

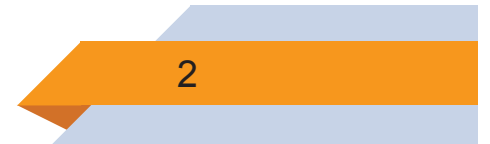
50 SHADES OF BLUE: Ethical Considerations in Advising Law Enforcement

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Outline

1. Background on Police Legal Advisors.
2. Understanding Ethics.
3. What are the Guidelines?
4. Functions of a Police Legal Advisor and How the Rules Apply.

1

Police Legal Advisors

A Brief History

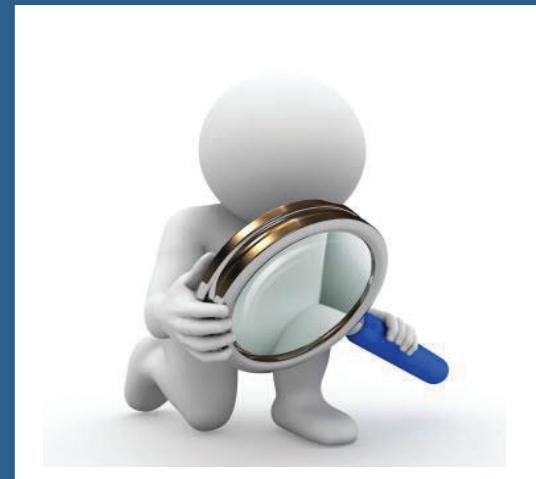
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A Timeline

Key sources of information highlighting the importance of Legal Advisors in Law Enforcement Agencies.

- 1963 – Police Administration, O.W. Wilson.
- 1967 – President’s Commission on Law Enforcement and Administration of Justice.
- 1967 – Police Legal Advisor, Gerald Caplan
- 1973 – National Advisory Commission on Criminal Justice Standards and Goals.
- 2006 – Police Legal Advisors in the USA: Past, Present, and Future.





Scholarly Literature

Prior to the 1960's not much scholarly literature on the issue of Police Legal Advisors.

1967 Gerald Caplan suggested the value of Police Legal Advisors in providing:

1. Improved police recruitment and hiring standards,
2. Improved police Training,
3. Improved department policies, and
4. Keeping police departments updated on changes in criminal law.



What Has Driven The Need for Legal Advisors?

- Complex work environment.
- Custodial interrogations
- Arrest, Search and Seizure
- Use of force



What Has Driven The Need for Legal Advisors?

- Complex work environment.
- Landmark court case decisions.



Landmark Cases

- *Mapp v. Ohio* (1961), **Holding:** material obtained w/o search warrant cannot be used in a criminal trial.
- *Miranda v. Arizona* (1966), **Holding:** Police must inform suspects of their rights before questioning.
- *Terry v. Ohio* (1968), **Holding:** Stop and frisks do not violate the Constitution under certain circumstances



Landmark Cases

- *Illinois v. Gates* (1983), **Holding:** Totality of Circumstances used for probable cause.
- *Arizona v. Gant* (2009), **Holding:** police may search a vehicle only if the arrested person is within the reaching distance of the passenger compartment at the time of the search or reasonable belief is established that crime-related evidence is present in the vehicle.



Landmark Cases

- *Riley v. California* (2014), **Holding:** warrant needed to search digital information on a cell phone seized incident to arrest.
- *Rodriguez v. United States* (2015) **Holding:** without reasonable suspicion, extension of a traffic stop to conduct dog sniff violates 4th Amendment.
- *Carpenter v. United States*, (2018) **Holding:** acquisition of cell-site records is a search under 4th Amendment, and, thus, generally requires a warrant.



What Has Driven The Need for Legal Advisors?

- Complex work environment.
- Landmark court case decisions.
- National spotlight of “bad” policing.



National Spotlight of “Bad Policing”

- Rodney King (1991), use of force
- Michael Brown in Ferguson (2014), OIS
- Laquan McDonald in Chicago (2014), OIS charged w/ murder
- Walter Scott in North Charleston (2015), OIS charged w/ murder
- Samuel Dubose in Cincinnati (2015), OIS charged w/murder
- Alton Sterling in Baton Rouge, LA (2016), OIS no charges



What Has Driven The Need for Legal Advisors?

- Complex work environment.
- Landmark court case decisions.
- National spotlight of “bad” policing.
- Social influence and increased public expectations of transparency.
- Increase of litigation and liability claims in police departments.

“Today, the need for in-house police legal advisors is necessary as litigation and liability claims involving law enforcement officers continue to increase.”

—*Carol Archbold*

“

***Stand with anybody who stands right.
Stand with him while he is right, and
part with him when he has gone
wrong.”***

Abraham Lincoln, 16th President of the United States of America.

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Understanding Ethics

Is there really a right and a wrong?



Ethics

■ Ethics, morals, values, and integrity converge to guide the lawyer in professional conduct.



Ethics

■ Ethics refers to a set of moral principles that govern a person's conduct in dealing with concepts of right or wrong behavior.”

-Merriam Webster Dictionary



Morals

■ “Morals” refers to principles of right or wrong based on a standard of right behavior. ”

-Merriam Webster Dictionary



Morals

- Historically, morals have been linked to deeply held religious beliefs.
- Today morals transcend from religious principles to influence the secular world of businesses, government agencies, and professionals in establishing codes of ethics.



Ethics v. Morals

■ Morality describes one's values concerning what is right or wrong based on an element of subjective preference.

■ Ethics determines what is right or wrong, and establishes a set of rules or standards.

Ex: Moral principles prevent me from cheating; a code ethics requires that I not cheat.



Key Factors of Developing Moral Behavior

Research suggests that there are four basic factors that attribute to developing moral behavior:

1. moral awareness, recognizing an ethical situation.
2. moral reasoning, ability to overcome self-interest and cognitive biases to make an ethical decision.
3. moral intent, motivation to act on moral convictions, and
4. moral behavior, acting on ethical decision despite peer pressure or organizational reward structures.

Deborah L. Rhode, Legal Ethics in Legal Education, 16 *Clinical L. Rev.* 43, 48 (2009).





Additional Terms

- “Values” refers to a person’s judgments of what is important in life.
 - Oxford Dictionary
- “Integrity” refers to being free from corruption or impurity. Integrity is the quality of being honest and upright, having a strong moral principle and character.
 - Black’s Law Dictionary



Failure to Maintain Personal Integrity

■ The Texas Rules of Disciplinary Procedure provides for discipline when a lawyer fails to maintain personal integrity.

■ Sanctions are generally appropriate in cases involving (1) the commission of any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) the failure to maintain personal integrity in other respects, including stating or implying an ability to influence improperly a government agency or official or by improperly assisting a judge or judicial official in conduct that violates rules of judicial conduct or other law.

- Tex. R. Disc. P. 15.06



Legal Ethics

- “Ethics”
- “Morals”
- “Values”
- “Integrity”

These terms converge together to establish a set of legal ethics governing the conduct applicable to members of the legal profession.

“ Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interests. ”

Texas Disciplinary Rules of Professional Conduct: Preamble ¶ 7 (2019).

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WHAT ARE THE GUIDELINES

Navigating ethical behavior



Essential Tools

1. Texas Lawyer's Oath
2. Texas Lawyer's Creed
3. Texas Standards for Appellate Conduct
4. Texas Disciplinary Rules of Professional Conduct
5. Texas Rules of Disciplinary Procedure
6. Texas Professional Ethics Committee.



Texas Lawyer's Oath

- The Texas Government Code provides that “Each person admitted to practice law shall, before receiving a license, take an oath that the person will: (1) support the constitutions of the United States and this state; (2) honestly demean oneself in the practice of law; (3) discharge the attorney's duty to the attorney's client to the best of the attorney's ability; and (4) conduct oneself with integrity and civility in dealing and communicating with the court and all parties.”

Tex. Gov't Code §82.037.



Texas Lawyer's Oath

“I, _____, do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God”



Texas Lawyer's Creed

Texas Lawyer's Creed Timeline

- **August 19, 1988** – Eugene A. Cook is appointed to the Texas Supreme Court by Governor Bill Clements.
- **November 8, 1988** – Justice Cook is elected as an Associate Justice of the Texas Supreme Court.
- **May 22, 1989** – Justice Cook requests authorization from Supreme Court to form a Supreme Court Advisory Committee on Professionalism.
- **May 31, 1989** – Justice Cook requests local bar leaders to designate representatives for the Committee.
- **June to September 1989** – The Supreme Court Professionalism Committee holds meetings to draft and edit a definitive statement of professionalism for Texas lawyers.
- **Sept. 25, 1989** – Justice Cook provides a copy of the adopted Lawyer's Creed to the entire Supreme Court
- **Nov 7, 1989** – Texas Supreme Court and Texas Court of Criminal Appeals adopt the Texas Lawyer's Creed
- "Texas Lawyer's Creed Timeline," at <https://www.legalethicstexas.com/EthicsResources/Rules/Texas-Lawyer-s-Creed>



Texas Lawyer's Creed

“I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.”



Texas Lawyer's Creed

OUR LEGAL SYSTEM: A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.



Texas Lawyer's Creed

LAWYER TO CLIENT: A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.



Texas Lawyer's Creed

LAWYER TO LAWYER: A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.



Texas Lawyer's Creed

LAWYER AND JUDGE: Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

Texas Lawyer's Creed A Mandate For Professionalism, at https://www.legaethicstexas.com/getattachment/Ethics-Resources/Rules/Texas-Lawyer-s-Creed/Texas_Lawyers_Creed.pdf?lang=en-US (last visited April 13, 2019).



Texas Attorney Discipline System

The Texas attorney discipline system is governed by the

1. Texas Disciplinary Rules of Professional Conduct (ethics rules). The ethics rules define proper conduct for purposes of professional discipline.
2. Texas Rules of Disciplinary Procedure (procedural rules). The procedural rules provide the mechanism by which grievances are processed, investigated, and prosecuted.

State Bar of Texas Commission For Lawyer Discipline Annual Report June 1, 2017 – May 31, 2018.



Texas Disciplinary Rules of Professional Conduct

The Preamble:

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

Texas Disciplinary Rules of Professional Conduct: Preamble ¶1 (2019).



Texas Disciplinary Rules of Professional Conduct

The Preamble:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.

As advocate...

As negotiator...

As intermediary...

As evaluator...

Texas Disciplinary Rules of Professional Conduct: Preamble ¶2 (2019).



Texas Disciplinary Rules of Professional Conduct

The Preamble:

In all professional functions, a lawyer should zealously pursue client's interests within the bounds of the law. In doing so, a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Texas Disciplinary Rules of Professional Conduct or other law.

Texas Disciplinary Rules of Professional Conduct: Preamble ¶3 (2019).



Texas Disciplinary Rules of Professional Conduct

The Preamble:

In the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interests. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of these Rules many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment.

Texas Disciplinary Rules of Professional Conduct: Preamble ¶ 7 (2019).



Texas Disciplinary Rules of Professional Conduct

The Preamble:

Each lawyer's own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Texas Disciplinary Rules of Professional Conduct: Preamble ¶ 9 (2019).



Texas Rules of Disciplinary Procedure

The Preamble:

The Supreme Court of Texas has the constitutional and statutory responsibility for lawyer discipline. The responsibility for administering and supervising lawyer discipline is delegated to the Board of Directors of the State Bar of Texas.

Tex. R. Disciplinary P Preamble, at [https://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Rules-of-Disciplinary-Procedure/Preamble-\(1\)/Preamble](https://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Rules-of-Disciplinary-Procedure/Preamble-(1)/Preamble) (last visited April 13, 2019)



Texas Rules of Disciplinary Procedure

The Commission for Lawyer Discipline is a standing committee composed of 12 members:

- six attorneys appointed by the State Bar president, and
- six public members appointed by the Supreme Court of Texas.



Texas Rules of Disciplinary Procedure

The Commission provides oversight to the Office of Chief Disciplinary Counsel, which administers the attorney discipline system. Disciplinary action by the Commission ranges from private reprimands to disbarment.

State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2017-May 31, 2018.



Texas Rules of Disciplinary Procedure

The different types of sanctions, or levels of discipline, include:

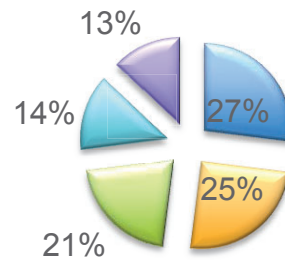
- private reprimand,
- public reprimand,
- suspension of a specific term, or a full or partial probated suspension, or
- disbarment.
- Ancillary sanctions may also be considered and include payment of restitution and attorney fees.

State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2017-May 31, 2018.



Texas Rules of Disciplinary Procedure

Areas of Misconduct



- Communication
- Integrity
- Neglect
- Safeguard Property
- Decline/Terminate Representation

Source: State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2017-May 31, 2018.



Texas Professional Ethics Committee

The Committee issues opinions pursuant to Texas Government Code, which states that “[t]he committee shall, either on its own initiative or when requested to do so by a member of the state bar, express its opinion on the propriety of professional conduct other than on a question pending before the court of this state.”

Tex. Gov't Code §81.091-81.095.

“ Character is like a tree and reputation its shadow. The shadow is what we think of it; the tree is the real thing. ”

—Abraham Lincoln, 16th President of the United States of America.

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Functions of a Police Legal Advisor and How the Rules Apply.

Professional Conduct of the Legal Advisor



The Need for Police Legal Advisor

“Formal police legal advisor training programs affiliated with law schools or universities that offer both instruction...specifically geared toward police liability issues are virtually non-existent.”

-Carol A. Archbold, 2006



Standards on Urban Police Function

Law enforcement agencies have a major responsibility for dealing with serious crime. One way to improve the capacity of the police department in discharging this responsibility effectively is to work together with a legal advisor.

Standards on Urban Police Function, Standard 1-1.1, American Bar Association Standards for Criminal Justice: Volume I, 2nd Ed., (1980)



Standards on Urban Police Function

Given the nature of the police function, police administrators should be provided with in-house police legal advisers who have the personal orientation and expertise necessary to equip them to play a substantial role in the planning and in the development and continual assessment of administrative policies and training programs. The police legal adviser should be an attorney appointed by the police administrator or selected by the administrator from an existing governmental unit.

Standards on Urban Police Function, Standard 1-7.9, American Bar Association Standards for Criminal Justice: Volume I, 2nd Ed., (1980)



Rule 1.12. Organization as a Client

Who is my client?

(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.



Rule 1.12. Organization as a Client

(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:

- (1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;
- (2) the violation is likely to result in substantial injury to the organization; and
- (3) the violation is related to a matter within the scope of the lawyers representation of the organization.



Rule 1.12. Organization as a Client

(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyers representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.



Rule 1.12. Organization as a Client

Comments

When one of the constituents of an organizational client, in their official capacity, communicates with the organizational lawyer, the communication is privileged. The lawyer may not disclose information relating to the representation except for disclosures permitted by Rule 1.05.

1.12 comment 3



Rule 1.12. Organization as a Client

Comments

Where an official's interest conflicts with the municipality's, the attorney has a duty to advise 1) that individual of the conflict of interest, 2) that the lawyer cannot represent the individual, 3) that the individual may wish to obtain independent representation, and 4) that discussions between the lawyer for the organization and the individual may not be privileged insofar as that individual is concerned.

1.12 comment 4



Rule 1.12. Organization as a Client

Comments

In representing the governmental entity, the attorney may also represent any of its directors, officers, employees, or other constituents, subject to the provisions of Rule 1.06 (Conflict of Interest)

1.12 comment 5.



Rule 1.12. Organization as a Client

Comments

Government Agency

9. The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. ...Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances.



Standards on Urban Police Function

In view of the important and sensitive nature of the role, a police legal adviser or the head of a police legal unit should report directly to the police administrator. The relationship of a police legal adviser to a police department should be analogous to that of house counsel to a corporation. The police legal adviser should provide independent legal advice based upon a full understanding of the police function and upon legal expertise, and should anticipate as well as react to legal problems and needs.

Standards on Urban Police Function, Standard 1-7.10, American Bar Association Standards for Criminal Justice: Volume I, 2nd Ed., (1980)



Rule 1.01. Competent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.



Rule 1.01. Competent Representation

- (b) In representing a client, a lawyer shall not:
- (1) neglect a legal matter entrusted to the lawyer; or
 - (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.
- (c) As used in this Rule neglect signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.



Rule 1.01. Competent Representation

Comments

Factors that are relevant in determining a lawyer's competence include the complexity and specialized nature of the legal issue, the lawyer's general experience in that area of law, the preparation and study the lawyer will be able to give the matter, and whether it is feasible to refer the matter to another attorney or associate a lawyer of established competence in the field in question.

1.01 comment 2.



Rule 1.01. Competent Representation

Comments

Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any specialized knowledge.

1.01 comment 3.



Rule 1.01. Competent Representation

Comments

The legal advisor should feel a moral or professional obligation to act with competence, diligence, and promptness on the client's behalf, despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence. An incompetent lawyer is subject to discipline.

1.01 comment 6.



Rule 1.01. Competent Representation

Comments

Additionally, the legal advisor should avoid procrastination and not neglect the client's legal matters. Where the lawyer foresees a possible delay, there is a duty to reasonably communicate that delay with the client pursuant to Rule 1.03. A lawyer is subject to professional discipline for neglecting a legal matter as well as for frequent failures to carry out the obligations owed to the client.

1.01 comment 7.



Rule 1.01. Competent Representation

Comments

The legal advisor should strive to become competent and to maintain a sufficient level of competency in the practice of law, including relevant technology.

1.01 comment 8.



Rule 1.03. Communication

The legal advisor shall keep the client reasonably informed and promptly comply with reasonable requests for information. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



Rule 1.05. Confidentiality

(a) Confidential information includes both privileged information and unprivileged client information. Privileged information refers to the information of a client protected by the lawyer-client privilege of Rule 5.03 of the Texas Rules of Evidence or of Rule 5.03 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 5.01 of the Federal Rules of Evidence for United States Courts and Magistrates. Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.



Rule 1.05. Confidentiality

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the clients representatives, or the members, associates, or employees of the lawyers law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultations.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person unless the client consents after consultation.



Rule 1.05. Confidentiality

Comments

1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidential information of one who has employed or sought to employ the lawyer... The ethical obligation of the lawyer to protect the confidential information of the client not only facilitates the proper representation of the client but also encourages potential clients to seek early legal assistance.

1.05 comment 1.



Rule 1.05. Confidentiality

Comments

5. The requirement of confidentiality applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

1.05 comment 5.



Rule 2.01. Advisor

In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice.



Rule 2.01. Advisor

Comments

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

2.01 Comment 1



Rule 2.01. Advisor

Comments

A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

2.01 Comment 5.



Standards on Urban Police Function

- ▶ formulating the types of administrative policies that are recommended in these standards;
- ▶ developing law-related training programs pertinent to increased understanding of the nature of the police function, departmental policies, judicial trends and their rationale, and of the significant role of the police in preserving democratic processes;
- ▶ formulating legislative programs and participating in the legislative process;



Standards on Urban Police Function

- ▶ maintaining liaison with other criminal justice and municipal agencies on matters primarily relating to policy formulation and policy review, and assessing the effectiveness of various agencies in responding to common legal problems; and
- ▶ developing liaison with members of the local bar and encouraging their participation in responding to legal problems and needs of the police agency.

Standards on Urban Police Function, Standard 1-7.11, American Bar Association Standards for Criminal Justice: Volume I, 2nd Ed., (1980)



Rule 1.02. Scope of Representation

(a) Subject to paragraphs (b), (c), (d), and (e), (f), and (g), a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;



Rule 1.02. Scope of Representation

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.



Rule 1.02. Scope of Representation

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.



Rule 1.02. Scope of Representation

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.



Rule 1.02. Scope of Representation

Comments

The client has ultimate authority to determine the objectives to be served by legal representation, within the limits imposed by law, the lawyer's professional obligations, and the agreed scope of representation. Within those limits, a client also has a right to consult with the lawyer about the general methods to be used in pursuing those objectives. The lawyer should assume responsibility for the means by which the client's objectives are best achieved. Thus, a lawyer has very broad discretion to determine technical and legal tactics, subject to the client's wishes.

1.02 comment 1



Rule 1.02. Scope of Representation

Comments

Unless the representation is terminated as provided in Rule 1.15, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so.

1.02 comment 6



THANKS!

