

**The Lawyer Disciplinary Process
Tips to Responding to a Bar Complaint
The Most Violated Rules
Updated Rules**

Huntsville Young Lawyers CLE

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Disciplinary Procedure

I. Jurisdiction

- Lawyers admitted to practice law in the State of Alabama are subject to the **exclusive jurisdiction** of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar, with review by the Alabama Supreme Court. This jurisdiction includes misconduct that occurs outside the lawyer-client relationship.
- Incumbent judges are subject to the jurisdiction of the Disciplinary Commission or Disciplinary Board during their term of office for misconduct that occurred prior to becoming a judge.
- Former judges who have resumed their status as lawyers are subject to the jurisdiction of the Supreme Court of Alabama and the Disciplinary Commission and the Disciplinary Board for misconduct that occurred before, during, or after they occupied the office of judge.
- Courts retain the power necessary to maintain control over proceedings conducted before it.
- A lawyer's voluntary surrender of license does not divest the Disciplinary Commission or local grievance committee of its jurisdiction to investigate and bring charges.

II. Grounds for Discipline

- Conviction of a serious crime (felony, lesser crime involving moral turpitude, lesser crime involving interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft) or an attempt, conspiracy or solicitation of a serious crime.
- A violation of the Alabama Rules of Professional Conduct.
- Discipline imposed by another jurisdiction or court.
- A violation of the Alabama Rules of Disciplinary Procedure or failure to comply with an order of the Disciplinary Commission or Disciplinary Board.
- Failure to respond to a request for information from a disciplinary authority.

III. Nature of the Proceedings

- Neither civil nor criminal, but *sui generis*.

- Except as otherwise provided by the rules, the Alabama Rules of Civil Procedure and the Alabama Rules of Appellate Procedure apply to disciplinary proceedings.
- Disciplinary proceedings may be initiated by the General Counsel or a local grievance committee on a complaint or upon its own motion based upon information acquired from any source.

IV. The Disciplinary Board of the Alabama State Bar

- The Board of Bar Commissioners appoints the Disciplinary Board. It consists of three (3) panels of five (5) members each. Three (3) of its members are Bar Commissioners, one (1) is a lay member, and one (1) is the Disciplinary Hearing Officer. Bar Commissioners serve three-year terms and are limited to two successive terms. Lay members serve one-year terms, but may serve unlimited successive terms. The disciplinary board panel assigned to hear a case can sit with less than all of its members present, but cannot sit unless a lay member is present.
- The Disciplinary Board functions in a manner similar to a petit jury; making findings of fact, conclusions of law and, upon a finding of guilty, imposes discipline.
- The members of the Disciplinary Board serve with no compensation, except for reimbursement of expenses.
- Disciplinary Board members attend mandatory training sessions that cover the disciplinary process, the rules of procedure, the rules of professional conduct, and the standards for imposing lawyer discipline.

V. Disciplinary Hearing Officers

- The Board of Bar Commissioners appoints a pool of three (3) Disciplinary Hearing Officers, who serve three-year terms and may only serve two successive terms.
- Disciplinary Hearing Officers must be members in good standing for a period of 12 years prior to their appointment and can have no prior disciplinary record. A Disciplinary Hearing Officer may or may not be a member of the Board of Bar Commissioners.
- The Disciplinary Hearing Officer is vested with the power of a circuit judge when presiding over lawyer disciplinary proceedings and exercises general supervision over lawyer disciplinary proceedings.
- The Disciplinary Hearing Officer is a voting member of the disciplinary board panel and is responsible for entering written findings and conclusions as approved by a majority of the disciplinary board panel.

- The Disciplinary Hearing Officers serve with no compensation, except for reimbursement of expenses. They attend mandatory training that covers the disciplinary process, the rules of procedure, the rules of professional conduct, and the standards for imposing lawyer discipline.

VI. The Disciplinary Commission of the Alabama State Bar

- The Board of Bar Commissioners appoints the Disciplinary Commission. It consists of four members who are Bar Commissioners, none of which can be a member of the Disciplinary Board. The members serve three-year terms and are limited to two successive terms.
- The Board of Bar Commissioners appoints the Chairman of the Disciplinary Commission from the four members of the Disciplinary Commission. The Chairman may serve two terms, not to exceed five years each. The Chairman serves in an administrative and advisory function and does not vote on disciplinary matters.
- The Disciplinary Commission reviews all disciplinary matters. This review is accomplished through reports submitted by the Office of General Counsel or a local grievance committee.
- The Disciplinary Commission functions in a manner similar to that of a grand jury and may conclude a disciplinary matter with dismissal of the complaint, imposition of a private or public reprimand, or by directing that the Office of General Counsel file formal charges with the Disciplinary Board. Significantly, although the Office of General Counsel and/or a local grievance committee can initiate an investigation, approval of the Disciplinary Commission is required before any disciplinary matter is concluded or formal charges are filed.

VII. The Office of General Counsel (OGC)

- The General Counsel of the Alabama State Bar serves as legal counsel to the Alabama State Bar Association and its various committees, boards and commissions. Tony McLain is the General Counsel; Assistant General Counsels are Jeremy McIntire, Mark Moody, and Tripp Vickers. Additional support staff, investigators/paralegals, and administrative assistants are responsible for the day-to-day operations of the office.
- In addition to providing general legal counsel to the Alabama State Bar Association, Rule 6 of the Ala. R. Disc. P. provides that the OGC is responsible for the investigation and prosecution of all disciplinary proceedings before the Bar.
- The OGC also provides ethics opinions to lawyers, assists the Unauthorized Practice of Law Committee with investigations of UPL complaints, investigates and prosecutes Character & Fitness Appeals, assists the Client Security Fund Committee in

administering the Client Security Fund and investigating claims made against that fund, assists with the enforcement of compliance with the Client Security Fund Rules, the Mandatory Continuing Legal Education Rules, and the Interest on Lawyer Trust Account Rules.

- Although the OGC, the Disciplinary Commission or the Disciplinary Board may initiate disciplinary investigations, they are generally initiated by the filing of a written and sworn complaint with the OGC.
- The OGC follows an established complaint screening procedure that allows for prompt notice of the complaint to the lawyer and provides an opportunity for that lawyer to submit a written response to the complaint. Two staff attorneys review the complaint before a decision is made to screen-out or open a formal investigation. All dispositions are reported to and approved by the Disciplinary Commission.
- During the initial informal stage of the complaint screening procedure, approximately 80 percent of complaints are “screened-out/dismissed” without a formal investigation. In those cases where a formal investigation is appropriate, the lawyer is notified of the decision to conduct a formal investigation and either the OGC or a local grievance committee conducts the investigation. At this point, the lawyer is required to notify the partner, senior partner, managing partner, executive committee, or management committee of the investigation. See Rule 12(a)(3), Ala. R. Disc. P.
- At the conclusion of the investigation, a report of the investigation is presented to the Disciplinary Commission. The Disciplinary Commission makes initial findings and imposes discipline in accordance with those findings. The Disciplinary Commission may dismiss the complaint, impose a private or public reprimand or direct that formal charges be filed with the Disciplinary Board.
- The lawyer is notified of the decision of the Disciplinary Commission and has the option of accepting the findings and discipline, requesting reconsideration, or demanding formal charges.
- When a lawyer demands formal charges, or, in those cases where the Disciplinary Commission directs that formal charges be filed, formal charges are filed with the Disciplinary Board and the matter proceeds in a manner similar to that of a civil trial. The Alabama Rules of Civil Procedure and The Alabama Rules of Evidence apply to these proceedings, unless the Alabama Rules of Disciplinary Procedure provide otherwise. The Alabama Rules of Evidence may be relaxed in proceedings before the Disciplinary Commission and Disciplinary Board.
- A disciplinary hearing has two phases, a guilt phase and a discipline phase.
- Clear and convincing evidence is the standard of proof required in all disciplinary proceedings.

- Appeals of decisions of the Disciplinary Commission and Disciplinary Board lie to the Supreme Court of Alabama.

VIII. Statistics - 2011

Complaints Received	1582
Screened Out	1199
Files Opened	390
Private Reprimand	32
Public Reprimand	11
Suspension/Disbarment/Surrender	24
Disability Inactive	5
Probation	7

IX. Advisory Opinions

- In addition to investigating and prosecuting, the OGC is available to render advisory opinions on matters of professional conduct.
- Rule 18, *A.R.D.P.*, provides:

“If, before engaging in a particular course of conduct, a lawyer makes a full and fair disclosure, in writing, to the General Counsel, and receives therefrom a written opinion, concurred in by the Disciplinary Commission, that the proposed conduct is permissible, such conduct shall not be subject to disciplinary action.”

- Formal Opinions are provided at the discretion of the General Counsel and the Disciplinary Commission. These opinions require the concurrence of the Disciplinary Commission and are binding on the OGC and the Disciplinary Commission.
- Informal opinions are provided daily by telephone and by written request. These opinions are advisory in nature and are not binding on the Disciplinary Commission.
- **Statistics - 2011**

Formal Ethics Opinions	2
Informal Ethics Opinions	3464

X. Refusal of Complainant to Proceed

- The refusal of a complainant to proceed or to cooperate with an investigation or prosecution or the compromise or settlement of underlying claims between the complainant or a third party and the lawyer does not abate the disciplinary proceedings.

XI. Disciplinary Matters -- Related Pending Civil or Criminal Litigation

- Disciplinary proceedings are not deferred because they involve matters that are also involved in pending criminal or civil proceedings.

XII. Immunity

- Complaints and testimony in lawyer disciplinary proceedings are absolutely privileged. All participants involved in the disciplinary proceedings enjoy official duty immunity.

XIII. Uniform Service Rule

- The Ala. R. Disc. P. contain a uniform service rule that requires all lawyers authorized to practice law in this state to keep the membership division of the Alabama State Bar informed, in writing, of their current name, address, and telephone number.
- A lawyer who provides only a post office box waives personal service.

XIV. Subpoena Power

- The Disciplinary Commission, Disciplinary Board, Disciplinary Hearing Officer, General Counsel, and local grievance committee have subpoena power enforceable in circuit court.

XV. Interim or Summary Suspension

- Upon petition evidencing a conviction of a serious crime or upon a preliminary showing that a lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to a client or to the public, the Disciplinary Commission may interimly suspend a lawyer's license to practice law.
- Upon notice of the interim suspension the lawyer may demand a hearing to dissolve the interim suspension. This hearing must be held within seven (7) days from the filing of the written demand.
- The interim suspension terminates upon order of the Disciplinary Commission, Disciplinary Board, or the Supreme Court, upon imposition of final discipline, upon transfer to disability inactive status, or upon the failure of the General Counsel to file formal charges with the Disciplinary Board within 28 days from the effective date of the interim suspension.
- Summary suspension may be imposed by the Disciplinary Commission upon a showing that the lawyer failed to pay any cost, assessment, or restitution, or upon a showing that

the lawyer has failed to participate in disciplinary proceedings or failed to respond to requests for information from a disciplinary authority.

XVI. Mandatory Suspension or Disbarment

- A lawyer shall be suspended or disbarred when a judgment is rendered against the lawyer for money collected by him or her as a lawyer upon which judgment and execution has been issued and returned “no property found” or upon conviction of a serious crime.

XVII. Reciprocal Discipline

- A lawyer who has been disciplined by another jurisdiction or court shall be subject to the imposition of identical discipline by the Disciplinary Board absent a showing of just cause why the identical discipline should not be imposed.

XVIII. Responsibilities of Disbarred or Suspended Lawyers or Lawyers on Disability Inactive Status

- Upon disbarment, suspension, or placement on disability inactive status, a lawyer shall provide written notice to clients, courts and other jurisdictions of the disbarment, suspension, or disability inactive status.
- Lawyers who have been suspended or placed on disability inactive status are prohibited from employment within the legal profession during the period of suspension or disability unless prior approval is obtained from the Disciplinary Commission.
- Lawyers who have been disbarred are prohibited from employment within the legal profession during the period of disbarment.

XIX. Disability Inactive Status

- Lawyers who have been judicially declared incompetent or mentally ill must be transferred to disability inactive status.
- When it appears that a lawyer is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, upon petition and proper proof, the Disciplinary Board may transfer the lawyer to disability inactive status. The General Counsel may file a petition to determine incapacity or the lawyer may claim incapacity.
- During the period of disability, all disciplinary proceedings against that lawyer are stayed.
- The lawyer may not resume the practice of law until reinstated by order of the Disciplinary Board upon proper proof that the disability has been removed and the lawyer is fit to resume the practice of law.

XX. Reinstatement

- Lawyers who have been disbarred, transferred to disability inactive status, or suspended for more than 90 days may not resume the practice of law until reinstated by order of the Disciplinary Board.
- The lawyer bears the burden of proving by clear and convincing evidence that the lawyer has the moral qualifications to practice law and that the resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice, and will not be subversive to the public interest.

XXI. Confidentiality

- All disciplinary proceedings, except reinstatements, transfers to disability inactive status, interim and summary suspensions and character and fitness appeals, are confidential until the lawyer pleads guilty or the Disciplinary Board or the Disciplinary Commission makes a finding of guilty.

XXII. Statute of Limitations

- There is generally a six-year period from the accrual of an offense during which formal disciplinary proceedings must be filed with the Disciplinary Board.

XXIII. Publication and Costs

- The costs of publication of notices are assessed against the disciplined lawyer.
- The Bar may also charge persons the cost of production of records and other documents at a commercially reasonable rate, not to exceed \$1.00 per page, plus a research fee of \$25.00.
- The Disciplinary Hearing Officer, Disciplinary Board, or Disciplinary Commission may tax costs against a disciplined lawyer.
- Costs may include costs of an investigation, travel, expenses, court reporter's fees, copying, telephone, translation services, witness expenses, mileage, expenses of Disciplinary Hearing Officers, Disciplinary Board members, Disciplinary Commission members and of the Office of General Counsel.
- In each case, an administrative fee of \$750.00 may be assessed in favor of the Bar.

10 Tips for Responding to a Bar Complaint

1. Respond
2. Respond Timely
3. Respond Completely and Directly
4. Provide a brief summary of background information or procedural history underlying the representation or complaint
5. Briefly and factually address the complainant's allegations
6. If the allegations involve a complex area of the law, provide some basic information about the law applicable to the issues
7. Avoid legal arguments about the Rules of Professional Conduct
8. Avoid personal attacks against the complainant, members of the Office of General Counsel, or the disciplinary process.
9. Avoid being coy, catty, evasive, or overwhelming
10. Avoid incompetence

Recent Amendments

Rule 1.15. Safekeeping Property

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

* * *

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

- (1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee, and purpose of each disbursement;
- (2) ledger records for all client trust accounts showing, for each separate trust client or third person, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
- (3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of these Rules;
- (4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- (5) copies of bills for legal fees and expenses rendered to clients;
- (6) copies of records showing disbursements on behalf of clients;
- (7) the physical or electrical equivalents of all trust account checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;
- (8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the

recipient, and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(10) copies of those portions of client files that are reasonably related to client trust account transactions.

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

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

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

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

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

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

Comment

Rule 1.15(e) enumerates the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third-person funds as required by Rule 1.15. Consistent with Rule 1.15, this Rule requires that lawyers maintain client trust account records for a period of six years after termination of each particular legal engagement or representation.

Rule 1.15(e)(7) requires that the physical or electronic equivalents of all trust account checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of six years after termination of each legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act," codified at 12 U.S.C. § 5001 et seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002(16) as "a paper reproduction of the original check that contains an image of the front and back of the original

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

The Automated Clearing House ("ACH") Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g., tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion ("ECC"). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point of purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of Rule 1.15(e)(8).

There are five types of check conversions with regard to which a lawyer should be careful to comply with the requirements of Rule 1.15(e)(8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone conversion," bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment.

Rule 1.15(e) applies to each electronic-fund transfer hereinabove described. All electronic-fund transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards is realized only if the procedures set forth in Rule 1.15(e)(9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the

preferred practice given the difficulty of identifying an error (whether by the lawyer or by the bank) among three months' transactions.

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

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

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

The requirement in paragraph (f)(2) that receipts shall be deposited intact means that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

Rule 1.15(g) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet-based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See ABA Formal Ethics Opinion 398 (1995). Records required by Rule 1.15(e) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.15, or by the official request of a disciplinary authority, including, but not

limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or by court rule.

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

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

3. New Rule 1.15

Rule 1.15 [Safekeeping Property]—Adds to section (a), the following: “Any funds while in the lawyer’s trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.”

Under new section (e) of Rule 1.15, a lawyer who practices in Alabama shall maintain all required current financial records for a period of six (6) years after termination of the representation, including, but not limited to:

- 1. Detailed receipt and disbursement journals;**
- 2. Detailed ledger records for all client trust accounts;**
- 3. Copies of client retainer and compensation agreements as required by Rule 1.5;**
- 4. Copies of accountings to clients or third persons for trust account disbursements to them or on their behalf;**
- 5. Copies of bills for legal fees and expenses rendered;**
- 6. Copies of records showing disbursements on behalf of clients;**
- 7. Physical or electrical equivalent of all trust-account checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks;**
- 8. Detailed records of all electronic transfers from client trust accounts;**
- 9. Copies of monthly trial balances and quarterly reconciliations of client trust accounts maintained by the lawyers; and**
- 10. Copies of those portions of client files that are reasonably related to client trust-account transactions.**

Renumbered “new” Section (f) now requires, with respect to client trust accounts governed by Rule 1.15, that “Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or shall authorize transfers from a client trust account.” This section also requires that receipts be deposited intact, and that withdrawals be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

New section (h) requires that upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust-account records specified in the Rules.

4. Certification – IOLTA

Limited Scope Representation Rules

ARCP 11: A lawyer is not required to sign or put his or her name on a pleading prepared for a pro se litigant, but the document must include a notation: “This document was prepared with the assistance of a licensed Alabama lawyer pursuant to Rule 1.2(c), Alabama Rules of Professional Conduct.”

ARCP 87 (new): A lawyer must file a “notice of limited scope representation” before or at the time that he or she appears in court on a limited scope basis. At the conclusion of the representation, the lawyer files a “notice of completion of limited scope representation,” serves the notice on the client, and then is out of the case without having to file a motion to withdraw. The Alabama State Bar has prepared forms to use which are available online.

Rules of Professional Conduct: A lawyer’s agreement with a client to provide limited scope representation must be in writing unless the representation consists only of a phone consultation, takes place in a pro bono clinic, or is by court appointment. Signature by the client is not required but is a good practice. For purposes of dealing with other lawyers, the client is considered to be unrepresented except to the extent that the lawyer providing limited services provides notice in writing to opposing counsel.

More Resources: The state bar has posted forms, practice materials, and more information regarding the new rules on its website.

I. “HONESTY IS THE BEST POLICY BUT INSANITY IS THE BEST DEFENSE”

A. Conflict of Interest

1. **"Rule 1.9 Conflict of Interest:
Former Client**

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) 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 consents after consultation; or
- (b) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known."

2. **"Former Client" - Yes or No?**

- a. Did attorney-client relationship exist?
- b. Who do you represent now?

3. **"Substantially Related"**

- a. RO-89-65 - "We are of the opinion that it would be ethically impermissible for you to undertake representation of the University of XXX in any cause of action substantially related to your prior representation of the male administrative employee of the university. We are of the opinion that the prospective representation discussed in your request is substantially related to the divorce action handled and the information you obtained during the course of that representation, and solely by virtue thereof. The basis of the entire action is an alleged illicit sexual relationship between your former client and another University of XXX employee. You gained confidential or secret information about that relationship while representing your former client."

B. Present Client

**"Rule 1.7 Conflict of Interest:
General Rule**

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) Each client consents after consultation.
- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
- (1) The lawyer reasonably believes the representation will not be adversely affected; and
 - (2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved."

C. Imputed Disqualification

**"Rule 1.10 Imputed Disqualification:
General Rule**

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.
- (b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.
- (c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, unless:
 - (1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client;

and

- (2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.
- (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7."

II. "EVERYTHING IS OKAY IN THE END. IF IT'S NOT OKAY, THEN IT'S NOT THE END."

- A. RO-2010-02 (Appendix "A")
- B. RO-86-02 - "Subject to the attorney's lien provided for in Code of Alabama (1975), §34-3-61, the attorney must provide copies of a client's complete file to the client upon request if it is material delivered to the lawyer by the client or if it consists of an original document prepared by the lawyer for the client. A lawyer is not required to provide copies of legal analyses to the client unless he has specifically agreed to do so previously, and he is not required to furnish notes, research, and inter-office memoranda which went toward the compilation of the final product unless he has previously agreed to do so. This is so whether the attorney (1) voluntarily withdraws from representation under DR 2-111, (2) is discharged by his client, (3) continues to handle the active matter, or (4) concludes the matter and closes the file. Should the attorney choose to maintain a copy of these materials for his records, he must pay for the photocopying expense. Where the attorney has received full compensation for his services rendered in connection with a given file, he must surrender these materials to the client upon the client's request."
- C. Lawyer Leaves Firm—Who Gets File?

RO-91-06 - "Mr. Lawyer may contact the clients so affected and inform them that they have the right to designate where their files should go including: (1) staying with Doe, Jones and Smith; (2) going with Mr. Lawyer in his 'New' law practice; or (3) taking the file(s) to any other lawyer."

MOST VIOLATED RULES OF PROFESSIONAL CONDUCT

September 1992 - December 2009

		2009	Total
Rule 1.3	Willful neglect	27	716
Rule 1.4(a) & (b)	Communication	30	619
Rule 8.4(g)	Conduct adversely reflecting on fitness to practice law	18	339
Rule 8.1(b)	Fail to disclose fact necessary to correct a misapprehension of knowingling fail to respond to lawful demand for information	9	279
Rule 1.1	Competence	3	203
Rule 8.4(c)	Conduct involving dishonesty, fraud, deceit or misrepresentation	6	193
Rule 8.4(a)	Violate or attempt to violate a Rule of Professional Conduct or assist or induce another to do so	15	216
Rule 1.15	Safeguarding client or third party Property	10	188
Rule 8.4(d)	Conduct prejudicial to the administration of justice	8	152
Rule 1.16	Declining or terminating representation and failing to refund unearned fee	6	160
Rule 1.5	Fees	4	133
Rule 8.4(b)	Criminal act reflecting on lawyer's honesty, fraud, deceit, or misrepresentation	2	94

Rule 1.7	Basic conflict rule	1	52
Rule 5.5	Unauthorized practice		43
Rule 5.3	Responsibilities regarding non-lawyer assistance		39
Rule 3.4	Fairness to Opposing Party and Counsel		34
Rule 4.1	Truthfulness in statement to others		32
Rule 7.3	Direct Contact with Prospective Clients	1	29
Rule 3.1	Meritorious claim or contentions	1	25
Rule 3.3	Candor toward the tribunal	1	22
Rule 1.9	Former client conflict rule	2	22
Rule 1.2	Scope of representation		19
Rule 7.1	Communications concerning a lawyer's services	1	16
Rule 4.2	Communicate with person represented by counsel	1	15
Rule 5.1	Responsibilities of a Partner or Supervisory Lawyer		13
Rule 1.6	Confidentiality		12
Rule 3.2	Failure to expedite litigation	2	13
Rule 1.8(h)	Entering into agreement prospectively limiting the lawyer's liability		11
Rule 7.2	Advertising	1	14

Rule 1.8(a)	Acquire ownership, possessory, security or other pecuniary interest	1	12
Rule 2(e)	<u>(Alabama Rules of Disciplinary Procedure)</u> Grounds for discipline		9
Rule 3.6	Trial publicity		8
Rule 7.4	False and misleading advertising		8
Rule 8.1(a)	Knowingly make a false statement of material fact	3	11
Rule 3.10	Threatening criminal prosecution to gain an advantage in a civil matter	1	9
Rule 4.3	Dealing with unrepresented party		8
Rule 4.4	Respect for rights of third persons	1	8
Rule 3.5(c)	Conduct intended to disrupt a tribunal	1	7
Rule 5.4(a)	Sharing fee with a non-lawyer	1	7
Rule 1.8(g)	Shall not participate in making aggregate settlement unless each client consents	1	6
Rule 1.10(a)	Imputed Disqualification	2	6
Rule 7.5	Firm Names and Letterheads		4
Rule 5.4(a)	Sharing fee with a non-lawyer		4
Rule 8.2	Judicial and Legal Officials		2
Rule 1.8(j)	Acquiring proprietary interest		2
Rule 1.8(c)	Lawyer preparing instrument with gift to himself or family member	1	1
Rule 1.10(b)	Imputed Disqualification	2	2