

MAGICSHEETS | PROFESSIONAL RESPONSIBILITY (ABA & CA) 4/5

DIVERGENT ISSUES	ABA	CA
Duty of competence	L must have legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent a client	L may not intentionally, recklessly, or repeatedly fail to perform legal services with competence Competency includes the duty to supervise the work of subordinate L and non-L employees
Duty of diligence	L must act with reasonable diligence and promptness in representing C	L may not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing C
Duty of loyalty – conflict of interest (COI)	L may not accept or continue representation of C, without informed written consent (IWC) from C, if (1) the representation is directly adverse to another C or (2) there is a significant risk that representation of C will be materially limited by L’s responsibilities to another C, former C, or personal interest of L	Or L has legal, business, financial, professional, or personal relationship w/ party in same matter
Exception	UNLESS L obtains informed written consent (IWC) from Cs + L reasonably believes he can competently and diligently represent each C	UNLESS L obtains informed written consent (IWC) from Cs
Duty of loyalty – COI Sexual relations with C	L may not engage in sexual relation with C (even consensual), unless it preceded AC relationship	Same, unless C is L’s spouse or registered domestic partner
Duty of loyalty – COI Loans to client	L cannot provide financial assistance to C in connection with litigation, except for... - Advancing litigation expenses (repayment may be contingent on outcome) - Paying litigation expenses for an indigent C	L may lend money to C for any purpose if C gives written promise to repay
Duty of loyalty – COI Pecuniary interest	Pecuniary interest in C’s property is only allowed as lien to secure fees or contingency fee	Retaining liens is not allowed
Fees Standards	Fees cannot be “unreasonable” Factors include: novelty and difficulty of legal issues, time limitation, nature of relationship w/ client, experience, contingency	Fees cannot be “illegal or unconscionable” CA also factors in: amount in proportion to value of services, relative sophistication of attorney and client, client’s informed consent to fee
Fees Agreements	Fee agreement is <i>preferably</i> in writing, except for regularly represented clients w/ same basis or rate Contingency fee agreement <i>must</i> be in writing	For <i>non-contingency cases</i> , written agreement required only if reasonably foreseeable > \$1k
Fees Third-party compensation	May take comp from non-C, only if 1) <i>3P does not interfere</i> with independence of professional judgment or with lawyer-client relationship, 2) C info is <i>kept confidential</i> , and 3) C gives <i>informed consent</i>	May take comp from non-C, only if 1) <i>3P does not interfere</i> with independence of professional judgment or with lawyer-client relationship, 2) C info is <i>kept confidential</i> , and 3) C gives <i>informed, written consent (IWC)</i>
Fees Referral fees	Referral fees are prohibited	L may pay fee to referring L, only with <i>written client consent</i> and <i>total fee not increased</i>
Fees “True retainers”	–	L may charge <i>non-refundable</i> fee to ensure L’s availability to C if C agrees in writing
Fees Arbitration	–	C may elect arbitration of dispute of L’s fees, unless agreed in writing to mandatory arbitration
Duty to safekeep client property	Depositing L’s funds in C trust account permitted to extent reasonably necessary to pay bank charges –	EXCEPTION: advance flat fee w/ written notice
Duty of confidentiality	L must not reveal information relating to the representation of a client. EXCEPTIONS: To prevent death or serious bodily harm To prevent crime/fraud likely to cause substantial <i>financial</i> harm. To get ethics advice Compelled by court/law/ethics rules Informed consent from C, suit v. client, collect fees	<i>May</i> reveal to extent necessary after dissuading C and informing C that info can be revealed – Compelled by court/law rules
Organization as client (potential Business Associations crossover) Reporting up client org	When L knows that action of (rogue) officer or employee is likely to result in substantial injury to the org, L must proceed as is reasonably necessary in the best interest of the org Report up the chain of command up to the highest level (board of directors). If this fails, and there is substantial risk of harm to the org, L may reveal info outside to the extent necessary	Urge rogue employee to reconsider while explaining likely consequences. L must not violate duty of confidentiality. If this fails, withdraw from rep (never authorized to reveal info to outside)

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Termination of representation (mandatory)	Termination is mandatory if representation will result in violation of the rules or other law, L's physical or mental condition materially impairs ability to represent client, or L is discharged by C	Termination is mandatory if L knows or should know that representation will result in violation of rules, L's physical or mental condition renders it unreasonably difficult to carry out representation effectively, L is discharged by C, or frivolous litigation
Withdrawal of representation (permissive)	C insists on action L considers repugnant, crime or fraud, unreasonably difficult. C agrees to termination. Other good cause	← Any of these rules, or C insists on action not warranted under existing law, or continued representation is likely to result in violation of these rules
Malpractice suit v. L	C needs written notice and reasonable opportunity to seek independent counsel before settling	
	–	Criminal Δ who sues a lawyer for malpractice must make a colorable claim of actual innocence Will/trust: Intended beneficiary known to L may also hold L liable for malpractice
Duty of candor	L has a duty not to knowingly make a false statement of fact or law, fail to disclose adverse law, or offer false evidence (including from witness or client). L may refuse to offer evidence he reasonably believes is false or disclose adverse facts [CA used to have different standard until 2018]	
Duty of candor Testimony of criminal Δ	If L reasonably believes testimony will be false, must still allow Δ to testify If L knows Δ's testimony will be false...	
	Try to convince not to, ask court to withdraw, or disclose	Try to convince not to, ask court to withdraw, or allow Δ to testify in narrative
Lawyer as witness	L may not be a witness and advocate, unless there is: uncontested matter, explanation of nature and value of legal services, or substantial hardship on C	L may not be a witness and advocate, unless there is: uncontested matter, explanation of nature and value of legal services, substantial hardship on C, or client IWC
"Threat rule"	–	L may not threaten <i>criminal</i> , administrative, or disciplinary charges to gain advantage in civil lit
Trial publicity	L may state to media re charges, defense, investigation exists, schedule, ask help, warn public danger	L may not make media statement if there is a substantial likelihood it will result in material prejudice
Advertisement (generally allowed)	False or misleading communication containing <i>material</i> misrepresentation of fact or law (or omission of a necessary fact) are prohibited	False or misleading statements are prohibited (materiality not required) Presumed violations: testimonials (unless disclaimer), guarantees, predictions, implied affiliations
Solicitation (generally prohibited)	L may not seek work via contact in person or live phone call (or real-time electronics under ABA only), unless family or prior professional (or close personal under ABA) relationship	
	–	Runner/capper: Cannot give anything of value to a person for recommending the lawyer or services, or reward a person for a recommendation made that resulted in employment, except for reasonable media cost
Sale of practice	<i>Entire</i> practice must be sold, must cease practicing law in the geographic area	Sale of <i>substantially</i> all of practice allowed
Grounds for discipline after admission	L may not violate the rules <u>or</u> knowingly assist or induce others, or commit a criminal act or engage in conduct that reflects dishonesty	L may not commit felony, crime, or act involving "moral turpitude, dishonesty or corruption"
Duty to report misconduct	If L knows (suspicion or speculation insufficient) of a violation of rules that presents a substantial question as to the honesty, trustworthiness, or fitness as an attorney, L has ongoing obligation to report it	Self-reporting required if sanctions > \$1k, 3 suits were filed v. L within 1 year, or facing felony charges (Reporting another L's violations is permissive)
Unauthorized practice of law (UPL)	L cannot engage or aid in the unauthorized practice of law	
	–	L may hire and properly supervise a disbarred, suspended, resigned, or involuntarily inactive member to do non-attorney work