Ethics in the Real World

Huntsville-Madison County Bar Association
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Do As I Say, Not As I do!

Questions to Ponder

1. Does the Bar target solo and small firm practitioners in discipline cases?

2. Should newly admitted lawyers be required to participate in a mentoring program during the first year of admission?

3. Should lawyers' licenses to practice law be restricted for the first three years to prohibit solo practice?

4. Should there be a *de minimis* rule allowing lawyers to deposit retainers of $2500.00 or less into their operating account, rather than trust account?

Rule 8.3. Reporting Professional Misconduct.

"(a) A lawyer possessing unprivileged knowledge of a violation of Rule 8.4 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

"(b) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request."

- The most often violated rule
- The least prosecuted
- I am no longer the lawyer police

Rule 5.1. Responsibilities of a Partner or Supervisory Lawyer

"(a) A partner [or lawyer with direct supervisory authority] in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers [and non-lawyers—Rule 5.3] in the firm conform to the Rules of Professional Conduct."

- Employee Training
    - Professional Etiquette
    - Legal Etiquette
    - Basic Legal Procedure
- Confidentiality
- Client Loyalty – Fiduciary Duty
- Communication
- Screening for Conflicts
- Case Management Procedures
- Standard Operating Procedures
- Unauthorized Practice of Law

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. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation.

- Incompetence or malpractice?
- $7 \times 6 \neq 49$
- Civil action filed outside statute of limitations
- Failure to recognize viable claims and defenses
- Failure to timely assert objections, claims, and defenses
- Failure to conduct adequate or timely discovery
- Fraud, fraudulent suppression
- Breach of fiduciary duty
- Theft

Most Often Violated Ethics Rules

1. Failure to Communicate (Rule 1.4, Ala. R. Prof. C.)

    - "Reasonably informed" – "Reasonable Requests"
    - Case Status – Other Information
    - Informed Decisions - "to the extent reasonably necessary"
        - Engagement
        - Turndown
        - Basis or rate of fees and expenses
        - Scope of representation
        - Termination

2. Lack of Diligence (Rule 1.3, Ala. R. Prof. C.)

    - Heavy Workload
        - Light Payload
    - Procrastination
    - Poor office management
        - Scope of Representation
        - Filing System
        - Calendaring System
        - No follow up
    - Personal Problems, Substance Abuse, Depression
    - A note about Incompetence – (Rule 1.1. Competence – Gross Lack of Diligence)

3. Client Funds (Rule 1.15, Ala. R. Prof. C.)

- Mandatory IOLTA
- Money and Property - Rule 1.15 includes any property belonging to a client or third party that is delivered to the lawyer. (Client files, documents, photos, physical evidence, videotapes and audiotapes, etc.)
- Nominal, Short Term and Not Practicable - The IOLTA trust account is for funds that are nominal in amount or that will be held for a short term and the lawyer has determined that the funds cannot practicably be invested for the benefit of the client or third party.
- Ownership at Receipt - Whether funds are deposited into a trust account or regular account depends on who owns the funds at the time they are received by the lawyer.
- Separate - Money and property must be kept separate from the lawyer's personal or business property. Only client and third-party funds should be deposited into the trust account. No personal or business funds, except funds to pay account expenses or funds jointly owned by lawyer and client and/or third party at time of receipt.
- Funds in the trust account which the lawyer is entitled to receive must be removed from the trust account before they are used by the lawyer to pay personal or business expenses.
- Trust Designation - Trust account checks and deposit slips must be designated as a trust account by use of terms such as "trust account," "fiduciary account," or "escrow account."
- Other Designation - Business account that is not a trust account, its checks and deposit slips must be designated as a non-trust account by use of terms such as "business account," "professional account," "office account," "general account," "payroll account," or "regular account."
- Complete Records - Complete records of the account must be maintained for a period of six (6) years after termination of the representation. A checkbook register is NOT a "complete" record.
    - Receipt and disbursement journals containing a record of deposit to and withdrawals from client trust accounts, identifying date, source and description of each item deposited as well as the date, payee, and purpose of each disbursement.
    - Ledger records for all client trust accounts showing for each trust client or third person the source of all funds deposited, names of all persons for whom the funds are held, amount, description and amount of charges and withdrawals, and the names of all persons or entities to which disbursed.
    - Copies of retainer and compensation agreements.
    - Copies of accounting agreements.
    - Copies of bills for legal fees and expenses.
    - Copies of all disbursement records.
    - Trust account checkbook registers, bank statements, records of deposit, pre-numbered cancelled checks, and counter-checks.
    - All electronic transfers, including name of person who authorized, date, name of recipient, confirmation from financial institution of withdrawal and the date and time the transfer was completed. (CAUTION: This information may not be included on your bank statement for ACH and ECC payments.)
    - Copies of monthly trial balances and reconciliations of the trust account.
    - Copies of portions of client files that are related to trust account transactions.

- Only lawyers admitted to practice in Alabama or a person under their direct supervision shall be authorized signatories on the account.
- Receipts shall be deposited intact and records of deposits must sufficiently identify each item. No split deposits.
- Withdrawals shall only be by check payable to the named payee and NOT TO CASH, or by authorized electronic transfer.
- Records may be maintained by electronic, photographic or other media, as long as they are readily accessible by the lawyer and capable of reproduction by printed copies.
- Upon dissolution of a firm, the partners must make arrangements for maintenance of the trust account records.

- Prompt Notification - A lawyer must promptly notify the client or third party upon receipt of funds in which the client or third party has an interest.
- Prompt Delivery - A lawyer must promptly deliver those funds to the person entitled to receive them.
- Prompt Accounting - A lawyer shall promptly render an accounting of the funds upon request. However, Rule 1.5(c) requires that in contingency-fee cases an accounting be provided to the client upon disbursement, even in the absence of a specific request.
- Disputed Funds - When the ownership of funds is in dispute, the amount in dispute shall be held separately until there is an accounting and severance of the interests. Any amount not in dispute should be promptly disbursed.
- Prompt Resolution - When ownership is in dispute the lawyer should suggest means for prompt resolution of the dispute.
- Uncollected Funds - A lawyer should not make disbursements of uncollected funds. However, if the lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse uncollected funds. If the funds are not collected, then the lawyer must replace the funds within five (5) working days of notice of non-collection.
- Automatic Overdraft Notification Agreement - A lawyer must execute an automatic overdraft notification request for all trust accounts. Automatic overdraft notification requires the financial institution to report every instance where a properly payable item is presented for payment and there are insufficient funds or the item is paid and an overdraft on the account is created and is not paid by the lawyer within three business days from the date notice is sent to the lawyer. An overdraft notification is a proper ground for further investigation by the Office of General Counsel.
- No Trust Account Notice - A lawyer engaged in the active practice of law shall maintain a trust account to hold client and third-party funds. If they do not hold funds of clients or third parties, then they must provide written notice to the Secretary of the Alabama State Bar that they will not maintain such an account. This notice must be provided within six months of admission or return to active practice. If they establish a trust account, the lawyer must immediately give notice to the Secretary of the Alabama State Bar.

Rule 4.2. Communication with Person Represented by Counsel

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so.

(b) A person to whom limited-scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by Rule 4.2(a).

- This Rule covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.
- This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation.
- This Rule does not preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter.
- Parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. However, a lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a).
- The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.
- In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.
- Consent of the organization's lawyer is not required for communication with a former constituent. However, the lawyer should avoid inquiries that would violate the attorney-client privilege and refrain from allowing voluntary disclosure of privileged information by the former constituent.
- If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule.

Governmental Client Exception to the Anti-Contact Rule

- Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government.

- Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal, civil, or administrative enforcement proceedings.
- Generally, permits direct lawyer contact with a governmental officer or employee represented in their official capacity.
- Some states recognize an exception to the exception in cases where the governmental client is represented with respect to negotiation or litigation of a specific claim and the contact does not involve an issue of general policy. Restatement Third, The Law Governing Lawyers §101.
- The Governmental Client Exception is consistent with public policy that favors open communication, open government, open files, and open meetings.
- The Governmental Client Exception assumes that the officer or employee is sued in their official capacity. If a governmental officer or employee has retained separate counsel to represent them in their individual capacity, then the Governmental Client Exception is not applicable.
- Jurisdictions are split over the extent and scope of the Governmental Client Exception.
- In Alabama, the Disciplinary Commission held in RO-2003-03 that Rule 4.2 does not prohibit a lawyer from communicating directly with government officials who are represented by counsel about the subject matter of the representation. It should be noted that RO-2003-03 did not limit the communication to only government officials sued in their official capacity, nor did it limit the communication to matters of general policy or limit the exception in litigation involving specific claims.
- The government may impose a policy that requires officials and employees to refuse to speak to opposing counsel without consent or the presence of the government agency's lawyer.
- **Caution:** The Governmental Client Exception does not allow, however, the lawyer representing the government to communicate directly with private individuals represented by counsel without counsel's consent.
- A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order.

Rule 11. Signing of Pleadings, Motions, and Other Papers

(a) Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other paper, and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings, motions, or other papers need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading, motion, or other paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. As provided in Rule 30(G) of the Alabama Rules of Judicial Administration, an electronic signature is a "signature" under these Rules. If a pleading, motion, or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action

may proceed as though the pleading, motion, or other paper had not been served. For a willful violation of this rule, an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(b) Limited-scope representation. An attorney may draft or help to draft a pleading, motion, or other paper filed by an otherwise self-represented person. The attorney need not sign that pleading, motion, or other paper but shall include a notation at the end stating: **"This document was prepared with the assistance of a licensed Alabama lawyer pursuant to Rule 1.2(c), Alabama Rules of Professional Conduct."** In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of the facts, unless the attorney has reason to believe that such representation is false or materially insufficient.

Rule 1.5. Fees

Rule 1.5(a) prohibits an agreement for charging or collecting a clearly excessive fee.

> "…A fee is **clearly excessive** when, after review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee."

Factors considered when determining whether a fee is excessive:

- Time and labor involved
- Difficulty of matter
- Skill required
- Conflicts created
- Fee charged in the locality for similar services
- Amount involved
- Results obtained
- Nature and length of professional relationship
- Experience
- Reputation
- Ability
- Fixed or contingent fee
- Written fee agreement signed by client

Note: This list is neither exclusive nor exhaustive.

Rule 1.5(b) requires that the basis *or method* and rate of the fee be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

Rule 1.5(c) requires that contingent fee agreements be written. They must state the method by which the fee will be determined, including percentages, whether expenses and costs will be deducted and, if so, whether they are to be deducted before or after the contingent fee is calculated. The lawyer must provide a written account stating the outcome of the matter, the amount of recovery, the remittance to the client and how it was determined.

Rule 1.5(d) prohibits contingent fees in domestic cases.

Rule 1.5 (e) prohibits a division of fees between lawyers not in the same firm, unless (a) the division is in proportion to the work done by each lawyer or (b) each lawyer, in writing, assumes joint responsibility for the representation or (c) in a contingency fee case the fee is divided between the referring and the receiving lawyer (d) and in any case, the client is advised and does not object to the participation of the lawyer and the division of the fee, and (e) the total fee is not clearly excessive.

In addition to Rule 1.5 factors, there are many other factors that impact your decision on the type and amount of fee. Lawyers should move away from the idea that fees are predetermined fixed amounts in every case and should consider that the amount of the fee for any given matter should be a range that takes into account all relevant factors and helps the lawyer arrive at a fee that will be profitable**,** motivational, and that will provide a sense of value to the client. Some other factors to consider are:

- Business/Financial
  - Do you know how much it costs to run your business, pay yourself a living wage, and meet your tax obligations?
  - Business plan
  - Budget
  - Cost analysis

- Market
  - Competitor's fees
  - Client expectations
  - Client service driven market expectations
  - Client's perceived value

- Type of case or work
  - Routine
  - High Volume
  - Specialized
  - Unique/Experimental
  - Groundbreaking
  - First impression

- Type of client
  - New client
  - Regular client
  - Difficult client
  - Demanding or needy client
  - Nonchalant client
  - Sophisticated client
  - Unsophisticated client

- Other factors
  - Lawyer's reputation
  - Lawyer's experience
  - Court or Judge
  - Opposing counsel

Billing

Among the factors contributing to the poor public perception of lawyers, is over-billing. Over-billing is not charging an excessively-high hourly rate or billing for work not performed, it includes billing for unnecessary work (excessive research, reviewing and revising, discovery), exaggerating time by block billing (billing for large blocks of time with no detailed description of work performed), or excessive minimum incremental billing (billing minimums of .25 hours, instead of .1 hours, i.e., rounding up to the nearest quarter-hour), or by using vague and useless descriptions ("T/C w/Client"), and by overstaffing.

It has been said that most lawyers, particularly young lawyers, cannot ethically achieve 2100+ billable hours per year. The ABA Commission on Billable Hours has suggested that firms consider a "Billable Hours Diet," such as:

- Client work – 1900 hours
- Pro Bono – 100 hours
- Service to Firm – 100 hours
- Client Development – 75 hours
- Training and Professional Development – 75 hours
- Service to Profession – 50 hours

Conflicts of Interests

- Confidential and Client Loyalty
- Client trust
- Judicial interests
- Client choice

Rule 1.7 - The General Rule

- A conflict of interest is involved if the representation of a client will be directly adverse to another client.
- A conflict of interest is involved, even when there is no direct adversity, if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's duties to another client, or by the lawyer's own interests, a former client , or a third person.

- Not all differing interests in complex and multi-party litigation create a conflict of interest requiring disqualification. To determine whether or not a conflict of interest exists, the lawyer should assess:
    - Context of the representation
    - Clients' predominate common interests in relation to adverse interests
    - Practicality of individual representation
    - Client choice
    - Extent of judicial oversight
- A lawyer may not simultaneously take adverse legal positions on behalf of different clients unless the adverse legal positions are taken in different courts and the adverse legal position taken in one court would not have a material adverse affect on the other client.
- A lawyer may take adverse legal positions in different courts at different times.

Rule 1.8 – Prohibited Transactions

- Business transactions must be fair and reasonable to the client, fully disclosed in writing to the client in a manner that the client can reasonably understand; the client should have a reasonable opportunity to seek advice of independent counsel, and client must consent in writing to the transaction.
    - "Adverse"
    - Ordinary fee contract is not prohibited
    - Transactions to secure fee or exchanges in lieu of fee are prohibited, unless compliance with rule.
- Use of confidential information to the disadvantage of the client is prohibited. However, the rule does not prohibit a lawyer's use of information that does not disadvantage the client.
- Lawyer may not prepare instrument that gives a substantial gift to the lawyer or person related to the lawyer as parent, child, sibling, or spouse, unless the client is related.
- No negotiation for media or literary rights during the representation.
- No financial assistance to a client, except:
    - Court costs or litigation expenses (contingent on outcome for non-indigent clients)
    - Court costs or litigation expenses (not contingent on outcome for indigent clients)
    - Emergency financial assistance (Re-payment may not be contingent on outcome and provided that the financial assistance was not promised prior to the lawyer-client relationship)
- Payment for services by third parties is permissible if client consents and if there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.
- Aggregate settlements require each client's consent and disclosure of the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.
- May not prospectively limit liability to client or settle a claim for such liability with an unrepresented client or former client without first advising the client that independent representation is appropriate.
- Lawyers related as parent, child, sibling, or spouse may not represent adverse parties without informed consent.

- No proprietary interest in cause of action or subject matter of litigation, except: lien for fees and expenses and contract with client for reasonable fees.
    - Security Interest for fees
- Can't represent both parties in family law matters.
    - What does "represent" mean?
- No sex with clients

"(l) A lawyer shall not engage in sexual conduct with a client or representative of a client that exploits or adversely affects the interest of the client or the lawyer-client relationship, including, but not limited to:

"(1) requiring or demanding sexual relations with a client or a representative of a client incident to or as a condition of a legal representation;

"(2) continuing to represent a client if the lawyer's sexual relations with the client or representative of the client cause the lawyer to render incompetent representation.

"(m) Except for spousal relationship or a sexual relationship that existed at the commencement of the lawyer-client relationship, sexual relations between the lawyer and the client shall be presumed to be exploitive. This presumption is rebuttable.

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

Rule 1.9 – Former Client Conflicts

- Prior lawyer-client relationship
- Represent another person with materially-adverse interests in the same or substantially-related matter
    - Commonality of parties or persons
    - Commonality of facts
    - Commonality of issues
    - Commonality of subject matter
- *Or*, use confidential information to the disadvantage of the former client.

Rule 1.10 – Imputed Disqualification

- Lawyers associated in a firm are treated as the same lawyer for conflict purposes.
- Lawyer joining firms only brings with him actual conflicts and confidential information known to him.
- Lawyer leaving a firm takes with him his actual conflicts and confidential information (*unless the firm retains the file and confidential information).*

Waiver of Conflicts

- Actual waiver
    - Lawyer reasonably believes representation will not be adversely affected

    - Informed consent (reasonably-adequate information about the material risks of the representation)
    - Documented affirmative response
- Implied Waiver
    - Failure to promptly assert conflict at earliest opportunity
- Non-waivable Conflict
    - If disinterested lawyer would conclude that client should not agree to the representation under any circumstances, then it is improper even to ask for the waiver
    - Impossible to make disclosure necessary to obtain informed consent
    - Representation prohibited by law
    - One client will assert a claim against the other in the same litigation
    - It is not reasonably likely that the lawyer will be able to provide adequate representation to one or more of the clients
    - Authority of governmental entity to consent
- Prospective waiver
    - Subject to heightened scrutiny
    - An open-ended agreement to consent to all conflicts should be ineffective unless the client possesses sophistication in the matter in question and has had the opportunity to receive independent legal advice about the consent

The Basics of Bar Complaints

Initiation of Complaint

Although the Office of General Counsel (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.

Complaint Screening Procedure

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. In any case, the disposition must be reported to and approved by the Disciplinary Commission.

- Initial screening is informal (But, you may want to consider hiring counsel.)
- Review the complaint and respond
    - Do restate or summarize the issues
    - Do provide a complete, narrative, chronological, and fact based response addressing only the issues raised in the complaint
    - Do be cooperative and truthful
    - Do Not send a voluminous response (A one to two pages, letter format is usually sufficient.)

- Do Not send multiple exhibits (Exhibits are usually not necessary in the initial response. If additional information or explanation is desired, it will be requested.)
- Do Not complain about the complaint
- Do Not ask for an itemization of rules allegedly violated
- Do Not attack the Bar or the grievance process
- Do Not whine, make sarcastic or catty comments
- Do Not ignore the complaint -- Extensions are routinely given at least once (7 to 14 days is reasonable, but in extraordinary circumstances additional time will be allowed.)

During the initial informal stage of the complaint screening procedure, approximately 85 percent of complaints are "screened out/dismissed" without a formal investigation.

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), *A.R.D.P.*

- It's probably a good idea to retain counsel
- Respond to the investigator personally or through counsel
- Offer to meet personally with investigator for the local grievance committee or assistant general counsel
- Submit a more detailed response with exhibits

Initial Determination by Disciplinary Commission

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.

- No violation
- Technical violation but imposition of discipline not warranted
- Material facts in dispute
- Undisputed facts, but private or public reprimand is not sufficient discipline

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.

- If discipline is imposed and you haven't retained counsel, it's probably not too late.
- If discipline is imposed **always** request reconsideration
    - Clarify the facts

- Be careful arguing the law
- Offer alternative discipline

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.

Note: If you are still representing yourself at this point, you are a fool.

Balance

A few years ago, this topic would not have been included in an ethics or professionalism presentation. However, experience has taught us that the stress that lawyers face each day of their legal career and, more importantly, how they deal with that stress has a significant impact on lawyer discipline and professionalism. It is estimated that about 75 percent of lawyer discipline cases involve depression, alcohol, drug abuse, or a combination thereof. The practice of law is stressful. Lawyers try to resolve other peoples' problems and right wrongs. In so doing, lawyers routinely see clients and others at their worst. The constant negative exposure takes a toll on a lawyer's emotional and physical health. In addition, most lawyers can be characterized as over-achievers and many lawyers are lawyers because they are driven to "help" and make things better. Adding to the stress caused by negative exposure, many lawyers eventually begin to define themselves and their success by "wins" and "losses." When that happens, the lawyer quickly loses perspective and the resulting additional stress manifests itself through serious physical and emotional consequences. Maintaining balance is critical to maintaining a healthy perspective on life and the practice of law.

Ways to manage stress include:

- Pace yourself, you are no longer on the semester system
- Go to lunch, but not alone
- Take vacation time
- Take time each day for yourself
- Stay tied to your support network
- Spend time with your spouse, significant other, and family
- Eat right, exercise, and get enough sleep

If you have problems or just need someone to talk to, you can contact the Alabama State Bar Lawyer Assistance Program. All contact with ALAP is confidential unless you are ordered to enroll in the program as a condition of lawyer discipline. Be assured, if you don't properly manage your stress, your legal career will be interrupted or cut short by poor health, serious lawyer discipline, or death.

Ethics Guidance

The single most effective tool in the preservation of our profession through self-regulation is the lawyer's individual sense of professionalism, honor, and integrity. All other enforcement tools are comparatively ineffective. Lawyers who are solo practitioners or who practice in small firms or office-sharing arrangements are at a significant disadvantage because often they have to make decisions about procedure, strategy, and ethics in isolation, unlike, their counterparts in large firms or government practice, who have the benefit of organizational oversight and convenient opportunities for consultation and collaboration with more experienced lawyers.

However, there is a danger that lawyers who practice together will be affected by the phenomenon of *Firm Culture,* which is present in medium to large firms. Firm Culture may work to the disadvantage of some young lawyers. Generally, lawyers have a natural tendency to conform their conduct to that of others in the firm. Although a firm may express formal systems and policy, there exists an informal system and practice that may, in practice, run counter to the expressed policy or system. Whether solo or in a firm, young lawyers should be sensitive to their ethical obligations and remember that the privilege of self-regulation and maintenance integrity and standing of our profession depends on every ethical decision they make. The following are primary sources of ethical guidance for all lawyers:

- Rules of Professional Conduct
- Personal honor and integrity
- Older lawyers
- Local bar commissioners
- Office of General Counsel
- Robert Lusk – Lusk Law Firm, LLC