

## ETHICAL OBLIGATIONS FOR CRIMINAL DEFENDERS: STEERING CLEAR OF THE STATE BAR

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### I. ETHICAL REQUIREMENTS/BEST PRACTICES & PROFESSIONALISM

**A. ETHICS:** There are three primary sources of information about attorneys' ethical obligations: Rules, comments, and ethics opinions.

1. **Rules:** The Rules of Professional Conduct are published annually in The Lawyer's Handbook and available at <http://www.ncbar.gov/rules/rpcsearch.asp> (hard copies are also available for about \$15.00) These Rules are the "black letter law" of legal ethics in North Carolina. Lawyers are charged with knowledge of these Rules, which are enforced through the State Bar's disciplinary process (and sometimes by the courts).
2. **Comments:** Each Rule is published with an accompanying set of comments, which elaborate on the meaning and application of the Rule. Comments provide more detail about the interpretation and scope of the Rule.
3. **Ethics Opinions:** The State Bar's Ethics Committee issues formal ethics opinions discussing the applicability of the Rules to various specific fact patterns. Ethics opinions, which provide valuable guidance specific to various fields of practice, are indexed by topic in the Handbook and are searchable by keyword at <http://www.ncbar.gov/ethics/>.

**B. BEST PRACTICES:** Some practices are not required by the Rules, but are advisable because they reduce the likelihood that your clients will complain to the State Bar and/or make it easier to respond to any State Bar inquiry.

1. **Avoiding Client Complaints:** As discussed in more detail below, timely attention to clients' cases and frequent communication with clients are two of the simplest ways to avoid client complaints to the Bar.
2. **Tools for Responding to State Bar Inquiries:** The more documentation you have in your file, the easier it will be to respond to a State Bar inquiry about the representation. Useful (but generally not required) documentation includes: correspondence with your client; a signed writing reflecting the client's consent to any issue where informed consent is required; contemporaneous memoranda reflecting important oral communications with your client (and others); a phone log or other record of communications with your client.

**C. PROFESSIONALISM:** The Rules of Professional Conduct are the “floor” for lawyer behavior, while standards of professionalism are the aspirational goals for our profession. Many of these goals are described in the Preamble to the Rules.

1. **Your Reputation Is Your Most Valuable Professional Asset.** Among the core tenets of professionalism are: Treating others with respect, being scrupulously honest, maintaining civility and collegiality even in adversarial situations, and conducting yourself as a dignified professional even when confronted with frustration or adversity. If you are mindful of these goals, you will earn your peers’ respect, the court’s trust, and your clients’ gratitude.
2. **Integrity of the Profession and Justice System:** As a lawyer, you are also responsible for promoting the administration of justice and promoting public confidence in the legal profession. To that end, you should demonstrate respect for the courts (in word, deed, and demeanor), avoid using legal procedure to harass or intimidate, offer guidance and mentoring to new lawyers, and assist peers who are unable to attend to their professional responsibilities because of personal difficulties.
3. **Pro Bono Service:** The Preamble notes “The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay.” In keeping with that philosophy, the State Bar promulgated Rule 6.1 (“Voluntary Pro Bono Publico Service”), which states that lawyers should aspire to render at least 50 hours of pro bono service per year. Comment 5 to that Rule explains that government and public sector lawyers can fulfill their *pro bono* responsibilities even when they are not permitted to engage in the private practice of law by “participation in activities for improving the law, the legal system, and the legal profession.”

## II. CRIMINAL DEFENSE LAWYERS & THE STATE BAR DISCIPLINARY PROCESS

### A. MOST COMMON COMPLAINTS ABOUT CRIMINAL DEFENSE LAWYERS

1. **Diligence:** Clients in criminal cases often complain that their lawyers are not diligently and promptly tending to their cases in violation of Rule 1.3. They may specifically complain that the lawyer failed to seek a bond reduction, failed to request discovery or file discovery motions, failed to interview witnesses, failed to push for a speedy trial, etc. Discipline against criminal lawyers for lack of diligence has most often been imposed for failure to perfect an appeal.
2. **Failure to Communicate:** Clients never hear from their lawyers as often as they would like. A client may assume that the lawyer is not working on his/her case because s/he hasn’t received an update recently. This may prompt a complaint to the State Bar. Criminal lawyers are sometimes found to have inadequately communicated with their clients in violation of Rule 1.4,

especially where the lawyer doesn't visit or communicate with a jailed client for an extended period.

**3. Accepting fees from appointed clients:** You may not solicit or accept fees from a court-appointed client. Doing so constitutes charging an excessive and/or illegal fee in violation of Rule 1.5 and may also be prejudicial to the administration of justice because the client is only entitled to appointed counsel if s/he is financially unable to secure legal representation. "If, at any stage in the action or proceeding, [you learn that your client has become] financially able to secure legal representation and provide other necessary expenses of representation, . . . [you] must promptly inform the court of that information." N.C.G.S. § 7A-450(d). Failure to inform the court under these circumstances may also constitute "disobeying an obligation under the rules of the tribunal" in violation of Rule 3.4(c).

**4. [The other most common allegation—false/inaccurate IDS fee applications—is not applicable to public defenders]**

**B. GENERAL STANDARD FOR INITIATING INVESTIGATION:** With a few limited exceptions set forth below, when the State Bar receives a complaint about a lawyer, it opens a grievance file. If the grievance sets forth allegations that, if true, might constitute a violation of the Rules, the State Bar will send a Letter of Notice to the lawyer. The lawyer must respond to the Letter of Notice by providing a "full and fair disclosure of all the facts and circumstances pertaining to the alleged misconduct." 27 NCAC 1B, § .0112(c). Again, the issuance of a Letter of Notice does not mean that the State Bar has made any determination about the veracity of the allegations.

**C. CERTAIN ALLEGATIONS THE STATE BAR MAY DECLINE TO INVESTIGATE:** Pursuant to Discipline and Disability Rule .0111(e), the State Bar may (and often does) decline to investigate the following types of allegations:

1. **IAC:** "That a lawyer provided ineffective assistance of counsel in a criminal case, unless a court has granted a motion for appropriate relief based upon the lawyer's conduct";
2. **Involuntary Plea:** "That a plea entered in a criminal case was not made voluntarily and knowingly, unless a court granted a motion for appropriate relief based upon the lawyer's conduct";
3. **Trial Strategy:** "That a lawyer's advice or strategy in a civil or criminal matter was inadequate or ineffective."

### **III. POTENTIAL ETHICAL ISSUES FOR PUBLIC DEFENDERS**

#### **A. COMMUNICATION**

##### **1. Rule 1.4**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, . . . is required . . . ;

(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.

2. **Clarify Scope of Representation to Avoid Mission Creep:** You should communicate clearly about the scope of the representation so the client will not assume that you are handling something you are not. If a client has more than one criminal charge, or charges pending in more than one county, make sure you and the client are on the same page about which of those matters you are handling. Tell the client whether your representation covers ancillary matters like seeking a bond reduction, dealing with administrative agencies like DMV or DSS, and any appeals. The best way to avoid misunderstandings about this is to specify the scope of the representation in writing.
3. **Communication with Jailed Clients:** Clients who are in custody are understandably more focused on their legal dilemma than those who are not. As a result, they may have unrealistic expectations about how frequently they will hear from you and quickly their cases will be resolved. Although you are not required to respond to repeated, redundant, requests for information, you should be especially sensitive to these clients' isolation and make a diligent effort to communicate regularly and to visit when possible.
4. **“No News” Calls—The Benefits of Checking In:** If you can set aside a block of time every day or every week just to check in with your clients, do it. You are not required to provide periodic reports to your clients when there are no substantive updates on their cases. However, an occasional call (or email, or letter) from you saying “There’s nothing new to report, but I am still working on your case and haven’t forgotten you,” can go a long way towards keeping a client satisfied with the representation.

## **B. CONFLICTS**

1. **Current Clients—Rule 1.7** provides the “black letter law” for avoiding conflicts of interest involving current clients. You have a conflict regarding a current client if: (a) another client has directly adverse interests; (b) the representation “may be materially limited by” your responsibilities to a third party; or (c) the representation “may be materially limited by” some personal interest.
  - a. **Cure by Client Consent:** Client(s) can consent to most conflicts (with written confirmation of informed consent) unless the representation is illegal, involves clients on opposing sides of the same case, or it is unreasonable for the lawyer to believe s/he can adequately represent both clients.
  - b. **Getting Out:** If a conflict not consentable, you must decline the representation or withdraw. You may have to withdraw from representing both affected clients if you cannot fulfill your obligations to the terminated client while continuing to represent the other client with adverse interests.
  - c. **Representing Co-Defendants:** If a lawyer (or firm) is representing multiple defendants in the same matter, the lawyers “should be mindful that if the common representation fails because the potentially

adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination.” Rule 1.7, Cmt. 29. A lawyer representing co-defendants must also carefully consider the potential effect on the attorney-client privilege and client-lawyer confidentiality. Cmt. 30. *See generally* Rule 1.7, Cmts 29-35, “Special Considerations in Common Representation.” In light of all the potential pitfalls of representing co-defendants, public defender’s offices may decide to refer co-defendants to outside appointed counsel.

## 2. Specific Conflicts Involving Current Clients—Rule 1.8

- a. **Going into Business with Your Client:** You *must not* engage in a business transaction or acquire a pecuniary interest adverse to your client unless:
  - It is fair & reasonable
  - The terms are fully disclosed & transmitted in writing
  - You provided written advice re: the desirability of seeking independent legal counsel
  - The client had a reasonable opportunity to seek counsel
  - You got the client’s signed written consent to the essential terms and to your role in transaction
- b. **Using a Client’s Information:** You *must not use* information obtained in the course of the representation to the client’s advantage (this is separate from the duty not to disclose).
- c. **Gifts from Client:** You *must not* solicit any substantial gift from a client.
- d. **Media Rights:** While the representation is ongoing, you *must not* negotiate with your client to acquire media rights relating to the representation.
- e. **Financial Help to Client:** You *must not* provide financial assistance to a client in connection with litigation, with limited exceptions for paying court costs and expenses under certain circumstances. (This is why you must not loan money to a client to help him make bond.)
- f. **Pleas Involving Co-Defendants:** “A lawyer who represents two or more clients . . . in a criminal case [shall not participate in making] 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.”

## 3. Former Clients—Rule 1.9

- a. You can represent a current client in a matter where he is adverse to a former client, so long as it’s not in the “same or substantially related matter” as the former representation. If the current and former clients’ interests are materially adverse in the same/substantially related

matter, the former client must give informed consent to the conflict, confirmed in writing.

- b. **Using a Former Client's Information** You cannot use information acquired in the prior representation to the former client's disadvantage except where that information has become generally known.
- c. **Former Client as Current Witness:** The fact that a former client is an adverse witness in a case does not necessarily mean that you have a conflict. So long as the case isn't the "same or substantially related matter" as that in which you represented the former client, and so long as the former client's status as a witness doesn't require you to use or disclose information acquired by virtue of your representation of the former client, you do not have a conflict under this Rule. You *should* carefully evaluate whether effective cross-examination of the former client would require you to use or disclose confidential information.

#### 4. Prospective Clients—Rule 1.18

- a. **Definition:** A person who discusses with a lawyer the possibility of forming a client-lawyer relationship is a prospective client. This is unlikely to come up often for public defenders, but it is possible that you could communicate with a potential client who was preliminarily determined to be entitled to appointed counsel but was not ultimately determined to be indigent.
- b. **Information Obtained from Prospective Client:** If you had discussions with a prospective client, you must not use or reveal information learned in the consultation, except as would be permitted or required with respect to clients.
- c. **Prohibited Representation:** You must not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if you received information from the prospective client that could be significantly harmful to him or her in the matter
- d. **Cure by Consent:** The representation described above is allowed if both the affected client and the prospective client give informed consent, confirmed in writing,

#### 5. Obtaining and Documenting Informed Consent to a Conflict: As noted above, most conflicts can be consented to by the affected client(s), but valid consent must be "informed" and "confirmed in writing."

- a. **"Informed consent"** is an agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances. Some Rules specify what information/explanation is "appropriate."
- b. **"Confirmed in writing"** means the consent is expressed in a writing by the person giving the informed consent, or a writing promptly transmitted by the lawyer to the consenting person confirming an oral informed consent. There is no signature requirement unless the

applicable conflict Rule specifically provides that the writing must be signed by the client.

- c. **Best Practices Recommendation:** You can disclose and obtain consent to anything you think your client *might believe* is a conflict. This can save you grief and time down the road if the client later alleges that you failed to disclose a potential conflict.

### C. “MOONLIGHTING”

1. **Why this is a problem**—For public defenders, practicing law “on the side” is a violation of statute and may also constitute a violation of the Rules of Professional Conduct (e.g., “criminal conduct reflecting adversely on a lawyer’s honesty, trustworthiness, or fitness” in violation of Rule 8.4(b)).

2. **N.C.G.G. § 84-2** provides: “No justice, judge, magistrate, full-time district attorney, full-time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk [etc.] shall engage in the private practice of law. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars (\$200.00).”

3. **“Practicing law” includes a lot of things.** The broad statutory definition is: “performing *any legal service for any other person*, firm or corporation, *with or without compensation*, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, *or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person*, firm or corporation. N.C.G.S. § 84-2.1 (emphasis added).

### D. CLIENT-CREATED CONUNDRUMS

1. **False Testimony:** You must not offer false evidence to the court. Rule 3.3 (“Candor Toward the Tribunal”) prohibits lawyers from offering evidence they know to be false. It also provides that “a lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal case, that the lawyer reasonably believes is false.” Rule 3.3(a)(3).

- a. Your duty not to present false evidence to the tribunal supersedes your duty to honor your client’s wishes. Cmt. 5. However, “the prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer’s reasonable belief that evidence is false does not preclude its presentation to the trier of fact.” Cmt. 8.

- b. If you know your client intends to testify falsely, you should try to persuade the client not to. If that fails and you continue representing the client, you must refuse to elicit the false testimony. Cmt 6.
- c. “Because of the special protections historically provided criminal defendants . . . this Rule does not permit a lawyer to refuse to offer the testimony of a criminal client where the lawyer *reasonably believes* but does not *know* that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify.” Cmt. 9.
- d. “If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.” Cmt. 6.

## 2. Receipt of Evidence

- a. **In General:** Absent a court order or other legal obligation to produce or disclose the location of an item of physical evidence, you may receive such an item for inspection and/or testing, but should then return it to the source. You must inform the source of the physical evidence of the legal consequences of possessing or destroying the evidence, and must advise the source to retain the evidence intact. *See* RPC 221.
- b. **Contraband:** Where possession of an item is itself a crime, you cannot take possession of the contraband or facilitate its transfer to anyone else. *See* 07 FEO 2.

## E. MISCELLANEA

### 1. Contact with Judges & Jurors—Rule 3.5

- a. ***Ex Parte* Communication:** Rule 3.5(a)(3) provides that a lawyer may not “communicate *ex parte* with a judge or other official except: (A) in the course of official proceedings; (B) in writing, if a copy of the writing is furnished simultaneously to the opposing party; (C) orally, upon adequate notice to opposing party; or (D) as otherwise permitted by law.” Lawyers and judges are generally sensitive to the issue of *ex parte* communications, but should not assume that any “simultaneously furnished” written communication is proper . . .
- b. **Informal Written Communications (A “cc” May Not Be Enough):** 98 FEO 13 describes a scenario in which a lawyer (in a civil case) copied the presiding judicial official on a letter to opposing counsel that accused him of impropriety in failing to respond to discovery and improperly contacting a treating physician. Although this *ex parte* communication did not technically violate Rule 3.5 because it was simultaneously transmitted to opposing counsel, the opinion states that it was nonetheless improper. The opinion notes that this type of informal communication with judges may be “used as an opportunity

to introduce new evidence, to argue the merits of the case, or to cast the opposing party or counsel in a bad light.” This creates the appearance of improper influence upon the tribunal, which can be prejudicial to the administration of justice. The opinion states that informal written communications with judges/judicial officials should be limited to:

- i. Communications, such as a proposed order or memorandum, prepared pursuant to the court’s instructions;
- ii. Communications related to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case (e.g. a request for continuance due to health problem);
- iii. Communications sent with the consent of the opposing party/counsel; and
- iv. Communications permitted by law, or the rules or written procedures of the tribunal.

You should not send information written communication to a judge except under the circumstances described above.

- c. **Contact with Jurors:** Under Rule 3.5, you may not communicate *ex parte* with a sitting juror or prospective juror. After the jury is discharged, you can communicate with a juror unless: (1) the communication is prohibited by law or court order; (2) you know that the juror does not want to communicate; or (3) the communication involves harassment, coercion or misrepresentation. All of these restrictions apply equally to contact with, or investigation of, jurors’ family members.

## 2. Trial Publicity—Rule 3.6

- a. **General Rule:** When you are involved in a case, you *must not* make extrajudicial statements that you know (or reasonably should know) will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the case.
- b. **Safe Topics:** (1) the claim, offense, defense, and identity of people involved; (2) information in the public record; (3) that an investigation is in progress; (4) the scheduling or result of any step in the litigation; (5) a request for assistance in obtaining necessary evidence/information; (6) warning others of the likelihood of substantial harm to an individual or the public interest.
- c. **Additional Permissible Statements in Criminal Cases:** (1) identifying information about the accused; (2) information necessary to apprehending the accused; (3) the fact, time, & place of arrest; and (4) the investigating/arresting officers or agencies and length of investigation.
- d. **The Response Exception:** You can make a statement that a reasonable lawyer would believe is required to protect a client from

the substantial undue prejudicial effect of recent publicity not initiated by you or the client, but the statement must be limited as reasonably necessary to mitigate the adverse publicity.

- e. **The Self-Defense Exception:** You can reply to public charges that you have engaged in misconduct, and can participate in the proceedings of legislative, administrative, or other investigative bodies.
- f. **Discipline Under This Rule is Rare:** Whether it's because lawyers are sensitive to issues of trial publicity or because the standard is difficult to define (e.g. "substantial likelihood of materially prejudicing"), lawyers are rarely disciplined for violating Rule 3.6. Almost every instance of public discipline under this Rule has involved improper statements by criminal prosecutors.

#### IV. YOUR ROLE IN SELF-REGULATION

**A. YOU ARE YOUR BROTHER'S KEEPER: THE OBLIGATION TO REPORT**—Under Rule 8.3, when you know that another lawyer has committed a violation of the Rules that "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects," you are required to inform the State Bar or the court.

1. **A Self-Regulating Profession:** Some of the most serious attorney misconduct is discovered by other lawyers. Although no lawyer takes pleasure or satisfaction from having to report another lawyer's bad acts, such reporting is imperative to the self-regulatory process. The State Bar cannot protect the public (and the integrity of the profession) from the ill effects of misconduct it doesn't know about.
2. **When To Report:** You are not required to report every potential violation of the Rules by another lawyer. First, you have to know that the violation occurred—you are not required to report mere supposition or gossip. Second, the violation must "raise a substantial question" about the lawyer's fitness. If you are unsure whether conduct meets this threshold, you can contact State Bar Ethics Counsel for confidential advice.
3. **Confidentiality is Paramount:** You are not required to disclose confidential information (protected by Rule 1.6) in order to comply with this Rule, but you *should* ask your client for authorization to report.
4. **Enforcement:** Lawyers are sometimes disciplined for failure to report another lawyer's serious misconduct, such as a law partner's misappropriation of entrusted funds.

#### B. RESPONDING TO THE STATE BAR

**1. If you get a Letter of Notice, do:**

- a. Respond!! Don't put your head in the sand! No matter how irksome or baseless the allegations are, you must respond. *See* Rule 8.1(b). Lawyers receive reprimands (which are public written discipline) for failing to respond to notice regarding a grievance.
- b. Explain the relevant facts and circumstances as concisely as possible and provide any documents that illustrate what happened.
- c. Request more time if you need it.

**2. If you get a Letter of Notice, don't:**

- a. Panic
- b. Ignore it
- c. Assume the State Bar thinks the allegations are well-founded. That's not the standard for sending a Letter of Notice.
- d. Attack the client/complainant.

## **Appendix: ETHICS OPINION SYNOPSES—CRIMINAL PRACTICE ISSUES**

### **RPC 33: Disclosure of Client's Alias and Criminal Record**

*Opinion rules that an attorney who learns through a privileged communication of his client's alias and prior criminal record may not permit his client to testify under a false name or deny his prior record under oath. If the client does so, the attorney would be required to request the client to disclose the true name or record and, if the client refused, to withdraw pursuant to the rules of the tribunal.*

### **RPC 58: Substitution of Criminal Defense Counsel**

*Opinion rules that another member of a lawyer's firm may substitute for the lawyer in defending a criminal case if there is no prejudice to the client and the client and the court consent.*

### **RPC 61: Defense Counsel's Right to Interview Minor Prosecuting Witness**

*Opinion rules that a defense attorney may interview a child who is the prosecuting witness in a molestation case without the knowledge or consent of the district attorney.*

### **RPC 76: Advancing a Client's Fine**

*Opinion rules that a lawyer may advance his client's fine.*

### **RPC 93: Interviewing Codefendants in Criminal Cases**

*Opinion concerns several situations in which an attorney who represents a criminal defendant wishes to interview other individuals who are represented by attorneys who will not agree to permit the attorney to interview their clients. In the first inquiry, Attorney A wishes to interview criminal defendant B, who has been indicted in a separate indictment from Attorney A's client. In the second inquiry, Attorney A wishes to interview criminal defendant B, who has been named as a criminal coconspirator with A's client, but has not yet been joined as a codefendant for trial. In the third inquiry, Attorney A wishes to interview a coconspirator who was named in the same indictment with A's client.*

### **RPC 129: Waiver of Appellate and Postconviction Rights in Plea Agreement**

*Opinion rules that prosecutors and defense attorneys may negotiate plea agreements in which appellate and postconviction rights are waived, except in regard to allegations of ineffective assistance of counsel or prosecutorial misconduct.*

### **RPC 152: Disclosure of Material Terms of Plea Agreements**

*Opinion rules that the prosecutor and the defense attorney must see that all material terms of a negotiated plea are disclosed in response to direct questions concerning such matters when pleas are entered in open court.*

### **RPC 173: Advancing Funds to Client to Post Bond**

*Opinion rules that a lawyer who represents a client on a criminal charge may not lend the client the money necessary to post bond.*

### **RPC 175: Reporting Child Abuse**

*Opinion rules that a lawyer may ethically exercise his or her discretion to decide whether to reveal confidential information concerning child abuse or neglect pursuant to a statutory requirement.*

### **RPC 198: Responsibilities of Stand-by Counsel Upon the Assumption of the Defense in a Capital Case**

*Opinion explores the ethical responsibilities of stand-by defense counsel who are instructed to take over the defense in a capital murder case without an opportunity to prepare.*

### **RPC 199: Ethical Responsibilities of Court-Appointed Lawyer**

*Opinion addresses the ethical responsibilities of a lawyer appointed to represent a criminal defendant in a capital case who, in good faith, believes he lacks the experience and ability to represent the defendant competently.*

### **RPC 214: Sending Questionnaire to Prospective Members of Jury**

*Opinion rules that a lawyer may not send a jury questionnaire directly to prospective members of the jury but, if the questionnaire is sent out by the court, such communications are not prohibited.*

### **RPC 220: Use of Tape Recording Made by Someone Other Than the Lawyer's Client**

*Opinion rules that a lawyer should seek the court's permission to listen to a tape recording of a telephone conversation of his or her client made by a third party if listening to the tape recording would otherwise be a violation of the law.*

### **RPC 221: Receipt of Evidence of Crime**

*Opinion rules that absent a court order or law requiring delivery of physical evidence of a crime to the authorities, a lawyer for a criminal defendant may take possession of evidence that is not contraband in order to examine, test, or inspect the evidence. The lawyer must return inculpatory physical evidence that is not contraband to the source and advise the source of the legal consequences pertaining to the possession or destruction of the evidence.*

### **RPC 225: Seeking Cooperation on Plea Agreement from Crime Victim with Pending Civil Action**

*Opinion holds that the lawyer for a defendant in criminal and civil actions arising out of the same event may seek the cooperation of a crime victim on a plea agreement provided the settlement of the victim's civil claim against the defendant is not contingent upon the content of the testimony of the victim or the outcome of the case.*

### **98 Formal Ethics Opinion 5: Disclosure of Client's Prior Driving Record**

*Opinion rules that a defense lawyer may remain silent while the prosecutor presents an inaccurate driving record to the court provided the lawyer and client did not criminally or fraudulently misrepresent the driving record to the prosecutor or the court and, further provided, that on application for a limited driving privilege, there is no misrepresentation to the court about the prior driving record.*

### **98 Formal Ethics Opinion 18: Revealing Confidential Information to Parents of Minor Client**

*Opinion rules that a lawyer representing a minor owes the duty of confidentiality to the minor and may only disclose confidential information to the minor's parent, without the minor's consent, if the parent is the legal guardian of the minor and the disclosure of the information is necessary to make a binding legal decision about the subject matter of the representation.*

**2003 Formal Ethics Opinion 5: Participating in Misrepresentation of Prior Record Level in Sentencing Proceedings**

*Opinion rules that neither a defense lawyer nor a prosecutor may participate in the misrepresentation of a criminal defendant's prior record level in a sentencing proceeding even if the judge is advised of the misrepresentation and does not object.*

**2007 Formal Ethics Opinion 2: Taking Possession of Client's Contraband**

*Opinion rules that a lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband.*