American Bar Association
ADOPTED BY THE HOUSE OF DELEGATES
August 6-7, 2001

Evaluation of the Rules of Professional Conduct (Report No. 401)
The Commission's recommendation adopting the proposed amendments to the Model Rules of Professional Conduct dated August 2001 were considered and the following action was taken on the Preamble through Rule 1.10.1 Please note that only in instances where the Commission's recommendations were amended will this summary include the text of the amendments.

Preamble – A Lawyer's Responsibility; Scope. The Committee's amendments to the rule and accompanying commentary were approved.*

Rule 1.0 – Terminology. The committee's amendments to the rule and accompanying commentary were approved*.

Rule 1.1 – Competence. The committee's amendments to the rule and accompanying commentary were approved*.

Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer. The committee's amendments to the rule and accompanying commentary were approved*.

Rule 1.3 – Diligence. The committee's amendments to the rule and accompanying commentary were approved*.

Rule 1.4 – Communication. The committee's amendments to the rule and accompanying commentary were approved*.

Rule 1.5 – Fees. The committee's amendments to the rule and accompanying commentary were amended and approved*. As amended, it reads:

* Copies of the amendments to the Model Rules of Professional Conduct dated August 2001 are available upon request to the Division for Policy Administration.
(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Commentary

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnishing the client with at least a simple memorandum or copy of the lawyer’s customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

Rule 1.6 – Confidentiality of Information. The House approved a motion to divide Rule 1.6 into subparagraphs 1.6(b)(1), 1.6(b)(2) and f.6(b)(3). The following action was taken on the subparagraphs:

Rule 1.6(b)(1). The committee’s amendment to this subparagraph was approved.
Rule 1.6(b)(2). The committee’s amendment to this subparagraph was amended to strike (b)(2), which was approved.

Rule 1.6(b)(3). The committee’s amendment to the rule was withdrawn.

As amended, the new Rule 1.6 reads:

(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 secure legal advice about the lawyer’s compliance with these Rules;
(3) 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
(4) to comply with the other law or a court order.

The committee’s accompanying commentary was amended and approved.*

Rule 1.7 – Conflict of Interest: Current Clients. The committee’s amendments to the rule and accompanying commentary were approved.*

Rule 1.8 – Conflict of Interest: Current Clients: Specific Rules. The committee’s amendments to the rule and accompanying commentary were approved*.

Rules 1.9 – Duties to Former Clients. The committee’s amendments to rule and accompanying commentary were approved*.
Rule 1.10 – Imputation of Conflicts of Interest: General Rule.
The committee's amendments to the rule and accompanying commentary were amended and approved*. As amended, it reads:

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9.

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