

ETHICS FOR THE PUBLIC DEFENDER

Client Misconduct

- What are the rules?
- Preserving Client Confidences
- Maintaining Attorney Honesty

Hypotheticals From The Real World

- You represent a defendant charged with DWI; he informs you that he has been arrested under the wrong name. In fact, under his real name he has a prior DWI conviction.
 - - what limits are there on your representation?
 - - can you use his “clean” record as a mitigating factor?
 - - could you seek a limited privilege?

Hypotheticals From The Real World

- What if he has been arrested under the correct name, but has a prior conviction under another name?

Hypotheticals From The Real World

- Your county has a program for first offenders, under which a first offender who signs a confession can receive a deferred prosecution. Your client informs you that he is innocent, but is willing to sign the confession to get the deferral. Any problem?

Hypotheticals From The Real World

- Your client appears to be a good candidate for reduction of his current bail, which he cannot meet. However, he informs you that once he makes bail you will not have to worry about seeing him in court again. Any problem in seeking a reduction? What if you get a reduction and your client then tells you he has a one way ticket out of town?

Hypotheticals From The Real World

- Your client appears to be a good candidate for reduction of his current bail, which he cannot meet. However, he informs you that once he makes bail you will not have to worry about seeing him in court again. Any problem in seeking a reduction? What if you get a reduction and your client then tells you he has a one way ticket out of town?

Hypotheticals From The Real World

- Your client is out on bond, and arrives at court apparently under the influence. He is offered a plea; what do you do if you suspect that his condition will make his plea unknowing?

Hypotheticals From The Real World

- You are in court on a Friday and learn that the police have warrants for an existing client; can you call the client and alert him to his pending arrest? If you do speak to the client, and he asks for advice about avoiding being arrested until the weekend is over, what can you say? What is he mentions to you that it would be unpleasant if he was arrested at his residence due to his collection of bongos, or of items that might be tied to a burglary?

Client Confidences

Rule 1.6 [c] Except when permitted under paragraph [d], a lawyer shall not knowingly:

- (1) reveal confidential information of a client
- (2) use confidential information of a client to the disadvantage of a client or
- (3) use confidential information of a client for the advantage of the lawyer or a third person, unless the client consents after consultation.

Client Confidences

Rule 1.6 [d] A lawyer may reveal confidential information when (1) disclosure is impliedly authorized to carry out goals of representation (2) with consent of client, after consultation (3) when permitted under the Rules of Professional Conduct or required by law or court order (4) information concerning client's intent to commit a crime and information necessary to prevent the crime (5) information necessary to rectify the consequences of client's criminal or fraudulent act in the commission of which the lawyer's services were used (6) information necessary to allow the attorney to defend themselves

ATTORNEY HONESTY

- Rule 3.3 (a) A Lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client (3) fail to disclose controlling, adverse legal precedent (4) offer evidence that the lawyer knows to be false

ATTORNEY HONESTY

- Rule 3.4 A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

ATTORNEY HONESTY

- Rule 3.4 A Lawyer shall not: (b) falsify evidence, counsel or assist a witness to testify falsely, counsel or assist a witness to hide or leave the jurisdiction for the purpose of being unavailable as a witness, or offer an inducement to a witness that is prohibited by law.

ATTORNEY HONESTY

- Rule 3.4 A Lawyer shall not: (f) request a person, other than a client, to refrain from voluntarily giving relevant information to another party unless that person is an employee or relative of the client and the lawyer reasonably believes the person will not be adversely affected by not giving the information.

ATTORNEY HONESTY

- Rule 4.1 In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

ATTORNEY HONESTY

- Rule 8.4 It is professional misconduct for a lawyer to: (a) violate the Rules of Professional Conduct (b) commit a criminal act that reflects adversely on attorney's honesty; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation (d) engage in conduct that is prejudicial to the administration of justice...(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

DEALING WITH NON-CLIENTS

- Dealing with Represented Persons
- Dealing with Non-represented Persons

DEALING WITH REPRESENTED PERSONS

- Rule 4.2. (A)...It is not a violation of this rule of a lawyer to encourage his or her client to discuss the subject of the representation with the opposing party in a good faith attempt to resolve the controversy.

DEALING WITH REPRESENTED PERSONS

- Rule 4.2. (A) During the representation of 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 consent of other lawyer or authorized by law.

Cases and Rulings

- CPR 313
- RPC 33 Attorney has no affirmative duty to disclose client's false name and record but cannot allow client to commit perjury
- 98 Formal Ethics Opinion 5
- CPR 92

Cases and Rulings

- CPR 321
- In re Palmer, 296 NC 638
- North Carolina State Bar v. Graves, 50 N.C. App. 450 (1981)
- RPC 225 Lawyer may seek cooperation of victim in plea agreement as long as settlement of victim's civil claim is not contingent upon outcome of criminal case.
- State v. Rogers, 68 N.C. App. 358 (1984)

Cases and Rulings

- 79 DHC 10 (Censured for informing party that his client would not testify against him if other party would also plead the Fifth)

Cases and Rulings

- RPC 93 Counsel may not speak with represented persons, even when not technically co-defendants, and even when persons initiate contact, without permission of their counsel.
- RPC 221 Absent court order or law, attorney may take possession on non-contraband evidence to examine it, but must then return evidence to its source and advise source of consequences of possession or destruction of evidence
- 98 Formal Ethics Opinion 2

Cases and Rulings

- 92 DHC 18 – censure for failing to disclose all material terms of plea agreement.
- RPC 152 Prosecutor and Defense counsel must disclose all material terms of plea