

1 representation of a client except so far as disclosure is
2 required or permitted by the Iowa Rules of Professional
3 Conduct or other law.

4 [5] A lawyer's conduct should conform to the
5 requirements of the law, both in professional service to
6 clients and in the lawyer's business and personal affairs. A
7 lawyer should use the law's procedures only for legitimate
8 purposes and not to harass or intimidate others. A lawyer
9 should demonstrate respect for the legal system and for
10 those who serve it, including judges, other lawyers, and
11 public officials. While it is a lawyer's duty, when necessary,
12 to challenge the rectitude of official action, it is also a
13 lawyer's duty to uphold legal process.

14 [6] As a public citizen, a lawyer should seek
15 improvement of the law, access to the legal system, the
16 administration of justice, and the quality of service rendered
17 by the legal profession. As a member of a learned profession,
18 a lawyer should cultivate knowledge of the law beyond its
19 use for clients, employ that knowledge in reform of the law,
20 and work to strengthen legal education. In addition, a lawyer
21 should further the public's understanding of and confidence
22 in the rule of law and the justice system because legal
23 institutions in a constitutional democracy depend on
24 popular participation and support to maintain their
25 authority. A lawyer should be mindful of deficiencies in the
26 administration of justice and of the fact that the poor, and
27 sometimes persons who are not poor, cannot afford adequate
28 legal assistance. Therefore, all lawyers should devote
29 professional time and resources and use civic influence to
30 ensure equal access to our system of justice for all those who
31 because of economic or social barriers cannot afford or
32 secure adequate legal counsel. A lawyer should aid the legal
33 profession in pursuing these objectives and should help the
34 bar regulate itself in the public interest.

35 [7] Many of a lawyer's professional responsibilities are
36 prescribed in the Iowa Rules of Professional Conduct, as well
37 as substantive and procedural law. However, a lawyer is also
38 guided by personal conscience and the approbation of
39 professional peers. A lawyer should strive to attain the
40 highest level of skill, to improve the law and the legal
41 profession, and to exemplify the legal profession's ideals of
42 public service.

1 [8] A lawyer's responsibilities as a representative of
2 clients, an officer of the legal system, and a public citizen are
3 usually harmonious. Thus, when an opposing party is well
4 represented, a lawyer can be a zealous advocate on behalf of
5 a client and at the same time assume that justice is being
6 done. So also, a lawyer can be sure that preserving client
7 confidences ordinarily serves the public interest because
8 people are more likely to seek legal advice, and thereby heed
9 their legal obligations, when they know their
10 communications will be private.

11 [9] In the nature of law practice, however, conflicting
12 responsibilities are encountered. Virtually all difficult ethical
13 problems arise from conflict between a lawyer's
14 responsibilities to clients, to the legal system, and to the
15 lawyer's own interest in remaining an ethical person while
16 earning a satisfactory living. The Iowa Rules of Professional
17 Conduct often prescribe terms for resolving such conflicts.
18 Within the framework of these rules, however, many difficult
19 issues of professional discretion can arise. Such issues must
20 be resolved through the exercise of sensitive professional and
21 moral judgment guided by the basic principles underlying
22 the rules. These principles include the lawyer's obligation
23 zealously to protect and pursue a client's legitimate
24 interests, within the bounds of the law, while maintaining a
25 professional, courteous, and civil attitude toward all persons
26 involved in the legal system.

27 [10] The legal profession is largely self-governing.
28 Although other professions also have been granted powers of
29 self-government, the legal profession is unique in this
30 respect because of the close relationship between the
31 profession and the processes of government and law
32 enforcement. This connection is manifested in the fact that
33 ultimate authority over the legal profession is vested largely
34 in the courts.

35 [11] To the extent that lawyers meet the obligations of
36 their professional calling, the occasion for government
37 regulation is obviated. Self-regulation also helps maintain
38 the legal profession's independence from government
39 domination. An independent legal profession is an important
40 force in preserving government under law, for abuse of legal
41 authority is more readily challenged by a profession whose
42 members are not dependent on government for the right to
43 practice.

1 [12] The legal profession's relative autonomy carries
2 with it special responsibilities of self-government. The
3 profession has a responsibility to ensure that its regulations
4 are conceived in the public interest and not in furtherance of
5 parochial or self-interested concerns of the bar. Every lawyer
6 is responsible for observance of the Iowa Rules of
7 Professional Conduct. A lawyer should also aid in securing
8 their observance by other lawyers. Neglect of these
9 responsibilities compromises the independence of the
10 profession and the public interest which it serves.

11 [13] Lawyers play a vital role in the preservation of
12 society. The fulfillment of this role requires an
13 understanding by lawyers of their relationship to our legal
14 system. The Iowa Rules of Professional Conduct, when
15 properly applied, serve to define that relationship.

16 **SCOPE**

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18 [14] The Iowa Rules of Professional Conduct are rules
19 of reason. They should be interpreted with reference to the
20 purposes of legal representation and of the law itself. Some
21 of the rules are imperatives, cast in the terms "shall" or
22 "shall not." These define proper conduct for purposes of
23 professional discipline. Others, generally cast in the term
24 "may," are permissive and define areas under the rules in
25 which the lawyer has discretion to exercise professional
26 judgment. No disciplinary action should be taken when the
27 lawyer chooses not to act or acts within the bounds of such
28 discretion. Other rules define the nature of relationships
29 between the lawyer and others. The rules are thus partly
30 obligatory and disciplinary and partly constitutive and
31 descriptive in that they define a lawyer's professional role.
32 Many of the comments use the term "should." Comments do
33 not add obligations to the rules but provide guidance for
34 practicing in compliance with the rules.
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36 [15] The rules presuppose a larger legal context
37 shaping the lawyer's role. That context includes court rules
38 and statutes relating to matters of licensure, laws defining
39 specific obligations of lawyers, and substantive and
40 procedural law in general. The comments are sometimes
41 used to alert lawyers to their responsibilities under such
42 other law.
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1 [16] Compliance with the rules, as with all law in an
2 open society, depends primarily upon understanding and
3 voluntary compliance, secondarily upon reinforcement by
4 peer and public opinion, and finally, when necessary, upon
5 enforcement through disciplinary proceedings. The rules do
6 not, however, exhaust the moral and ethical considerations
7 that should inform a lawyer, for no worthwhile human
8 activity can be completely defined by legal rules. The rules
9 simply provide a framework for the ethical practice of law.

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11 [17] Furthermore, for purposes of determining the
12 lawyer's authority and responsibility, principles of
13 substantive law external to these rules determine whether a
14 client-lawyer relationship exists. Most of the duties flowing
15 from the client-lawyer relationship attach only after the
16 client has requested the lawyer to render legal services and
17 the lawyer has agreed to do so. But there are some duties,
18 such as that of confidentiality under rule 32:1.6, that attach
19 when the lawyer agrees to consider whether a client-lawyer
20 relationship shall be established. See rule 32:1.18. Whether
21 a client-lawyer relationship exists for any specific purpose
22 can depend on the circumstances and may be a question of
23 fact.

24 [18] Under various legal provisions, including
25 constitutional, statutory, and common law, the
26 responsibilities of government lawyers may include authority
27 concerning legal matters that ordinarily reposes in the client
28 in private client-lawyer relationships. For example, a lawyer
29 for a government agency may have authority on behalf of the
30 government to decide upon settlement or whether to appeal
31 from an adverse judgment. Such authority in various
32 respects is generally vested in the attorney general and the
33 state's attorney in state government, and their federal
34 counterparts, and the same may be true of other government
35 law officers. Also, lawyers under the supervision of these
36 officers may be authorized to represent several government
37 agencies in intragovernmental legal controversies in
38 circumstances where a private lawyer could not represent
39 multiple private clients. These rules do not abrogate any
40 such authority.

41 [19] Failure to comply with an obligation or prohibition
42 imposed by a rule is a basis for invoking the disciplinary
43 process. The rules presuppose that disciplinary assessment
44 of a lawyer's conduct will be made on the basis of the facts

1 and circumstances as they existed at the time of the conduct
2 in question and in recognition of the fact that a lawyer often
3 has to act upon uncertain or incomplete evidence of the
4 situation. Moreover, the rules presuppose that whether or
5 not discipline should be imposed for a violation, and the
6 severity of a sanction, depend on all the circumstances, such
7 as the willfulness and seriousness of the violation,
8 extenuating factors, and whether there have been previous
9 violations.

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11 [20] Violation of a rule should not itself give rise to a
12 cause of action against a lawyer nor should it create any
13 presumption in such a case that a legal duty has been
14 breached. In addition, violation of a rule does not necessarily
15 warrant any other nondisciplinary remedy, such as
16 disqualification of a lawyer in pending litigation. The rules
17 are designed to provide guidance to lawyers and to provide a
18 structure for regulating conduct through disciplinary
19 agencies. They are not designed to be a basis for civil
20 liability. Furthermore, the purpose of the rules can be
21 subverted when they are invoked by opposing parties as
22 procedural weapons. The fact that a rule is a just basis for a
23 lawyer's self-assessment, or for sanctioning a lawyer under
24 the administration of a disciplinary authority, does not imply
25 that an antagonist in a collateral proceeding or transaction
26 has standing to seek enforcement of the rule. Nevertheless,
27 since the rules do establish standards of conduct by lawyers,
28 a lawyer's violation of a rule may be evidence of breach of the
29 applicable standard of conduct.

30 [21] The comment accompanying each rule explains
31 and illustrates the meaning and purpose of the rule. The
32 Preamble and this note on Scope provide general orientation.
33 The comments are intended as guides to interpretation, but
34 the text of each rule is authoritative.

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36 **RULE 32:1.0: TERMINOLOGY**

37 (a) "Belief" or "believes" denotes that the person
38 involved actually supposed the fact in question to be true. A
39 person's belief may be inferred from circumstances.

40 (b) "Confirmed in writing," when used in reference to
41 the informed consent of a person, denotes informed consent
42 that is given in writing by the person or a writing that a

1 lawyer promptly transmits to the person confirming an oral
2 informed consent. See paragraph (e) for the definition of
3 "informed consent." If it is not feasible to obtain or transmit
4 the writing at the time the person gives informed consent,
5 then the lawyer must obtain or transmit it within a
6 reasonable time thereafter.

7 (c) "Firm" or "law firm" denotes a lawyer or lawyers in a
8 law partnership, professional corporation, sole
9 proprietorship, or other association authorized to practice
10 law; or lawyers employed in a legal services organization or
11 the legal department of a corporation or other organization.

12 (d) "Fraud" or "fraudulent" denotes conduct that is
13 fraudulent under the substantive or procedural law of the
14 applicable jurisdiction and has a purpose to deceive.

15 (e) "Informed consent" denotes the agreement by a
16 person to a proposed course of conduct after the lawyer has
17 communicated adequate information and explanation about
18 the material risks of and reasonably available alternatives to
19 the proposed course of conduct.

20 (f) "Knowingly," "known," or "knows" denotes actual
21 knowledge of the fact in question. A person's knowledge may
22 be inferred from circumstances.

23 (g) "Partner" denotes a member of a partnership, a
24 shareholder in a law firm organized as a professional
25 corporation, or a member of an association authorized to
26 practice law.

27 (h) "Reasonable" or "reasonably" when used in relation
28 to conduct by a lawyer denotes the conduct of a reasonably
29 prudent and competent lawyer.

30 (i) "Reasonable belief" or "reasonably believes" when
31 used in reference to a lawyer denotes that the lawyer believes
32 the matter in question and that the circumstances are such
33 that the belief is reasonable.

34 (j) "Reasonably should know" when used in reference
35 to a lawyer denotes that a lawyer of reasonable prudence
36 and competence would ascertain the matter in question.

1 (k) "Screened" denotes the isolation of a lawyer from
2 any participation in a matter through the timely imposition
3 of procedures within a firm that are reasonably adequate
4 under the circumstances to protect information that the
5 isolated lawyer is obligated to protect under these rules or
6 other law.

7 (l) "Substantial" when used in reference to degree or
8 extent denotes a material matter of clear and weighty
9 importance.

10 (m) "Tribunal" denotes a court, an arbitrator in a
11 binding arbitration proceeding, or a legislative body,
12 administrative agency, or other body acting in an
13 adjudicative capacity. A legislative body, administrative
14 agency, or other body acts in an adjudicative capacity when
15 a neutral official, after the presentation of evidence or legal
16 argument by a party or parties, will render a binding legal
17 judgment directly affecting a party's interests in a particular
18 matter.

19 (n) "Writing" or "written" denotes a tangible or
20 electronic record of a communication or representation,
21 including handwriting, typewriting, printing, photostating,
22 photography, audio or videorecording, and e-mail. A "signed"
23 writing includes an electronic sound, symbol, or process
24 attached to or logically associated with a writing and
25 executed or adopted by a person with the intent to sign the
26 writing.
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28 **Comment**
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30 *Confirmed in Writing*

31 [1] If it is not feasible to obtain or transmit a written
32 confirmation at the time the client gives informed consent,
33 then the lawyer must obtain or transmit it within a
34 reasonable time thereafter. If a lawyer has obtained a client's
35 informed consent, the lawyer may act in reliance on that
36 consent so long as it is confirmed in writing within a
37 reasonable time thereafter.

38 *Firm*

39 [2] Whether two or more lawyers constitute a firm
40 within paragraph (c) can depend on the specific facts. For

1 example, two practitioners who share office space and
2 occasionally consult or assist each other ordinarily would
3 not be regarded as constituting a firm. However, if they
4 present themselves to the public in a way that suggests that
5 they are a firm or conduct themselves as a firm, they should
6 be regarded as a firm for purposes of the rules. The terms of
7 any formal agreement between associated lawyers are
8 relevant in determining whether they are a firm, as is the
9 fact that they have mutual access to information concerning
10 the clients they serve. Furthermore, it is relevant in doubtful
11 cases to consider the underlying purpose of the rule that is
12 involved. A group of lawyers could be regarded as a firm for
13 purposes of the rule that the same lawyer should not
14 represent opposing parties in litigation, while it might not be
15 so regarded for purposes of the rule that information
16 acquired by one lawyer is attributed to another.

17 [3] With respect to the law department of an
18 organization, including the government, there is ordinarily
19 no question that the members of the department constitute a
20 firm within the meaning of the Iowa Rules of Professional
21 Conduct. There can be uncertainty, however, as to the
22 identity of the client. For example, it may not be clear
23 whether the law department of a corporation represents a
24 subsidiary or an affiliated corporation, as well as the
25 corporation by which the members of the department are
26 directly employed. A similar question can arise concerning
27 an unincorporated association and its local affiliates.

28 [4] Similar questions can also arise with respect to
29 lawyers in legal aid and legal services organizations.
30 Depending upon the structure of the organization, the entire
31 organization or different components of it may constitute a
32 firm or firms for purposes of these rules.

33 *Fraud*

34 [5] When used in these rules, the terms "fraud" or
35 "fraudulent" refer to conduct that is characterized as such
36 under the substantive or procedural law of the applicable
37 jurisdiction and has a purpose to deceive. This does not
38 include merely negligent misrepresentation or negligent
39 failure to apprise another of relevant information. For
40 purposes of these rules, it is not necessary that anyone has
41 suffered damages or relied on the misrepresentation or
42 failure to inform.

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Informed Consent

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[6] Many of the Iowa Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., rules 32:1.2(c), 32:1.6(a), 32:1.7(b), 32:1.9(a), 32:1.11(a), 32:1.12(a), and 32:1.18(d). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

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[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules

1 require that a person's consent be confirmed in writing. See
2 rules 32:1.7(b), 32:1.9(a), 32:1.11(a), 32:1.12(a), and
3 32:1.18(d). For a definition of "writing" and "confirmed in
4 writing," see paragraphs (n) and (b). Other rules require that
5 a client's consent be obtained in a writing signed by the
6 client. See, e.g., rules 32:1.8(a) and (g). For a definition of
7 "signed," see paragraph (n).

8 *Screened*

9 [8] This definition applies to situations where
10 screening of a personally disqualified lawyer is permitted to
11 remove imputation of a conflict of interest under rule
12 32:1.11, 32:1.12, or 32:1.18.

13 [9] The purpose of screening is to assure the affected
14 parties that confidential information known by the
15 personally disqualified lawyer remains protected. The
16 personally disqualified lawyer should acknowledge the
17 obligation not to communicate with any of the other lawyers
18 in the firm with respect to the matter. Similarly, other
19 lawyers in the firm who are working on the matter should be
20 informed that the screening is in place and that they may
21 not communicate with the personally disqualified lawyer
22 with respect to the matter. Additional screening measures
23 that are appropriate for the particular matter will depend on
24 the circumstances. To implement, reinforce, and remind all
25 affected lawyers of the presence of the screening, it may be
26 appropriate for the firm to undertake such procedures as a
27 written undertaking by the screened lawyer to avoid any
28 communication with other firm personnel and any contact
29 with any firm files or other materials relating to the matter,
30 written notice and instructions to all other firm personnel
31 forbidding any communication with the screened lawyer
32 relating to the matter, denial of access by the screened
33 lawyer to firm files or other materials relating to the matter,
34 and periodic reminders of the screen to the screened lawyer
35 and all other firm personnel.

36 [10] In order to be effective, screening measures must
37 be implemented as soon as practical after a lawyer or law
38 firm knows or reasonably should know that there is a need
39 for screening.

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1 that reasonably necessary in the circumstances, for ill-
2 considered action under emergency conditions can
3 jeopardize the client's interest.
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5 [4] A lawyer may accept representation where the
6 requisite level of competence can be achieved by reasonable
7 preparation. This applies as well to a lawyer who is
8 appointed as counsel for an unrepresented person. *See also*
9 rule 32:6.2.
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11 *Thoroughness and Preparation*

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13 [5] Competent handling of a particular matter includes
14 inquiry into and analysis of the factual and legal elements of
15 the problem, and use of methods and procedures meeting
16 the standards of competent practitioners. It also includes
17 adequate preparation. The required attention and
18 preparation are determined in part by what is at stake;
19 major litigation and complex transactions ordinarily require
20 more extensive treatment than matters of lesser complexity
21 and consequence. An agreement between the lawyer and the
22 client regarding the scope of the representation may limit the
23 matters for which the lawyer is responsible. *See* rule
24 32:1.2(c).

25 *Maintaining Competence*

26 [6] To maintain the requisite knowledge and skill, a
27 lawyer should keep abreast of changes in the law and its
28 practice, engage in continuing study and education, and
29 comply with all continuing legal education requirements to
30 which the lawyer is subject.

31 **RULE 32:1.2: SCOPE OF REPRESENTATION AND** 32 **ALLOCATION OF AUTHORITY BETWEEN CLIENT** 33 **AND LAWYER** 34

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36 **(a) Subject to paragraphs (c) and (d), a lawyer shall**
37 **abide by a client's decisions concerning the objectives of**
38 **representation and, as required by rule 32:1.4, shall**
39 **consult with the client as to the means by which they**
40 **are to be pursued. A lawyer may take such action on**
41 **behalf of the client as is impliedly authorized to carry**
42 **out the representation. A lawyer shall abide by a client's**
43 **decision whether to settle a matter. In a criminal case,**

1 **the lawyer shall abide by the client's decision, after**
2 **consultation with the lawyer, as to a plea to be entered,**
3 **whether to waive jury trial, and whether the client will**
4 **testify.**

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6 **(b) A lawyer's representation of a client, including**
7 **representation by appointment, does not constitute an**
8 **endorsement of the client's political, economic, social,**
9 **or moral views or activities.**

10 **(c) A lawyer may limit the scope of the**
11 **representation if the limitation is reasonable under the**
12 **circumstances and the client gives informed consent.**

13 **(d) A lawyer shall not counsel a client to engage, or**
14 **assist a client, in conduct that the lawyer knows is**
15 **criminal or fraudulent, but a lawyer may discuss the**
16 **legal consequences of any proposed course of conduct**
17 **with a client and may counsel or assist a client to make**
18 **a good faith effort to determine the validity, scope,**
19 **meaning, or application of the law.**

20
21 **Comment**

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23 *Allocation of Authority between Client and Lawyer*

24 [1] Paragraph (a) confers upon the client the ultimate
25 authority to determine the purposes to be served by legal
26 representation, within the limits imposed by law and the
27 lawyer's professional obligations. The decisions specified in
28 paragraph (a), such as whether to settle a civil matter, must
29 also be made by the client. See rule 32:1.4(a)(1) for the
30 lawyer's duty to communicate with the client about such
31 decisions. With respect to the means by which the client's
32 objectives are to be pursued, the lawyer shall consult with
33 the client as required by rule 32:1.4(a)(2) and may take such
34 action as is impliedly authorized to carry out the
35 representation.

36 [2] On occasion, however, a lawyer and a client may
37 disagree about the means to be used to accomplish the
38 client's objectives. Clients normally defer to the special
39 knowledge and skill of their lawyer with respect to the means
40 to be used to accomplish their objectives, particularly with
41 respect to technical, legal, and tactical matters. Conversely,
42 lawyers usually defer to the client regarding such questions

1 as the expense to be incurred and concern for third persons
2 who might be adversely affected. Because of the varied
3 nature of the matters about which a lawyer and client might
4 disagree and because the actions in question may implicate
5 the interests of a tribunal or other persons, this rule does
6 not prescribe how such disagreements are to be resolved.
7 Other law, however, may be applicable and should be
8 consulted by the lawyer. The lawyer should also consult with
9 the client and seek a mutually acceptable resolution of the
10 disagreement. If such efforts are unavailing and the lawyer
11 has a fundamental disagreement with the client, the lawyer
12 may withdraw from the representation. See rule
13 32:1.16(b)(4). Conversely, the client may resolve the
14 disagreement by discharging the lawyer. See rule
15 32:1.16(a)(3).

16 [3] At the outset of a representation, the client may
17 authorize the lawyer to take specific action on the client's
18 behalf without further consultation. Absent a material
19 change in circumstances and subject to rule 32:1.4, a lawyer
20 may rely on such an advance authorization. The client may,
21 however, revoke such authority at any time.

22 [4] In a case in which the client appears to be suffering
23 diminished capacity, the lawyer's duty to abide by the
24 client's decisions is to be guided by reference to rule 32:1.14.

25 *Independence from Client's Views or Activities*

26 [5] Legal representation should not be denied to people
27 who are unable to afford legal services, or whose cause is
28 controversial or the subject of popular disapproval. By the
29 same token, representing a client does not constitute
30 approval of the client's views or activities.

31 *Agreements Limiting Scope of Representation*

32 [6] The scope of services to be provided by a lawyer
33 may be limited by agreement with the client or by the terms
34 under which the lawyer's services are made available to the
35 client. When a lawyer has been retained by an insurer to
36 represent an insured, for example, the representation may
37 be limited to matters related to the insurance coverage. A
38 limited representation may be appropriate because the client
39 has limited objectives for the representation. In addition, the
40 terms upon which representation is undertaken may exclude

1 specific means that might otherwise be used to accomplish
2 the client's objectives. Such limitations may exclude actions
3 that the client thinks are too costly or that the lawyer
4 regards as repugnant or imprudent.

5 [7] Although this rule affords the lawyer and client
6 substantial latitude to limit the representation, the limitation
7 must be reasonable under the circumstances. If, for
8 example, a client's objective is limited to securing general
9 information about the law the client needs in order to handle
10 a common and typically uncomplicated legal problem, the
11 lawyer and client may agree that the lawyer's services will be
12 limited to a brief telephone consultation. Such a limitation,
13 however, would not be reasonable if the time allotted was not
14 sufficient to yield advice upon which the client could rely.
15 Although an agreement for a limited representation does not
16 exempt a lawyer from the duty to provide competent
17 representation, the limitation is a factor to be considered
18 when determining the legal knowledge, skill, thoroughness,
19 and preparation reasonably necessary for the representation.
20 See rule 32:1.1.

21 [8] All agreements concerning a lawyer's representation
22 of a client must accord with the Iowa Rules of Professional
23 Conduct and other law. See, e.g., rules 32:1.1, 32:1.8, and
24 32:5.6.

25 *Criminal, Fraudulent, and Prohibited Transactions*

26 [9] Paragraph (d) prohibits a lawyer from knowingly
27 counseling or assisting a client to commit a crime or fraud.
28 This prohibition, however, does not preclude the lawyer from
29 giving an honest opinion about the actual consequences that
30 appear likely to result from a client's conduct. Nor does the
31 fact that a client uses advice in a course of action that is
32 criminal or fraudulent of itself make a lawyer a party to the
33 course of action. There is a critical distinction between
34 presenting an analysis of legal aspects of questionable
35 conduct and recommending the means by which a crime or
36 fraud might be committed with impunity.

37 [10] When the client's course of action has already
38 begun and is continuing, the lawyer's responsibility is
39 especially delicate. The lawyer is required to avoid assisting
40 the client, for example, by drafting or delivering documents
41 that the lawyer knows are fraudulent or by suggesting how

1 the wrongdoing might be concealed. A lawyer may not
2 continue assisting a client in conduct that the lawyer
3 originally supposed was legally proper but then discovers is
4 criminal or fraudulent. The lawyer must, therefore, withdraw
5 from the representation of the client in the matter. *See* rule
6 32:1.16(a). In some cases, withdrawal alone might be
7 insufficient. It may be necessary for the lawyer to give notice
8 of the fact of withdrawal and to disaffirm any opinion,
9 document, affirmation, or the like. *See* rule 32:4.1.

10 [11] Where the client is a fiduciary, the lawyer may be
11 charged with special obligations in dealings with a
12 beneficiary.

13 [12] Paragraph (d) applies whether or not the
14 defrauded party is a party to the transaction. Hence, a
15 lawyer must not participate in a transaction to effectuate
16 criminal or fraudulent avoidance of tax liability. Paragraph
17 (d) does not preclude undertaking a criminal defense
18 incident to a general retainer for legal services to a lawful
19 enterprise. The last clause of paragraph (d) recognizes that
20 determining the validity or interpretation of a statute or
21 regulation may require a course of action involving
22 disobedience of the statute or regulation or of the
23 interpretation placed upon it by governmental authorities.

24 [13] If a lawyer comes to know or reasonably should
25 know that a client expects assistance not permitted by the
26 Iowa Rules of Professional Conduct or other law or if the
27 lawyer intends to act contrary to the client's instructions, the
28 lawyer must consult with the client regarding the limitations
29 on the lawyer's conduct. *See* rule 32:1.4(a)(5).

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31 **RULE 32:1.3: DILIGENCE**

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33 **A lawyer shall act with reasonable diligence and**
34 **promptness in representing a client.**

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36 **Comment**

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38 [1] A lawyer should pursue a matter on behalf of a
39 client despite opposition, obstruction, or personal
40 inconvenience to the lawyer, and take whatever lawful and
41 ethical measures are required to vindicate a client's cause or
42 endeavor. A lawyer must also act with commitment and

1 dedication to the interests of the client and with zeal in
2 advocacy upon the client's behalf. A lawyer is not bound,
3 however, to press for every advantage that might be realized
4 for a client. For example, a lawyer may have authority to
5 exercise professional discretion in determining the means by
6 which a matter should be pursued. See rule 32:1.2. The
7 lawyer's duty to act with reasonable diligence does not
8 require the use of offensive tactics or preclude the treating of
9 all persons involved in the legal process with courtesy and
10 respect. See Iowa Ct. R. ch. 33.

11 [2] A lawyer's work load must be controlled so that
12 each matter can be handled competently.

13 [3] Perhaps no professional shortcoming is more widely
14 resented than procrastination. A client's interests often can
15 be adversely affected by the passage of time or the change of
16 conditions; in extreme instances, as when a lawyer overlooks
17 a statute of limitations, the client's legal position may be
18 destroyed. Even when the client's interests are not affected
19 in substance, however, unreasonable delay can cause a
20 client needless anxiety and undermine confidence in the
21 lawyer's trustworthiness. A lawyer's duty to act with
22 reasonable promptness, however, does not preclude the
23 lawyer from agreeing to a reasonable request for a
24 postponement that will not prejudice the lawyer's client.

25 [4] Unless the relationship is terminated as provided in
26 rule 32:1.16, a lawyer should carry through to conclusion all
27 matters undertaken for a client. If a lawyer's employment is
28 limited to a specific matter, the relationship terminates when
29 the matter has been resolved. If a lawyer has served a client
30 over a substantial period in a variety of matters, the client
31 sometimes may assume that the lawyer will continue to
32 serve on a continuing basis unless the lawyer gives notice of
33 withdrawal. Doubt about whether a client-lawyer
34 relationship still exists should be clarified by the lawyer,
35 preferably in writing, so that the client will not mistakenly
36 suppose the lawyer is looking after the client's affairs when
37 the lawyer has ceased to do so. For example, if a lawyer has
38 handled a judicial or administrative proceeding that
39 produced a result adverse to the client and the lawyer and
40 the client have not agreed that the lawyer will handle the
41 matter on appeal, the lawyer must consult with the client
42 about the possibility of appeal before relinquishing
43 responsibility for the matter. See rule 32:1.4(a)(2). Whether

1 the lawyer is obligated to prosecute the appeal for the client
2 depends on the scope of the representation the lawyer has
3 agreed to provide to the client or other applicable law. See
4 rule 32:1.2. See, e.g., Iowa R. Crim. P. 2.29(6); Iowa Rs. App.
5 P. 6.6(4), 6.32.
6

7 [5] To prevent neglect of client matters in the event of a
8 sole practitioner's death or disability, the duty of diligence
9 may require that each sole practitioner prepare a plan, in
10 conformity with applicable rules, that designates another
11 competent lawyer to review client files, notify each client of
12 the lawyer's death or disability, and determine whether there
13 is a need for immediate protective action. See Iowa Ct. Rs.
14 35.16(5), 35.17 (where reasonable necessity exists, the local
15 chief judge shall appoint a lawyer to serve as trustee to
16 inventory files, sequester client funds, and take any other
17 appropriate action to protect the interests of the clients and
18 other affected persons of a deceased, suspended, or disabled
19 lawyer).
20

21 **RULE 32:1.4: COMMUNICATION**

22 **(a) A lawyer shall:**

23
24
25 **(1) promptly inform the client of any decision**
26 **or circumstance with respect to which the client's**
27 **informed consent, as defined in rule 32:1.0(e), is**
28 **required by these rules;**

29 **(2) reasonably consult with the client about**
30 **the means by which the client's objectives are to**
31 **be accomplished;**

32 **(3) keep the client reasonably informed about**
33 **the status of the matter;**

34 **(4) promptly comply with reasonable requests**
35 **for information; and**

36 **(5) consult with the client about any relevant**
37 **limitation on the lawyer's conduct when the lawyer**
38 **knows that the client expects assistance not**
39 **permitted by the Iowa Rules of Professional**
40 **Conduct or other law.**

1 **(b) A lawyer shall explain a matter to the extent**
2 **reasonably necessary to permit the client to make**
3 **informed decisions regarding the representation.**

4 **Comment**

5 [1] Reasonable communication between the lawyer and
6 the client is necessary for the client effectively to participate
7 in the representation.

8 *Communicating with Client*

9 [2] If these rules require that a particular decision
10 about the representation be made by the client, paragraph
11 (a)(1) requires that the lawyer promptly consult with and
12 secure the client's consent prior to taking action unless prior
13 discussions with the client have resolved what action the
14 client wants the lawyer to take. For example, a lawyer who
15 receives from opposing counsel an offer of settlement in a
16 civil controversy or a proffered plea bargain in a criminal
17 case must promptly inform the client of its substance unless
18 the client has previously indicated that the proposal will be
19 acceptable or unacceptable or has authorized the lawyer to
20 accept or to reject the offer. *See* rule 32:1.2(a).

21 [3] Paragraph (a)(2) requires the lawyer to reasonably
22 consult with the client about the means to be used to
23 accomplish the client's objectives. The lawyer should also
24 discuss relevant provisions of the Standards for Professional
25 Conduct and indicate the lawyer's intent to follow those
26 Standards whenever possible. *See* Iowa Ct. R. ch. 33. In
27 some situations — depending on both the importance of the
28 action under consideration and the feasibility of consulting
29 with the client — this duty will require consultation prior to
30 taking action. In other circumstances, such as during a trial
31 when an immediate decision must be made, the exigency of
32 the situation may require the lawyer to act without prior
33 consultation. In such cases the lawyer must nonetheless act
34 reasonably to inform the client of actions the lawyer has
35 taken on the client's behalf. Additionally, paragraph (a)(3)
36 requires that the lawyer keep the client reasonably informed
37 about the status of the matter, such as significant
38 developments affecting the timing or the substance of the
39 representation.

1 [4] A lawyer's regular communication with clients will
2 minimize the occasions on which a client will need to request
3 information concerning the representation. When a client
4 makes a reasonable request for information, however,
5 paragraph (a)(4) requires prompt compliance with the
6 request, or if a prompt response is not feasible, that the
7 lawyer, or a member of the lawyer's staff, acknowledge
8 receipt of the request and advise the client when a response
9 may be expected. Client telephone calls should be promptly
10 returned or acknowledged.

11 *Explaining Matters*

12 [5] The client should have sufficient information to
13 participate intelligently in decisions concerning the
14 objectives of the representation and the means by which they
15 are to be pursued, to the extent the client is willing and able
16 to do so. Adequacy of communication depends in part on the
17 kind of advice or assistance that is involved. For example,
18 when there is time to explain a proposal made in a
19 negotiation, the lawyer should review all important
20 provisions with the client before proceeding to an agreement.
21 In litigation a lawyer should explain the general strategy and
22 prospects of success and ordinarily should consult the client
23 on tactics that are likely to result in significant expense or to
24 injure or coerce others. On the other hand, a lawyer
25 ordinarily will not be expected to describe trial or negotiation
26 strategy in detail. The guiding principle is that the lawyer
27 should fulfill reasonable client expectations for information
28 consistent with the duty to act in the client's best interests,
29 and the client's overall requirements as to the character of
30 representation. In certain circumstances, such as when a
31 lawyer asks a client to consent to a representation affected
32 by a conflict of interest, the client must give informed
33 consent, as defined in rule 32:1.0(e).

34 [6] Ordinarily, the information to be provided is that
35 appropriate for a client who is a comprehending and
36 responsible adult. However, fully informing the client
37 according to this standard may be impracticable, for
38 example, where the client is a child or suffers from
39 diminished capacity. See rule 32:1.14. When the client is an
40 organization or group, it is often impossible or inappropriate
41 to inform every one of its members about its legal affairs;
42 ordinarily, the lawyer should address communications to the
43 appropriate officials of the organization. See rule 32:1.13.

1 Where many routine matters are involved, a system of
2 limited or occasional reporting may be arranged with the
3 client.

4 *Withholding Information*

5 [7] In some circumstances, a lawyer may be justified in
6 delaying transmission of information when the client would
7 be likely to react imprudently to an immediate
8 communication. Thus, a lawyer might withhold a psychiatric
9 diagnosis of a client when the examining psychiatrist
10 indicates that disclosure would harm the client. A lawyer
11 may not withhold information to serve the lawyer's own
12 interest or convenience or the interests or convenience of
13 another person. Rules or court orders governing litigation
14 may provide that information supplied to a lawyer may not
15 be disclosed to the client. Rule 32:3.4(c) directs compliance
16 with such rules or orders.

17
18 **RULE 32:1.5: FEES**

19
20 **(a) A lawyer shall not make an agreement for,**
21 **charge, or collect an unreasonable fee or an**
22 **unreasonable amount for expenses, or violate any**
23 **restrictions imposed by law. The factors to be considered**
24 **in determining the reasonableness of a fee include the**
25 **following:**

26 **(1) the time and labor required, the novelty**
27 **and difficulty of the questions involved, and the**
28 **skill requisite to perform the legal service properly;**

29 **(2) the likelihood, if apparent to the client,**
30 **that the acceptance of the particular employment**
31 **will preclude other employment by the lawyer;**

32 **(3) the fee customarily charged in the locality**
33 **for similar legal services;**

34 **(4) the amount involved and the results**
35 **obtained;**

36 **(5) the time limitations imposed by the client**
37 **or by the circumstances;**

1 (6) the nature and length of the professional
2 relationship with the client;

3 (7) the experience, reputation, and ability of
4 the lawyer or lawyers performing the services; and

5 (8) whether the fee is fixed or contingent.

6 (b) The scope of the representation and the basis or
7 rate of the fee and expenses for which the client will be
8 responsible shall be communicated to the client,
9 preferably in writing, before or within a reasonable time
10 after commencing the representation, except when the
11 lawyer will charge a regularly represented client on the
12 same basis or rate. Any changes in the basis or rate of
13 the fee or expenses shall also be communicated to the
14 client.

15
16 (c) A fee may be contingent on the outcome of the
17 matter for which the service is rendered, except in a
18 matter in which a contingent fee is prohibited by
19 paragraph (d) or other law. A contingent fee agreement
20 shall be in a writing signed by the client and shall state
21 the method by which the fee is to be determined,
22 including the percentage or percentages that shall
23 accrue to the lawyer in the event of settlement, trial, or
24 appeal; litigation and other expenses to be deducted
25 from the recovery; and whether such expenses are to be
26 deducted before or after the contingent fee is calculated.
27 The agreement must clearly notify the client of any
28 expenses for which the client will be liable whether or
29 not the client is the prevailing party. Upon conclusion of
30 a contingent fee matter, the lawyer shall provide the
31 client with a written statement stating the outcome of
32 the matter and, if there is a recovery, showing the
33 remittance to the client and the method of its
34 determination.

35 (d) A lawyer shall not enter into an arrangement
36 for, charge, or collect:

37 (1) any fee in a domestic relations matter,
38 the payment or amount of which is contingent
39 upon the securing of a divorce or upon the amount
40 of alimony or support, or property settlement in
41 lieu thereof; or

1 **(2) a contingent fee for representing a**
2 **defendant in a criminal case.**

3 **(e) A division of a fee between lawyers who are not in**
4 **the same firm may be made only if:**

5 **(1) the division is in proportion to the**
6 **services performed by each lawyer or each lawyer**
7 **assumes joint responsibility for the representation;**

9 **(2) the client agrees to the arrangement,**
10 **including the share each lawyer will receive, and**
11 **the agreement is confirmed in writing; and**

12 **(3) the total fee is reasonable.**

13 **Comment**

14 *Reasonableness and Legality of Fee and Expenses*

15 [1] Paragraph (a) requires that lawyers charge fees that
16 are reasonable under the circumstances. The factors
17 specified in (1) through (8) are not exclusive. Nor will each
18 factor be relevant in each instance. Paragraph (a) also
19 requires that expenses for which the client will be charged
20 must be reasonable. A lawyer may seek reimbursement for
21 the cost of services performed in-house, such as copying, or
22 for other expenses incurred in-house, such as telephone
23 charges, either by charging a reasonable amount to which
24 the client has agreed in advance or by charging an amount
25 that reasonably reflects the cost incurred by the lawyer. A fee
26 that is otherwise reasonable may be subject to legal
27 limitations, of which the lawyer should be aware. For
28 example, a lawyer must comply with restrictions imposed by
29 statute or court rule on the timing and amount of fees in
30 probate.
31 probate.

32 *Basis or Rate of Fee*

33 [2] When the lawyer has regularly represented a client,
34 they ordinarily will have evolved an understanding
35 concerning the basis or rate of the fee and the expenses for
36 which the client will be responsible. In a new client-lawyer
37 relationship, however, an understanding as to fees and
38 expenses must be promptly established. Generally, it is
39 expenses must be promptly established. Generally, it is
40 expenses must be promptly established. Generally, it is
41 expenses must be promptly established. Generally, it is

1 desirable to furnish the client with at least a simple
2 memorandum or copy of the lawyer's customary fee
3 arrangements that states the general nature of the legal
4 services to be provided, the basis, rate, or total amount of
5 the fee, and whether and to what extent the client will be
6 responsible for any costs, expenses, or disbursements in the
7 course of the representation. A written statement concerning
8 the terms of the engagement reduces the possibility of
9 misunderstanding.

10
11 [3] Contingent fees, like any other fees, are subject to
12 the reasonableness standard of paragraph (a) of this rule. In
13 determining whether a particular contingent fee is
14 reasonable, or whether it is reasonable to charge any form of
15 contingent fee, a lawyer must consider the factors that are
16 relevant under the circumstances. Applicable law may
17 impose limitations on contingent fees, such as a ceiling on
18 the percentage allowable, or may require a lawyer to offer
19 clients an alternative basis for the fee. Applicable law also
20 may apply to situations other than a contingent fee, for
21 example, government regulations regarding fees in certain
22 tax matters.

23
24 *Terms of Payment*

25
26 [4] A lawyer may require advance payment of a fee, but
27 is obliged to return any unearned portion. See rule
28 32:1.16(d). A lawyer may accept property in payment for
29 services, such as an ownership interest in an enterprise,
30 providing this does not involve acquisition of a proprietary
31 interest in the cause of action or subject matter of the
32 litigation contrary to rule 32:1.8(i). However, a fee paid in
33 property instead of money may be subject to the
34 requirements of rule 32:1.8(a) because such fees often have
35 the essential qualities of a business transaction with the
36 client.

37 [5] An agreement may not be made whose terms might
38 induce the lawyer improperly to curtail services for the client
39 or perform them in a way contrary to the client's interest.
40 For example, a lawyer should not enter into an agreement
41 whereby services are to be provided only up to a stated
42 amount when it is foreseeable that more extensive services
43 probably will be required, unless the situation is adequately
44 explained to the client. Otherwise, the client might have to
45 bargain for further assistance in the midst of a proceeding or

1 transaction. However, it is proper to define the extent of
2 services in light of the client's ability to pay. A lawyer should
3 not exploit a fee arrangement based primarily on hourly
4 charges by using wasteful procedures.

5 *Prohibited Contingent Fees*
6

7 [6] Paragraph (d) prohibits a lawyer from charging a
8 contingent fee in a domestic relations matter when payment
9 is contingent upon the securing of a divorce or upon the
10 amount of alimony or support or property settlement to be
11 obtained. This provision does not preclude a contract for a
12 contingent fee for legal representation in connection with the
13 recovery of post-judgment balances due under support,
14 alimony, or other financial orders because such contracts do
15 not implicate the same policy concerns.

16 *Division of Fee*

17 [7] A division of fee is a single billing to a client
18 covering the fee of two or more lawyers who are not in the
19 same firm. A division of fee facilitates association of more
20 than one lawyer in a matter in which neither alone could
21 serve the client as well, and most often is used when the fee
22 is contingent and the division is between a referring lawyer
23 and a trial specialist. Paragraph (e) permits the lawyers to
24 divide a fee either on the basis of the proportion of services
25 they render or if each lawyer assumes responsibility for the
26 representation as a whole. In addition, the client must agree
27 to the arrangement, including the share that each lawyer is
28 to receive, and the agreement must be confirmed in writing.
29 Contingent fee agreements must be in a writing signed by
30 the client and must otherwise comply with paragraph (c) of
31 this rule. Joint responsibility for the representation entails
32 financial and ethical responsibility for the representation as
33 if the lawyers were associated in a partnership. A lawyer
34 should only refer a matter to a lawyer whom the referring
35 lawyer reasonably believes is competent to handle the
36 matter. *See* rule 32:1.1.

37 [8] Paragraph (e) does not prohibit or regulate division
38 of fees to be received in the future for work done when
39 lawyers were previously associated in a law firm.

40 *Disputes over Fees*

1 [9] If a procedure has been established for resolution of
2 fee disputes, such as an arbitration or mediation procedure
3 established by the bar, the lawyer must comply with the
4 procedure when it is mandatory, and, even when it is
5 voluntary, the lawyer should conscientiously consider
6 submitting to it. Law may prescribe a procedure for
7 determining a lawyer's fee, for example, in representation of
8 an executor or administrator, a class or a person entitled to
9 a reasonable fee as part of the measure of damages. The
10 lawyer entitled to such a fee and a lawyer representing
11 another party concerned with the fee should comply with the
12 prescribed procedure.

13
14 **RULE 32:1.6: CONFIDENTIALITY OF INFORMATION**

15
16 **(a) A lawyer shall not reveal information relating to**
17 **the representation of a client unless the client gives**
18 **informed consent, the disclosure is impliedly authorized**
19 **in order to carry out the representation, or the**
20 **disclosure is permitted by paragraph (b) or required by**
21 **paragraph (c).**

22
23 **(b) A lawyer may reveal information relating to the**
24 **representation of a client to the extent the lawyer**
25 **reasonably believes necessary:**

26
27 **(1) to prevent reasonably certain death or**
28 **substantial bodily harm;**

29
30 **(2) to prevent the client from committing a**
31 **crime or fraud that is reasonably certain to result**
32 **in substantial injury to the financial interests or**
33 **property of another and in furtherance of which**
34 **the client has used or is using the lawyer's**
35 **services;**

36
37 **(3) to prevent, mitigate, or rectify substantial**
38 **injury to the financial interests or property of**
39 **another that is reasonably certain to result or has**
40 **resulted from the client's commission of a crime or**
41 **fraud in furtherance of which the client has used**
42 **the lawyer's services;**

43
44 **(4) to secure legal advice about the lawyer's**
45 **compliance with these rules;**

1
2 **(5) to establish a claim or defense on behalf**
3 **of the lawyer in a controversy between the lawyer**
4 **and the client, to establish a defense to a criminal**
5 **charge or civil claim against the lawyer based upon**
6 **conduct in which the client was involved, or to**
7 **respond to allegations in any proceeding**
8 **concerning the lawyer's representation of the**
9 **client; or**

10
11 **(6) to comply with other law or a court order.**

12
13 **(c) A lawyer shall reveal information relating to the**
14 **representation of a client to the extent the lawyer**
15 **reasonably believes necessary to prevent imminent**
16 **death or substantial bodily harm.**

17
18 **Comment**

19
20 [1] This rule governs the disclosure by a lawyer of
21 information relating to the representation of a client during
22 the lawyer's representation of the client. See rule 32:1.18 for
23 the lawyer's duties with respect to information provided to
24 the lawyer by a prospective client, rule 32:1.9(c)(2) for the
25 lawyer's duty not to reveal information relating to the
26 lawyer's prior representation of a former client, and rules
27 32:1.8(b) and 32:1.9(c)(1) for the lawyer's duties with respect
28 to the use of such information to the disadvantage of clients
29 and former clients.

30
31 [2] A fundamental principle in the client-lawyer
32 relationship is that, in the absence of the client's informed
33 consent, the lawyer must not reveal information relating to
34 the representation. See rule 32:1.0(e) for the definition of
35 informed consent. This contributes to the trust that is the
36 hallmark of the client-lawyer relationship. The client is
37 thereby encouraged to seek legal assistance and to
38 communicate fully and frankly with the lawyer even as to
39 embarrassing or legally damaging subject matter. The lawyer
40 needs this information to represent the client effectively and,
41 if necessary, to advise the client to refrain from wrongful
42 conduct. Almost without exception, clients come to lawyers
43 in order to determine their rights and what is, in the complex
44 of laws and regulations, deemed to be legal and correct.
45 Based upon experience, lawyers know that almost all clients
46 follow the advice given, and the law is upheld.

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[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Iowa Rules of Professional Conduct or other law. *See also* Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Permissive Disclosure Adverse to Client

1 [6] Although the public interest is usually best served
2 by a strict rule requiring lawyers to preserve the
3 confidentiality of information relating to the representation of
4 their clients, the confidentiality rule is subject to limited
5 exceptions. Paragraph (b)(1) recognizes the overriding value
6 of life and physical integrity and permits disclosure
7 reasonably necessary to prevent reasonably certain death or
8 substantial bodily harm. Such harm is reasonably certain to
9 occur if it will be suffered in the near future or if there is a
10 present and substantial threat that a person will suffer such
11 harm at a later date if the lawyer fails to take action
12 necessary to eliminate the threat. Thus, a lawyer who knows
13 that a client has accidentally discharged toxic waste into a
14 town's water supply may reveal this information to the
15 authorities if there is a present and substantial risk that a
16 person who drinks the water will contract a life-threatening
17 or debilitating disease and the lawyer's disclosure is
18 necessary to eliminate the threat or reduce the number of
19 victims.

20
21 [7] Paragraph (b)(2) is a limited exception to the rule of
22 confidentiality that permits the lawyer to reveal information
23 to the extent necessary to enable affected persons or
24 appropriate authorities to prevent the client from committing
25 a crime or fraud, as defined in rule 32:1.0(d), that is
26 reasonably certain to result in substantial injury to the
27 financial or property interests of another and in furtherance
28 of which the client has used or is using the lawyer's services.
29 Such a serious abuse of the client-lawyer relationship by the
30 client forfeits the protection of this rule. The client can, of
31 course, prevent such disclosure by refraining from the
32 wrongful conduct. Although paragraph (b)(2) does not
33 require the lawyer to reveal the client's misconduct, the
34 lawyer may not counsel or assist the client in conduct the
35 lawyer knows is criminal or fraudulent. See rule 32:1.2(d).
36 See also rule 32:1.16 with respect to the lawyer's obligation
37 or right to withdraw from the representation of the client in
38 such circumstances, and rule 32:1.13(c), which permits the
39 lawyer, where the client is an organization, to reveal
40 information relating to the representation in limited
41 circumstances.

42
43 [8] Paragraph (b)(3) addresses the situation in which
44 the lawyer does not learn of the client's crime or fraud until
45 after it has been consummated. Although the client no
46 longer has the option of preventing disclosure by refraining

1 from the wrongful conduct, there will be situations in which
2 the loss suffered by the affected person can be prevented,
3 rectified, or mitigated. In such situations, the lawyer may
4 disclose information relating to the representation to the
5 extent necessary to enable the affected persons to prevent or
6 mitigate reasonably certain losses or to attempt to recoup
7 their losses. Paragraph (b)(3) does not apply when a person
8 who has committed a crime or fraud thereafter employs a
9 lawyer for representation concerning that offense.

10
11 [9] A lawyer's confidentiality obligations do not
12 preclude a lawyer from securing confidential legal advice
13 about the lawyer's personal responsibility to comply with
14 these rules. In most situations, disclosing information to
15 secure such advice will be impliedly authorized for the
16 lawyer to carry out the representation. Even when the
17 disclosure is not impliedly authorized, paragraph (b)(4)
18 permits such disclosure because of the importance of a
19 lawyer's compliance with the Iowa Rules of Professional
20 Conduct.

21
22 [10] Where a legal claim or disciplinary charge alleges
23 complicity of the lawyer in a client's conduct or other
24 misconduct of the lawyer involving representation of the
25 client, the lawyer may respond to the extent the lawyer
26 reasonably believes necessary to establish a defense. The
27 same is true with respect to a claim involving the conduct or
28 representation of a former client. Such a charge can arise in
29 a civil, criminal, disciplinary, or other proceeding and can be
30 based on a wrong allegedly committed by the lawyer against
31 the client or on a wrong alleged by a third person, for
32 example, a person claiming to have been defrauded by the
33 lawyer and client acting together. The lawyer's right to
34 respond arises when an assertion of such complicity has
35 been made. Paragraph (b)(5) does not require the lawyer to
36 await the commencement of an action or proceeding that
37 charges such complicity, so that the defense may be
38 established by responding directly to a third party who has
39 made such an assertion. The right to defend also applies, of
40 course, where a proceeding has been commenced.

41
42 [11] A lawyer entitled to a fee is permitted by
43 paragraph (b)(5) to prove the services rendered in an action
44 to collect it. This aspect of the rule expresses the principle
45 that the beneficiary of a fiduciary relationship may not
46 exploit it to the detriment of the fiduciary.

1
2 [12] Other law may require that a lawyer disclose
3 information about a client. Whether such a law supersedes
4 rule 32:1.6 is a question of law beyond the scope of these
5 rules. When disclosure of information relating to the
6 representation appears to be required by other law, the
7 lawyer must discuss the matter with the client to the extent
8 required by rule 32:1.4. If, however, the other law
9 supersedes this rule and requires disclosure, paragraph
10 (b)(6) permits the lawyer to make such disclosures as are
11 necessary to comply with the law.
12

13 [13] A lawyer may be ordered to reveal information
14 relating to the representation of a client by a court or by
15 another tribunal or governmental entity claiming authority
16 pursuant to other law to compel the disclosure. Absent
17 informed consent of the client to do otherwise, the lawyer
18 should assert on behalf of the client all nonfrivolous claims
19 that the order is not authorized by other law or that the
20 information sought is protected against disclosure by the
21 attorney-client privilege or other applicable law. In the event
22 of an adverse ruling, the lawyer must consult with the client
23 about the possibility of appeal to the extent required by rule
24 32:1.4. Unless review is sought, however, paragraph (b)(6)
25 permits the lawyer to comply with the court's order.
26

27 [14] Paragraph (b) permits disclosure only to the extent
28 the lawyer reasonably believes the disclosure is necessary to
29 accomplish one of the purposes specified. Where practicable,
30 the lawyer should first seek to persuade the client to take
31 suitable action to obviate the need for disclosure. In any
32 case, a disclosure adverse to the client's interest should be
33 no greater than the lawyer reasonably believes necessary to
34 accomplish the purpose. If the disclosure will be made in
35 connection with a judicial proceeding, the disclosure should
36 be made in a manner that limits access to the information to
37 the tribunal or other persons having a need to know it and
38 appropriate protective orders or other arrangements should
39 be sought by the lawyer to the fullest extent practicable.
40

41 [15] Paragraph (b) permits but does not require the
42 disclosure of information relating to a client's representation
43 to accomplish the purposes specified in paragraphs (b)(1)
44 through (b)(6). In exercising the discretion conferred by this
45 rule, the lawyer may consider such factors as the nature of
46 the lawyer's relationship with the client and with those who

1 might be injured by the client, the lawyer's own involvement
2 in the transaction, and factors that may extenuate the
3 conduct in question. A lawyer's decision not to disclose as
4 permitted by paragraph (b) does not violate this rule.
5 Disclosure may be required, however, by other rules. Some
6 rules require disclosure only if such disclosure would be
7 permitted by paragraph (b). See rules 32:1.2(d), 32:4.1(b),
8 32:8.1, and 32:8.3. Rule 32:3.3, on the other hand, requires
9 disclosure in some circumstances regardless of whether
10 such disclosure is permitted by this rule. See rule 32:3.3(c).

11
12 *Acting Competently to Preserve Confidentiality*

13
14 [16] A lawyer must act competently to safeguard
15 information relating to the representation of a client against
16 inadvertent or unauthorized disclosure by the lawyer or
17 other persons who are participating in the representation of
18 the client or who are subject to the lawyer's supervision. See
19 rules 32:1.1, 32:5.1, and 32:5.3.

20
21 [17] When transmitting a communication that includes
22 information relating to the representation of a client, the
23 lawyer must take reasonable precautions to prevent the
24 information from coming into the hands of unintended
25 recipients. This duty, however, does not require that the
26 lawyer use special security measures if the method of
27 communication affords a reasonable expectation of privacy.
28 Special circumstances, however, may warrant special
29 precautions. Factors to be considered in determining the
30 reasonableness of the lawyer's expectation of confidentiality
31 include the sensitivity of the information and the extent to
32 which the privacy of the communication is protected by law
33 or by a confidentiality agreement. A client may require the
34 lawyer to implement special security measures not required
35 by this rule or may give informed consent to the use of a
36 means of communication that would otherwise be prohibited
37 by this rule.

38
39 *Former Client*

40
41 [18] The duty of confidentiality continues after the
42 client-lawyer relationship has terminated. See rule
43 32:1.9(c)(2). See rule 32:1.9(c)(1) for the prohibition against
44 using such information to the disadvantage of the former
45 client.
46

1 *Required Disclosure Adverse to Client*

2
3 [19] Rule 32:1.6(c) requires a lawyer to reveal
4 information relating to the representation of a client to the
5 extent the lawyer reasonably believes necessary to prevent
6 imminent death or substantial bodily harm. Rule 32:1.6(c)
7 differs from rule 32:1.6(b)(1) in that rule 32:1.6(b)(1) permits,
8 but does not require, disclosure in situations where death or
9 substantial bodily harm is deemed to be reasonably certain
10 rather than imminent. For purposes of rule 32:1.6,
11 “reasonably certain” includes situations where the lawyer
12 knows or reasonably believes the harm will occur, but there
13 is still time for independent discovery and prevention of the
14 harm without the lawyer’s disclosure. For purposes of this
15 rule, death or substantial bodily harm is “imminent” if the
16 lawyer knows or reasonably believes it is unlikely that the
17 death or harm can be prevented unless the lawyer
18 immediately discloses the information.
19

20 **RULE 32:1.7: CONFLICT OF INTEREST: CURRENT**
21 **CLIENTS**

22 **(a) Except as provided in paragraph (b), a lawyer**
23 **shall not represent a client if the representation involves**
24 **a concurrent conflict of interest. A concurrent conflict of**
25 **interest exists if:**

26 **(1) the representation of one client will be**
27 **directly adverse to another client; or**

28 **(2) there is a significant risk that the**
29 **representation of one or more clients will be**
30 **materially limited by the lawyer's responsibilities**
31 **to another client, a former client, or a third person**
32 **or by a personal interest of the lawyer.**

33 **(b) Notwithstanding the existence of a concurrent**
34 **conflict of interest under paragraph (a), a lawyer may**
35 **represent a client if:**

36 **(1) the lawyer reasonably believes that the**
37 **lawyer will be able to provide competent and**
38 **diligent representation to each affected client;**

1 **(2) the representation is not prohibited by**
2 **law;**

3 **(3) the representation does not involve the**
4 **assertion of a claim by one client against another**
5 **client represented by the lawyer in the same**
6 **litigation or other proceeding before a tribunal; and**

7 **(4) each affected client gives informed**
8 **consent, confirmed in writing.**

9 **(c) In no event shall a lawyer represent both parties**
10 **in dissolution of marriage proceedings.**

11 **Comment**

12 *General Principles*

13 [1] Loyalty and independent judgment are essential
14 elements in the lawyer's relationship to a client. Concurrent
15 conflicts of interest can arise from the lawyer's
16 responsibilities to another client, a former client or a third
17 person, or from the lawyer's own interests. For specific rules
18 regarding certain concurrent conflicts of interest, see rule
19 32:1.8. For former client conflicts of interest, see rule 32:1.9.
20 For conflicts of interest involving prospective clients, see rule
21 32:1.18. For definitions of "informed consent" and
22 "confirmed in writing," see rule 32:1.0(e) and (b).

23 [2] Resolution of a conflict of interest problem under
24 this rule requires the lawyer to: 1) clearly identify the client
25 or clients; 2) determine whether a conflict of interest exists;
26 3) decide whether the representation may be undertaken
27 despite the existence of a conflict, i.e., whether the conflict is
28 consentable; and 4) if so, consult with the clients affected
29 under paragraph (a) and obtain their informed consent,
30 confirmed in writing. The clients affected under paragraph
31 (a) include both of the clients referred to in paragraph (a)(1)
32 and the one or more clients whose representation might be
33 materially limited under paragraph (a)(2).

34 [3] A conflict of interest may exist before
35 representation is undertaken, in which event the
36 representation must be declined, unless the lawyer obtains
37 the informed consent of each client under the conditions of
38 paragraph (b). To determine whether a conflict of interest

1 exists, a lawyer should adopt reasonable procedures,
2 appropriate for the size and type of firm and practice, to
3 determine in both litigation and non-litigation matters the
4 persons and issues involved. *See also* comment to rule
5 32:5.1. Ignorance caused by a failure to institute such
6 procedures will not excuse a lawyer's violation of this rule.
7 As to whether a client-lawyer relationship exists or, having
8 once been established, is continuing, see comment to rule
9 32:1.3 and Scope.

10 [4] If a conflict arises after representation has been
11 undertaken, the lawyer ordinarily must withdraw from the
12 representation, unless the lawyer has obtained the informed
13 consent of the client under the conditions of paragraph (b).
14 *See* rule 32:1.16. Where more than one client is involved,
15 whether the lawyer may continue to represent any of the
16 clients is determined both by the lawyer's ability to comply
17 with duties owed to the former client and by the lawyer's
18 ability to represent adequately the remaining client or
19 clients, given the lawyer's duties to the former client. *See*
20 rule 32:1.9. *See also* comments [5] and [29].

21 [5] Unforeseeable developments, such as changes in
22 corporate and other organizational affiliations or the addition
23 or realignment of parties in litigation, might create conflicts
24 in the midst of a representation, as when a company sued by
25 the lawyer on behalf of one client is bought by another client
26 represented by the lawyer in an unrelated matter. Depending
27 on the circumstances, the lawyer may have the option to
28 withdraw from one of the representations in order to avoid
29 the conflict. The lawyer must seek court approval where
30 necessary and take steps to minimize harm to the clients.
31 *See* rule 32:1.16. The lawyer must continue to protect the
32 confidences of the client from whose representation the
33 lawyer has withdrawn. *See* rule 32:1.9(c).

34 *Identifying Conflicts of Interest: Directly Adverse*

35 [6] Loyalty to a current client prohibits undertaking
36 representation directly adverse to that client without that
37 client's informed consent. Thus, absent consent, a lawyer
38 may not act as an advocate in one matter against a person
39 the lawyer represents in some other matter, even when the
40 matters are wholly unrelated. The client as to whom the
41 representation is directly adverse is likely to feel betrayed,
42 and the resulting damage to the client-lawyer relationship is

1 likely to impair the lawyer's ability to represent the client
2 effectively. In addition, the client on whose behalf the
3 adverse representation is undertaken reasonably may fear
4 that the lawyer will pursue that client's case less effectively
5 out of deference to the other client, i.e., that the
6 representation may be materially limited by the lawyer's
7 interest in retaining the current client. Similarly, a directly
8 adverse conflict may arise when a lawyer is required to
9 cross-examine a client who appears as a witness in a lawsuit
10 involving another client, as when the testimony will be
11 damaging to the client who is represented in the lawsuit. On
12 the other hand, simultaneous representation in unrelated
13 matters of clients whose interests are only economically
14 adverse, such as representation of competing economic
15 enterprises in unrelated litigation, does not ordinarily
16 constitute a conflict of interest and thus may not require
17 consent of the respective clients.

18 [7] Directly adverse conflicts can also arise in
19 transactional matters. For example, if a lawyer is asked to
20 represent the seller of a business in negotiations with a
21 buyer represented by the lawyer, not in the same transaction
22 but in another, unrelated matter, the lawyer could not
23 undertake the representation without the informed consent
24 of each client.

25 *Identifying Conflicts of Interest: Material Limitation*

26 [8] Even where there is no direct adverseness, a
27 conflict of interest exists if there is a significant risk that a
28 lawyer's ability to consider, recommend, or carry out an
29 appropriate course of action for the client will be materially
30 limited as a result of the lawyer's other responsibilities or
31 interests. For example, a lawyer asked to represent several
32 individuals seeking to form a joint venture is likely to be
33 materially limited in the lawyer's ability to recommend or
34 advocate all possible positions that each might take because
35 of the lawyer's duty of loyalty to the others. The conflict in
36 effect forecloses alternatives that would otherwise be
37 available to the client. The mere possibility of subsequent
38 harm does not itself require disclosure and consent. The
39 critical questions are the likelihood that a difference in
40 interests will eventuate and, if it does, whether it will
41 materially interfere with the lawyer's independent
42 professional judgment in considering alternatives or

1 foreclose courses of action that reasonably should be
2 pursued on behalf of the client.

3 *Lawyer's Responsibilities to Former Clients and Other Third*
4 *Persons*

5 [9] In addition to conflicts with other current clients, a
6 lawyer's duties of loyalty and independence may be
7 materially limited by responsibilities to former clients under
8 rule 32:1.9 or by the lawyer's responsibilities to other
9 persons, such as fiduciary duties arising from a lawyer's
10 service as a trustee, executor, or corporate director.

11 *Personal Interest Conflicts*

12 [10] The lawyer's own interests should not be
13 permitted to have an adverse effect on representation of a
14 client. For example, if the probity of a lawyer's own conduct
15 in a transaction is in serious question, it may be difficult or
16 impossible for the lawyer to give a client detached advice.
17 Similarly, when a lawyer has discussions concerning
18 possible employment with an opponent of the lawyer's client,
19 or with a law firm representing the opponent, such
20 discussions could materially limit the lawyer's representation
21 of the client. In addition, a lawyer may not allow related
22 business interests to affect representation, for example, by
23 referring clients to an enterprise in which the lawyer has an
24 undisclosed financial interest. See rule 32:1.8 for specific
25 rules pertaining to a number of personal interest conflicts,
26 including business transactions with clients. *See also* rule
27 32:1.10 (personal interest conflicts under rule 32:1.7
28 ordinarily are not imputed to other lawyers in a law firm).

29 [11] When lawyers representing different clients in the
30 same matter or in substantially related matters are closely
31 related by blood or marriage, there may be a significant risk
32 that client confidences will be revealed and that the lawyer's
33 family relationship will interfere with both loyalty and
34 independent professional judgment. As a result, each client
35 is entitled to know of the existence and implications of the
36 relationship between the lawyers before the lawyer agrees to
37 undertake the representation. Thus, a lawyer related to
38 another lawyer, e.g., a parent, child, sibling, spouse,
39 cohabiting partner, or lawyer related in any other familial or
40 romantic capacity, ordinarily may not represent a client in a
41 matter where that lawyer is representing another party,

1 unless each client gives informed consent. The
2 disqualification arising from a close family relationship is
3 personal and ordinarily is not imputed to members of firms
4 with whom the lawyers are associated. See rule 32:1.10.

5 [12] A lawyer is prohibited from engaging in sexual
6 relationships with a client unless the sexual relationship
7 predates the formation of the client-lawyer relationship. See
8 rule 32:1.8(j).

9 *Interest of Person Paying for a Lawyer's Service*

10 [13] A lawyer may be paid from a source other than the
11 client, including a co-client, if the client is informed of that
12 fact and consents and the arrangement does not compromise
13 the lawyer's duty of loyalty or independent judgment to the
14 client. See rule 32:1.8(f). If acceptance of the payment from
15 any other source presents a significant risk that the lawyer's
16 representation of the client will be materially limited by the
17 lawyer's own interest in accommodating the person paying
18 the lawyer's fee or by the lawyer's responsibilities to a payer
19 who is also a co-client, then the lawyer must comply with the
20 requirements of paragraph (b) before accepting the
21 representation, including determining whether the conflict is
22 consentable and, if so, that the client has adequate
23 information about the material risks of the representation.

24 [13a] Where a lawyer has been retained by an insurer
25 to represent the insured pursuant to the insurer's
26 obligations under a liability insurance policy, the lawyer may
27 comply with reasonable cost-containment litigation
28 guidelines proposed by the insurer if such guidelines do not
29 materially interfere with the lawyer's duty to exercise
30 independent professional judgment to protect the reasonable
31 interests of the insured, do not regulate the details of the
32 lawyer's performance, and do not materially limit the
33 professional discretion and control of the lawyer. The lawyer
34 may provide the insurer with a description of the services
35 rendered and time spent, but the lawyer may not agree to
36 provide detailed information that would undermine the
37 protection of confidential client-lawyer information, if the
38 insurer will share such information with a third party. If the
39 lawyer believes that guidelines proposed by the insurer
40 prevent the lawyer from exercising independent professional
41 judgment or from protecting confidential client information,
42 the lawyer shall identify and explain the conflict of interest to

1 the insurer and insured and also advise the insured of the
2 right to seek independent legal counsel. If the conflict is not
3 eliminated but the insured wants the lawyer to continue the
4 representation, the lawyer may proceed if the lawyer
5 reasonably believes that the lawyer will be able to provide
6 competent and diligent representation and the insured's
7 informed consent is obtained pursuant to paragraph (b)(4).

8 *Prohibited Representations*

9 [14] Ordinarily, clients may consent to representation
10 notwithstanding a conflict. However, as indicated in
11 paragraph (b), some conflicts are nonconsentable, meaning
12 that the lawyer involved cannot properly ask for such
13 agreement or provide representation on the basis of the
14 client's consent. When the lawyer is representing more than
15 one client, the question of consentability must be resolved as
16 to each client.

17 [15] Consentability is typically determined by
18 considering whether the interests of the clients will be
19 adequately protected if the clients are permitted to give their
20 informed consent to representation burdened by a conflict of
21 interest. Thus, under paragraph (b)(1), representation is
22 prohibited if in the circumstances the lawyer cannot
23 reasonably conclude that the lawyer will be able to provide
24 competent and diligent representation. See rule 32:1.1
25 (competence) and rule 32:1.3 (diligence).

26 [16] Paragraph (b)(2) describes conflicts that are
27 nonconsentable because the representation is prohibited by
28 applicable law.

29 [17] Paragraph (b)(3) describes conflicts that are
30 nonconsentable because of the institutional interest in
31 vigorous development of each client's position when the
32 clients are aligned directly against each other in the same
33 litigation or other proceeding before a tribunal. Whether
34 clients are aligned directly against each other within the
35 meaning of this paragraph requires examination of the
36 context of the proceeding. Paragraph (c) provides a specific
37 example of such a nonconsentable conflict, that is, where a
38 lawyer is asked to represent both parties in a marriage
39 dissolution proceeding. Although this paragraph does not
40 preclude a lawyer's multiple representation of adverse
41 parties to a mediation (because mediation is not a

1 proceeding before a "tribunal" under rule 32:1.0(m)), such
2 representation may be precluded by paragraph (b)(1).

3 *Informed Consent*

4 [18] Informed consent requires that each affected
5 client be aware of the relevant circumstances and of the
6 material and reasonably foreseeable ways that the conflict
7 could have adverse effects on the interests of that client. *See*
8 rule 32:1.0(e) (informed consent). The information required
9 depends on the nature of the conflict and the nature of the
10 risks involved. When representation of multiple clients in a
11 single matter is undertaken, the information must include
12 the implications of the common representation, including
13 possible effects on loyalty, confidentiality, and the attorney-
14 client privilege and the advantages and risks involved. *See*
15 comments [30] and [31] (effect of common representation on
16 confidentiality).

17 [19] Under some circumstances it may be impossible
18 to make the disclosure necessary to obtain consent. For
19 example, when the lawyer represents different clients in
20 related matters and one of the clients refuses to consent to
21 the disclosure necessary to permit the other client to make
22 an informed decision, the lawyer cannot properly ask the
23 latter to consent. In some cases the alternative to common
24 representation can be that each party may have to obtain
25 separate representation with the possibility of incurring
26 additional costs. These costs, along with the benefits of
27 securing separate representation, are factors that may be
28 considered by the affected client in determining whether
29 common representation is in the client's interests.

30 *Consent Confirmed in Writing*

31 [20] Paragraph (b) requires the lawyer to obtain the
32 informed consent of the client, confirmed in writing. Such a
33 writing may consist of a document executed by the client or
34 one that the lawyer promptly records and transmits to the
35 client following an oral consent. *See* rule 32:1.0(b). *See also*
36 rule 32:1.0(n) (writing includes electronic transmission). If it
37 is not feasible to obtain or transmit the writing at the time
38 the client gives informed consent, then the lawyer must
39 obtain or transmit it within a reasonable time thereafter. *See*
40 rule 32:1.0(b). The requirement of a writing does not
41 supplant the need in most cases for the lawyer to talk with

1 the client, to explain the risks and advantages, if any, of
2 representation burdened with a conflict of interest, as well as
3 reasonably available alternatives, and to afford the client a
4 reasonable opportunity to consider the risks and alternatives
5 and to raise questions and concerns. Rather, the writing is
6 required in order to impress upon clients the seriousness of
7 the decision the client is being asked to make and to avoid
8 disputes or ambiguities that might later occur in the absence
9 of a writing.

10 *Revoking Consent*

11 [21] A client who has given consent to a conflict may
12 revoke the consent and, like any other client, may terminate
13 the lawyer's representation at any time. Whether revoking
14 consent to the client's own representation precludes the
15 lawyer from continuing to represent other clients depends on
16 the circumstances, including the nature of the conflict,
17 whether the client revoked consent because of a material
18 change in circumstances, the reasonable expectations of the
19 other clients, and whether material detriment to the other
20 clients or the lawyer would result.

21 *Consent to Future Conflict*

22 [22] Whether a lawyer may properly request a client to
23 waive conflicts that might arise in the future is subject to the
24 test of paragraph (b). The effectiveness of such waivers is
25 generally determined by the extent to which the client
26 reasonably understands the material risks that the waiver
27 entails. The more comprehensive the explanation of the types
28 of future representations that might arise and the actual and
29 reasonably foreseeable adverse consequences of those
30 representations, the greater the likelihood that the client will
31 have the requisite understanding. Thus, if the client agrees
32 to consent to a particular type of conflict with which the
33 client is already familiar, then the consent ordinarily will be
34 effective with regard to that type of conflict. If the consent is
35 general and open-ended, then the consent ordinarily will be
36 ineffective, because it is not reasonably likely that the client
37 will have understood the material risks involved. On the
38 other hand, if the client is an experienced user of the legal
39 services involved and is reasonably informed regarding the
40 risk that a conflict may arise, such consent is more likely to
41 be effective, particularly if, e.g., the client is independently
42 represented by other counsel in giving consent and the

1 consent is limited to future conflicts unrelated to the subject
2 of the representation. In any case, advance consent cannot
3 be effective if the circumstances that materialize in the
4 future are such as would make the conflict nonconsentable
5 under paragraph (b).

6 *Conflicts in Litigation*

7 [23] Paragraphs (b)(3) and (c) prohibit representation of
8 opposing parties in the same litigation, regardless of the
9 clients' consent. On the other hand, simultaneous
10 representation of parties whose interests in litigation may
11 conflict, such as coplaintiffs or codefendants, is governed by
12 paragraph (a)(2). A conflict may exist by reason of
13 substantial discrepancy in the parties' testimony,
14 incompatibility in positions in relation to an opposing party
15 or the fact that there are substantially different possibilities
16 of settlement of the claims or liabilities in question. Such
17 conflicts can arise in criminal cases as well as civil. The
18 potential for conflict of interest in representing multiple
19 defendants in a criminal case is so grave that ordinarily a
20 lawyer should decline to represent more than one
21 codefendant. On the other hand, common representation of
22 persons having similar interests in civil litigation is proper if
23 the requirements of paragraph (b) are met.

24 [24] Ordinarily a lawyer may take inconsistent legal
25 positions in different tribunals at different times on behalf of
26 different clients. The mere fact that advocating a legal
27 position on behalf of one client might create precedent
28 adverse to the interests of a client represented by the lawyer
29 in an unrelated matter does not create a conflict of interest.
30 A conflict of interest exists, however, if there is a significant
31 risk that a lawyer's action on behalf of one client will
32 materially limit the lawyer's effectiveness in representing
33 another client in a different case; for example, when a
34 decision favoring one client will create a precedent likely to
35 seriously weaken the position taken on behalf of the other
36 client. Factors relevant in determining whether the clients
37 need to be advised of the risk include: where the cases are
38 pending, whether the issue is substantive or procedural, the
39 temporal relationship between the matters, the significance
40 of the issue to the immediate and long-term interests of the
41 clients involved, and the clients' reasonable expectations in
42 retaining the lawyer. If there is significant risk of material
43 limitation, then absent informed consent of the affected

1 clients, the lawyer must refuse one of the representations or
2 withdraw from one or both matters.

3 [25] When a lawyer represents or seeks to represent a
4 class of plaintiffs or defendants in a class-action lawsuit,
5 unnamed members of the class are ordinarily not considered
6 to be clients of the lawyer for purposes of applying paragraph
7 (a)(1) of this rule. Thus, the lawyer does not typically need to
8 get the consent of such a person before representing a client
9 suing the person in an unrelated matter. Similarly, a lawyer
10 seeking to represent an opponent in a class action does not
11 typically need the consent of an unnamed member of the
12 class whom the lawyer represents in an unrelated matter.

13 *Nonlitigation Conflicts*

14 [26] Conflicts of interest under paragraphs (a)(1) and
15 (a)(2) arise in contexts other than litigation. For a discussion
16 of directly adverse conflicts in transactional matters, see
17 comment [7]. Relevant factors in determining whether there
18 is significant potential for material limitation include the
19 duration and intimacy of the lawyer's relationship with the
20 client or clients involved, the functions being performed by
21 the lawyer, the likelihood that disagreements will arise, and
22 the likely prejudice to the client from the conflict. The
23 question is often one of proximity and degree. *See* comment
24 [8].

25 [27] For example, conflict questions may arise in estate
26 planning and estate administration. A lawyer may be called
27 upon to prepare wills for several family members, such as
28 husband and wife, and, depending upon the circumstances,
29 a conflict of interest may be present. In order to comply with
30 conflict of interest rules, the lawyer should make clear the
31 lawyer's relationship to the parties involved.

32 [28] Whether a conflict is consentable depends on the
33 circumstances. For example, a lawyer may not represent
34 multiple parties to a negotiation whose interests are
35 fundamentally antagonistic to each other, but common
36 representation is permissible where the clients are generally
37 aligned in interest even though there is some difference in
38 interest among them. Thus, a lawyer may seek to establish
39 or adjust a relationship between clients on an amicable and
40 mutually advantageous basis; for example, in helping to
41 organize a business in which two or more clients are

1 entrepreneurs, working out the financial reorganization of an
2 enterprise in which two or more clients have an interest, or
3 arranging a property distribution in settlement of an estate.
4 The lawyer seeks to resolve potentially adverse interests by
5 developing the parties' mutual interests. Otherwise, each
6 party might have to obtain separate representation, with the
7 possibility of incurring additional cost, complication, or even
8 litigation. Given these and other relevant factors, the clients
9 may prefer that the lawyer act for all of them.

10 *Special Considerations in Common Representation*

11 [29] In considering whether to represent multiple
12 clients in the same matter, a lawyer should be mindful that
13 if the common representation fails because the potentially
14 adverse interests cannot be reconciled, the result can be
15 additional cost, embarrassment, and recrimination.
16 Ordinarily, the lawyer will be forced to withdraw from
17 representing all of the clients if the common representation
18 fails. In some situations, the risk of failure is so great that
19 multiple representation is plainly impossible. For example, a
20 lawyer cannot undertake common representation of clients
21 where contentious litigation or negotiations between them
22 are imminent or contemplated. Moreover, because the lawyer
23 is required to be impartial between commonly represented
24 clients, representation of multiple clients is improper when it
25 is unlikely that impartiality can be maintained. Generally, if
26 the relationship between the parties has already assumed
27 antagonism, the possibility that the clients' interests can be
28 adequately served by common representation is not very
29 good. Other relevant factors are whether the lawyer
30 subsequently will represent both parties on a continuing
31 basis and whether the situation involves creating or
32 terminating a relationship between the parties.

33 [30] A particularly important factor in determining the
34 appropriateness of common representation is the effect on
35 client-lawyer confidentiality and the attorney-client privilege.
36 With regard to the attorney-client privilege, the prevailing
37 rule is that, as between commonly represented clients, the
38 privilege does not attach. Hence, it must be assumed that if
39 litigation eventuates between the clients, the privilege will
40 not protect any such communications, and the clients
41 should be so advised.

1 [31] As to the duty of confidentiality, continued
2 common representation will almost certainly be inadequate if
3 one client asks the lawyer not to disclose to the other client
4 information relevant to the common representation. This is
5 so because the lawyer has an equal duty of loyalty to each
6 client, and each client has the right to be informed of
7 anything bearing on the representation that might affect that
8 client's interests and the right to expect that the lawyer will
9 use that information to that client's benefit. See rule 32:1.4.
10 The lawyer should, at the outset of the common
11 representation and as part of the process of obtaining each
12 client's informed consent, advise each client that information
13 will be shared and that the lawyer will have to withdraw if
14 one client decides that some matter material to the
15 representation should be kept from the other. In limited
16 circumstances, it may be appropriate for the lawyer to
17 proceed with the representation when the clients have
18 agreed, after being properly informed, that the lawyer will
19 keep certain information confidential. For example, the
20 lawyer may reasonably conclude that failure to disclose one
21 client's trade secrets to another client will not adversely
22 affect representation involving a joint venture between the
23 clients and agree to keep that information confidential with
24 the informed consent of both clients.

25 [32] When seeking to establish or adjust a relationship
26 between clients, the lawyer should make clear that the
27 lawyer's role is not that of partisanship normally expected in
28 other circumstances and, thus, that the clients may be
29 required to assume greater responsibility for decisions than
30 when each client is separately represented. Any limitations
31 on the scope of the representation made necessary as a
32 result of the common representation should be fully
33 explained to the clients at the outset of the representation.
34 See rule 32:1.2(c).

35 [33] Subject to the above limitations, each client in the
36 common representation has the right to loyal and diligent
37 representation and the protection of rule 32:1.9 concerning
38 the obligations to a former client. The client also has the
39 right to discharge the lawyer as stated in rule 32:1.16.

40 *Organizational Clients*

41 [34] A lawyer who represents a corporation or other
42 organization does not, by virtue of that representation,

1 necessarily represent any constituent or affiliated
2 organization, such as a parent or subsidiary. See rule
3 32:1.13(a). Thus, the lawyer for an organization is not barred
4 from accepting representation adverse to an affiliate in an
5 unrelated matter, unless the circumstances are such that
6 the affiliate should also be considered a client of the lawyer,
7 there is an understanding between the lawyer and the
8 organizational client that the lawyer will avoid representation
9 adverse to the client's affiliates, or the lawyer's obligations to
10 either the organizational client or the new client are likely to
11 limit materially the lawyer's representation of the other
12 client.

13 [35] A lawyer for a corporation or other organization
14 who is also a member of its board of directors should
15 determine whether the responsibilities of the two roles may
16 conflict. The lawyer may be called on to advise the
17 corporation in matters involving actions of the directors.
18 Consideration should be given to the frequency with which
19 such situations may arise, the potential intensity of the
20 conflict, the effect of the lawyer's resignation from the board,
21 and the possibility of the corporation's obtaining legal advice
22 from another lawyer in such situations. If there is material
23 risk that the dual role will compromise the lawyer's
24 independence of professional judgment, the lawyer should
25 not serve as a director or should cease to act as the
26 corporation's lawyer when conflicts of interest arise. The
27 lawyer should advise the other members of the board that in
28 some circumstances matters discussed at board meetings
29 while the lawyer is present in the capacity of director might
30 not be protected by the attorney-client privilege and that
31 conflict of interest considerations might require the lawyer's
32 recusal as a director or might require the lawyer and the
33 lawyer's firm to decline representation of the corporation in a
34 matter.

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**RULE 32:1.8: CONFLICT OF INTEREST:
CURRENT CLIENTS: SPECIFIC RULES**

38 **(a) A lawyer shall not enter into a business**
39 **transaction with a client or knowingly acquire an**
40 **ownership, possessory, security, or other pecuniary**
41 **interest adverse to a client unless:**

1 (1) the transaction and terms on which the
2 lawyer acquires the interest are fair and reasonable
3 to the client and are fully disclosed and
4 transmitted in writing in a manner that can be
5 reasonably understood by the client;

6 (2) the client is advised in writing of the
7 desirability of seeking and is given a reasonable
8 opportunity to seek the advice of independent
9 legal counsel on the transaction; and

10 (3) the client gives informed consent, in a
11 writing signed by the client, to the essential terms
12 of the transaction and the lawyer's role in the
13 transaction, including whether the lawyer is
14 representing the client in the transaction.

15 (b) A lawyer shall not use information relating to
16 representation of a client to the disadvantage of the
17 client unless the client gives informed consent, except
18 as permitted or required by these rules.

19 (c) A lawyer shall not solicit any substantial gift
20 from a client, including a testamentary gift, or prepare
21 on behalf of a client an instrument giving the lawyer or a
22 person related to the lawyer any substantial gift unless
23 the lawyer or other recipient of the gift is related to the
24 client. For purposes of this paragraph, related persons
25 include a spouse, child, sibling, grandchild, parent,
26 grandparent, or other relative or individual with whom
27 the lawyer or the client maintains a close, familial
28 relationship.

29 (d) Prior to the conclusion of representation of a
30 client, a lawyer shall not make or negotiate an
31 agreement giving the lawyer literary or media rights to a
32 portrayal or account based in substantial part on
33 information relating to the representation.

34 (e) A lawyer shall not provide financial assistance
35 to a client in connection with pending or contemplated
36 litigation, except that:

37 (1) a lawyer may advance court costs and
38 expenses of litigation, the repayment of which may
39 be contingent on the outcome of the matter; and

1 (2) contract with a client for a reasonable
2 contingent fee in a civil case.

3 (j) A lawyer shall not have sexual relations with a
4 client, or a representative of a client, unless the person
5 is the spouse of the lawyer or the sexual relationship
6 predates the initiation of the client-lawyer relationship.
7 Even in these provisionally exempt relationships, the
8 lawyer should strictly scrutinize the lawyer's behavior
9 for any conflicts of interest to determine if any harm
10 may result to the client or to the representation. If there
11 is any reasonable possibility that the legal
12 representation of the client may be impaired, or the
13 client harmed by the continuation of the sexual
14 relationship, the lawyer should immediately withdraw
15 from the legal representation.

16
17 (k) While lawyers are associated in a firm, a
18 prohibition in the foregoing paragraphs (a) through (i)
19 that applies to any one of them shall apply to all of
20 them.

21
22 (l) A lawyer related to another lawyer shall not
23 represent a client whose interests are directly adverse to
24 a person whom the lawyer knows is represented by the
25 related lawyer except upon the client's informed
26 consent, confirmed in a writing signed by the client.
27 Even if the clients' interests do not appear to be directly
28 adverse, the lawyer should not undertake the
29 representation of a client if there is a significant risk
30 that the related lawyer's involvement will interfere with
31 the lawyer's loyalty and exercise of independent
32 judgment, or will create a significant risk that client
33 confidences will be revealed. For purposes of this
34 paragraph, "related lawyer" includes a parent, child,
35 sibling, spouse, cohabiting partner, or lawyer related in
36 any other familial or romantic capacity.

37 **Comment**

38 *Business Transactions Between Client and Lawyer*

39 [1] A lawyer's legal skill and training, together with the
40 relationship of trust and confidence between lawyer and
41 client, create the possibility of overreaching when the lawyer
42 participates in a business, property, or financial transaction

1 with a client, for example, a loan or sales transaction or a
2 lawyer investment on behalf of a client. The requirements of
3 paragraph (a) must be met even when the transaction is not
4 closely related to the subject matter of the representation, as
5 when a lawyer drafting a will for a client learns that the
6 client needs money for unrelated expenses and offers to
7 make a loan to the client. The rule applies to lawyers
8 engaged in the sale of goods or services related to the
9 practice of law, for example, the sale of investment services
10 to existing clients of the lawyer's legal practice. See rule
11 32:5.7. It also applies to lawyers purchasing property from
12 estates they represent. It does not apply to ordinary fee
13 arrangements between client and lawyer, which are governed
14 by rule 32:1.5, although its requirements must be met when
15 the lawyer accepts an interest in the client's business or
16 other nonmonetary property as payment of all or part of a
17 fee. In addition, the rule does not apply to standard
18 commercial transactions between the lawyer and the client
19 for products or services that the client generally markets to
20 others, for example, banking or brokerage services, medical
21 services, products manufactured or distributed by the client,
22 and utilities' services. In such transactions, the lawyer has
23 no advantage in dealing with the client, and the restrictions
24 in paragraph (a) are unnecessary and impracticable.

25 [2] Paragraph (a)(1) requires that the transaction itself
26 be fair to the client and that its essential terms be
27 communicated to the client, in writing, in a manner that can
28 be reasonably understood. Paragraph (a)(2) requires that the
29 client also be advised, in writing, of the desirability of
30 seeking the advice of independent legal counsel. It also
31 requires that the client be given a reasonable opportunity to
32 obtain such advice. Paragraph (a)(3) requires that the lawyer
33 obtain the client's informed consent, in a writing signed by
34 the client, both to the essential terms of the transaction and
35 to the lawyer's role. When necessary, the lawyer should
36 discuss both the material risks of the proposed transaction,
37 including any risk presented by the lawyer's involvement,
38 and the existence of reasonably available alternatives and
39 should explain why the advice of independent legal counsel
40 is desirable. See rule 32:1.0(e) (definition of informed
41 consent).

42 [3] The risk to a client is greatest when the client
43 expects the lawyer to represent the client in the transaction
44 itself or when the lawyer's financial interest otherwise poses

1 a significant risk that the lawyer's representation of the
2 client will be materially limited by the lawyer's financial
3 interest in the transaction. Here the lawyer's role requires
4 that the lawyer must comply, not only with the requirements
5 of paragraph (a), but also with the requirements of rule
6 32:1.7. Under that rule, the lawyer must disclose the risks
7 associated with the lawyer's dual role as both legal adviser
8 and participant in the transaction, such as the risk that the
9 lawyer will structure the transaction or give legal advice in a
10 way that favors the lawyer's interests at the expense of the
11 client. Moreover, the lawyer must obtain the client's
12 informed consent. In some cases, the lawyer's interest may
13 be such that rule 32:1.7 will preclude the lawyer from
14 seeking the client's consent to the transaction.

15 [4] If the client is independently represented in the
16 transaction, paragraph (a)(2) of this rule is inapplicable, and
17 the paragraph (a)(1) requirement for full disclosure is
18 satisfied either by a written disclosure by the lawyer involved
19 in the transaction or by the client's independent counsel.
20 The fact that the client was independently represented in the
21 transaction is relevant in determining whether the
22 agreement was fair and reasonable to the client as paragraph
23 (a)(1) further requires.

24 *Use of Information Related to Representation*

25 [5] Use of information relating to the representation to
26 the disadvantage of the client violates the lawyer's duty of
27 loyalty. Paragraph (b) applies when the information is used
28 to benefit either the lawyer or a third person, such as
29 another client or business associate of the lawyer. For
30 example, if a lawyer learns that a client intends to purchase
31 and develop several parcels of land, the lawyer may not use
32 that information to purchase one of the parcels in
33 competition with the client or to recommend that another
34 client make such a purchase. The rule does not prohibit
35 uses that do not disadvantage the client. For example, a
36 lawyer who learns a government agency's interpretation of
37 trade legislation during the representation of one client may
38 properly use that information to benefit other clients.
39 Paragraph (b) prohibits disadvantageous use of client
40 information unless the client gives informed consent, except
41 as permitted or required by these rules. See rules 32:1.2(d),
42 32:1.6, 32:1.9(c), 32:3.3, 32:4.1(b), 32:8.1, and 32:8.3.

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Gifts to Lawyers

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[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

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[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this rule is where the client is a relative of the donee.

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[8] This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 32:1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

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Literary Rights

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[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction

1 concerning literary property from agreeing that the lawyer's
2 fee shall consist of a share in ownership in the property, if
3 the arrangement conforms to rule 32:1.5 and paragraphs (a)
4 and (i).

5 *Financial Assistance*

6 [10] Lawyers may not subsidize lawsuits or
7 administrative proceedings brought on behalf of their clients,
8 including making or guaranteeing loans to their clients for
9 living expenses, because to do so would encourage clients to
10 pursue lawsuits that might not otherwise be brought and
11 because such assistance gives lawyers too great a financial
12 stake in the litigation. These dangers do not warrant a
13 prohibition on a lawyer lending a client court costs and
14 litigation expenses, including the expenses of medical
15 examination and the costs of obtaining and presenting
16 evidence, because these advances are virtually
17 indistinguishable from contingent fees and help ensure
18 access to the courts. Similarly, an exception allowing lawyers
19 representing indigent clients to pay court costs and litigation
20 expenses regardless of whether these funds will be repaid is
21 warranted.

22 *Person Paying for a Lawyer's Services*

23 [11] Lawyers are frequently asked to represent a client
24 under circumstances in which a third person will
25 compensate the lawyer, in whole or in part. The third person
26 might be a relative or friend, an indemnitor (such as a
27 liability insurance company), or a co-client (such as a
28 corporation sued along with one or more of its employees).
29 Because third-party payers frequently have interests that
30 differ from those of the client, including interests in
31 minimizing the amount spent on the representation and in
32 learning how the representation is progressing, lawyers are
33 prohibited from accepting or continuing such
34 representations unless the lawyer determines that there will
35 be no interference with the lawyer's independent professional
36 judgment and there is informed consent from the client. *See*
37 also rule 32:5.4(c) (prohibiting interference with a lawyer's
38 professional judgment by one who recommends, employs, or
39 pays the lawyer to render legal services for another).

40 [12] Sometimes, it will be sufficient for the lawyer to
41 obtain the client's informed consent regarding the fact of the

1 payment and the identity of the third-party payer. If,
2 however, the fee arrangement creates a conflict of interest for
3 the lawyer, then the lawyer must comply with rule 32:1.7.
4 The lawyer must also conform to the requirements of rule
5 32:1.6 concerning confidentiality. Under rule 32:1.7(a), a
6 conflict of interest exists if there is significant risk that the
7 lawyer's representation of the client will be materially limited
8 by the lawyer's own interest in the fee arrangement or by the
9 lawyer's responsibilities to the third-party payer (for
10 example, when the third-party payer is a co-client). Under
11 rule 32:1.7(b), the lawyer may accept or continue the
12 representation with the informed consent of each affected
13 client, unless the conflict is nonconsentable under that
14 paragraph. Under rule 32:1.7(b), the informed consent must
15 be confirmed in writing.

16 [12a] When the lawyer is publicly-compensated, such
17 as in the case of a public defender in a criminal case or a
18 guardian appointed in a civil case or when civil legal services
19 are provided by a legal aid organization, the fee arrangement
20 ordinarily does not pose the same risk of interference with
21 the lawyer's independent professional judgment that exists
22 in other contexts. Under paragraph (f), such a lawyer must
23 disclose the fact that the lawyer is being compensated
24 through public funding or that legal services are being
25 provided as part of a legal aid organization; however, formal
26 consent by the client to the fee arrangement is not required
27 under such circumstances given the limited ability of an
28 indigent client as a practical matter to refuse the services of
29 the lawyer being compensated through public funding or
30 through legal aid.

31 *Aggregate Settlements*

32 [13] Differences in willingness to make or accept an
33 offer of settlement are among the risks of common
34 representation of multiple clients by a single lawyer. Under
35 rule 32:1.7, this is one of the risks that should be discussed
36 before undertaking the representation, as part of the process
37 of obtaining the clients' informed consent. In addition, rule
38 32:1.2(a) protects each client's right to have the final say in
39 deciding whether to accept or reject an offer of settlement
40 and in deciding whether to enter a guilty or nolo contendere
41 plea in a criminal case. The rule stated in this paragraph is a
42 corollary of both these rules and provides that, before any
43 settlement offer or plea bargain is made or accepted on

1 behalf of multiple clients, the lawyer must inform each of
2 them about all the material terms of the settlement,
3 including what the other clients will receive or pay if the
4 settlement or plea offer is accepted. *See also* rule 32:1.0(e)
5 (definition of informed consent). Lawyers representing a class
6 of plaintiffs or defendants, or those proceeding derivatively,
7 may not have a full client-lawyer relationship with each
8 member of the class; nevertheless, such lawyers must
9 comply with applicable rules regulating notification of class
10 members and other procedural requirements designed to
11 ensure adequate protection of the entire class.

12 *Limiting Liability and Settling Malpractice Claims*

13 [14] Agreements prospectively limiting a lawyer's
14 liability for malpractice are prohibited because they are likely
15 to undermine competent and diligent representation. Also,
16 many clients are unable to evaluate the desirability of
17 making such an agreement before a dispute has arisen,
18 particularly if they are then represented by the lawyer
19 seeking the agreement. This paragraph does not, however,
20 prohibit a lawyer from entering into an agreement with the
21 client to arbitrate legal malpractice claims, provided such
22 agreements are enforceable and the client is fully informed of
23 the scope and effect of the agreement. Nor does this
24 paragraph limit the ability of lawyers to practice in the form
25 of a limited-liability entity, where permitted by law, provided
26 that each lawyer remains personally liable to the client for
27 his or her own conduct and the firm complies with any
28 conditions required by law, such as provisions requiring
29 client notification or maintenance of adequate liability
30 insurance. Nor does it prohibit an agreement in accordance
31 with rule 32:1.2 that defines the scope of the representation,
32 although a definition of scope that makes the obligations of
33 representation illusory will amount to an attempt to limit
34 liability.

35 [15] Agreements settling a claim or a potential claim
36 for malpractice are not prohibited by this rule. Nevertheless,
37 in view of the danger that a lawyer will take unfair advantage
38 of an unrepresented client or former client, the lawyer must
39 first advise such a person in writing of the appropriateness
40 of independent representation in connection with such a
41 settlement. In addition, the lawyer must give the client or
42 former client a reasonable opportunity to find and consult
43 independent counsel.

1 *Acquiring Proprietary Interest in Litigation*

2 [16] Paragraph (i) states the traditional general rule
3 that lawyers are prohibited from acquiring a proprietary
4 interest in litigation. Like paragraph (e), the general rule has
5 its basis in common law champerty and maintenance and is
6 designed to avoid giving the lawyer too great an interest in
7 the representation. In addition, when the lawyer acquires an
8 ownership interest in the subject of the representation, it will
9 be more difficult for a client to discharge the lawyer if the
10 client so desires. The rule is subject to specific exceptions
11 developed in decisional law and continued in these rules.
12 The exception for certain advances of the costs of litigation is
13 set forth in paragraph (e). In addition, paragraph (i) sets
14 forth exceptions for liens authorized by law to secure the
15 lawyer's fees or expenses and contracts for reasonable
16 contingent fees. Iowa law determines which liens are
17 authorized. These may include liens granted by statute and
18 liens acquired by contract with the client. When a lawyer
19 acquires by contract a security interest in property other
20 than that recovered through the lawyer's efforts in the
21 litigation, such an acquisition is a business or financial
22 transaction with a client and is governed by the
23 requirements of paragraph (a). Contracts for contingent fees
24 in civil cases are governed by rule 32:1.5.

25 *Client-Lawyer Sexual Relationships*

26 [17] The relationship between lawyer and client is a
27 fiduciary one in which the lawyer occupies the highest
28 position of trust and confidence. The relationship is almost
29 always unequal; thus, a sexual relationship between lawyer
30 and client can involve unfair exploitation of the lawyer's
31 fiduciary role, in violation of the lawyer's basic ethical
32 obligation not to use the trust of the client to the client's
33 disadvantage. In addition, such a relationship presents a
34 significant danger that, because of the lawyer's emotional
35 involvement, the lawyer will be unable to represent the client
36 without impairment of the exercise of independent
37 professional judgment. Moreover, a blurred line between the
38 professional and personal relationships may make it difficult
39 to predict to what extent client confidences will be protected
40 by the attorney-client evidentiary privilege, since client
41 confidences are protected by privilege only when they are
42 imparted in the context of the client-lawyer relationship.
43 Because of the significant danger of harm to client interests

1 and because the client's own emotional involvement renders
2 it unlikely that the client could give adequate informed
3 consent, this rule prohibits the lawyer from having sexual
4 relations with a client regardless of whether the relationship
5 is consensual and regardless of the absence of prejudice to
6 the client.

7 [18] Sexual relationships that predate the client-lawyer
8 relationship are not prohibited. Issues relating to the
9 exploitation of the fiduciary relationship and client
10 dependency are diminished when the sexual relationship
11 existed prior to the commencement of the client-lawyer
12 relationship. However, before proceeding with the
13 representation in these circumstances, the lawyer should
14 consider whether the lawyer's ability to represent the client
15 will be materially limited by the relationship. See rule
16 32:1.7(a)(2).

17 [19] When the client is an organization, paragraph (j)
18 of this rule prohibits a lawyer for the organization (whether
19 inside counsel or outside counsel) from having a sexual
20 relationship with a constituent of the organization who
21 supervises, directs, or regularly consults with that lawyer
22 concerning the organization's legal matters.

23 *Imputation of Prohibitions*

24 [20] Under paragraph (k), a prohibition on conduct by
25 an individual lawyer in paragraphs (a) through (i) also
26 applies to all lawyers associated in a firm with the personally
27 prohibited lawyer. For example, one lawyer in a firm may not
28 enter into a business transaction with a client of another
29 member of the firm without complying with paragraph (a),
30 even if the first lawyer is not personally involved in the
31 representation of the client. The prohibitions set forth in
32 paragraphs (j) and (l) are personal and are not applied to
33 associated lawyers.

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RULE 32:1.9: DUTIES TO FORMER CLIENTS

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**(a) A lawyer who has formerly represented a client
in a matter shall not thereafter represent another person
in the same or a substantially related matter in which**

1 that person's interests are materially adverse to the
2 interests of the former client unless the former client
3 gives informed consent, confirmed in writing.
4

5 (b) A lawyer shall not knowingly represent a person
6 in the same or a substantially related matter in which a
7 firm with which the lawyer formerly was associated had
8 previously represented a client
9

10 (1) whose interests are materially adverse to
11 that person, and
12

13 (2) about whom the lawyer had acquired
14 information protected by rules 32:1.6 and 32:1.9(c)
15 that is material to the matter, unless the former
16 client gives informed consent, confirmed in
17 writing.
18

19 (c) A lawyer who has formerly represented a client
20 in a matter or whose present or former firm has formerly
21 represented a client in a matter shall not thereafter:
22

23 (1) use information relating to the
24 representation to the disadvantage of the former
25 client except as these rules would permit or require
26 with respect to a client, or when the information
27 has become generally known; or
28

29 (2) reveal information relating to the
30 representation except as these rules would permit
31 or require with respect to a client.
32

33 **Comment**

34
35 [1] After termination of a client-lawyer relationship, a
36 lawyer has certain continuing duties with respect to
37 confidentiality and conflicts of interest and thus may not
38 represent another client except in conformity with this rule.
39 Under this rule, for example, a lawyer could not properly
40 seek to rescind on behalf of a new client a contract drafted
41 on behalf of the former client. So also a lawyer who has
42 prosecuted an accused person could not properly represent
43 the accused in a subsequent civil action against the
44 government concerning the same transaction. Nor could a
45 lawyer who has represented multiple clients in a matter
46 represent one of the clients against the others in the same or

1 a substantially related matter after a dispute arose among
2 the clients in that matter, unless all affected clients give
3 informed consent. See comment [9]. Current and former
4 government lawyers must comply with this rule to the extent
5 required by rule 32:1.11.

6 [2] The scope of a "matter" for purposes of this rule
7 depends on the facts of a particular situation or transaction.
8 The lawyer's involvement in a matter can also be a question
9 of degree. When a lawyer has been directly involved in a
10 specific transaction, subsequent representation of other
11 clients with materially adverse interests in that transaction
12 clearly is prohibited. On the other hand, a lawyer who
13 recurrently handled a type of problem for a former client is
14 not precluded from later representing another client in a
15 factually distinct problem of that type even though the
16 subsequent representation involves a position adverse to the
17 prior client. Similar considerations can apply to the
18 reassignment of military lawyers between defense and
19 prosecution functions within the same military jurisdictions.
20 The underlying question is whether the lawyer was so
21 involved in the matter that the subsequent representation
22 can be justly regarded as a changing of sides in the matter in
23 question.

24 [3] Matters are "substantially related" for purposes of
25 this rule if they involve the same transaction or legal dispute
26 or if there otherwise is a substantial risk that confidential
27 factual information as would normally have been obtained in
28 the prior representation would materially advance the
29 client's position in the subsequent matter. For example, a
30 lawyer who has represented a businessperson and learned
31 extensive private financial information about that person
32 may not then represent that person's spouse in seeking a
33 divorce. Similarly, a lawyer who has previously represented a
34 client in securing environmental permits to build a shopping
35 center would be precluded from representing neighbors
36 seeking to oppose rezoning of the property on the basis of
37 environmental considerations; however, the lawyer would not
38 be precluded, on the grounds of substantial relationship,
39 from defending a tenant of the completed shopping center in
40 resisting eviction for nonpayment of rent. Information that
41 has been disclosed to the public or to other parties adverse
42 to the former client ordinarily will not be disqualifying.
43 Information acquired in a prior representation may have
44 been rendered obsolete by the passage of time, a

1 circumstance that may be relevant in determining whether
2 two representations are substantially related. In the case of
3 an organizational client, general knowledge of the client's
4 policies and practices ordinarily will not preclude a
5 subsequent representation; on the other hand, knowledge of
6 specific facts gained in a prior representation that are
7 relevant to the matter in question ordinarily will preclude
8 such a representation. A former client is not required to
9 reveal the confidential information learned by the lawyer in
10 order to establish a substantial risk that the lawyer has
11 confidential information to use in the subsequent matter. A
12 conclusion about the possession of such information may be
13 based on the nature of the services the lawyer provided the
14 former client and information that would in ordinary practice
15 be learned by a lawyer providing such services.

16 *Lawyers Moving Between Firms*

17 [4] When lawyers have been associated within a firm
18 but then end their association, the question of whether a
19 lawyer should undertake representation is more complicated.
20 There are several competing considerations. First, the client
21 previously represented by the former firm must be
22 reasonably assured that the principle of loyalty to the client
23 is not compromised. Second, the rule should not be so
24 broadly cast as to preclude other persons from having
25 reasonable choice of legal counsel. Third, the rule should not
26 unreasonably hamper lawyers from forming new associations
27 and taking on new clients after having left a previous
28 association. In this connection, it should be recognized that
29 today many lawyers practice in firms, that many lawyers to
30 some degree limit their practice to one field or another, and
31 that many move from one association to another several
32 times in their careers. If the concept of imputation were
33 applied with unqualified rigor, the result would be radical
34 curtailment of the opportunity of lawyers to move from one
35 practice setting to another and of the opportunity of clients
36 to change counsel.

37 [5] Paragraph (b) operates to disqualify the lawyer only
38 when the lawyer involved has actual knowledge of
39 information protected by rules 32:1.6 and 32:1.9(c). Thus, if
40 a lawyer while with one firm acquired no knowledge or
41 information relating to a particular client of the firm, and
42 that lawyer later joined another firm, neither the lawyer
43 individually nor the second firm is disqualified from

1 representing another client in the same or a related matter
2 even though the interests of the two clients conflict. See rule
3 32:1.10(b) for the restrictions on a firm once a lawyer has
4 terminated association with the firm.

5 [6] Application of paragraph (b) depends on a
6 situation's particular facts, aided by inferences, deductions,
7 or working presumptions that reasonably may be made
8 about the way in which lawyers work together. A lawyer may
9 have general access to files of all clients of a law firm and
10 may regularly participate in discussions of their affairs; it
11 should be inferred that such a lawyer in fact is privy to all
12 information about all the firm's clients. In contrast, another
13 lawyer may have access to the files of only a limited number
14 of clients and participate in discussions of the affairs of no
15 other clients; in the absence of information to the contrary, it
16 should be inferred that such a lawyer in fact is privy to
17 information about the clients actually served but not those of
18 other clients. In such an inquiry, the burden of proof should
19 rest upon the firm whose disqualification is sought.

20 [7] Independent of the question of disqualification of a
21 firm, a lawyer changing professional association has a
22 continuing duty to preserve confidentiality of information
23 about a client formerly represented. See rules 32:1.6 and
24 32:1.9(c).

25 [8] Paragraph (c) provides that information acquired by
26 the lawyer in the course of representing a client may not
27 subsequently be used or revealed by the lawyer to the
28 disadvantage of the client. However, the fact that a lawyer
29 has once served a client does not preclude the lawyer from
30 using generally known information about that client when
31 later representing another client.

32 [9] The provisions of this rule are for the protection of
33 former clients and can be waived if the client gives informed
34 consent, which consent must be confirmed in writing under
35 paragraphs (a) and (b). See rule 32:1.0(e). With regard to the
36 effectiveness of an advance waiver, see comment [22] to rule
37 32:1.7. With regard to disqualification of a firm with which a
38 lawyer is or was formerly associated, see rule 32:1.10.

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1 **RULE 32:1.10: IMPUTATION OF**
2 **CONFLICTS OF INTEREST:**
3 **GENERAL RULE**

4 (a) While lawyers are associated in a firm, none of
5 them shall knowingly represent a client when any one of
6 them practicing alone would be prohibited from doing so
7 by rule 32:1.7 or 32:1.9, unless the prohibition is based
8 on a personal interest of the prohibited lawyer and does
9 not present a significant risk of materially limiting the
10 representation of the client by the remaining lawyers in
11 the firm.

12 (b) When a lawyer has terminated an association
13 with a firm, the firm is not prohibited from thereafter
14 representing a person with interests materially adverse
15 to those of a client represented by the formerly
16 associated lawyer and not currently represented by the
17 firm, unless:

18 (1) the matter is the same or substantially
19 related to that in which the formerly associated
20 lawyer represented the client; and

21 (2) any lawyer remaining in the firm has
22 information protected by rules 32:1.6 and 32:1.9(c)
23 that is material to the matter.

24 (c) A disqualification prescribed by this rule may be
25 waived by the affected client under the conditions stated
26 in rule 32:1.7.

27 (d) The disqualification of lawyers associated in a
28 firm with former or current government lawyers is
29 governed by rule 32:1.11.

30 **Comment**

31 *Definition of "Firm"*

32 [1] For purposes of the Iowa Rules of Professional
33 Conduct, the term "firm" denotes lawyers in a law
34 partnership, professional corporation, sole proprietorship, or
35 other association authorized to practice law; or lawyers
36 employed in a legal services organization or the legal
37 department of a corporation or other organization. See rule

1 32:1.0(c). Whether two or more lawyers constitute a firm
2 within this definition can depend on the specific facts. See
3 rule 32:1.0, comments [2] - [4].

4 *Principles of Imputed Disqualification*

5 [2] The rule of imputed disqualification stated in
6 paragraph (a) gives effect to the principle of loyalty to the
7 client as it applies to lawyers who practice in a law firm.
8 Such situations can be considered from the premise that a
9 firm of lawyers is essentially one lawyer for purposes of the
10 rules governing loyalty to the client, or from the premise that
11 each lawyer is vicariously bound by the obligation of loyalty
12 owed by each lawyer with whom the lawyer is associated.
13 Paragraph (a) operates only among the lawyers currently
14 associated in a firm. When a lawyer moves from one firm to
15 another, the situation is governed by rules 32:1.9(b) and
16 32:1.10(b).

17 [3] The rule in paragraph (a) does not prohibit
18 representation where neither questions of client loyalty nor
19 protection of confidential information are presented. Where
20 one lawyer in a firm could not effectively represent a given
21 client because of strong political beliefs, for example, but
22 that lawyer will do no work on the case and the personal
23 beliefs of the lawyer will not materially limit the
24 representation by others in the firm, the firm should not be
25 disqualified. On the other hand, if an opposing party in a
26 case were owned by a lawyer in the law firm, and others in
27 the firm would be materially limited in pursuing the matter
28 because of loyalty to that lawyer, the personal
29 disqualification of the lawyer would be imputed to all others
30 in the firm.

31 [4] The rule in paragraph (a) also does not prohibit
32 representation by others in the law firm where the person
33 prohibited from involvement in a matter is a nonlawyer, such
34 as a paralegal or legal secretary. Nor does paragraph (a)
35 prohibit representation if the lawyer is prohibited from acting
36 because of events before the person became a lawyer, for
37 example, work that the person did while a law student. Such
38 persons, however, ordinarily must be screened from any
39 personal participation in the matter to avoid communication
40 to others in the firm of confidential information that both the
41 nonlawyers and the firm have a legal duty to protect. In
42 addition, written notice must be promptly given to any

1 affected former client to enable the former client to ascertain
2 compliance with the provisions of this rule. See rules
3 32:1.0(k) and 32:5.3.

4 [5] Rule 32:1.10(b) operates to permit a law firm,
5 under certain circumstances, to represent a person with
6 interests directly adverse to those of a client represented by a
7 lawyer who formerly was associated with the firm. The rule
8 applies regardless of when the formerly associated lawyer
9 represented the client. However, the law firm may not
10 represent a person with interests adverse to those of a
11 present client of the firm, which would violate rule 32:1.7.
12 Moreover, the firm may not represent the person where the
13 matter is the same or substantially related to that in which
14 the formerly associated lawyer represented the client and
15 any other lawyer currently in the firm has material
16 information protected by rules 32:1.6 and 32:1.9(c).

17 [6] Rule 32:1.10(c) removes imputation with the
18 informed consent of the affected client or former client under
19 the conditions stated in rule 32:1.7. The conditions stated in
20 rule 32:1.7 require the lawyer to determine that the
21 representation is not prohibited by rule 32:1.7(b) and that
22 each affected client or former client has given informed
23 consent to the representation, confirmed in writing. In some
24 cases, the risk may be so severe that the conflict may not be
25 cured by client consent. For a discussion of the effectiveness
26 of client waivers of conflicts that might arise in the future,
27 see rule 32:1.7, comment [22]. For a definition of informed
28 consent, see rule 32:1.0(e).

29 [7] Where a lawyer has joined a private firm after
30 having represented the government, imputation is governed
31 by rule 32:1.11(b) and (c), not this rule. Under rule
32 32:1.11(d), where a lawyer represents the government after
33 having served clients in private practice, nongovernmental
34 employment, or in another government agency, former-client
35 conflicts are not imputed to government lawyers associated
36 with the individually disqualified lawyer.

37 [8] Where a lawyer is prohibited from engaging in
38 certain transactions under rule 32:1.8, paragraph (k) of that
39 rule, and not this rule, determines whether that prohibition
40 also applies to other lawyers associated in a firm with the
41 personally prohibited lawyer.