **(2) the testimony relates to the nature and**
31 **value of legal services rendered in the case; or**

32
33 **(3) disqualification of the lawyer would work**
34 **substantial hardship on the client.**

35
36 **(b) A lawyer may act as advocate in a trial in which**
37 **another lawyer in the lawyer's firm is likely to be called**
38 **as a witness unless precluded from doing so by rule**
39 **32:1.7 or rule 32:1.9.**

40 41 **Comment**

42
43 [1] Combining the roles of advocate and witness can
44 prejudice the tribunal and the opposing party and can also
45 involve a conflict of interest between the lawyer and client.
46

1 *Advocate-Witness Rule*

2
3 [2] The tribunal has proper objection when the trier of
4 fact may be confused or misled by a lawyer serving as both
5 advocate and witness. The opposing party has proper
6 objection where the combination of roles may prejudice that
7 party's rights in the litigation. A witness is required to testify
8 on the basis of personal knowledge, while an advocate is
9 expected to explain and comment on evidence given by
10 others. It may not be clear whether a statement by an
11 advocate-witness should be taken as proof or as an analysis
12 of the proof.
13

14 [3] To protect the tribunal, paragraph (a) prohibits a
15 lawyer from simultaneously serving as advocate and
16 necessary witness except in those circumstances specified in
17 paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes
18 that if the testimony will be uncontested, the ambiguities in
19 the dual role are purely theoretical. Paragraph (a)(2)
20 recognizes that where the testimony concerns the extent and
21 value of legal services rendered in the action in which the
22 testimony is offered, permitting the lawyers to testify avoids
23 the need for a second trial with new counsel to resolve that
24 issue. Moreover, in such a situation the judge has firsthand
25 knowledge of the matter in issue; hence, there is less
26 dependence on the adversary process to test the credibility of
27 the testimony.
28

29 [4] Apart from these two exceptions, paragraph (a)(3)
30 recognizes that a balancing is required between the interests
31 of the client and those of the tribunal and the opposing
32 party. Whether the tribunal is likely to be misled or the
33 opposing party is likely to suffer prejudice depends on the
34 nature of the case, the importance and probable tenor of the
35 lawyer's testimony, and the probability that the lawyer's
36 testimony will conflict with that of other witnesses. Even if
37 there is risk of such prejudice, in determining whether the
38 lawyer should be disqualified, due regard must be given to
39 the effect of disqualification on the lawyer's client. It is
40 relevant that one or both parties could reasonably foresee
41 that the lawyer would probably be a witness. The conflict of
42 interest principles stated in rules 32:1.7, 32:1.9, and 32:1.10
43 have no application to this aspect of the problem.
44

45 [5] Because the tribunal is not likely to be misled when
46 a lawyer acts as advocate in a trial in which another lawyer

1 in the lawyer's firm will testify as a necessary witness,
2 paragraph (b) permits the lawyer to do so except in
3 situations involving a conflict of interest.
4

5 *Conflict of Interest*
6

7 [6] In determining if it is permissible to act as advocate
8 in a trial in which the lawyer will be a necessary witness, the
9 lawyer must also consider that the dual role may give rise to
10 a conflict of interest that will require compliance with rule
11 32:1.7 or 32:1.9. For example, if there is likely to be
12 substantial conflict between the testimony of the client and
13 that of the lawyer, the representation involves a conflict of
14 interest that requires compliance with rule 32:1.7. This
15 would be true even though the lawyer might not be
16 prohibited by paragraph (a) from simultaneously serving as
17 advocate and witness because the lawyer's disqualification
18 would work a substantial hardship on the client. Similarly, a
19 lawyer who might be permitted to simultaneously serve as an
20 advocate and a witness by paragraph (a)(3) might be
21 precluded from doing so by rule 32:1.9. The problem can
22 arise whether the lawyer is called as a witness on behalf of
23 the client or is called by the opposing party. Determining
24 whether or not such a conflict exists is primarily the
25 responsibility of the lawyer involved. If there is a conflict of
26 interest, the lawyer must secure the client's informed
27 consent, confirmed in writing. In some cases, the lawyer will
28 be precluded from seeking the client's consent. See rule
29 32:1.7. See rule 32:1.0(b) for the definition of "confirmed in
30 writing" and rule 32:1.0(e) for the definition of "informed
31 consent."
32

33 [7] Paragraph (b) provides that a lawyer is not
34 disqualified from serving as an advocate because a lawyer
35 with whom the lawyer is associated in a firm is precluded
36 from doing so by paragraph (a). If, however, the testifying
37 lawyer would also be disqualified by rule 32:1.7 or rule
38 32:1.9 from representing the client in the matter, other
39 lawyers in the firm will be precluded from representing the
40 client by rule 32:1.10 unless the client gives informed
41 consent under the conditions stated in rule 32:1.7 or 32:1.9.
42
43

44 **RULE 32:3.8: SPECIAL RESPONSIBILITIES**
45 **OF A PROSECUTOR**
46

1 **The prosecutor in a criminal case shall:**

2 **(a) refrain from prosecuting a charge that the**
3 **prosecutor knows or reasonably should know is not**
4 **supported by probable cause;**

5
6 **(b) make reasonable efforts to ensure that the**
7 **accused has been advised of the right to, and the**
8 **procedure for obtaining, counsel and has been given**
9 **reasonable opportunity to obtain counsel;**

10
11 **(c) not seek to obtain from an unrepresented**
12 **accused a waiver of important pretrial rights, such as the**
13 **right to a preliminary hearing;**

14
15 **(d) make timely disclosure to the defense of all**
16 **evidence or information known to the prosecutor that**
17 **tends to negate the guilt of the accused or mitigates the**
18 **offense, and, in connection with sentencing, disclose to**
19 **the defense and to the tribunal all unprivileged**
20 **mitigating information known to the prosecutor, except**
21 **when the prosecutor is relieved of this responsibility by**
22 **a protective order of the tribunal;**

23
24 **(e) not subpoena a lawyer in a grand jury or other**
25 **criminal proceeding to present evidence about a past or**
26 **present client unless the prosecutor reasonably believes:**

27 **(1) the information sought is not protected**
28 **from disclosure by any applicable privilege;**

29 **(2) the evidence sought is essential to the**
30 **successful completion of an ongoing investigation**
31 **or prosecution; and**

32 **(3) there is no other feasible alternative to**
33 **obtain the information; and**

34 **(f) except for statements that are necessary to**
35 **inform the public of the nature and extent of the**
36 **prosecutor's action and that serve a legitimate law**
37 **enforcement purpose, refrain from making extrajudicial**
38 **comments that have a substantial likelihood of**
39 **heightening public condemnation of the accused and**
40 **exercise reasonable care to prevent investigators, law**
41 **enforcement personnel, employees, or other persons**

1 **assisting or associated with the prosecutor in a criminal**
2 **case from making an extrajudicial statement that the**
3 **prosecutor would be prohibited from making under rule**
4 **32:3.6 or this rule.**
5

6 **Comment**
7

8 [1] A prosecutor has the responsibility of a minister of
9 justice and not simply that of an advocate. This
10 responsibility carries with it specific obligations to see that
11 the defendant is accorded procedural justice and that guilt is
12 decided upon the basis of sufficient evidence. *See generally*
13 *ABA Standards of Criminal Justice Relating to the*
14 *Prosecution Function*. Applicable law may require other
15 measures by the prosecutor, and knowing disregard of those
16 obligations or a systematic abuse of prosecutorial discretion
17 could constitute a violation of rule 32:8.4.
18

19 [2] A defendant may waive a preliminary hearing and
20 thereby lose a valuable opportunity to challenge probable
21 cause. Accordingly, prosecutors should not seek to obtain
22 waivers of preliminary hearings or other important pretrial
23 rights from unrepresented accused persons. Paragraph (c)
24 does not apply, however, to an accused appearing *pro se*
25 with the approval of the tribunal. Nor does it forbid the
26 lawful questioning of an uncharged suspect who has
27 knowingly waived the rights to counsel and silence. In
28 addition, paragraph (c) does not apply to a defendant
29 charged with a simple misdemeanor for which the prosecutor
30 reasonably believes the defendant will not be incarcerated.
31

32 [3] The exception in paragraph (d) recognizes that a
33 prosecutor may seek an appropriate protective order from
34 the tribunal if disclosure of information to the defense could
35 result in substantial harm to an individual or to the public
36 interest. For purposes of paragraph (d), evidence tending to
37 negate the guilt of the accused includes evidence that tends
38 to impeach a witness for the State.
39

40 [4] Paragraph (e) is intended to limit the issuance of
41 lawyer subpoenas in grand jury and other criminal
42 proceedings to those situations in which there is a genuine
43 need to intrude into the client-lawyer relationship.
44

45 [5] Paragraph (f) supplements rule 32:3.6, which
46 prohibits extrajudicial statements that have a substantial

1 likelihood of prejudicing an adjudicatory proceeding. In the
2 context of a criminal prosecution, a prosecutor's
3 extrajudicial statement can create the additional problem of
4 increasing public condemnation of the accused. Although
5 the announcement of an indictment, for example, will
6 necessarily have severe consequences for the accused, a
7 prosecutor can, and should, avoid comments which have no
8 legitimate law enforcement purpose and have a substantial
9 likelihood of increasing public opprobrium of the accused.
10 Nothing in this comment is intended to restrict the
11 statements which a prosecutor may make which comply with
12 rule 32:3.6(b) or 32:3.6(c) and with rule 32:3.6(e).
13

14 [6] Like other lawyers, prosecutors are subject to rules
15 32:5.1 and 32:5.3, which relate to responsibilities regarding
16 lawyers and nonlawyers who work for or are associated with
17 the lawyer's office. Paragraph (f) reminds the prosecutor of
18 the importance of these obligations in connection with the
19 unique dangers of improper extrajudicial statements in a
20 criminal case. In addition, paragraph (f) requires a
21 prosecutor to exercise reasonable care to prevent persons
22 assisting or associated with the prosecutor from making
23 improper extrajudicial statements, even when such persons
24 are not under the direct supervision of the prosecutor.
25 Ordinarily, the reasonable care standard will be satisfied if
26 the prosecutor issues the appropriate cautions to law-
27 enforcement personnel and other relevant individuals.
28
29

30 **RULE 32:3.9: ADVOCATE IN**
31 **NONADJUDICATIVE PROCEEDINGS**

32 **A lawyer representing a client before a legislative**
33 **body or administrative agency in a nonadjudicative**
34 **proceeding shall disclose that the appearance is in a**
35 **representative capacity and shall conform to the**
36 **provisions of rules 32:3.3(a) through (c), 32:3.4(a) through**
37 **(c), and 32:3.5.**
38

39 **Comment**
40

41 [1] In representation before bodies such as
42 legislatures, municipal councils, and executive and
43 administrative agencies acting in a rule-making or policy-
44 making capacity, lawyers present facts, formulate issues,
45 and advance argument in the matters under consideration.

1 The decision-making body, like a court, should be able to
2 rely on the integrity of the submissions made to it. A lawyer
3 appearing before such a body must deal with it honestly and
4 in conformity with applicable rules of procedure. In all such
5 appearances the lawyer shall identify the client if
6 identification of the client is not prohibited by law. It is not
7 improper, however, for a lawyer to seek from an agency
8 information available to the public without identifying a
9 client. See rules 32:3.3(a)-(c), 32:3.4(a)-(c), and 32:3.5.

10
11 [2] Lawyers have no exclusive right to appear before
12 nonadjudicative bodies, as they do before a court. The
13 requirements of this rule therefore may subject lawyers to
14 regulations inapplicable to advocates who are not lawyers.
15 However, legislatures and administrative agencies have a
16 right to expect lawyers to deal with them as they deal with
17 courts.

18
19 [3] This rule only applies when a lawyer represents a
20 client in connection with an official hearing or meeting of a
21 governmental agency or a legislative body to which the
22 lawyer or the lawyer's client is presenting evidence or
23 argument. It does not apply to representation of a client in a
24 negotiation or other bilateral transaction with a
25 governmental agency or in connection with an application for
26 a license or other privilege or the client's compliance with
27 generally applicable reporting requirements, such as the
28 filing of income tax returns. Nor does it apply to the
29 representation of a client in connection with an investigation
30 or examination of the client's affairs conducted by
31 government investigators or examiners. Representation in
32 such matters is governed by rules 32:4.1 through 32:4.4.

33
34 [4] A lawyer representing a client before a
35 governmental body in a nonadjudicative proceeding is
36 engaged in the practice of law, even if such undertakings
37 could also be engaged in by nonlawyers. Accordingly, a client
38 who employs a lawyer to represent that client in lobbying or
39 other advocacy before governmental bodies is entitled to
40 assume that the lawyer will do so pursuant to the lawyer's
41 professional obligations under these rules, specifically
42 including those provisions concerning confidentiality,
43 competence, and conflicts of interest.

44
45 **TRANSACTIONS WITH PERSONS**

1 **OTHER THAN CLIENTS**

2
3 **RULE 32:4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS**

4 **In the course of representing a client, a lawyer**
5 **shall not knowingly:**

6 **(a) make a false statement of material fact or law to**
7 **a third person; or**

8 **(b) fail to disclose a material fact to a third person**
9 **when disclosure is necessary to avoid assisting a**
10 **criminal or fraudulent act by a client, unless disclosure**
11 **is prohibited by rule 32:1.6.**

12 **Comment**

13 *Misrepresentation*

14 [1] A lawyer is required to be truthful when dealing
15 with others on a client's behalf, but generally has no
16 affirmative duty to inform an opposing party of relevant
17 facts. A misrepresentation can occur if the lawyer
18 incorporates or affirms a statement of another person that
19 the lawyer knows is false. Misrepresentations can also occur
20 by partially true but misleading statements or omissions
21 that are the equivalent of affirmative false statements. For
22 dishonest conduct that does not amount to a false statement
23 or for misrepresentations by a lawyer other than in the
24 course of representing a client, see rule 32:8.4.

25 *Statements of Fact*

26 [2] This rule refers to statements of fact. Whether a
27 particular statement should be regarded as one of fact can
28 depend on the circumstances. Under generally accepted
29 conventions in negotiation, certain types of statements
30 ordinarily are not taken as statements of material fact.
31 Estimates of price or value placed on the subject of a
32 transaction and a party's intentions as to an acceptable
33 settlement of a claim are ordinarily in this category, and so is
34 the existence of an undisclosed principal except where
35 nondisclosure of the principal would constitute fraud.
36 Lawyers should be mindful of their obligations under

1 applicable law to avoid criminal and tortious
2 misrepresentation.

3 *Crime or Fraud by Client*

4 [3] Under rule 32:1.2(d), a lawyer is prohibited from
5 counseling or assisting a client in conduct that the lawyer
6 knows is criminal or fraudulent. Paragraph (b) states a
7 specific application of the principle set forth in rule 32:1.2(d)
8 and addresses the situation where a client's crime or fraud
9 takes the form of a lie or misrepresentation. Ordinarily, a
10 lawyer can avoid assisting a client's crime or fraud by
11 withdrawing from the representation. Sometimes it may be
12 necessary for the lawyer to give notice of the fact of
13 withdrawal and to disaffirm an opinion, document,
14 affirmation, or the like. In extreme cases, substantive law
15 may require a lawyer to disclose information relating to the
16 representation to avoid being deemed to have assisted the
17 client's crime or fraud. If the lawyer can avoid assisting a
18 client's crime or fraud only by disclosing this information,
19 then under paragraph (b) the lawyer is required to do so,
20 unless the disclosure is prohibited by rule 32:1.6.

21
22 **RULE 32:4.2: COMMUNICATION WITH PERSON**
23 **REPRESENTED BY COUNSEL**

24 **In representing a client, a lawyer shall not**
25 **communicate about the subject of the representation**
26 **with a person the lawyer knows to be represented by**
27 **another lawyer in the matter, unless the lawyer has the**
28 **consent of the other lawyer or is authorized to do so by**
29 **law or a court order.**

30 **Comment**

31 [1] This rule contributes to the proper functioning of
32 the legal system by protecting a person who has chosen to be
33 represented by a lawyer in a matter against possible
34 overreaching by other lawyers who are participating in the
35 matter, interference by those lawyers with the client-lawyer
36 relationship, and the uncounseled disclosure of information
37 relating to the representation.

1 [2] This rule applies to communications with any
2 person who is represented by counsel concerning the matter
3 to which the communication relates.

4 [3] The rule applies even though the represented
5 person initiates or consents to the communication. A lawyer
6 must immediately terminate communication with a person if,
7 after commencing communication, the lawyer learns that the
8 person is one with whom communication is not permitted by
9 this rule.

10 [4] This rule does not prohibit communication with a
11 represented person, or an employee or agent of such a
12 person, concerning matters outside the representation. For
13 example, the existence of a controversy between a
14 government agency and a private party, or between two
15 organizations, does not prohibit a lawyer for either from
16 communicating with nonlawyer representatives of the other
17 regarding a separate matter. Nor does this rule preclude
18 communication with a represented person who is seeking
19 advice from a lawyer who is not otherwise representing a
20 client in the matter. A lawyer may not make a
21 communication prohibited by this rule through the acts of
22 another. See rule 32:8.4(a). Parties to a matter may
23 communicate directly with each other, and a lawyer is not
24 prohibited from advising a client concerning a
25 communication that the client is legally entitled to make.
26 Also, a lawyer having independent justification or legal
27 authorization for communicating with a represented person
28 is permitted to do so.

29 [5] Communications authorized by law may include
30 communications by a lawyer on behalf of a client who is
31 exercising a constitutional or other legal right to
32 communicate with the government. Communications
33 authorized by law may also include investigative activities of
34 lawyers representing governmental entities, directly or
35 through investigative agents, prior to the commencement of
36 criminal or civil enforcement proceedings. When
37 communicating with the accused in a criminal matter, a
38 government lawyer must comply with this rule in addition to
39 honoring the constitutional rights of the accused. The fact
40 that a communication does not violate a state or federal
41 constitutional right is insufficient to establish that the
42 communication is permissible under this rule.

1 [6] A lawyer who is uncertain whether a
2 communication with a represented person is permissible
3 may seek a court order. A lawyer may also seek a court order
4 in exceptional circumstances to authorize a communication
5 that would otherwise be prohibited by this rule, for example,
6 where communication with a person represented by counsel
7 is necessary to avoid reasonably certain injury.

8 [7] In the case of a represented organization, this rule
9 prohibits communications with a constituent of the
10 organization who supervises, directs, or regularly consults
11 with the organization's lawyer concerning the matter or has
12 authority to obligate the organization with respect to the
13 matter or whose act or omission in connection with the
14 matter may be imputed to the organization for purposes of
15 civil or criminal liability. Consent of the organization's lawyer
16 is not required for communication with a former constituent.
17 If a constituent of the organization is represented in the
18 matter by his or her own counsel, the consent by that
19 counsel to a communication will be sufficient for purposes of
20 this rule. *Compare* rule 32:3.4(f). In communicating with a
21 current or former constituent of an organization, a lawyer
22 must not use methods of obtaining evidence that violate the
23 legal rights of the organization. *See* rule 32:4.4.

24 [8] The prohibition on communications with a
25 represented person only applies in circumstances where the
26 lawyer knows that the person is in fact represented in the
27 matter to be discussed. This means that the lawyer has
28 actual knowledge of the fact of the representation; but such
29 actual knowledge may be inferred from the circumstances.
30 *See* rule 32:1.0(f). Thus, the lawyer cannot evade the
31 requirement of obtaining the consent of counsel by closing
32 eyes to the obvious.

33 [9] In the event the person with whom the lawyer
34 communicates is not known to be represented by counsel in
35 the matter, the lawyer's communications are subject to rule
36 32:4.3.

37
38 **RULE 32:4.3: DEALING WITH UNREPRESENTED PERSON**

39
40 **In dealing on behalf of a client with a person who is**
41 **not represented by counsel, a lawyer shall not state or**

1 **imply that the lawyer is disinterested. When the lawyer**
2 **knows or reasonably should know that the unrepresented**
3 **person misunderstands the lawyer's role in the matter,**
4 **the lawyer shall make reasonable efforts to correct the**
5 **misunderstanding. The lawyer shall not give legal advice**
6 **to an unrepresented person, other than the advice to**
7 **secure counsel, if the lawyer knows or reasonably should**
8 **know that the interests of such a person are or have a**
9 **reasonable possibility of being in conflict with the**
10 **interests of the client.**

11
12 **Comment**

13
14 [1] An unrepresented person, particularly one not
15 experienced in dealing with legal matters, might assume that
16 a lawyer is disinterested in loyalties or is a disinterested
17 authority on the law even when the lawyer represents a
18 client. In order to avoid a misunderstanding, a lawyer will
19 typically need to identify the lawyer's client and, where
20 necessary, explain that the client has interests opposed to
21 those of the unrepresented person. For misunderstandings
22 that sometimes arise when a lawyer for an organization deals
23 with an unrepresented constituent, see rule 32:1.13(f).

24 [2] The rule distinguishes between situations involving
25 unrepresented persons whose interests may be adverse to
26 those of the lawyer's client and those in which the person's
27 interests are not in conflict with the client's. In the former
28 situation, the possibility that the lawyer will compromise the
29 unrepresented person's interests is so great that the rule
30 prohibits the giving of any advice, apart from the advice to
31 obtain counsel. Whether a lawyer is giving impermissible
32 advice may depend on the experience and sophistication of
33 the unrepresented person, as well as the setting in which the
34 behavior and comments occur. This rule does not prohibit a
35 lawyer from negotiating the terms of a transaction or settling
36 a dispute with an unrepresented person. So long as the
37 lawyer has explained that the lawyer represents an adverse
38 party and is not representing the person, the lawyer may
39 inform the person of the terms on which the lawyer's client
40 will enter into an agreement or settle a matter, prepare
41 documents that require the person's signature, and explain
42 the lawyer's own view of the meaning of the document or the
43 lawyer's view of the underlying legal obligations.

1
2 **RULE 32:4.4: RESPECT FOR RIGHTS OF THIRD**
3 **PERSONS**

4 **(a) In representing a client, a lawyer shall not use**
5 **means that have no substantial purpose other than to**
6 **embarrass, delay, or burden a third person, or use**
7 **methods of obtaining evidence that violate the legal**
8 **rights of such a person.**

9 **(b) A lawyer who receives a document relating to**
10 **the representation of the lawyer's client and knows or**
11 **reasonably should know that the document was**
12 **inadvertently sent shall promptly notify the sender.**

13 **Comment**

14 [1] Responsibility to a client requires a lawyer to
15 subordinate the interests of others to those of the client, but
16 that responsibility does not imply that a lawyer may
17 disregard the rights of third persons. It is impractical to
18 catalogue all such rights, but they include legal restrictions
19 on methods of obtaining evidence from third persons and
20 unwarranted intrusions into privileged relationships, such
21 as the client-lawyer relationship. For example, present or
22 former organizational employees or agents may have
23 information protected by the attorney-client evidentiary
24 privilege or the work product doctrine of the organization
25 itself. If the person contacted by the lawyer has no authority
26 to waive the privilege, the lawyer may not deliberately seek to
27 obtain the information in this manner.

28 [2] Paragraph (b) recognizes that lawyers sometimes
29 receive documents that were mistakenly sent or produced by
30 opposing parties or their lawyers. If a lawyer knows or
31 reasonably should know that such a document was sent
32 inadvertently, then this rule requires the lawyer to promptly
33 notify the sender in order to permit that person to take
34 protective measures. Whether the lawyer is required to take
35 additional steps, such as returning the original document, is
36 a matter of law beyond the scope of these rules, as is the
37 question of whether the privileged status of a document has
38 been waived. Similarly, this rule does not address the legal
39 duties of a lawyer who receives a document that the lawyer
40 knows or reasonably should know may have been wrongfully

1 obtained by the sending person. For purposes of this rule,
2 "document" includes e-mail or other electronic modes of
3 transmission subject to being read or put into readable form.

4 [3] Some lawyers may choose to return a document
5 unread, for example, when the lawyer learns before receiving
6 the document that it was inadvertently sent to the wrong
7 address. Where a lawyer is not required by applicable law to
8 do so, the decision to voluntarily return such a document is
9 a matter of professional judgment ordinarily reserved to the
10 lawyer. See rules 32:1.2 and 32:1.4.

11 **LAW FIRMS AND ASSOCIATIONS**

12 **RULE 32:5.1: RESPONSIBILITIES OF PARTNERS,** 13 **MANAGERS, AND SUPERVISORY LAWYERS** 14

15 **(a) A partner in a law firm, and a lawyer who**
16 **individually or together with other lawyers possesses**
17 **comparable managerial authority in a law firm, shall**
18 **make reasonable efforts to ensure that the firm has in**
19 **effect measures giving reasonable assurance that all**
20 **lawyers in the firm conform to the Iowa Rules of**
21 **Professional Conduct.**

22 **(b) A lawyer having direct supervisory authority**
23 **over another lawyer shall make reasonable efforts to**
24 **ensure that the other lawyer conforms to the Iowa Rules**
25 **of Professional Conduct.**

26 **(c) A lawyer shall be responsible for another**
27 **lawyer's violation of the Iowa Rules of Professional**
28 **Conduct if:**

29 **(1) the lawyer orders or, with knowledge of**
30 **the specific conduct, ratifies the conduct involved;**
31 **or**

32 **(2) the lawyer is a partner or has comparable**
33 **managerial authority in the law firm in which the**
34 **other lawyer practices, or has direct supervisory**
35 **authority over the other lawyer, and knows of the**
36 **conduct at a time when its consequences can be**
37 **avoided or mitigated but fails to take reasonable**
38 **remedial action.**

1 **Comment**

2 [1] Paragraph (a) applies to lawyers who have
3 managerial authority over the professional work of a firm.
4 See rule 32:1.0(c). This includes members of a partnership,
5 the shareholders in a law firm organized as a professional
6 corporation, and members of other associations authorized
7 to practice law; lawyers having comparable managerial
8 authority in a legal services organization or a law department
9 of an enterprise or government agency; and lawyers who
10 have intermediate managerial responsibilities in a firm.
11 Paragraph (b) applies to lawyers who have supervisory
12 authority over the work of other lawyers in a firm.

13 [2] Paragraph (a) requires lawyers with managerial
14 authority within a firm to make reasonable efforts to
15 establish internal policies and procedures designed to
16 provide reasonable assurance that all lawyers in the firm will
17 conform to the Iowa Rules of Professional Conduct. Such
18 policies and procedures include those designed to detect and
19 resolve conflicts of interest, identify dates by which actions
20 must be taken in pending matters, account for client funds
21 and property, and ensure that inexperienced lawyers are
22 properly supervised.

23 [3] Other measures that may be required to fulfill the
24 responsibility prescribed in paragraph (a) can depend on the
25 firm's structure and the nature of its practice. In a small firm
26 of experienced lawyers, informal supervision and periodic
27 review of compliance with the required systems ordinarily
28 will suffice. In a large firm, or in practice situations in which
29 difficult ethical problems frequently arise, more elaborate
30 measures may be necessary. Some firms, for example, have a
31 procedure whereby junior lawyers can make confidential
32 referral of ethical problems directly to a designated senior
33 partner or special committee. See rule 32:5.2. Firms,
34 whether large or small, may also rely on continuing legal
35 education in professional ethics. In any event, the ethical
36 atmosphere of a firm can influence the conduct of all its
37 members, and the partners may not assume that all lawyers
38 associated with the firm will inevitably conform to the rules.

39 [4] Paragraph (c) expresses a general principle of
40 personal responsibility for acts of another. See also rule
41 32:8.4(a).

1 [5] Paragraph (c)(2) defines the duty of a partner or
2 other lawyer having comparable managerial authority in a
3 law firm, as well as a lawyer who has direct supervisory
4 authority over performance of specific legal work by another
5 lawyer. Whether a lawyer has supervisory authority in
6 particular circumstances is a question of fact. Partners and
7 lawyers with comparable authority have at least indirect
8 responsibility for all work being done by the firm, while a
9 partner or manager in charge of a particular matter
10 ordinarily also has supervisory responsibility for the work of
11 other firm lawyers engaged in the matter. Appropriate
12 remedial action by a partner or managing lawyer would
13 depend on the immediacy of that lawyer's involvement and
14 the seriousness of the misconduct. A supervisor is required
15 to intervene to prevent avoidable consequences of
16 misconduct if the supervisor knows that the misconduct
17 occurred. Thus, if a supervising lawyer knows that a
18 subordinate misrepresented a matter to an opposing party in
19 negotiation, the supervisor as well as the subordinate has a
20 duty to correct the resulting misapprehension.

21 [6] Professional misconduct by a lawyer under
22 supervision could reveal a violation of paragraph (b) on the
23 part of the supervisory lawyer even though it does not entail
24 a violation of paragraph (c) because there was no direction,
25 ratification, or knowledge of the violation.

26 [7] Apart from this rule and rule 32:8.4(a), a lawyer
27 does not have disciplinary liability for the conduct of a
28 partner, associate, or subordinate. Whether a lawyer may be
29 liable civilly or criminally for another lawyer's conduct is a
30 question of law beyond the scope of these rules.

31 [8] The duties imposed by this rule on managing and
32 supervising lawyers do not alter the personal duty of each
33 lawyer in a firm to abide by the Iowa Rules of Professional
34 Conduct. See rule 32:5.2(a).

35
36 **RULE 32:5.2: RESPONSIBILITIES OF A**
37 **SUBORDINATE LAWYER**

38
39 **(a) A lawyer is bound by the Iowa Rules of**
40 **Professional Conduct notwithstanding that the lawyer**
41 **acted at the direction of another person.**

1
2 **(b) A subordinate lawyer does not violate the Iowa**
3 **Rules of Professional Conduct if that lawyer acts in**
4 **accordance with a supervisory lawyer's reasonable**
5 **resolution of an arguable question of professional duty.**
6

7 **Comment**
8

9 [1] Although a lawyer is not relieved of responsibility
10 for a violation by the fact that the lawyer acted at the
11 direction of a supervisor, that fact may be relevant in
12 determining whether a lawyer had the knowledge required to
13 render conduct a violation of the rules. For example, if a
14 subordinate filed a frivolous pleading at the direction of a
15 supervisor, the subordinate would not be guilty of a
16 professional violation unless the subordinate knew of the
17 document's frivolous character.
18

19 [2] When lawyers in a supervisor-subordinate
20 relationship encounter a matter involving professional
21 judgment as to ethical duty, the supervisor may assume
22 responsibility for making the judgment. Otherwise a
23 consistent course of action or position could not be taken. If
24 the question can reasonably be answered only one way, the
25 duty of both lawyers is clear and they are equally responsible
26 for fulfilling it. However, if the question is reasonably
27 arguable, someone has to decide upon the course of action.
28 That authority ordinarily reposes in the supervisor, and a
29 subordinate may be guided accordingly. For example, if a
30 question arises whether the interests of two clients conflict
31 under rule 32:1.7, the supervisor's reasonable resolution of
32 the question should protect the subordinate professionally if
33 the resolution is subsequently challenged.
34
35

36 **RULE 32:5.3: RESPONSIBILITIES REGARDING**
37 **NONLAWYER ASSISTANTS**

38 **With respect to a nonlawyer employed or retained**
39 **by or associated with a lawyer:**

40 **(a) a partner, and a lawyer who individually or**
41 **together with other lawyers possesses comparable**
42 **managerial authority in a law firm shall make reasonable**
43 **efforts to ensure that the firm has in effect measures**
44 **giving reasonable assurance that the person's conduct is**

1 **compatible with the professional obligations of the**
2 **lawyer;**

3 **(b) a lawyer having direct supervisory authority**
4 **over the nonlawyer shall make reasonable efforts to**
5 **ensure that the person's conduct is compatible with the**
6 **professional obligations of the lawyer; and**

7 **(c) a lawyer shall be responsible for conduct of such**
8 **a person that would be a violation of the Iowa Rules of**
9 **Professional Conduct if engaged in by a lawyer if:**

10 **(1) the lawyer orders or, with the knowledge**
11 **of the specific conduct, ratifies the conduct**
12 **involved; or**

13 **(2) the lawyer is a partner or has comparable**
14 **managerial authority in the law firm in which the**
15 **person is employed, or has direct supervisory**
16 **authority over the person, and knows of the**
17 **conduct at a time when its consequences can be**
18 **avoided or mitigated but fails to take reasonable**
19 **remedial action.**

20 **Comment**

21 [1] Lawyers generally employ assistants in their
22 practice, including secretaries, investigators, law student
23 interns, and paraprofessionals. Such assistants, whether
24 employees or independent contractors, act for the lawyer in
25 rendition of the lawyer's professional services. A lawyer must
26 give such assistants appropriate instruction and supervision
27 concerning the ethical aspects of their employment,
28 particularly regarding the obligation not to disclose
29 information relating to representation of the client, and
30 should be responsible for their work product. The measures
31 employed in supervising nonlawyers should take account of
32 the fact that they do not have legal training and are not
33 subject to professional discipline.

34 [2] Paragraph (a) requires lawyers with managerial
35 authority within a law firm to make reasonable efforts to
36 establish internal policies and procedures designed to
37 provide reasonable assurance that nonlawyers in the firm
38 will act in a way compatible with the Iowa Rules of
39 Professional Conduct. See comment [1] to rule 32:5.1.

1 Paragraph (b) applies to lawyers who have supervisory
2 authority over the work of a nonlawyer. Paragraph (c)
3 specifies the circumstances in which a lawyer is responsible
4 for conduct of a nonlawyer that would be a violation of the
5 Iowa Rules of Professional Conduct if engaged in by a lawyer.

6
7 **RULE 32:5.4: PROFESSIONAL INDEPENDENCE**
8 **OF A LAWYER**
9

10 **(a) A lawyer or law firm shall not share legal fees**
11 **with a nonlawyer, except that:**

12
13 **(1) an agreement by a lawyer with the**
14 **lawyer's firm, partner, or associate may provide for**
15 **the payment of money, over a reasonable period of**
16 **time after the lawyer's death, to the lawyer's estate**
17 **or to one or more specified persons;**

18
19 **(2) a lawyer who purchases the practice of a**
20 **deceased, disabled, or disappeared lawyer may,**
21 **pursuant to the provisions of rule 32:1.17, pay to**
22 **the estate or other representative of that lawyer**
23 **the agreed-upon purchase price; and**

24
25 **(3) a lawyer or law firm may include**
26 **nonlawyer employees in a compensation or**
27 **retirement plan, even though the plan is based in**
28 **whole or in part on a profit-sharing arrangement.**

29 **(b) A lawyer shall not form a partnership with a**
30 **nonlawyer if any of the activities of the partnership**
31 **consist of the practice of law.**

32 **(c) A lawyer shall not permit a person who**
33 **recommends, employs, or pays the lawyer to render legal**
34 **services for another to direct or regulate the lawyer's**
35 **professional judgment in rendering such legal services.**

36 **(d) A lawyer shall not practice with or in the form**
37 **of a professional corporation or association authorized to**
38 **practice law for a profit, if:**

39 **(1) a nonlawyer owns any interest therein,**
40 **except that a fiduciary representative of the estate**

1 **of a lawyer may hold the stock or interest of the**
2 **lawyer for a reasonable time during administration;**

3 **(2) a nonlawyer is a corporate director or**
4 **officer thereof or occupies the position of similar**
5 **responsibility in any form of association other than**
6 **a corporation; or**

7 **(3) a nonlawyer has the right to direct or**
8 **control the professional judgment of a lawyer.**

9 **Comment**

10 [1] The provisions of this rule express traditional
11 limitations on sharing fees. These limitations are to protect
12 the lawyer's professional independence of judgment. Where
13 someone other than the client pays the lawyer's fee or salary,
14 or recommends employment of the lawyer, that arrangement
15 does not modify the lawyer's obligation to the client. As
16 stated in paragraph (c), such arrangements should not
17 interfere with the lawyer's professional judgment.

18 [2] This rule also expresses traditional limitations on
19 permitting a third party to direct or regulate the lawyer's
20 professional judgment in rendering legal services to another.
21 *See also* rule 32:1.8(f) (lawyer may accept compensation from
22 a third party as long as there is no interference with the
23 lawyer's independent professional judgment and the client
24 gives informed consent).

25
26 **RULE 32:5.5: UNAUTHORIZED PRACTICE OF LAW;**
27 **MULTIJURISDICTIONAL PRACTICE OF LAW**

28 **(a) A lawyer shall not practice law in a jurisdiction**
29 **in violation of the regulation of the legal profession in**
30 **that jurisdiction, or assist another in doing so.**

31 **(b) A lawyer who is not admitted to practice in this**
32 **jurisdiction shall not:**

33 **(1) except as authorized by these rules or**
34 **other law, establish an office or other systematic**
35 **and continuous presence in this jurisdiction for**
36 **the practice of law; or**

1 **(2) hold out to the public or otherwise**
2 **represent that the lawyer is admitted to practice**
3 **law in this jurisdiction.**

4 **(c) A lawyer admitted in another United States**
5 **jurisdiction, and not disbarred or suspended from**
6 **practice in any jurisdiction, may provide legal services**
7 **on a temporary basis in this jurisdiction that:**

8 **(1) are undertaken in association with a**
9 **lawyer who is admitted to practice in this**
10 **jurisdiction and who actively participates in the**
11 **matter;**

12 **(2) are in or reasonably related to a pending**
13 **or potential proceeding before a tribunal in this or**
14 **another jurisdiction, if the lawyer, or a person the**
15 **lawyer is assisting, is authorized by law or order to**
16 **appear in such proceeding or reasonably expects to**
17 **be so authorized;**

18 **(3) are in or reasonably related to a pending**
19 **or potential arbitration, mediation, or other**
20 **alternative dispute resolution proceeding in this or**
21 **another jurisdiction, if the services arise out of or**
22 **are reasonably related to the lawyer's practice in a**
23 **jurisdiction in which the lawyer is admitted to**
24 **practice and are not services for which the forum**
25 **requires pro hac vice admission; or**

26 **(4) are not within paragraphs (c)(2) or (c)(3)**
27 **and arise out of or are reasonably related to the**
28 **lawyer's practice in a jurisdiction in which the**
29 **lawyer is admitted to practice.**

30 **(d) A lawyer admitted in another United States**
31 **jurisdiction, and not disbarred or suspended from**
32 **practice in any jurisdiction, may provide legal services**
33 **in this jurisdiction that:**

34 **(1) are provided to the lawyer's employer or**
35 **its organizational affiliates and are not services for**
36 **which the forum requires pro hac vice admission;**
37 **or**

1 **(2) are services that the lawyer is authorized**
2 **to provide by federal law or other law of this**
3 **jurisdiction.**

4 **Comment**

5 [1] A lawyer may practice law only in a jurisdiction in
6 which the lawyer is authorized to practice. A lawyer may be
7 admitted to practice law in a jurisdiction on a regular basis
8 or may be authorized by court rule or order or by law to
9 practice for a limited purpose or on a restricted basis.
10 Paragraph (a) applies to unauthorized practice of law by a
11 lawyer, whether through the lawyer's direct action or by the
12 lawyer assisting another person.

13 [2] The definition of the practice of law is established
14 by law and varies from one jurisdiction to another. Whatever
15 the definition, limiting the practice of law to members of the
16 bar protects the public against rendition of legal services by
17 unqualified persons. This rule does not prohibit a lawyer
18 from employing the services of paraprofessionals and
19 delegating functions to them, so long as the lawyer
20 supervises the delegated work and retains responsibility for
21 their work. *See* rule 32:5.3.

22 [3] A lawyer may provide professional advice and
23 instruction to nonlawyers whose employment requires
24 knowledge of the law; for example, claims adjusters,
25 employees of financial or commercial institutions, social
26 workers, accountants, and persons employed in government
27 agencies. Lawyers also may assist independent nonlawyers,
28 such as paraprofessionals, who are authorized by the law of
29 a jurisdiction to provide particular law-related services. In
30 addition, a lawyer may counsel nonlawyers who wish to
31 proceed *pro se*.

32 [4] Other than as authorized by law or this rule, a
33 lawyer who is not admitted to practice generally in this
34 jurisdiction violates paragraph (b) if the lawyer establishes
35 an office or other systematic and continuous presence in this
36 jurisdiction for the practice of law. Presence may be
37 systematic and continuous even if the lawyer is not
38 physically present here. Such a lawyer must not hold out to
39 the public or otherwise represent that the lawyer is admitted
40 to practice law in this jurisdiction. *See also* rules 32:7.1(a)
41 and 32:7.5(b).

1 [5] There are occasions in which a lawyer admitted to
2 practice in another United States jurisdiction, and not
3 disbarred or suspended from practice in any jurisdiction,
4 may provide legal services on a temporary basis in this
5 jurisdiction under circumstances that do not create an
6 unreasonable risk to the interests of the lawyer's clients, the
7 public, or the courts. Paragraph (c) identifies four such
8 circumstances. The fact that conduct is not so identified
9 does not imply that the conduct is or is not authorized. With
10 the exception of paragraphs (d)(1) and (d)(2), this rule does
11 not authorize a lawyer to establish an office or other
12 systematic and continuous presence in this jurisdiction
13 without being admitted to practice generally here.

14 [6] There is no single test to determine whether a
15 lawyer's services are provided on a "temporary basis" in this
16 jurisdiction, and may therefore be permissible under
17 paragraph (c). Services may be "temporary" even though the
18 lawyer provides services in this jurisdiction on a recurring
19 basis, or for an extended period of time, as when the lawyer
20 is representing a client in a single lengthy negotiation or
21 litigation.

22 [7] Paragraphs (c) and (d) apply to lawyers who are
23 admitted to practice law in any United States jurisdiction,
24 which includes the District of Columbia and any state,
25 territory, or commonwealth of the United States. The word
26 "admitted" in paragraph (c) contemplates that the lawyer is
27 authorized to practice in the jurisdiction in which the lawyer
28 is admitted and excludes a lawyer who, while technically
29 admitted, is not authorized to practice because, for example,
30 the lawyer is on inactive status.

31 [8] Paragraph (c)(1) recognizes that the interests of
32 clients and the public are protected if a lawyer admitted only
33 in another jurisdiction associates with a lawyer licensed to
34 practice in this jurisdiction. For this paragraph to apply,
35 however, the lawyer admitted to practice in this jurisdiction
36 must actively participate in and share responsibility for the
37 representation of the client.

38 [9] Lawyers not admitted to practice generally in a
39 jurisdiction may be authorized by law or order of a tribunal
40 or an administrative agency to appear before the tribunal or
41 agency. This authority may be granted pursuant to formal
42 rules governing admission pro hac vice or pursuant to

1 informal practice of the tribunal or agency. Under paragraph
2 (c)(2), a lawyer does not violate this rule when the lawyer
3 appears before a tribunal or agency pursuant to such
4 authority. To the extent that a court rule or other law of this
5 jurisdiction requires a lawyer who is not admitted to practice
6 in this jurisdiction to obtain admission pro hac vice before
7 appearing before a tribunal or administrative agency, this
8 rule requires the lawyer to obtain that authority.

9 [10] Paragraph (c)(2) also provides that a lawyer
10 rendering services in this jurisdiction on a temporary basis
11 does not violate this rule when the lawyer engages in
12 conduct in anticipation of a proceeding or hearing in a
13 jurisdiction in which the lawyer is authorized to practice law
14 or in which the lawyer reasonably expects to be admitted pro
15 hac vice. Examples of such conduct include meetings with
16 the client, interviews of potential witnesses, and the review of
17 documents. Similarly, a lawyer admitted only in another
18 jurisdiction may engage in conduct temporarily in this
19 jurisdiction in connection with pending litigation in another
20 jurisdiction in which the lawyer is or reasonably expects to
21 be authorized to appear, including taking depositions in this
22 jurisdiction.

23 [11] When a lawyer has been or reasonably expects to
24 be admitted to appear before a court or administrative
25 agency, paragraph (c)(2) also permits conduct by lawyers
26 who are associated with that lawyer in the matter, but who
27 do not expect to appear before the court or administrative
28 agency. For example, subordinate lawyers may conduct
29 research, review documents, and attend meetings with
30 witnesses in support of the lawyer responsible for the
31 litigation.

32 [12] Paragraph (c)(3) permits a lawyer admitted to
33 practice law in another jurisdiction to perform services on a
34 temporary basis in this jurisdiction if those services are in or
35 reasonably related to a pending or potential arbitration,
36 mediation, or other alternative dispute resolution proceeding
37 in this or another jurisdiction, if the services arise out of or
38 are reasonably related to the lawyer's practice in a
39 jurisdiction in which the lawyer is admitted to practice. The
40 lawyer, however, must obtain admission pro hac vice in the
41 case of a court-annexed arbitration or mediation or
42 otherwise if court rules or law so require.

1 [13] Paragraph (c)(4) permits a lawyer admitted in
2 another jurisdiction to provide certain legal services on a
3 temporary basis in this jurisdiction that arise out of or are
4 reasonably related to the lawyer's practice in a jurisdiction in
5 which the lawyer is admitted but are not within paragraphs
6 (c)(2) or (c)(3). These services include both legal services and
7 services that nonlawyers may perform but that are
8 considered the practice of law when performed by lawyers.

9 [14] Paragraphs (c)(3) and (c)(4) require that the
10 services arise out of or be reasonably related to the lawyer's
11 practice in a jurisdiction in which the lawyer is admitted. A
12 variety of factors evidence such a relationship. The lawyer's
13 client may have been previously represented by the lawyer,
14 or may be resident in or have substantial contacts with the
15 jurisdiction in which the lawyer is admitted. The matter,
16 although involving other jurisdictions, may have a significant
17 connection with that jurisdiction. In other cases, significant
18 aspects of the lawyer's work might be conducted in that
19 jurisdiction or a significant aspect of the matter may involve
20 the law of that jurisdiction. The necessary relationship might
21 arise when the client's activities or the legal issues involve
22 multiple jurisdictions, such as when the officers of a
23 multinational corporation survey potential business sites
24 and seek the services of their lawyer in assessing the relative
25 merits of each. In addition, the services may draw on the
26 lawyer's recognized expertise developed through the regular
27 practice of law on behalf of clients in matters involving a
28 particular body of federal, nationally uniform, foreign, or
29 international law.

30 [15] Paragraph (d) identifies two circumstances in
31 which a lawyer who is admitted to practice in another United
32 States jurisdiction, and is not disbarred or suspended from
33 practice in any jurisdiction, may establish an office or other
34 systematic and continuous presence in this jurisdiction for
35 the practice of law as well as provide legal services on a
36 temporary basis. Except as provided in paragraphs (d)(1) and
37 (d)(2), a lawyer who is admitted to practice law in another
38 jurisdiction and who establishes an office or other systematic
39 or continuous presence in this jurisdiction must become
40 admitted to practice law generally in this jurisdiction.

41 [16] Paragraph (d)(1) applies to a lawyer who is
42 employed by a client to provide legal services to the client or
43 its organizational affiliates, i.e., entities that control, are

1 controlled by, or are under common control with the
2 employer. This paragraph does not authorize the provision of
3 personal legal services to the employer's officers or
4 employees. The paragraph applies to in-house corporate
5 lawyers, government lawyers, and others who are employed
6 to render legal services to the employer. The lawyer's ability
7 to represent the employer outside the jurisdiction in which
8 the lawyer is licensed generally serves the interests of the
9 employer and does not create an unreasonable risk to the
10 client and others because the employer is well situated to
11 assess the lawyer's qualifications and the quality of the
12 lawyer's work.

13 [17] If an employed lawyer establishes an office or
14 other systematic and continuous presence in this
15 jurisdiction for the purpose of rendering legal services to the
16 employer, the lawyer must register and follow the
17 requirements of Iowa Court Rule 31.16.

18 [18] Paragraph (d)(2) recognizes that a lawyer may
19 provide legal services in a jurisdiction in which the lawyer is
20 not licensed when authorized to do so by federal or other
21 law, which includes statute, court rule, executive regulation,
22 or judicial precedent.

23 [19] A lawyer who practices law in this jurisdiction
24 pursuant to paragraphs (c) or (d) or otherwise is subject to
25 the disciplinary authority of this jurisdiction. *See* rule
26 32:8.5(a).

27 [20] In some circumstances, a lawyer who practices
28 law in this jurisdiction pursuant to paragraphs (c) or (d) may
29 have to inform the client that the lawyer is not licensed to
30 practice law in this jurisdiction. For example, that may be
31 required when the representation occurs primarily in this
32 jurisdiction and requires knowledge of the law of this
33 jurisdiction. *See* rule 32:1.4(b).

34 [21] Paragraphs (c) and (d) do not authorize
35 communications advertising legal services to prospective
36 clients in this jurisdiction by lawyers who are admitted to
37 practice in other jurisdictions. Whether and how lawyers
38 may communicate the availability of their services to
39 prospective clients in this jurisdiction is governed by rules
40 32:7.1 to 32:7.5, 32:7.7, and 32:7.8.

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RULE 32:5.6: RESTRICTIONS ON RIGHT TO PRACTICE

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A lawyer shall not participate in offering or making:

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(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

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(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

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Comment

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[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

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[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

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[3] This rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to rule 32:1.17.

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RULE 32:5.7: RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

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(a) A lawyer shall be subject to the Iowa Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

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(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

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1 **(2) in other circumstances by an entity**
2 **controlled by the lawyer individually or with others**
3 **if the lawyer fails to take reasonable measures to**
4 **ensure that a person obtaining the law-related**
5 **services knows that the services are not legal**
6 **services and that the protections of the client-**
7 **lawyer relationship do not exist.**

8 **(b) The term "law-related services" denotes services**
9 **that might reasonably be performed in conjunction with**
10 **and in substance are related to the provision of legal**
11 **services, and that are not prohibited as unauthorized**
12 **practice of law when provided by a nonlawyer.**

13 **Comment**

14 [1] When a lawyer performs law-related services or
15 controls an organization that does so, there exists the
16 potential for ethical problems. Principal among these is the
17 possibility that the person for whom the law-related services
18 are performed fails to understand that the services may not
19 carry with them the protections normally afforded as part of
20 the client-lawyer relationship. The recipient of the law-
21 related services may expect, for example, that the protection
22 of client confidences, prohibitions against representation of
23 persons with conflicting interests, and obligations of a lawyer
24 to maintain professional independence apply to the provision
25 of law-related services when that may not be the case.

26 [2] Rule 32:5.7 applies to the provision of law-related
27 services by a lawyer even when the lawyer does not provide
28 any legal services to the person for whom the law-related
29 services are performed and whether the law-related services
30 are performed through a law firm or a separate entity. The
31 rule identifies the circumstances in which all of the Iowa
32 Rules of Professional Conduct apply to the provision of law-
33 related services. Even when those circumstances do not
34 exist, however, the conduct of a lawyer involved in the
35 provision of law-related services is subject to those rules that
36 apply generally to lawyer conduct, regardless of whether the
37 conduct involves the provision of legal services. *See, e.g.*, rule
38 32:8.4.

39 [3] When law-related services are provided by a lawyer
40 under circumstances that are not distinct from the lawyer's
41 provision of legal services to clients, the lawyer in providing

1 the law-related services must adhere to the requirements of
2 the Iowa Rules of Professional Conduct as provided in
3 paragraph (a)(1). Even when the law-related and legal
4 services are provided in circumstances that are distinct from
5 each other, for example through separate entities or different
6 support staff within the law firm, the Iowa Rules of
7 Professional Conduct apply to the lawyer as provided in
8 paragraph (a)(2) unless the lawyer takes reasonable
9 measures to ensure that the recipient of the law-related
10 services knows that the services are not legal services and
11 that the protections of the client-lawyer relationship do not
12 apply.

13 [4] Law-related services also may be provided through
14 an entity that is distinct from that through which the lawyer
15 provides legal services. If the lawyer individually or with
16 others has control of such an entity's operations, the rule
17 requires the lawyer to take reasonable measures to ensure
18 that each person using the services of the entity knows that
19 the services provided by the entity are not legal services and
20 that the Iowa Rules of Professional Conduct that relate to the
21 client-lawyer relationship do not apply. A lawyer's control of
22 an entity extends to the ability to direct its operation.
23 Whether a lawyer has such control will depend upon the
24 circumstances of the particular case.

25 [5] When a client-lawyer relationship exists with a
26 person who is referred by a lawyer to a separate law-related
27 service entity controlled by the lawyer, individually or with
28 others, the lawyer must comply with rule 32:1.8(a).

29 [6] In taking the reasonable measures referred to in
30 paragraph (a)(2) to ensure that a person using law-related
31 services understands the practical effect or significance of
32 the inapplicability of the Iowa Rules of Professional Conduct,
33 the lawyer should communicate to the person receiving the
34 law-related services, in a manner sufficient to ensure that
35 the person understands the significance of the fact, that the
36 relationship of the person to the business entity will not be a
37 client-lawyer relationship. The communication should be
38 made before entering into an agreement for provision of or
39 providing law-related services, and preferably should be in
40 writing.

41 [7] The burden is upon the lawyer to show that the
42 lawyer has taken reasonable measures under the

1 circumstances to communicate the desired understanding.
2 For instance, a sophisticated user of law-related services,
3 such as a publicly held corporation, may require a lesser
4 explanation than someone unaccustomed to making
5 distinctions between legal services and law-related services.

6 [8] Regardless of the sophistication of potential
7 recipients of law-related services, a lawyer should take
8 special care to keep separate the provision of law-related and
9 legal services in order to minimize the risk that the recipient
10 will assume that the law-related services are legal services.
11 The risk of such confusion is especially acute when the
12 lawyer renders both types of services with respect to the
13 same matter. Under some circumstances the legal and law-
14 related services may be so closely entwined that they cannot
15 be distinguished from each other, and the requirement of
16 disclosure and consultation imposed by paragraph (a)(2)
17 of the rule cannot be met. In such a case a lawyer will be
18 responsible for ensuring that both the lawyer's conduct and,
19 to the extent required by rule 32:5.3, that of nonlawyer
20 employees in the distinct entity that the lawyer controls
21 comply in all respects with the Iowa Rules of Professional
22 Conduct.

23 [9] A broad range of economic and other interests of
24 clients may be served by lawyers' engaging in the delivery of
25 law-related services. Examples of law-related services
26 include providing financial planning, accounting, economic
27 analysis, social work, psychological counseling, and non-
28 legal consulting such as engineering, medical, or
29 environmental consulting.

30 [10] When a lawyer is obliged to accord the recipients
31 of such services the protections of those rules that apply to
32 the client-lawyer relationship, the lawyer must take special
33 care to heed the proscriptions of the rules addressing conflict
34 of interest (rules 32:1.7 through 32:1.11, especially rules
35 32:1.7(a)(2) and 32:1.8(a), (b), and (f)), and to scrupulously
36 adhere to the requirements of rule 32:1.6 relating to
37 disclosure of confidential information. The promotion of the
38 law-related services must also in all respects comply with
39 rules 32:7.1 through 32:7.5, 32:7.7, and 32:7.8, dealing with
40 advertising and solicitation. In that regard, lawyers should
41 take special care to identify the obligations that may be
42 imposed as a result of this state's decisional law.

1 [11] When the full protections of all of the Iowa Rules
2 of Professional Conduct do not apply to the provision of law-
3 related services, principles of law external to the rules, for
4 example, the law of principal and agent, govern the legal
5 duties owed to those receiving the services. Those other legal
6 principles may establish a different degree of protection for
7 the recipient with respect to confidentiality of information,
8 conflicts of interest, and permissible business relationships
9 with clients. *See also* rule 32:8.4 (Misconduct).

10 [12] Certain services that may be performed by
11 nonlawyers nonetheless are treated as the practice of law in
12 Iowa when performed by lawyers, including consummation
13 of real estate transactions, preparation of tax returns,
14 legislative lobbying, and estate planning. *See* rule 32:3.9,
15 cmt. [4]; Iowa Ct. R. 37.5. Accordingly, the lawyer providing
16 such services must at all times and under all circumstances
17 comply fully with the Iowa Rules of Professional Conduct.
18
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21 ***PUBLIC SERVICE***

22 **RULE 32:6.1: VOLUNTARY PRO BONO PUBLICO SERVICE**

24 **Every lawyer has a professional responsibility to**
25 **provide legal services to those unable to pay. A lawyer**
26 **should aspire to render at least 50 hours of pro bono**
27 **publico legal services per year. In fulfilling this**
28 **responsibility, the lawyer should:**

29 **(a) provide a substantial majority of the 50 hours of**
30 **legal services without fee or expectation of fee to:**

31 **(1) persons of limited means or**

32 **(2) charitable, religious, civic, community,**
33 **governmental, and educational organizations in**
34 **matters that are designed primarily to address the**
35 **needs of persons of limited means; and**

36 **(b) provide any additional services through:**

37 **(1) delivery of legal services at no fee or**
38 **substantially reduced fee to individuals, groups, or**

1 **organizations seeking to secure or protect civil**
2 **rights, civil liberties, or public rights, or charitable,**
3 **religious, civic, community, governmental, and**
4 **educational organizations in matters in**
5 **furtherance of their organizational purposes, where**
6 **the payment of standard legal fees would**
7 **significantly deplete the organization's economic**
8 **resources or would be otherwise inappropriate;**

9 **(2) delivery of legal services at a substantially**
10 **reduced fee to persons of limited means; or**

11 **(3) participation in activities for improving the**
12 **law, the legal system, or the legal profession.**

13 **In addition, a lawyer should voluntarily contribute**
14 **financial support to organizations that provide legal**
15 **services to persons of limited means.**

16 **Comment**

17 [1] Every lawyer, regardless of professional prominence
18 or professional work load, has a responsibility to provide
19 legal services to those unable to pay, and personal
20 involvement in the problems of the disadvantaged can be one
21 of the most rewarding experiences in the life of a lawyer. It is
22 recognized that in some years a lawyer may render greater or
23 fewer hours than the annual standard specified, but during
24 the course of his or her legal career, each lawyer should
25 render on average per year, the number of hours set forth in
26 this rule. Services can be performed in civil matters or in
27 criminal or quasi-criminal matters for which there is no
28 government obligation to provide funds for legal
29 representation.

30 [2] Paragraphs (a)(1) and (2) recognize the critical need
31 for legal services that exists among persons of limited means
32 by providing that a substantial majority of the legal services
33 rendered annually to the disadvantaged be furnished
34 without fee or expectation of fee. Legal services under these
35 paragraphs consist of a full range of activities, including
36 individual and class representation, the provision of legal
37 advice, legislative lobbying, administrative rule making, and
38 the provision of free training or mentoring to those who
39 represent persons of limited means. The variety of these
40 activities should facilitate participation by government

1 lawyers, even when restrictions exist on their engaging in the
2 outside practice of law.

3 [3] Persons eligible for legal services under paragraphs
4 (a)(1) and (2) are those who qualify for participation in
5 programs funded by the Legal Services Corporation or by the
6 Iowa Lawyer Trust Account Commission, or other
7 comparable non-profit programs offering legal services to the
8 economically disadvantaged, and those whose incomes and
9 financial resources are slightly above the guidelines utilized
10 by such programs but, nevertheless, cannot afford counsel.
11 Legal services can be rendered to individuals or to
12 organizations such as homeless shelters, battered women's
13 centers, and food pantries that serve those of limited means.
14 The term "governmental organizations" includes, but is not
15 limited to, public protection programs and sections of
16 governmental or public sector agencies.

17 [4] Because service must be provided without fee or
18 expectation of fee, the intent of the lawyer to render free legal
19 services is essential for the work performed to fall within the
20 meaning of paragraphs (a)(1) and (2). Accordingly, services
21 rendered cannot be considered pro bono if an anticipated fee
22 is uncollected, but the award of statutory attorneys' fees in a
23 case originally accepted as pro bono would not disqualify
24 such services from inclusion under this section. Lawyers
25 who do receive fees in such cases are encouraged to
26 contribute an appropriate portion of such fees to
27 organizations or projects that benefit persons of limited
28 means.

29 [5] While it is possible for a lawyer to fulfill the annual
30 responsibility to perform pro bono services exclusively
31 through activities described in paragraphs (a)(1) and (2), to
32 the extent that any hours of service remained unfulfilled, the
33 remaining commitment can be met in a variety of ways as set
34 forth in paragraph (b). Constitutional, statutory, or
35 regulatory restrictions may prohibit or impede government
36 and public sector lawyers and judges from performing the
37 pro bono services outlined in paragraphs (a)(1) and (2) and
38 paragraphs (b)(1) and (2). Accordingly, where those
39 restrictions apply, government and public sector lawyers and
40 judges may fulfill their pro bono responsibility by performing
41 services outlined in paragraph (b)(3), to the extent permitted
42 by such restrictions.

1 [6] Paragraph (b)(1) includes the provision of certain
2 types of legal services to those whose incomes and financial
3 resources place them above limited means. It also permits
4 the pro bono lawyer to accept a substantially reduced fee for
5 services. Examples of the types of issues that may be
6 addressed under this paragraph include First Amendment
7 claims, Title VII claims, and environmental protection
8 claims. Additionally, a wide range of organizations may be
9 represented, including social service, medical research,
10 cultural, and religious groups.

11 [7] Paragraph (b)(2) covers instances in which lawyers
12 agree to and receive a modest fee for furnishing legal services
13 to persons of limited means. Participation in judicare
14 programs and acceptance of court appointments in which
15 the fee is substantially below a lawyer's usual rate are
16 encouraged under this paragraph.

17 [8] Paragraph (b)(3) recognizes the value of lawyers
18 engaging in activities that improve the law, the legal system
19 or the legal profession. Serving on bar association
20 committees, serving on boards of pro bono or legal services
21 programs, taking part in Law Day activities, acting as a
22 continuing legal education instructor, a mediator or an
23 arbitrator, and engaging in legislative lobbying to improve
24 the law, the legal system, or the profession are a few
25 examples of the many activities that fall within this
26 paragraph.

27 [9] Because the provision of pro bono services is a
28 professional responsibility, it is the individual ethical
29 commitment of each lawyer. Nevertheless, there may be
30 times when it is not feasible for a lawyer to engage in pro
31 bono services. At such times a lawyer may discharge the pro
32 bono responsibility by providing financial support to
33 organizations providing free legal services to persons of
34 limited means. Such financial support should be reasonably
35 equivalent to the value of the hours of service that would
36 have otherwise been provided. In addition, at times it may be
37 more feasible to satisfy the pro bono responsibility
38 collectively, as by a firm's aggregate pro bono activities.

39 [10] Because the efforts of individual lawyers are not
40 enough to meet the need for free legal services that exists
41 among persons of limited means, the government and the
42 profession have instituted additional programs to provide

1 those services. Every lawyer should financially support such
2 programs, in addition to either providing direct pro bono
3 services or making financial contributions when pro bono
4 service is not feasible.

5 [11] Law firms should act reasonably to enable and
6 encourage all lawyers in the firm to provide the pro bono
7 legal services called for by this rule.

8 [12] The responsibility set forth in this rule is not
9 intended to be enforced through disciplinary process.

10
11
12 **RULE 32:6.2: ACCEPTING APPOINTMENTS**

13
14 **A lawyer shall not seek to avoid appointment by a**
15 **tribunal to represent a person except for good cause,**
16 **such as:**

17
18 **(a) representing the client is likely to result in**
19 **violation of the Iowa Rules of Professional Conduct or**
20 **other law;**

21
22 **(b) representing the client is likely to result in an**
23 **unreasonable financial burden on the lawyer; or**

24
25 **(c) the client or the cause is so repugnant to the**
26 **lawyer as to be likely to impair the client-lawyer**
27 **relationship or the lawyer's ability to represent the**
28 **client.**

29
30 **Comment**

31
32 [1] A lawyer ordinarily is not obliged to accept a client
33 whose character or cause the lawyer regards as repugnant.
34 The lawyer's freedom to select clients is, however, qualified.
35 All lawyers have a responsibility to assist in providing pro
36 bono publico service. See rule 32:6.1. An individual lawyer
37 fulfills this responsibility by accepting a fair share of
38 unpopular matters or indigent or unpopular clients. A lawyer
39 may also be subject to appointment by a court to serve
40 unpopular clients or persons unable to afford legal services.
41

1 *Appointed Counsel*
2

3 [2] For good cause a lawyer may seek to decline an
4 appointment to represent a person who cannot afford to
5 retain counsel or whose cause is unpopular. Good cause
6 exists if the lawyer could not handle the matter competently,
7 see rule 32:1.1, or if undertaking the representation would
8 result in an improper conflict of interest, for example, when
9 the client or the cause is so repugnant to the lawyer as to be
10 likely to impair the client-lawyer relationship or the lawyer's
11 ability to represent the client. A lawyer may also seek to
12 decline an appointment if acceptance would be unreasonably
13 burdensome, for example, when it would impose a financial
14 sacrifice so great as to be unjust.
15

16 [3] An appointed lawyer has the same obligations to
17 the client as retained counsel, including the obligations of
18 loyalty and confidentiality, and is subject to the same
19 limitations on the client-lawyer relationship, such as the
20 obligation to refrain from assisting the client in violation of
21 the rules.
22

23
24
25 **RULE 32:6.3: MEMBERSHIP IN LEGAL**
26 **SERVICES ORGANIZATION**
27

28 **A lawyer may serve as a director, officer, or**
29 **member of a legal services organization, apart from the**
30 **law firm in which the lawyer practices, notwithstanding**
31 **that the organization serves persons having interests**
32 **adverse to a client of the lawyer. The lawyer shall not**
33 **knowingly participate in a decision or action of the**
34 **organization:**
35

36 **(a) if participating in the decision or action would**
37 **be incompatible with the lawyer's obligations to a client**
38 **under rule 32:1.7; or**
39

40 **(b) where the decision or action could have a**
41 **material adverse effect on the representation of a client**
42 **of the organization whose interests are adverse to a**
43 **client of the lawyer.**
44

1 **Comment**

2
3 [1] Lawyers should be encouraged to support and
4 participate in legal services organizations. A lawyer who is an
5 officer or a member of such an organization does not thereby
6 have a client-lawyer relationship with persons served by the
7 organization. However, there is potential conflict between the
8 interests of such persons and the interests of the lawyer's
9 clients. If the possibility of such conflict disqualified a lawyer
10 from serving on the board of a legal services organization,
11 the profession's involvement in such organizations would be
12 severely curtailed.

13
14 [2] It may be necessary in appropriate cases to
15 reassure a client of the organization that the representation
16 will not be affected by conflicting loyalties of a member of the
17 board. Established, written policies in this respect can
18 enhance the credibility of such assurances.

19
20
21 **RULE 32:6.4: LAW REFORM ACTIVITIES AFFECTING**
22 **CLIENT INTERESTS**

23 **A lawyer may serve as a director, officer, or member**
24 **of an organization involved in reform of the law or its**
25 **administration notwithstanding that the reform may**
26 **affect the interests of a client of the lawyer. When the**
27 **lawyer knows that the interests of a client may be**
28 **materially benefitted by a decision in which the lawyer**
29 **participates, the lawyer shall disclose that fact but need**
30 **not identify the client.**

31 **Comment**

32 [1] Lawyers involved in organizations seeking law
33 reform generally do not have a client-lawyer relationship
34 with the organization. Otherwise, it might follow that a
35 lawyer could not be involved in a bar association law reform
36 program that might indirectly affect a client. *See also* rule
37 32:1.2(b). For example, a lawyer specializing in antitrust
38 litigation might be regarded as disqualified from participating
39 in drafting revisions of rules governing that subject. In
40 determining the nature and scope of participation in such
41 activities, a lawyer should be mindful of obligations to clients
42 under other rules, particularly rule 32:1.7. A lawyer is
43 professionally obligated to protect the integrity of the

1 program by making an appropriate disclosure within the
2 organization when the lawyer knows a private client might be
3 materially benefitted.

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8 **RULE 32:6.5: NONPROFIT AND COURT-ANNEXED**
9 **LIMITED LEGAL SERVICES PROGRAMS**

10 **(a) A lawyer who, under the auspices of a program**
11 **sponsored by a nonprofit organization or court, provides**
12 **short-term limited legal services to a client without**
13 **expectation by either the lawyer or the client that the**
14 **lawyer will provide continuing representation in the**
15 **matter:**

16 **(1) is subject to rules 32:1.7 and 32:1.9(a)**
17 **only if the lawyer knows that the representation of**
18 **the client involves a conflict of interest; and**

19 **(2) is subject to rule 32:1.10 only if the**
20 **lawyer knows that another lawyer associated with**
21 **the lawyer in a law firm is disqualified by rule**
22 **32:1.7 or 32:1.9(a) with respect to the matter.**

23 **(b) Except as provided in paragraph (a)(2), rule**
24 **32:1.10 is inapplicable to a representation governed by**
25 **this rule.**

26 **Comment**

27 [1] Legal services organizations, courts, and various
28 nonprofit organizations have established programs through
29 which lawyers provide short-term limited legal services—
30 such as advice or the completion of legal forms—that will
31 assist persons to address their legal problems without
32 further representation by a lawyer. In these programs, such
33 as legal-advice hotlines, advice-only clinics, or pro se
34 counseling programs, a client-lawyer relationship is
35 established, but there is no expectation that the lawyer's
36 representation of the client will continue beyond the limited
37 consultation. Such programs are normally operated under
38 circumstances in which it is not feasible for a lawyer to
39 systematically screen for conflicts of interest as is generally

1 required before undertaking a representation. *See, e.g.*, rules
2 32:1.7, 32:1.9, and 32:1.10.

3 [2] A lawyer who provides short-term limited legal
4 services pursuant to this rule must secure the client's
5 informed consent to the limited scope of the representation.
6 *See* rule 32:1.2(c). If a short-term limited representation
7 would not be reasonable under the circumstances, the
8 lawyer may offer advice to the client but must also advise the
9 client of the need for further assistance of counsel. Except as
10 provided in this rule, the Iowa Rules of Professional Conduct,
11 including rules 32:1.6 and 32:1.9(c), are applicable to the
12 limited representation.

13 [3] Because a lawyer who is representing a client in the
14 circumstances addressed by this rule ordinarily is not able
15 to check systematically for conflicts of interest, paragraph (a)
16 requires compliance with rules 32:1.7 or 32:1.9(a) only if the
17 lawyer knows that the representation presents a conflict of
18 interest for the lawyer, and with rule 32:1.10 only if the
19 lawyer knows that another lawyer in the lawyer's firm is
20 disqualified by rules 32:1.7 or 32:1.9(a) in the matter.

21 [4] Because the limited nature of the services
22 significantly reduces the risk of conflicts of interest with
23 other matters being handled by the lawyer's firm, paragraph
24 (b) provides that rule 32:1.10 is inapplicable to a
25 representation governed by this rule except as provided by
26 paragraph (a)(2). Paragraph (a)(2) requires the participating
27 lawyer to comply with rule 32:1.10 when the lawyer knows
28 that the lawyer's firm is disqualified by rules 32:1.7 or
29 32:1.9(a). By virtue of paragraph (b), however, a lawyer's
30 participation in a short-term limited legal services program
31 will not preclude the lawyer's firm from undertaking or
32 continuing the representation of a client with interests
33 adverse to a client being represented under the program's
34 auspices. Nor will the personal disqualification of a lawyer
35 participating in the program be imputed to other lawyers
36 participating in the program.

37 [5] If, after commencing a short-term limited
38 representation in accordance with this rule, a lawyer
39 undertakes to represent the client in the matter on an
40 ongoing basis, rules 32:1.7, 32:1.9(a), and 32:1.10 become
41 applicable.

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INFORMATION ABOUT LEGAL SERVICES

**RULE 32:7.1: COMMUNICATIONS CONCERNING
A LAWYER'S SERVICES**

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not communicate with the public using statements that are unverifiable. In addition, advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services.

Comment

[1] This rule governs all communications about a lawyer's services, including advertising permitted by rule 32:7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful and verifiable.

[2] Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

1 [3] A lawyer should ensure that information contained
2 in any advertising which the lawyer publishes, or causes to
3 be published, is relevant, is dignified, is disseminated in an
4 objective and understandable fashion, and would facilitate
5 the prospective client's ability to make an informed choice
6 about legal representation. A lawyer should strive to
7 communicate such information without undue emphasis
8 upon style and advertising stratagems that hinder rather
9 than facilitate intelligent selection of counsel. Appeal should
10 not be made to the prospective client's emotions, prejudices,
11 or personal likes or dislikes. Care should be exercised to
12 ensure that false hopes of success or undue expectations are
13 not communicated. Only unambiguous information relevant
14 to a layperson's decision regarding legal rights or the
15 selection of counsel, provided in ways that comport with the
16 dignity of the profession and do not demean the
17 administration of justice, is appropriate in public
18 communications.

19 [4] See also rule 32:8.4(e) for the prohibition against
20 stating or implying an ability to influence improperly a
21 government agency or official or to achieve results by means
22 that violate the Iowa Rules of Professional Conduct or other
23 law.

24
25 **RULE 32:7.2: ADVERTISING**

26 **(a) The following communications shall not be**
27 **considered advertising and accordingly are not subject**
28 **to rules 32:7.2, 32:7.3, and 32:7.4: (1) communications**
29 **or solicitations for business between lawyers; (2)**
30 **communications between a lawyer and an existing or**
31 **former client, provided the lawyer does not know or have**
32 **reason to know the attorney-client relationship has been**
33 **terminated; or (3) communications by a lawyer that are**
34 **in reply to a request for information by a member of the**
35 **public that was not prompted by unauthorized**
36 **advertising by the lawyer; information available through**
37 **a hyperlink on a lawyer's Web site shall constitute this**
38 **type of communication. Nonetheless, any brochures or**
39 **pamphlets containing biographical and informational**
40 **data disseminated to existing clients, former clients,**
41 **lawyers, or in response to a request for information by a**

1 member of the public shall include the disclosures
2 required by paragraph (h) when applicable.
3

4 (b) Subject to the limitations contained in these
5 rules, a lawyer may advertise services through written,
6 recorded, or electronic communication, including public
7 media. Any communication made pursuant to this rule
8 shall include the name and office of at least one lawyer
9 or law firm responsible for the content.
10

11 (c) Subject to the limitations contained in these
12 rules, a lawyer licensed to practice law in Iowa may
13 permit the inclusion of the lawyer's name, address,
14 telephone number, and designation as a lawyer, in a
15 telephone or city directory, subject to the following
16 requirements:
17

18 (1) Only a lawyer's name, address, telephone
19 number, and designation as a lawyer may be
20 alphabetically listed in the residential, business,
21 and classified sections of the telephone or city
22 directory.
23

24 (2) Listings in the classified section shall be
25 under the general heading "Lawyers" or
26 "Attorneys," except that a lawyer who has
27 complied with rule 32:7.4(e) may be listed in
28 classifications or headings identifying those fields
29 or areas of practice as listed in rule 32:7.4(a). By
30 further exception, a lawyer qualified under rule
31 32:7.4 to practice in the field of taxation law also
32 may be listed under the general heading "Tax
33 Preparation" or "Tax Return Preparation" either in
34 lieu of or in addition to the general heading
35 "Lawyers" or "Attorneys."
36

37 (3) All other telephone or city directory
38 advertising permitted by these rules, including
39 display or box advertisements, shall include the
40 disclosures required by paragraph (h) when
41 applicable.
42

43 (d) Subject to the limitations contained in these
44 rules, a law firm may permit the inclusion of the firm
45 name, address, and telephone number in a telephone or
46 city directory, subject to the following requirements:

1
2 (1) The firm name, a list of its members,
3 address, and telephone number may be listed
4 alphabetically in the residential, business, and
5 classified sections of the telephone or city
6 directory.
7

8 (2) Listings in the classified section shall be
9 under the general heading "Lawyers" or
10 "Attorneys," except that a law firm may be listed
11 in each of the classifications or headings
12 identifying those fields or areas of practice as
13 listed in rule 32:7.4(a) in which one or more
14 members of the firm are qualified by virtue of
15 compliance with rule 32:7.4(e).
16

17 (3) All other telephone or city directory
18 advertising permitted by these rules, including
19 display or box advertising, may contain the firm
20 name, address, and telephone number, and the
21 names of the individual lawyer members of the
22 firm. All display or box advertisements shall
23 include within the advertisement the disclosures
24 required by paragraph (h) when applicable.
25

26 (e) Information permitted by these rules,
27 articulated only by a single nondramatic voice, not that
28 of the lawyer, and with no other background sound, may
29 be communicated by radio or television, or other
30 electronic or telephonic media. In the case of television,
31 no visual display shall be allowed except that allowed in
32 print as articulated by the announcer. All such
33 communications shall contain the disclosures required
34 by paragraph (h) when applicable.
35

36 (f) Whether or not the advertisement contains fee
37 information, a lawyer shall preserve for at least three
38 years a copy of each advertisement placed in a
39 newspaper, in the classified section of the telephone or
40 city directory, or in a periodical, a tape of any radio,
41 television, or other electronic or telephonic media
42 commercial, or recording, and a copy of all information
43 placed on the World Wide Web, and a record of the date
44 or dates and name of the publication in which the
45 advertisement appeared or the name of the medium
46 through which it was aired.

1
2 **(g) The following information may be**
3 **communicated to the public in the manner permitted by**
4 **this rule, provided it is presented in a dignified style:**

5
6 **(1) name, including name of law firm, names**
7 **of professional associates, addresses, telephone**
8 **numbers, Internet addresses and URLs, and the**
9 **designation “lawyer,” “attorney,” “J.D.,” “law**
10 **firm,” or the like;**

11
12 **(2) the following descriptions of practice:**

13 **(i) “general practice”;**

14
15 **(ii) “general practice including but not**
16 **limited to” followed by one or more fields of**
17 **practice descriptions set forth in rule**
18 **32:7.4(a)-(c); and**

19
20 **(iii) fields of practice, limitation of**
21 **practice, or specialization, but only to the**
22 **extent permitted by rule 32:7.4;**

23
24 **(3) date and place of birth;**

25
26 **(4) date and place of admission to the bar of**
27 **state and federal courts;**

28
29 **(5) schools attended, with dates of**
30 **graduation, degrees, and other scholastic**
31 **distinctions;**

32
33 **(6) public or quasi-public offices;**

34
35 **(7) military service;**

36
37 **(8) legal authorships;**

38
39 **(9) legal teaching positions;**

40
41 **(10) memberships, offices, and committee**
42 **and section assignments in bar associations;**

43
44 **(11) memberships and offices in legal**
45 **fraternities and legal societies;**

1
2 **(12) technical and professional licenses;**
3

4 **(13) memberships in scientific, technical, and**
5 **professional associations and societies; and**
6

7 **(14) foreign language ability.**
8

9 **(h) Fee information may be communicated to the**
10 **public in the manner permitted by this rule, provided it**
11 **is presented in a dignified style.**
12

13 **(1) The following information may be**
14 **communicated:**
15

16 **(i) the fee for an initial consultation;**
17

18 **(ii) the availability upon request of**
19 **either a written schedule of fees, or an**
20 **estimate of the fee to be charged for specific**
21 **services, or both;**
22

23 **(iii) contingent fee rates, subject to rule**
24 **32:1.5(c) and (d), provided that the statement**
25 **discloses whether percentages are computed**
26 **before or after deduction of costs and advises**
27 **the public that, in the event of an adverse**
28 **verdict or decision, the contingent fee**
29 **litigant could be liable for court costs,**
30 **expenses of investigation, expenses of**
31 **medical examinations, and costs of obtaining**
32 **and presenting evidence;**
33

34 **(iv) fixed fees or range of fees for**
35 **specific legal services;**
36

37 **(v) hourly fee rates; and**
38

39 **(vi) whether credit cards are accepted.**
40

41 **(2) If fixed fees or a range of fees for specific**
42 **legal services are communicated, the lawyer must**
43 **disclose, in print size at least equivalent to the**
44 **largest print used in setting forth the fee**
45 **information, the following information:**
46

1 (i) that the stated fixed fees or range of
2 fees will be available only to clients whose
3 matters are encompassed within the
4 described services; and
5

6 (ii) if the client's matters are not
7 encompassed within the described services,
8 or if an hourly fee rate is stated, the client is
9 entitled, without obligation, to a specific
10 written estimate of the fees likely to be
11 charged.
12

13 (3) For purposes of these rules, the term
14 "specific legal services" shall be limited to the
15 following services:
16

17 (i) abstract examinations and title
18 opinions not including services in clearing
19 title;
20

21 (ii) uncontested dissolutions of marriage
22 involving no disagreement concerning
23 custody of children, alimony, child support,
24 or property settlement. See rule 32:1.7(c);
25

26 (iii) wills leaving all property outright to
27 one beneficiary and contingently to one
28 beneficiary or one class of beneficiaries;
29

30 (iv) income tax returns for wage earners;
31

32 (v) uncontested personal bankruptcies;
33

34 (vi) changes of name;
35

36 (vii) simple residential deeds;
37

38 (viii) residential purchase and sale
39 agreements;
40

41 (ix) residential leases;
42

43 (x) residential mortgages and notes;
44

45 (xi) powers of attorney; and
46

1 (xii) bills of sale.
2

3 (4) Unless otherwise specified in the public
4 communication concerning fees, the lawyer shall
5 be bound, in the case of fee advertising in the
6 classified section of the telephone or city
7 directory, for a period of at least the time between
8 printings of the directory in which the fee
9 advertisement appears and in the case of all other
10 fee advertising for a period of at least ninety days
11 thereafter, to render the stated legal service for the
12 fee stated in the communication unless the client's
13 matters do not fall within the described services.
14 In that event or if a range of fees is stated, the
15 lawyer shall render the service for the estimated
16 fee given the client in advance of rendering the
17 service.
18

19 (i) In the event a lawyer's communication seeks to
20 advise the institution of litigation, the communication
21 must also disclose that the filing of a claim or suit solely
22 to coerce a settlement or to harass another could be
23 illegal and could render the person so filing liable for
24 malicious prosecution or abuse of process.
25

26 (j) A lawyer recommended by, paid by, or whose
27 legal services are furnished by an organization listed in
28 rule 32:7.7(d) may authorize, permit, or assist such
29 organization to use means of dignified commercial
30 publicity that does not identify any lawyer by name to
31 describe the availability or nature of its legal services or
32 legal service benefits.
33

34 (k) This rule does not prohibit limited and dignified
35 identification of a lawyer as a lawyer as well as by name:
36

37 (1) in political advertisements when the
38 professional status is germane to the political
39 campaign or to a political issue;
40

41 (2) in public notices when the name and
42 profession of a lawyer are required or authorized by
43 law or are reasonably pertinent for a purpose other
44 than the attraction of potential clients;
45

1 **(3) in routine reports and announcements of**
2 **a bona fide business, civic, professional, or political**
3 **organization in which the lawyer serves as a**
4 **director or officer;**

5
6 **(4) in and on legal documents prepared by the**
7 **lawyer;**

8
9 **(5) in and on legal textbooks, treatises, and**
10 **other legal publications, and in dignified**
11 **advertisements thereof; and**

12
13 **(6) in communications by a qualified legal**
14 **assistance organization, along with the**
15 **biographical information permitted under**
16 **paragraph (g), directed to a member or beneficiary**
17 **of such organization.**

18
19 **(1) A lawyer shall not compensate or give anything**
20 **of value to representatives of the press, radio, television,**
21 **or other communication medium in anticipation of or in**
22 **return for professional publicity in a news item or**
23 **voluntarily give any information to such representatives**
24 **which, if published in a news item, would be in violation**
25 **of rule 32:7.1.**

26
27 **Comment**

28
29 [1] Advertisements and public communications,
30 whether in reputable legal directories, telephone directories,
31 or newspapers, should be formulated to convey only
32 information that is necessary for the client to make an
33 appropriate selection. Competency may be a factor in the
34 selection of a lawyer. However, competency cannot be
35 determined from an advertisement. The cost of legal services
36 may also be a factor in the selection of a lawyer. A layperson
37 may be aided in the selection of a lawyer if the costs of legal
38 services were available for comparison or could be
39 considered in an atmosphere conducive to logic, reason, and
40 reflection. This factual information can be made available
41 through advertising. Care must be exercised to ensure that
42 there is a proper basis for the comparison of costs
43 communicated in a manner that will truthfully inform, and
44 not mislead, a prospective client as to the total costs. For
45 example, to state an hourly charge and to characterize it as a

1 “reasonable fee” is misleading because the total cost or fee
2 can vary greatly depending upon the number of hours spent.

3 [2] The lack of sophistication on the part of many
4 members of the public concerning legal services and the
5 importance of the interests affected by the choice of a lawyer
6 require that special care be taken by lawyers to avoid
7 misleading the public and to ensure that the information set
8 forth in any advertising is relevant to the selection of a
9 lawyer. The lawyer must be mindful that the benefits to the
10 public of a lawyer’s advertising depend upon its reliability
11 and accuracy. Advertising marked by excesses of content,
12 volume, scope or frequency, or which unduly emphasizes
13 unrepresentative biographical information, does not provide
14 that public benefit. Fee advertising involves special concerns.
15 With rare exception, lawyers render unique and varied
16 services for each client, even as to so-called “routine”
17 matters. When consulted about any matter, whether or not
18 “routine,” a lawyer should make relevant inquiries, which
19 may uncover the need for different services than those that
20 the client originally sought. These factors make it difficult to
21 set a fixed fee or a range of fees for a specific legal service in
22 advance of rendering the service and provide temptation to
23 depart from an advertised fee or to fail to render a needed
24 service. Thus, a lawyer who advertises a fee for a service
25 should exercise particular caution to avoid misleading
26 prospective clients and should include appropriate
27 disclaimers. A lawyer should also scrupulously avoid the use
28 of fee advertising as an indirect means of attracting clients in
29 the hope of performing other, more lucrative, legal services.
30 In communications concerning a lawyer’s fees, the lawyer
31 may use restrained subjective characterizations of rates or
32 fees such as “reasonable,” “moderate,” and “very reasonable,”
33 but shall avoid all unrestrained subjective characterizations
34 of rates or fees, such as, but not limited to, “cut-rate,”
35 “lowest,” “giveaway,” “below-cost,” “discount,” and “special.”

36 [3] All disclosures required to be published by these
37 rules shall be in 9-point type or larger. Whenever a
38 disclosure or notice is required by these rules, a lawyer or
39 law firm hosting a site on the World Wide Web shall display
40 the required disclosure or notice on the site’s home page.
41

42 [4] Nothing contained in these rules shall prohibit a
43 lawyer from permitting the inclusion in reputable law lists
44 and law directories intended primarily for the use of the legal

1 profession of such information as traditionally has been
2 included in these publications whether published in print or
3 on the Internet or other electronic system.
4

5 [5] Any member of the bar desiring to expand the
6 information authorized for disclosure pursuant to this rule
7 or to provide for its dissemination through forums other than
8 as authorized herein, may file an application with the
9 supreme court specifying the requested change. Court
10 approval of the application is required before an attorney
11 may engage in advertising that includes the expanded
12 information or is disseminated through the new forum.
13

14 [6] When the court receives a request to expand or
15 constrict the list of “specific legal services” in rule
16 32:7.2(h)(3), it will consider the following criteria in
17 determining which services should be included in the list:

18 (1) the description of the service would not be
19 misunderstood by the average layperson or be
20 misleading or deceptive;
21

22 (2) substantially all of the service normally can
23 be performed in the lawyer’s office with the aid of
24 standardized forms and office procedures;
25

26 (3) the service does not normally involve a
27 substantial amount of legal research, drafting of
28 unique documents, investigation, court appearances,
29 or negotiation with other parties or their attorneys;
30 and
31

32 (4) competent performance of the service
33 normally does not depend upon ascertainment and
34 consideration of more than a few varying factual
35 circumstances.
36
37
38

39 **RULE 32:7.3: DIRECT CONTACT WITH**
40 **PROSPECTIVE CLIENTS**

41 **(a) A lawyer shall not by in-person, live telephone,**
42 **or real-time electronic contact solicit professional**
43 **employment from a prospective client.**

1 **(b) A lawyer may engage in written solicitation by**
2 **direct mail or e-mail to persons or groups who may need**
3 **specific legal services because of a condition or**
4 **occurrence known to the soliciting lawyer. A lawyer**
5 **must retain a copy of the written solicitation for at least**
6 **three years. Simultaneously with the mailing of the**
7 **solicitation, the lawyer must file a copy of it with the**
8 **Iowa Supreme Court Attorney Disciplinary Board along**
9 **with a signed affidavit in which the lawyer attests to:**

10 **(1) the truthfulness of all facts contained in**
11 **the communication;**

12 **(2) how the identity and specific legal need of**
13 **the intended recipients were discovered; and**

14 **(3) how the identity and specific need of the**
15 **intended recipients were verified by the soliciting**
16 **lawyer.**

17 **(c) Information permitted by these rules may be**
18 **communicated by direct mail or e-mail to the general**
19 **public other than persons or groups of persons who may**
20 **be in need of specific or particular legal services because**
21 **of a condition or occurrence which is known or could**
22 **with reasonable inquiry be known to the advertising**
23 **lawyer. A lawyer must simultaneously file a copy of the**
24 **communication with the Iowa Supreme Court Attorney**
25 **Disciplinary Board and must retain a copy of the**
26 **communication for at least three years.**

27 **(d) All communications authorized by paragraphs**
28 **(b) and (c) shall contain the disclosures required by rule**
29 **32:7.2(h) when applicable. These communications shall,**
30 **in addition to other required disclosures, carry the**
31 **following disclosure in 9-point or larger type:**
32 **“ADVERTISEMENT ONLY.”**

33
34
35
36
37
38 **Comment**

39 [1] There is a potential for abuse inherent in direct in-
40 person, live telephone, or real-time electronic contact by a
41 lawyer with a prospective client known to need legal services.
42 These forms of contact between a lawyer and a prospective
43 client subject the layperson to the private importuning of the
44 trained advocate in a direct interpersonal encounter. The

1 prospective client, who may already feel overwhelmed by the
2 circumstances giving rise to the need for legal services, may
3 find it difficult fully to evaluate all available alternatives with
4 reasoned judgment and appropriate self-interest in the face
5 of the lawyer's presence and insistence upon being retained
6 immediately. The situation is fraught with the possibility of
7 undue influence, intimidation, and overreaching.

8 [2] This potential for abuse inherent in direct in-
9 person, live telephone, or real-time electronic solicitation of
10 prospective clients justifies its prohibition, particularly since
11 lawyer advertising and written communications permitted
12 under rule 32:7.2 offer alternative means of conveying
13 necessary information to those who may be in need of legal
14 services. Advertising and written communications which may
15 be mailed make it possible for a prospective client to be
16 informed about the need for legal services and about the
17 qualifications of available lawyers and law firms, without
18 subjecting the prospective client to direct in-person,
19 telephone, or real-time electronic persuasion that may
20 overwhelm the client's judgment.

21 [3] The use of general advertising and written, recorded
22 or electronic communications to transmit information from
23 lawyer to prospective client, rather than direct in-person, live
24 telephone, or real-time electronic contact, will help to ensure
25 that the information flows cleanly as well as freely. Because
26 rule 32:7.2(f) requires that the contents of advertisements
27 and communications permitted under rule 32:7.2 be
28 preserved, the contents cannot be disputed and may be
29 shared with others who know the lawyer. This potential for
30 informal review is itself likely to help guard against
31 statements and claims that might constitute false and
32 misleading communications in violation of rule 32:7.1. The
33 contents of direct in-person, live telephone, or real-time
34 electronic conversations between a lawyer and a prospective
35 client can be disputed and may not be subject to third-party
36 scrutiny. Consequently, such conversations are much more
37 likely to approach (and occasionally cross) the dividing line
38 between accurate representations and those that are false
39 and misleading.

40 [4] There is far less likelihood that a lawyer would
41 engage in abusive practices against an individual who is a
42 current or former client or with whom the lawyer has a close
43 personal or family relationship. Nor is there a serious

1 potential for abuse when the person contacted is a lawyer.
2 Consequently, a lawyer may suggest the need for legal
3 services to such individuals as authorized in rule 32:7.8.
4 Also, paragraph (a) is not intended to prohibit a lawyer from
5 participating in constitutionally protected activities of public
6 or charitable legal-service organizations or bona fide
7 political, social, civic, fraternal, employee, or trade
8 organizations whose purposes include providing or
9 recommending legal services to its members or beneficiaries.

10 [5] But even permitted forms of solicitation can be
11 abused. Thus, any solicitation which contains information
12 which is false or misleading within the meaning of rule
13 32:7.1 is prohibited.

14
15 **RULE 32:7.4: COMMUNICATION OF FIELDS OF**
16 **PRACTICE AND SPECIALIZATION**

17
18 **(a) A lawyer may communicate the fact that the**
19 **lawyer practices in or limits the lawyer's practice to**
20 **certain fields of law as authorized by this rule. Subject to**
21 **the exceptions and requirements of this rule, a lawyer**
22 **may identify or describe the lawyer's practice by**
23 **reference to the following fields of practice:**

24
25 **Administrative Law**
26 **Adoption Law**
27 **Agricultural Law**
28 **Alternate Dispute Resolution**
29 **Antitrust & Trade Regulation**
30 **Appellate Practice**
31 **Aviation & Aerospace**
32 **Banking Law**
33 **Bankruptcy**
34 **Business Law**
35 **Civil Rights & Discrimination**
36 **Collections Law**
37 **Commercial Law**
38 **Communications Law**
39 **Constitutional Law**
40 **Construction Law**
41 **Contracts**
42 **Corporate Law**
43 **Criminal Law**
44 **Debtor and Creditor**

1	Education Law
2	Elder Law
3	Election, Campaign & Political
4	Eminent Domain
5	Employee Benefits
6	Employment Law
7	Energy
8	Entertainment & Sports
9	Environmental Law
10	Family Law
11	Finance
12	Franchise Law
13	Government
14	Government Contracts
15	Health Care
16	Immigration
17	Indians & Native Populations
18	Information Technology Law
19	Insurance
20	Intellectual Property
21	International Law
22	International Trade
23	Investments
24	Labor Law
25	Legal Malpractice
26	Litigation
27	Media Law
28	Medical Malpractice
29	Mergers & Acquisitions
30	Military Law
31	Municipal Law
32	Natural Resources
33	Occupational Safety & Health
34	Pension & Profit Sharing Law
35	Personal Injury
36	Product Liability
37	Professional Liability
38	Public Utility Law
39	Real Estate
40	Securities
41	Social Security Law
42	Taxation
43	Tax Returns
44	Technology and Science
45	Toxic Torts
46	Trademarks & Copyright Law

1 **Transportation**
2 **Trial Law**
3 **Wills, Trusts, Estate Planning & Probate Law**
4 **Workers' Compensation**
5 **Zoning, Planning & Land Use**
6

7 **Any member of the bar desiring to expand this list**
8 **may file an application with the supreme court**
9 **specifying the requested change.**

10
11 **In describing the field of practice the lawyer may**
12 **use the suffix "law," "lawyer," "matters," "cases," or**
13 **"litigation."**

14
15 **(b) A lawyer admitted to engage in patent practice**
16 **before the United States Patent and Trademark Office**
17 **may use the designation "Patents," "Patent Attorney,"**
18 **"Patent Lawyer," or "Registered Patent Attorney."**

19
20 **(c) A lawyer engaged in Admiralty practice may use**
21 **the designation "Admiralty," "Proctor in Admiralty," or a**
22 **substantially similar designation.**

23 **(d) A lawyer shall not state or imply that a lawyer is**
24 **certified as a specialist in a particular field of law,**
25 **unless:**

26 **(1) the lawyer has been certified as a**
27 **specialist by an organization that has been**
28 **approved by the Iowa Supreme Court Attorney**
29 **Disciplinary Board; and**

30 **(2) the name of the certifying organization is**
31 **clearly identified in the communication.**

32 **(e) Prior to publicly describing one's practice as**
33 **permitted in paragraph (a) and (c), a lawyer shall comply**
34 **with the following prerequisites:**

35
36 **(1) For all fields of practice designated, a**
37 **lawyer must have devoted the greater of 100 hours**
38 **or 10 percent of the lawyer's time spent in the**
39 **actual practice of law to each indicated field of**
40 **practice for the preceding calendar year. In**
41 **addition, the lawyer must have completed at least**
42 **ten hours of accredited continuing legal education**

1 **courses of study in each indicated field of practice**
2 **during the preceding calendar year.**

3
4 **(2) A lawyer who wishes to use the terms**
5 **“practice limited to . . .” or “practicing primarily in**
6 **. . .” must have devoted the greater of 400 hours or**
7 **40 percent of the lawyer’s time spent in the actual**
8 **practice of law to each separate indicated field of**
9 **practice for the preceding calendar year. In**
10 **addition, the lawyer must have completed at least**
11 **fifteen hours of accredited continuing legal**
12 **education courses of study in each separate**
13 **indicated field of practice during the preceding**
14 **calendar year.**

15
16 **Prior to communication of a description or indication of**
17 **limitation of practice, a lawyer shall report the lawyer’s**
18 **compliance with the eligibility requirements of this**
19 **paragraph each year to the Commission on Continuing**
20 **Legal Education. See Iowa Ct. R. 41.9.**

21
22 **(f) A lawyer describing the lawyer’s practice as**
23 **“General practice including but not limited to” followed**
24 **by one or more fields of practice descriptions set forth in**
25 **this rule need not comply with the eligibility**
26 **requirements of paragraph (e).**

27
28 **Comment**

29
30 [1] In some instances lawyers limit their practice to, or
31 practice primarily in, certain fields of law. In the absence of
32 controls to ensure the existence of special competence,
33 lawyers should not be permitted to hold themselves out as
34 specialists or as having special training or ability other than
35 in the field of patent or admiralty law where a holding out as
36 a specialist historically has been permitted. However,
37 lawyers who comply with this rule may hold themselves out
38 publicly as practicing in, or limiting their practice to, certain
39 fields of law, but such communications are subject to the
40 false and misleading standard applied in rule 32:7.1 to
41 communications concerning a lawyer's services.

42 [2] Paragraph (b) recognizes the long-established policy
43 of the Patent and Trademark Office for the designation of
44 lawyers practicing before the Office. Paragraph (c) recognizes
45 that designation of Admiralty practice has a long historical

1 tradition associated with maritime commerce and the federal
2 courts.

3 [3] Paragraph (d) permits a lawyer to state that the
4 lawyer is certified as a specialist in a field of law if such
5 certification is granted by an organization approved by the
6 Iowa Supreme Court Attorney Disciplinary Board.
7 Certification signifies that an objective entity has recognized
8 an advanced degree of knowledge and experience in the
9 specialty area greater than is suggested by general licensure
10 to practice law. Certifying organizations may be expected to
11 apply standards of experience, knowledge, and proficiency to
12 insure that a lawyer's recognition as a specialist is
13 meaningful and reliable. In order to insure that consumers
14 can obtain access to useful information about an
15 organization granting certification, the name of the certifying
16 organization must be included in any communication
17 regarding the certification.

18
19 **RULE 32:7.5: PROFESSIONAL NOTICES, LETTERHEADS,**
20 **OFFICES, AND SIGNS**

21
22 **(a) A lawyer shall not use a firm name, letterhead,**
23 **or other professional designation that violates rule**
24 **32:7.1. A lawyer or law firm may use the following**
25 **professional cards, signs, letterheads, or similar**
26 **professional notices or devices if they are in dignified**
27 **form:**

28
29 **(1) A professional card of a lawyer identifying**
30 **the lawyer by name and as a lawyer, and giving**
31 **addresses, telephone numbers, the name of the**
32 **lawyer's law firm, and any information permitted**
33 **under rule 32:7.4. A professional card of a law firm**
34 **may also give the names of members and**
35 **associates. Such cards may be used for**
36 **identification.**

37
38 **(2) A brief professional announcement card**
39 **stating new or changed associations or addresses,**
40 **change of firm name, or similar matters pertaining**
41 **to the professional office of a lawyer or law firm,**
42 **which may be mailed to lawyers, clients, former**
43 **clients, personal friends, and relatives. It shall not**
44 **state biographical data except to the extent**

1 reasonably necessary to identify the lawyer or to
2 explain the change in the lawyer's association, but
3 it may state the immediate past position of the
4 lawyer. It may give the names and dates of
5 predecessor firms in a continuing line of
6 succession. It shall not state the nature of the
7 practice except as permitted under rule 32:7.4. A
8 dignified announcement of a change in location of
9 office, the addition of a new partner, equity holder
10 or associate, or a change in the name of a law firm
11 may be published in one or more newspapers of
12 general circulation over a period of no more than
13 four weeks.

14
15 (3) A sign on or near the door of the office
16 and in the building directory identifying the law
17 office. The sign shall not state the nature of the
18 practice, except as permitted under rule 32:7.4.

19
20 (4) A letterhead of a lawyer identifying the
21 lawyer by name and as a lawyer and giving the
22 lawyer's addresses, telephone numbers, the name
23 of the lawyer's law firm, associates, and any
24 information permitted under rule 32:7.4. A
25 letterhead of a law firm may also give the names of
26 members and associates, and names and dates
27 related to deceased and retired members. A lawyer
28 may be designated "Of Counsel" on a letterhead if
29 the lawyer has a continuing relationship with a
30 lawyer or law firm, other than as a partner or
31 associate. A lawyer or law firm may be designated
32 as "General Counsel" or by similar professional
33 reference on stationery of a client if the lawyer or
34 the firm devotes a substantial amount of
35 professional time in the representation of that
36 client. The letterhead of a law firm may give the
37 names and dates of predecessor firms in a
38 continuing line of succession.

39 (b) A law firm with offices in more than one
40 jurisdiction may use the same name or other
41 professional designation in each jurisdiction, but
42 identification of the lawyers in an office of the firm shall
43 indicate the jurisdictional limitations on those not
44 licensed to practice in the jurisdiction where the office
45 is located.

1 (c) The name of a lawyer holding a public office
2 shall not be used in the name of a law firm, or in
3 communications on its behalf, during any substantial
4 period in which the lawyer is not actively and regularly
5 practicing with the firm.

6 (d) Lawyers may state or imply that they practice
7 in a partnership or other organization only when that is
8 the fact.

9
10 (e) A lawyer in private practice shall not practice
11 under a trade name, a name that is misleading as to the
12 identity of the lawyer or lawyers practicing under such
13 name, or a firm name containing names other than those
14 of one or more of the lawyers in the firm. However the
15 name of a professional corporation, professional
16 association, professional limited liability company, or
17 registered limited liability partnership may contain
18 "P.C.", "P.A.", "P.L.C.", "L.L.P." or similar symbols
19 indicating the nature of the organization and, if
20 otherwise lawful, a firm may use as, or continue to
21 include in, its name, the name or names of one or more
22 deceased or retired members of the firm or of a
23 predecessor firm in a continuing line of succession.

24
25 (f) A lawyer who is engaged both in the practice of
26 law and another profession or business shall not so
27 indicate on the lawyer's letterhead, office sign, or
28 professional card, and shall not be identified as a lawyer
29 in any publication in connection with the lawyer's other
30 profession or business.

31
32 **Comment**

33
34 [1] A firm may be designated by the names of all or
35 some of its members or by the names of deceased members
36 when there has been a continuing succession in the firm's
37 identity. The use of a trade name or an assumed name could
38 mislead laypersons concerning the identity, responsibility,
39 and status of those practicing under a trade name or an
40 assumed name; therefore, such a practice is not permitted
41 by this rule.

42 [2] In order to avoid the possibility of misleading
43 persons with whom they deal, lawyers should be scrupulous
44 in the representation of their professional status. With

1 regard to paragraph (d), lawyers sharing office facilities, but
2 who are not in fact associated with each other in a law firm,
3 may not denominate themselves as, for example, "Smith and
4 Jones," for that title suggests that they are practicing law
5 together in a firm.

6 [3] A lawyer who occupies a judicial, legislative, or
7 public executive or administrative position and who has the
8 right to practice law concurrently may allow the lawyer's
9 name to remain in the name of the firm if actively continuing
10 to practice law as a member of the firm. Otherwise, the
11 lawyer's name should be removed from the firm name, the
12 lawyer should not be identified as a past or present member
13 of the firm, and the lawyer should not be held out as being a
14 practicing lawyer. The name of a partner who withdraws
15 from a firm but continues to practice law should be omitted
16 from the firm name in order to avoid misleading the public.
17

18 [4] The term "clinic," "center," or any other similar
19 term shall not be used in any communication to the public
20 unless the practice of the lawyer or the lawyer's firm is
21 limited to specific legal services as described in rule
22 32:7.2(h)(3) for which costs of rendering the service can be
23 substantially reduced because of the repetitive nature of the
24 services performed and the use of standardized forms and
25 office procedures.
26

27 **RULE 32:7.6: POLITICAL CONTRIBUTIONS TO OBTAIN**
28 **LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES**

29 **A lawyer or law firm shall not accept a government**
30 **legal engagement or an appointment by a judge if the**
31 **lawyer or law firm makes a political contribution or**
32 **solicits political contributions for the purpose of**
33 **obtaining or being considered for that type of legal**
34 **engagement or appointment.**

35 **Comment**

36 [1] Lawyers have a right to participate fully in the
37 political process, which includes making and soliciting
38 political contributions to judges on the ballot for judicial
39 retention and to candidates for other public offices.
40 Nevertheless, when lawyers make or solicit political
41 contributions in order to obtain an engagement for legal

1 work awarded by a government agency or to obtain
2 appointment by a judge, the public may legitimately question
3 whether the lawyers engaged to perform the work are
4 selected on the basis of competence and merit. In such a
5 circumstance, the integrity of the profession is undermined.

6 [2] The term "political contribution" denotes any gift,
7 subscription, loan, advance, or deposit of anything of value
8 made directly or indirectly to a candidate, incumbent,
9 political party, or campaign committee to influence or
10 provide financial support for retention of a judge or election
11 of a person to government office. Political contributions in
12 initiative and referendum elections are not included. For
13 purposes of this rule, the term "political contribution" does
14 not include uncompensated services.

15 [3] Subject to the exceptions below, (i) the term
16 "government legal engagement" denotes any engagement to
17 provide legal services that a public official has the direct or
18 indirect power to award; and (ii) the term "appointment by a
19 judge" denotes an appointment to a position such as referee,
20 commissioner, special master, receiver, guardian, or other
21 similar position that is made by a judge. Those terms do not,
22 however, include (a) substantially uncompensated services;
23 (b) engagements or appointments made on the basis of
24 experience, expertise, professional qualifications, and cost
25 following a request for proposal or other process that is free
26 from influence based upon political contributions; and (c)
27 engagements or appointments made on a rotational basis
28 from a list compiled without regard to political contributions.

29 [4] The term "lawyer or law firm" includes a political
30 action committee or other entity owned or controlled by a
31 lawyer or law firm.

32 [5] Political contributions are for the purpose of
33 obtaining or being considered for a government legal
34 engagement or appointment by a judge if, but for the desire
35 to be considered for the legal engagement or appointment,
36 the lawyer or law firm would not have made or solicited the
37 contributions. The purpose may be determined by an
38 examination of the circumstances in which the contributions
39 occur. For example, one or more contributions that in the
40 aggregate are substantial in relation to other contributions
41 by lawyers or law firms, made for the benefit of an official in
42 a position to influence award of a government legal

1 engagement, and followed by an award of the legal
2 engagement to the contributing or soliciting lawyer or the
3 lawyer's firm would support an inference that the purpose of
4 the contributions was to obtain the engagement, absent
5 other factors that weigh against existence of the proscribed
6 purpose. Those factors may include among others that the
7 contribution or solicitation was made to further a political,
8 social, or economic interest or because of an existing
9 personal, family, or professional relationship with a
10 candidate.

11 [6] If a lawyer makes or solicits a political contribution
12 under circumstances that constitute bribery or another
13 crime, rule 32:8.4(b) is implicated.

14
15 **RULE 32:7.7: RECOMMENDATION OF**
16 **PROFESSIONAL EMPLOYMENT**

17
18 **(a) A lawyer shall not, except as authorized in rules**
19 **32:7.2 and 32:7.3, recommend employment of the**
20 **lawyer, the lawyer's partner, or an associate of the**
21 **lawyer, as a private practitioner, to a nonlawyer who has**
22 **not sought advice regarding employment of a lawyer.**

23 **(b) A lawyer shall not give anything of value to a**
24 **person for recommending the lawyer's services except**
25 **that a lawyer may:**

26 **(1) pay the reasonable costs of**
27 **advertisements or communications permitted by**
28 **rule 32:7.2;**

29 **(2) pay the usual charges of a lawyer referral**
30 **service operated or sponsored by the bar**
31 **association; and**

32 **(3) pay for a law practice in accordance with**
33 **rule 32:1.17.**

34
35 **(c) A lawyer shall not request that a person or**
36 **organization recommend or promote the use of the**
37 **lawyer's services or those of a partner, associate, or any**
38 **other lawyer affiliated with the lawyer's firm, as a**
39 **private practitioner, except as authorized in rules 32:7.2**
40 **and 32:7.3, and except that:**

1
2 **(1) A lawyer may request referrals from a**
3 **lawyer referral service operated or sponsored by**
4 **the bar association.**
5

6 **(2) A lawyer may participate in a directory**
7 **listing by Iowa lawyers in an organization or**
8 **association of lawyers engaged in a particular area**
9 **of practice upon authorization by the Iowa**
10 **Supreme Court Attorney Disciplinary Board. See**
11 **Iowa Ct. R. 34.14(1).**
12

13 **(3) A lawyer may cooperate with the legal**
14 **service activities of any of the offices or**
15 **organizations enumerated in paragraphs (d)(1)**
16 **through (4) and may perform legal services for**
17 **those to whom the lawyer was recommended by**
18 **the office or organization to do such work if both**
19 **of the following requirements are met:**
20

21 **(i) The person to whom the**
22 **recommendation is made is a member or**
23 **beneficiary of such office or organization.**
24

25 **(ii) The lawyer remains free to exercise**
26 **independent professional judgment on behalf**
27 **of the client.**
28

29 **(d) A lawyer shall not knowingly assist a person or**
30 **organization that furnishes or pays for legal services to**
31 **others to promote the use of the lawyer's services or**
32 **those of the lawyer's partners or associates or any other**
33 **lawyer affiliated with the lawyer's firm, except as**
34 **permitted by this rule. However, this rule does not**
35 **prohibit a lawyer, a partner, an associate, or any other**
36 **lawyer affiliated with the lawyer or firm, from being**
37 **recommended, employed or paid by, or cooperating with,**
38 **one of the following offices or organizations that**
39 **promote the use of the lawyer's services or those of a**
40 **partner, associate, or any other lawyer affiliated with the**
41 **lawyer or the firm:**
42

43 **(1) A legal aid office or public defender office**
44 **operated or sponsored by a duly accredited law**
45 **school, a bona fide nonprofit community**
46 **organization, or a governmental agency, or**

1 operated, sponsored, or approved by a bar
2 association.

3
4 (2) A military legal assistance office.

5
6 (3) A lawyer referral service operated,
7 sponsored, or approved by a bar association.

8
9 (4) A legal services plan. A legal services plan
10 is any bona fide organization that recommends,
11 furnishes, or pays for legal services to its members
12 or its beneficiaries provided all of the following
13 conditions are satisfied:

14
15 (i) Such organization, including any
16 affiliate, is organized and operated so that no
17 profit is derived by it from the rendition of
18 legal services by lawyers, and that, if the
19 organization is organized for profit, the legal
20 services are not rendered by lawyers
21 employed, directed, supervised, or selected
22 by it except in connection with matters
23 where such organization bears ultimate
24 liability of its member or beneficiary.

25
26 (ii) Neither the lawyer, nor any partner,
27 associate, or other lawyer affiliated with the
28 lawyer's firm, nor any nonlawyer, shall have
29 initiated or promoted such organization for
30 the primary purpose of providing financial or
31 other benefit to such lawyer, partner,
32 associate, or affiliated lawyer.

33
34 (iii) Such organization is not operated
35 for the purpose of procuring legal work or
36 financial benefit for any lawyer as a private
37 practitioner outside of the legal services
38 program of the organization.

39
40 (iv) The member or beneficiary to whom
41 the legal services are furnished, and not such
42 organization, is recognized as the client of
43 the lawyer in the matter.

44
45 (v) Any member or beneficiary who is
46 entitled to have legal services furnished or

1 paid for by the organization may,
2 independent of the arrangement, if such
3 member or beneficiary so desires, and at the
4 person's own expense, select counsel other
5 than that furnished, selected, or approved by
6 the organization for the particular matter
7 involved.
8

9 (vi) The legal service plan of such
10 organization provides appropriate relief for
11 any member or beneficiary who asserts a
12 claim that the representation by counsel
13 furnished, selected, or approved would be
14 unethical, improper, or inadequate under the
15 circumstances of the matter involved and the
16 plan provides an appropriate procedure for
17 seeking such relief.
18

19 (vii) The lawyer does not know or have
20 cause to know that such organization is in
21 violation of applicable laws, rules of court,
22 and other legal requirements that govern its
23 legal service operations.
24

25 (viii) The legal services plan is
26 developed, administered, and operated so as
27 to prevent a third party from interfering with
28 or controlling a lawyer's performance of his
29 or her duties or a third party's receipt of any
30 part of the consideration paid to a lawyer for
31 furnishing legal services.
32

33 (ix) There is no publicity and
34 solicitation concerning the arrangement
35 except by means of simple, dignified
36 announcements. Such announcements may
37 only set forth the purpose and activities of
38 the organization and the nature and extent of
39 the benefits provided under the arrangement.
40 The announcements shall not identify the
41 lawyers who render the legal services, and
42 such announcement must be solely for the
43 good faith purpose of developing,
44 administering, or operating the arrangement,
45 and not for the purpose of soliciting business
46 for any specific lawyer. Nothing in this rule

1 shall prohibit a statement in response to
2 individual inquiries regarding the identities
3 of the lawyers rendering services for the
4 organization. Such responses may provide
5 the names, addresses, and telephone
6 numbers of such lawyers.
7

8 (x) Such organization has filed with the
9 Iowa Supreme Court Attorney Disciplinary
10 Board on or before July 1 of each year the
11 report required by Iowa Ct. R. 34.14(2). A
12 lawyer will not be deemed in violation of this
13 provision if such organization has failed to
14 file the required report so long as the lawyer
15 does not know or have cause to know of such
16 failure.
17

18 (e) A lawyer shall not accept employment when the
19 lawyer knows or reasonably should know that the person
20 seeking legal services does so as a result of conduct
21 prohibited under this rule.
22

23 **Comment**

24
25 [1] Selection of a lawyer by a layperson should be
26 made on an informed basis. Advice and recommendation of
27 third parties—relatives, friends, acquaintances, business
28 associates, or other lawyers—and disclosure of relevant
29 information about the lawyer and the lawyer’s practice may
30 be helpful. A layperson is best served if the recommendation
31 is disinterested and informed. In order that the
32 recommendation be disinterested, a lawyer should not seek
33 to influence another to recommend employment. A lawyer
34 should not compensate another person for a
35 recommendation of employment, for influencing a
36 prospective client to employ the lawyer, or to encourage
37 future recommendations.
38

39 [2] Lawyers are not permitted to pay others for
40 channeling professional work. Paragraph (b)(1), however,
41 allows a lawyer to pay for advertising and communications
42 permitted by rule 32:7.2, including the costs of print
43 directory listings, on-line directory listings, newspaper
44 advertisements, and television and radio airtime. A lawyer
45 may compensate employees, agents, and vendors who are
46 engaged to provide marketing or client-development services,

1 such as publicists, public-relations personnel, business-
2 development staff, and Web site designers. See rule 32:5.3
3 for the duties of lawyers and law firms with respect to the
4 conduct of nonlawyers who prepare marketing materials for
5 them.
6

7 [3] The legal profession has developed lawyer referral
8 systems designed to aid individuals who are able to pay fees
9 but need assistance in locating lawyers competent to handle
10 their particular problems. Use of a lawyer referral system
11 enables a layperson to avoid an uninformed selection of a
12 lawyer because such a system makes possible the
13 employment of competent lawyers who have indicated an
14 interest in the subject matter involved. Lawyers should
15 support the principle of lawyer referral systems and should
16 encourage the evolution of other ethical plans which aid in
17 the selection of qualified counsel.

18 [4] A lawyer who accepts assignments or referrals from
19 a legal service plan or referrals from a lawyer referral service
20 must act reasonably to ensure that the activities of the plan
21 or service are compatible with the lawyer's professional
22 obligations. See rule 32:5.3. Legal service plans and lawyer
23 referral services may communicate with prospective clients,
24 but such communication must be in conformity with these
25 rules. Thus, advertising must not be false or misleading, as
26 would be the case if the communications of a group legal
27 services plan would mislead prospective clients to think that
28 it was a lawyer referral service sponsored by a state agency
29 or bar association. Nor could the lawyer allow in-person,
30 telephonic, or real-time contacts that would violate rule
31 32:7.3.

32
33 **RULE 32:7.8: SUGGESTION OF NEED OF**
34 **LEGAL SERVICES**
35

36 **(a) A lawyer who has given unsolicited advice in-**
37 **person or by telephone to a layperson to obtain counsel**
38 **or take legal action shall not accept employment**
39 **resulting from that advice, except that:**
40

41 **(1) A lawyer may accept employment by a**
42 **close friend, relative, existing client, or former**
43 **client, provided the lawyer does not know or have**

1 **reason to know the attorney-client relationship has**
2 **been terminated.**

3
4 **(2) A lawyer may accept employment that**
5 **results from personal participation in activities**
6 **designed to educate laypersons to recognize legal**
7 **problems, to make intelligent selection of counsel,**
8 **or to utilize available legal services if such**
9 **activities are conducted or sponsored by any of the**
10 **offices or organizations enumerated in rule**
11 **32:7.7(d)(1) through (4), to the extent and under**
12 **the conditions prescribed therein.**

13
14 **(3) A lawyer who is recommended, furnished,**
15 **or paid by a qualified legal assistance organization**
16 **enumerated in rule 32:7.7(d)(1) through (4) may**
17 **represent a member or beneficiary thereof, to the**
18 **extent and under the conditions prescribed**
19 **therein.**

20
21 **(b) Without affecting the right to accept**
22 **employment, a lawyer may speak publicly or write for**
23 **publication on legal topics so long as such activities do**
24 **not emphasize the lawyer's own professional experience**
25 **or reputation and the lawyer does not undertake to give**
26 **individual advice.**

27
28 **(c) If success in asserting rights or defenses of a**
29 **client in litigation in the nature of a class action is**
30 **dependent upon the joinder of others, a lawyer may**
31 **accept, but shall not seek, employment from those**
32 **contacted for the purpose of obtaining their joinder.**

33
34 **Comment**

35
36 [1] Whether a lawyer acts properly in volunteering in-
37 person advice to a layperson to seek legal services depends
38 upon the circumstances. The giving of advice that one
39 should take legal action could well be in fulfillment of the
40 duty of the legal profession to assist laypersons in
41 recognizing legal problems. The advice is proper only if the
42 lawyer is motivated by a desire to protect one who does not
43 recognize that one may have legal problems or who is
44 ignorant of one's legal rights or obligations. The advice is
45 improper if the lawyer is motivated by a desire to obtain
46 personal benefit, secure personal publicity, or cause legal

1 action to be taken merely to harass or injure another. Since
2 motivation is subjective and often difficult to judge, the
3 motives of a lawyer who volunteers in-person advice likely to
4 produce legal controversy may well be suspect if the lawyer
5 receives professional employment or other benefits as a
6 result. A lawyer who volunteers in-person advice that one
7 should obtain the services of a lawyer generally should not
8 accept employment, compensation, or other benefit in
9 connection with that matter except as permitted by this rule.

10
11 [2] The public's need for legal services is met only if
12 laypersons recognize their legal problems, appreciate the
13 importance of seeking assistance, and are able to obtain the
14 services of acceptable legal counsel. Hence, important
15 functions of the legal profession are to educate laypersons to
16 recognize their problems, to facilitate the process of
17 intelligent selection of lawyers, and to assist in making legal
18 services fully available.

19
20 [3] The legal profession should assist laypersons to
21 recognize legal problems because such problems may not be
22 self-revealing and often are not timely noticed. Therefore,
23 lawyers should encourage and participate in educational and
24 public relations programs concerning our legal system with
25 particular reference to legal problems that frequently arise.
26 Preparation of advertisements and professional articles for
27 lay publications and participation in seminars, lectures, and
28 civic programs should be motivated by a desire to educate
29 the public to an awareness of legal needs and to provide
30 information relevant to the selection of the most appropriate
31 counsel rather than to obtain publicity for particular
32 lawyers.

33
34 [4] A lawyer who writes or speaks for the purpose of
35 educating members of the public to recognize legal problems
36 should carefully refrain from giving or appearing to give a
37 general solution applicable to all apparently similar
38 individual problems, since slight changes in fact situations
39 may require a material variance in the applicable advice;
40 otherwise, the public may be misled and misadvised. Talks
41 and writings by lawyers for laypersons should caution
42 laypersons not to attempt to solve individual problems upon
43 the basis of the information contained therein.

1 however, should do so openly and not use the right of
2 nondisclosure as a justification for failure to comply with
3 this rule.
4

5 [3] A lawyer representing an applicant for admission to
6 the bar, or representing a lawyer who is the subject of a
7 disciplinary inquiry or proceeding, is governed by the rules
8 applicable to the client-lawyer relationship, including rule
9 32:1.6, Iowa Code section 622.10, and, in some cases, rule
10 32:3.3.
11

12 **RULE 32:8.2: JUDICIAL AND LEGAL OFFICIALS**

14
15 **(a) A lawyer shall not make a statement that the**
16 **lawyer knows to be false or with reckless disregard as to**
17 **its truth or falsity concerning the qualifications or**
18 **integrity of a judge, adjudicatory officer, or public legal**
19 **officer, or of a candidate for election or appointment to**
20 **judicial or legal office.**
21

22 **(b) A lawyer who is a candidate for judicial office**
23 **shall comply with the applicable provisions of the Code**
24 **of Judicial Conduct.**
25

26 **Comment**

27
28 [1] Assessments by lawyers are relied on in evaluating
29 the professional or personal fitness of persons being
30 considered for election or appointment to judicial office and
31 to public legal offices, such as attorney general, prosecuting
32 attorney, and public defender. Expressing honest and candid
33 opinions on such matters contributes to improving the
34 administration of justice. Conversely, false statements by a
35 lawyer can unfairly undermine public confidence in the
36 administration of justice.

37 [2] When a lawyer seeks judicial office, the lawyer
38 should be bound by applicable limitations on political
39 activity.

40 [3] To maintain the fair and independent
41 administration of justice, lawyers are encouraged to continue
42 traditional efforts to defend judges and courts unjustly
43 criticized.
44

1
2 **RULE 32:8.3: REPORTING PROFESSIONAL MISCONDUCT**
3

4 (a) A lawyer who knows that another lawyer has
5 committed a violation of the Iowa Rules of Professional
6 Conduct shall inform the appropriate professional
7 authority.
8

9 (b) A lawyer who knows that a judge has committed
10 a violation of applicable rules of judicial conduct shall
11 inform the appropriate authority.
12

13 (c) This rule does not require disclosure of
14 information otherwise protected by rule 32:1.6 or Iowa
15 Code section 622.10 or information gained by a lawyer
16 or judge while participating in an approved lawyers
17 assistance program.
18

19 **Comment**
20

21 [1] Self-regulation of the legal profession requires that
22 members of the profession initiate disciplinary investigation
23 when they know of a violation of the Iowa Rules of
24 Professional Conduct. Lawyers have a similar obligation with
25 respect to judicial misconduct. An apparently isolated
26 violation may indicate a pattern of misconduct that only a
27 disciplinary investigation can uncover. Reporting a violation
28 is especially important where the victim is unlikely to
29 discover the offense.
30

31 [2] A report about misconduct is not required where it
32 would involve violation of rule 32:1.6 or Iowa Code section
33 622.10. However, a lawyer should encourage a client to
34 consent to disclosure where prosecution of the professional
35 misconduct would not substantially prejudice the client's
36 interests.
37

38 [3] (Reserved)
39

40 [4] The duty to report professional misconduct does
41 not apply to a lawyer retained to represent a lawyer whose
42 professional conduct is in question. Such a situation is
43 governed by the rules applicable to the client-lawyer
44 relationship and Iowa Code section 622.10.

1 [5] Information about a lawyer's or judge's misconduct
2 or fitness may be received by a lawyer in the course of that
3 lawyer's participation in an approved lawyers or judges
4 assistance program. In that circumstance, providing for an
5 exception to the reporting requirements of paragraphs (a)
6 and (b) of this rule encourages lawyers and judges to seek
7 treatment through such a program. Conversely, without
8 such an exception, lawyers and judges may hesitate to seek
9 assistance from these programs, which may then result in
10 additional harm to their professional careers and additional
11 injury to the welfare of clients and the public. These rules do
12 not otherwise address the confidentiality of information
13 received by a lawyer or judge participating in an approved
14 lawyers assistance program; such an obligation, however,
15 may be imposed by the rules of the program or other law.

16
17 **RULE 32:8.4: MISCONDUCT**

18
19 **It is professional misconduct for a lawyer to:**

20
21 **(a) violate or attempt to violate the Iowa Rules of**
22 **Professional Conduct, knowingly assist or induce**
23 **another to do so, or do so through the acts of another;**

24
25 **(b) commit a criminal act that reflects adversely on**
26 **the lawyer's honesty, trustworthiness, or fitness as a**
27 **lawyer in other respects;**

28
29 **(c) engage in conduct involving dishonesty, fraud,**
30 **deceit, or misrepresentation;**

31
32 **(d) engage in conduct that is prejudicial to the**
33 **administration of justice;**

34
35 **(e) state or imply an ability to influence improperly**
36 **a government agency or official or to achieve results by**
37 **means that violate the Iowa Rules of Professional**
38 **Conduct or other law;**

39
40 **(f) knowingly assist a judge or judicial officer in**
41 **conduct that is a violation of applicable rules of judicial**
42 **conduct or other law; or**
43

1 **(g) engage in sexual harassment or other unlawful**
2 **discrimination in the practice of law or knowingly**
3 **permit staff or agents subject to the lawyer's direction**
4 **and control to do so.**
5

6 **Comment**
7

8 [1] Lawyers are subject to discipline when they violate
9 or attempt to violate the Iowa Rules of Professional Conduct,
10 knowingly assist or induce another to do so or do so through
11 the acts of another, as when they request or instruct an
12 agent to do so on the lawyer's behalf. Paragraph (a), however,
13 does not prohibit a lawyer from advising a client concerning
14 action the client is legally entitled to take.
15

16 [2] Illegal conduct can reflect adversely on fitness to
17 practice law. A pattern of repeated offenses, even ones of
18 minor significance when considered separately, can indicate
19 indifference to legal obligation.
20

21 [3] A lawyer who, in the course of representing a client,
22 knowingly manifests, by words or conduct, bias or prejudice
23 based upon race, sex, religion, national origin, disability,
24 age, sexual orientation or socioeconomic status, violates
25 paragraph (d) when such actions are prejudicial to the
26 administration of justice. Legitimate advocacy respecting the
27 foregoing factors does not violate paragraph (d). A trial
28 judge's finding that peremptory challenges were exercised on
29 a discriminatory basis does not alone establish a violation of
30 this rule. For another reference to discrimination as
31 professional misconduct, see paragraph (g).
32

33 [4] A lawyer may refuse to comply with an obligation
34 imposed by law upon a good faith belief that no valid
35 obligation exists. The provisions of rule 32:1.2(d) concerning
36 a good faith challenge to the validity, scope, meaning, or
37 application of the law apply to challenges of legal regulation
38 of the practice of law.
39

40 [5] Lawyers holding public office assume legal
41 responsibilities going beyond those of other citizens. A
42 lawyer's abuse of public office can suggest an inability to
43 fulfill the professional role of a lawyer. The same is true of
44 abuse of positions of private trust such as trustee, executor,
45 administrator, guardian, agent, and officer, director, or
46 manager of a corporation or other organization.

1
2 [6] It is not professional misconduct for a lawyer to
3 advise clients or others about or to supervise or participate
4 in lawful covert activity in the investigation of violations of
5 civil or criminal law or constitutional rights or in lawful
6 intelligence-gathering activity, provided the lawyer's conduct
7 is otherwise in compliance with these rules. "Covert activity"
8 means an effort to obtain information on unlawful activity
9 through the use of misrepresentations or other subterfuge.
10 Covert activity may be commenced by a lawyer or involve a
11 lawyer as an advisor or supervisor only when the lawyer in
12 good faith believes there is a reasonable possibility that
13 unlawful activity has taken place, is taking place, or will take
14 place in the foreseeable future. Likewise, a government
15 lawyer who supervises or participates in a lawful covert
16 operation which involves misrepresentation or deceit for the
17 purpose of gathering relevant information, such as law
18 enforcement investigation of suspected illegal activity or an
19 intelligence-gathering activity, does not, without more,
20 violate this rule.

21
22
23 **RULE 32:8.5: DISCIPLINARY AUTHORITY; CHOICE OF**
24 **LAW**

25
26 **(a) Disciplinary Authority. A lawyer admitted to**
27 **practice in Iowa is subject to the disciplinary authority**
28 **of Iowa, regardless of where the lawyer's conduct occurs.**
29 **A lawyer not admitted in Iowa is also subject to the**
30 **disciplinary authority of Iowa if the lawyer provides or**
31 **offers to provide any legal services in Iowa. A lawyer may**
32 **be subject to the disciplinary authority of both Iowa and**
33 **another jurisdiction for the same conduct.**

34
35 **(b) Choice of Law. In any exercise of the**
36 **disciplinary authority of Iowa, the rules of professional**
37 **conduct to be applied shall be as follows:**

38 **(1) for conduct in connection with a matter**
39 **pending before a tribunal, the rules of the**
40 **jurisdiction in which the tribunal sits, unless the**
41 **rules of the tribunal provide otherwise; and**

42 **(2) for any other conduct, the rules of the**
43 **jurisdiction in which the lawyer's conduct occurred**
44 **or, if the predominant effect of the conduct is in a**

1 **different jurisdiction, the rules of that jurisdiction**
2 **shall be applied to the conduct. A lawyer shall not**
3 **be subject to discipline if the lawyer's conduct**
4 **conforms to the rules of a jurisdiction in which the**
5 **lawyer reasonably believes the predominant effect**
6 **of the lawyer's conduct will occur.**

7 **Comment**

8
9 *Disciplinary Authority*

10
11 [1] It is longstanding law that the conduct of a lawyer
12 admitted to practice in Iowa is subject to the disciplinary
13 authority of Iowa. Extension of the disciplinary authority of
14 Iowa to other lawyers who provide or offer to provide legal
15 services in Iowa is for the protection of the citizens of Iowa.
16 Reciprocal enforcement of a jurisdiction's disciplinary
17 findings and sanctions will further advance the purposes of
18 this rule. See Iowa Ct. R. 35.18. A lawyer who is subject to
19 Iowa's disciplinary authority under rule 32:8.5(a) appoints
20 the Clerk of the Supreme Court of Iowa to receive service of
21 process with respect to Iowa disciplinary matters. The fact
22 that the lawyer is subject to the disciplinary authority of
23 Iowa may be a factor in determining whether personal
24 jurisdiction may be asserted over the lawyer for civil matters.

25
26 *Choice of law*

27
28 [2] A lawyer may be potentially subject to more than
29 one set of rules of professional conduct which impose
30 different obligations. The lawyer may be licensed to practice
31 in more than one jurisdiction with differing rules, or may be
32 admitted to practice before a particular court with rules that
33 differ from those of the jurisdiction or jurisdictions in which
34 the lawyer is licensed to practice. Additionally, the lawyer's
35 conduct may involve significant contacts with more than one
36 jurisdiction.

37 [3] Paragraph (b) seeks to resolve such potential
38 conflicts. Its premise is that minimizing conflicts between
39 rules, as well as uncertainty about which rules are
40 applicable, is in the best interest of both clients and the
41 profession (as well as the bodies having authority to regulate
42 the profession). Accordingly, it takes the approach of (i)
43 providing that any particular conduct of a lawyer shall be
44 subject to only one set of rules of professional conduct, (ii)

1 making the determination of which set of rules applies to
2 particular conduct as straightforward as possible, consistent
3 with recognition of appropriate regulatory interests of
4 relevant jurisdictions, and (iii) providing protection from
5 discipline for lawyers who act reasonably in the face of
6 uncertainty.

7 [4] Paragraph (b)(1) provides that as to a lawyer's
8 conduct relating to a proceeding pending before a tribunal,
9 the lawyer shall be subject only to the rules of the
10 jurisdiction in which the tribunal sits unless the rules of the
11 tribunal, including its choice of law rule, provide otherwise.
12 As to all other conduct, including conduct in anticipation of
13 a proceeding not yet pending before a tribunal, paragraph
14 (b)(2) provides that a lawyer shall be subject to the rules of
15 the jurisdiction in which the lawyer's conduct occurred, or, if
16 the predominant effect of the conduct is in another
17 jurisdiction, the rules of that jurisdiction shall be applied to
18 the conduct. In the case of conduct in anticipation of a
19 proceeding that is likely to be before a tribunal, the
20 predominant effect of such conduct could be where the
21 conduct occurred, where the tribunal sits, or in another
22 jurisdiction.

23 [5] When a lawyer's conduct involves significant
24 contacts with more than one jurisdiction, it may not be clear
25 whether the predominant effect of the lawyer's conduct will
26 occur in a jurisdiction other than the one in which the
27 conduct occurred. So long as the lawyer's conduct conforms
28 to the rules of a jurisdiction in which the lawyer reasonably
29 believes the predominant effect will occur, the lawyer shall
30 not be subject to discipline under this rule.

31 [6] If two admitting jurisdictions were to proceed
32 against a lawyer for the same conduct, they should, in
33 applying this rule, identify the same governing ethics rules.
34 They should take all appropriate steps to see that they do
35 apply the same rule to the same conduct, and in all events
36 should avoid proceeding against a lawyer on the basis of two
37 inconsistent rules.

38 [7] The choice of law provision applies to lawyers
39 engaged in transnational practice, unless international law,
40 treaties, or other agreements between competent regulatory
41 authorities in the affected jurisdictions provide otherwise.