

**BEST PRACTICES/ETHICAL PRACTICE
IN THE REGION**

January 18th, 2008, 3:45 – 4:45 p.m.

ABI 2008 Caribbean Insolvency Symposium

Hollywood, FL – Westin Diplomat Hotel

Hon. Paul G. Hyman, Moderator

U.S. Bankruptcy Court; West Palm Beach, Fla.

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP; St Thomas, V.I.

Monsita Lecaroz-Arribas

Assistant U.S. Trustee; San Juan, P.R..

Felicia S. Turner

ABI Deputy Executive Director; Alexandria, Va.

HYPOTHETICAL NUMBER ONE

(CONCURRENT/FORMER CLIENTS)

Counsel files both the husband and wife shareholders' Chapter 11 case and the corporation's Chapter 11 case. Regardless of a \$30,000 claim of one debtor against the other, the Court determines there is no actual conflict of interest between the parties due to the immaterial amount of the claim within the context of the case and the lack of dispute. The Court also determines that should a conflict regarding the claim arise, it would appoint another counsel.

An Unsecured Creditors' Committee is appointed in the corporate case. Being an active Creditors' Committee, it files a Proof of Claim on behalf of the corporation in the shareholders' case. It then files a derivative action on behalf of the corporation against the shareholders.

In reaction, Counsel converts the corporate case to Chapter 7.

The Chapter 7 Trustee is appointed in the corporate case, and amends the Proof of Claim filed by Creditors' Committee in the shareholders' case to increase its amount, from \$30,000 to over \$22 million dollars. The Chapter 7 Trustee then files a motion for leave to file a non-dischargeability action of said claim.

Representing the shareholders, Counsel files an objection to the Proof of Claim filed by the Chapter 7 trustee in the shareholders' case.

Again representing the shareholders, Counsel files an objection to the filing of a non-dischargeability action of said claim filed by the Chapter 7 trustee in the shareholders' case, as time-barred.

APPLICABLE ETHICAL RULES

ABA Rule 1.7 Conflict Of Interest: Current Clients

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

- (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

ABA Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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

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

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

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

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

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

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

(1) the client gives informed consent;

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

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas,

unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

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

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

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

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

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

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

ABA Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests

of the former client unless the former client gives informed consent, confirmed in writing.

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

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

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

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

HYPOTHETICAL NUMBER TWO

(CH. 11 DISCLOSURE/SELF DEALING)

A company (the “Debtor”) filed chapter 11. The Debtor, through counsel (“Counsel”), filed a plan of reorganization and disclosure statement, which stated that the Debtor intended to pay creditors from profits derived in the ordinary course of its business. The Court scheduled a confirmation hearing, but Counsel later requested and obtained a continuance.

Ten months after having obtained the continuance, the Debtor entered a multi-million dollar contract to sell substantially all its assets. The Debtor did not seek the Court’s approval of this transaction and did not disclose it. One month later, the prospective buyer wired the earnest money to the Debtor. The Debtor did not disclose the receipt of this money in its monthly operating report but allegedly used it to improve its property. All this activity occurred with the knowledge and advice of Counsel. In addition, there were allegations later that Counsel attempted to have or did have a joint venture with the Debtor’s principal to develop the property.

Three weeks after the Debtor received the earnest money, Counsel filed a motion to reschedule the confirmation hearing and did not disclose the sales contract, the receipt of the earnest money, the improvements to the property, or the alleged business deal between Counsel and the Debtor’s principal. The Debtor never amended its original plan.

Almost two months later, the Court held the confirmation hearing on the original plan. The Court orally confirmed the plan. About one month later, the title commitment on the undisclosed transaction was issued, and the closing was scheduled for one month later. The closing, however, did not occur.

Two weeks after the scheduled closing, which was three months after the confirmation hearing, the Court entered the confirmation order. Given local practice, presumably, Counsel tendered the draft order late. The next day, the prospective buyer and the second mortgagee filed

motions to revoke the confirmation order. After a hearing two weeks later, the Court revoked confirmation.

APPLICABLE ETHICAL RULES

Florida Rule 4-1.1 Competence

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

Florida Rule 4-1.8 Conflict of Interest: Prohibited and Other Transactions

(a) Business Transactions With or Acquiring Interest Adverse to Client.

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:

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

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) Using Information to Disadvantage of Client.

A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by rule 4-1.6.

(c) Gifts to Lawyer or Lawyer's Family.

A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift

from a client, including a testamentary gift, except where the client is related to the donee.

(d) Acquiring Literary or Media Rights.

Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) Financial Assistance to Client.

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) Compensation by Third Party.

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by rule 4-1.6.

(g) Settlement of Claims for Multiple Clients.

A lawyer who represents 2 or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence

and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) Limiting Liability for Malpractice.

A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer shall not settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) Acquiring Proprietary Interest in Cause of Action.

A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee.

(j) Representation of Insureds.

When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date on which the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer or affect the extradisciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an

independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

[Statement of Insured Client's Rights Omitted]

Florida Rule 4-3.2 Expediting Litigation

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

Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Florida Rule 4-3.3 Candor Toward the Tribunal

(a) False Evidence; Duty to Disclose.

A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) permit any witness, including a criminal defendant, to offer testimony or other evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) Extent of Lawyer's Duties.

The duties stated in subdivision (a) continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.

(c) Evidence Believed to Be False.

A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) Ex Parte Proceedings.

In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Florida Rule 4-3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for the professional services of an expert witness; and reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings.

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

(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.

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

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

(1) the person is a relative or an employee or other agent of a client, and

(2) it is reasonable to believe that the person's interests will not be adversely affected by refraining from giving such information.

(g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

HYPOTHETICAL NUMBER THREE

(CONCURRENT CLIENTS AND REPORTING VIOLATIONS)

ABC law firm (“ABC”) is well known in the locality of Smalltown, FL for its expertise in the areas of bankruptcy, appellate practice, real estate, and banking law. For several years, ABC has served as counsel for Developer Group, LLC (“Developer”), which is in the business of purchasing distressed development properties or debt instruments covering such properties. Developer purchased the notes and related first priority security documents covering a distressed condominium development owned by Defunct Developer, Inc. (“Defunct”) and thereafter filed an action for debt and foreclosure of liens (the “Foreclosure Action”) against Defunct and various junior lienholders. For a number of reasons, including the fact that Defunct had given Developer’s predecessor in interest a confessed judgment, Defunct did not contest the Foreclosure Action. However, the condominium owners association (“COA”) for the condominium developed by Defunct was allowed to intervene in the Foreclosure Action to assert ownership and equitable servitude interests in portions of the property subject to the Foreclosure Action.

A year after the Foreclosure Action was filed (and while the action remained pending) Defunct approached ABC to represent it, as appellee, in COA’s appeal of a state court eviction order (the “Order”). The Order awarded Defunct restitution of certain resort buildings that were used and occupied by COA. The proposed representation would, therefore, involve the preparation of an appellate brief protecting the lower court’s judgment and other post trial pleadings.

Prior to agreeing to represent Defunct, ABC sent a letter to Developer and Defunct requesting that each party consent to ABC’s representation of Defunct in the appeal. Developer and Defunct, through independent counsel, determined that ABC’s representation of Defunct in the appeal did not involve a conflict of interest because Developer and Defunct’s interests were aligned in recovering possession of the mortgaged property from COA and the appeal was not substantially related to the Foreclosure Action. Accordingly, both parties signed a letter waiving any conflict of interest.

In preparing the appellate brief and post-trial pleadings, ABC relied on the lower court record, legal research, and communications with Defunct's counsel.

Several months after briefing of the appeal was complete, COA filed an involuntary Chapter 7 proceeding against Defunct for unpaid dues and assessments allegedly owed to COA. ABC entered an appearance on behalf of Developer in the bankruptcy proceeding. Another law firm entered an appearance on behalf of Defunct. Shortly after entry of an order for relief, Developer filed a motion to dismiss and a motion for relief from the automatic stay. COA then filed a motion to disqualify ABC on grounds that there was an impermissible conflict in ABC's concurrent representation of both Developer and Defunct. COA cited ABA Model Rule 1.7 as support. Furthermore, COA's counsel argued that he had a duty (and legal standing) to raise the conflict of interest pursuant to ABA Model Rule 8.3(a).

APPLICABLE ETHICAL RULES

ABA Rule 1.7 Conflict Of Interest: Current Clients

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

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;

- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

ABA Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

HYPOTHETICAL NUMBER FOUR

(INDIVIDUAL 11 ISSUES)

John Smith, a real estate developer, moved from Pennsylvania to Florida and purchased a large home on 3 acres of land as tenants by the entirety with his wife. Two years later, the real estate market tanks and he is forced to file an individual Chapter 11 case. He claims his homestead, with equity of \$1,000,000, and other personal property as exempt. His schedules indicate he receives a salary of \$16,000 per month which he will continue to receive from his real estate business during his Chapter 11 proceeding. Mr. Smith proposes to pay creditors \$30,000 which is an amount equal to his disposable income over 5 years after deducting the following monthly expenses listed on Mr. Smith's Schedule J:

- A) \$5,500 for his mortgage, real estate taxes, and insurance
- B) \$700 for utilities including electric, water, sewer, telephone, cell phone, cable TV and internet
- C) \$600 home maintenance including \$300 for cleaning help and \$200 for yard service
- D) \$1500 for food
- E) \$100 for laundry and dry cleaning
- G) \$500 for gasoline
- H) \$600 for family health insurance
- I) \$500 for entertainment
- J) \$500 for golf club dues
- K) \$500 for auto insurance on three vehicles
- L) \$2,500 to his ex-wife for their agreed upon domestic support obligation
- M) \$800 rent for his child's apt at college
- N) \$200 car payment for his college son's car
- O) \$200 car payment for his high school daughter's car
- P) \$800 car payment for his 2008 Mercedes

John and his wife were recently divorced. Under their settlement, his former wife received 90% of the marital assets notwithstanding that she is a doctor whose income has always exceeded John's.

John has been offered a settlement in a lawsuit in which he is the plaintiff. The settlement would pay all creditors in full. John believes the

settlement offer is woefully inadequate and wants to hire a really tough lawyer to further litigate his claim.

You had three meetings with John prior to filing his Chapter 11 petition at which you explained the basics of bankruptcy and the Chapter 11 process including the specific requirements for confirmation of a plan. You also explained to John that as a DIP he will owe a fiduciary duty to his creditors to act in the best interests of the bankruptcy estate.

The creditors committee objects to his exemptions and their treatment under his plan of reorganization.

APPLICABLE ETHICAL RULES

ABA Rule 1.1 Competence

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

ABA Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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

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

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

ABA Rule 1.3 Diligence

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

ABA Rule 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

ABA Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

(1) to prevent reasonably certain death or substantial bodily harm;

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

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

(4) to secure legal advice about the lawyer's compliance with these Rules;

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

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

ABA Rule 1.7 Conflict Of Interest: Current Clients

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

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

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

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

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

ABA Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

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

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

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

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

ABA Rule 2.1 Advisor

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

ABA Rule 3.1 Meritorious Claims And Contentions

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

ABA Rule 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

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

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

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

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

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

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