* **THE LEGAL PROFESSION**
  + Origins & Development of the US Legal Profession
    - Colonial America – “era of law without lawyers, a time when law was shaped by theologians, politicians, farmers, fisherman and merchants”
    - 19th Century – as industry developed, so did the law
      * Increase in laws demanded more people specially trained in the law (MORE LAWYERS – grew by 500%)
      * Lawyers were accepted as a “necessary evil”
      * Birth of the Wall Street transactional lawyer
      * Hiring In-House Counsel became common practice for businesses
    - 20th Century - Continued growth of lawyers and large law firms
  + History of the American Legal Education
    - Until the 20th century, most American lawyers entered the profession through an apprenticeship with a practicing lawyer. Slowly the apprenticeship system gave way to legal education.
    - Socratic method 🡪 clinic based
      * Mid-1800s: 1year curriculum grew to 3year curriculum; legal education focused on the internal logic of law, not the relationship between law and society.
      * Beginning in the 1970s: Clinical legal education was introduced into the curriculum of most law schools; case method still used; law schools started teaching courses in professional responsibility
  + Race, Sex and Class in the Legal Profession
    - During most of history, wealthy white Protestant men from prominent families dominated the American legal profession. Why?
      * Procedures for entry into the legal profession under the apprenticeship depended on personal connections.
      * Efforts by bar associations in the 19th and 20th centuries to raise the standards of the profession often resulted in exclusion of applicants from marginalized groups.
    - Women in law
      * 1630s – first female lawyer practiced law
      * Last half of the 19th century – increasing number of women tried to enter the profession
      * 1860s – law schools began to open their doors to women
    - People of color
      * African Americans and members of other racial minority groups were largely excluded from the practice of law until relatively recently.
      * Efforts to “raise standards” for admission to the practice of law in the first third of the 20th century made it more difficult for African Americans to enter the profession.
      * 1954 – Brown v. Board of Education decided; SCOTUS proclaimed “separate” education to be “inherently unequal.”
      * 1970s – most law schools had established programs to recruit and retain minority students
      * 2003 – SCOTUS held that the creation of a diverse educational community was a compelling state interest.
      * Today – Minorities compose about 11% of lawyers but only 5% of partners.
  + The Legal Profession today
    - About 74% of lawyers are in private practice, and only 52% of those lawyers work in law firms of more than one lawyer.
    - 3 “groups” of lawyers
      * Wealthy lawyers in large firms, mostly drawn from prestigious law schools, who mainly represent corporations.
      * A middle group of lawyers, who serve both business and individual clients.
      * Much less wealthy lawyers, drawn mainly from regional and local law schools, representing individuals.
    - Large Firms
      * Why law students hope to get jobs with large firms:
        + Higher salaries, bigger bonuses
        + Jobs are prestigious
        + To repay the enormous student loans quickly after graduation
      * Disadvantages of large firm practice:
        + Arguably exploit associates and deprive them of the normal benefits of living in families or society.
        + Cut-throat competition may undermine morale.
        + Long hours, led by the firms paying very high salaries to the most highly credentialed law school graduates and then the need to collect enough revenue to pay those salaries.
        + Studies show that lawyers who make the most money tend to be the least happy.
        + Most associates are overwhelmed by tension between the large firm’s billable hour requirements and the need to devote additional time to develop one’s practice, generate business, attend seminars, and participate in firm events.
        + Studies have shown that lawyers are more likely to be unhappy than people in other professions; more likely to have depression, OCD, abuse alcohol or drugs, etc.
        + Most associates will never become partner (and are aware of that).
        + Discrimination and sexual harassment are still present in law firms. Women and minorities are hired as incoming associates at the same rate, but much fewer reach the partner ranks.
    - Small firms
      * Disadvantages:
        + Compensation scales are lower at most small firms than large firms.
        + Small firm lawyers always have to think about bringing in business.
        + Equal likelihood of discrimination or gender bias in small firms.
        + Small firm lawyers have experienced a decline in income for several decades 🡪 increasing number of lawyers with a finite pool of small-firm clients.
      * Advantages of small firm practice:
        + Lawyers are closer to their colleagues and have a better chance of obtaining good mentoring.
        + Greater chance of becoming partner, because there are fewer associates per partner.
        + Small firms allow more flexible work schedules.
        + Overall attrition rate is lower.
        + Small firms arguably have more freedom to choose their clients.
        + Young lawyers get substantial responsibility for cases sooner.
        + New lawyers have more client contact.
        + Small firms may demand fewer billable hours.
        + Small firm lawyers seem to be happier with their careers.
    - Government and nonprofit organizations
      * About 15% of all lawyers work for governments and non-profit organizations.
      * Jobs that fit into this category are very different.
    - Temporary and contract lawyers
      * In recent years, law firms have massively expanded their employment of “temporary” or “contract” lawyers. These lawyers are hired for short-term assignments on particular projects.
      * Contract lawyers have no job security, expectation of future employment, fringe benefits or pension rights, and are paid less than full associates.
      * Some lawyers take contract jobs because they are unable to find more secure work; some prefer temporary work because they can take extended time off between jobs, choose where to work, and may be assigned to travel.
    - Overseas Outsourcing
      * Law firms now often employ people who work overseas and communicate with their employees primarily by the Internet.
      * No model rule or ABA ethics opinion yet for outsourcing, but some bar associations have reasoned that outsourcing is okay as long as the ethical rules apply 🡪 THE SUPERVISING AMERICAN LAWYER MUST TAKE FULL RESPONSIBILITY FOR THE WORK TO ENSURE COMPETENT REPRESENTATION, get client consent before disclosing confidential information, guard against conflict of interest, etc.
  + The Ethical Climate of the Legal Profession
    - As more cases of unethical behavior have come to light, law firms and other organizations have instituted staff and structures to offer training, set policy, and provide guidance to lawyers on compliance with legal and ethical rules.
    - Increased pressure to obtain profits within law firms may lead to more ethical improprieties:
      * Lawyers may take more cases than they can handle competently
      * Lawyers may work on cases without doing the time-consuming work of interviewing, investigation, and legal research that could turn failure into success.
      * Lawyers may experience pressures to pad clients’ bills.
      * Lawyers who are competing to obtain clients sometimes have a hard time turning anyone away, and some clients pressure lawyers to help them to engage in illegal or immoral conduct.
      * Lawyers may neglect clients’ cases or engage in financial misconduct because the lawyers become addicted to alcohol or other substances.
    - Public Perception of Lawyers
      * Most Americans believe lawyers are “only sometimes honest or are not usually honest.”
      * Public confidences in lawyers have fallen more rapidly than public opinion about any other occupation.
      * The prestige of lawyers has fallen dramatically over a 30-year period.
      * Only about 1/3 of the public would trust lawyers to tell the truth.
    - How to find an employer that has high ethical standards and more humane work:
      * There is a general inverse relationship between money and overall satisfaction.
      * There are significant differences between large and small firms, and differences in the cultures of individual firms.
      * Students should realize that recruiting by law firms often presents everything in a positive light 🡪 future lawyers should find out what the firm’s culture is really like. Ways to find out what it is “really like”:
        + Before receiving an offer:

Make friends with people at the firm that will talk honestly about the good and bad aspects of work at the firm.

Try to notice how much time associates are able to spend with friends and family.

Talk to lawyers who were previously employed by the firm.

Look on Westlaw or Lexis to find reported cases involving suits against lawyers at the firm for malpractice, etc.

Read the news, blogs, etc.

* **RESTRICTIONS ON LAW PRACTICE – ADVERTISING, ASSOCIATIONS, MULTI-STATE PRACTICE**
  + **Advertising**
    - **Past: Lawyers didn’t advertise at all; advertising was considered both unseemly and unethical.**
    - **Current: Lawyers advertise on billboards, local TV stations, Internet, yellow pages**
    - Why should lawyer advertising be regulated?
      * Need people to trust that the legal system (and lawyers) is trustworthy, fair, honest, etc.
      * Advertising should still be allowed though, because it can inform people that legal help is available to them.
      * Idea that lawyers are “above” advertising – they shouldn’t advertise.
      * Idea that lawyers shouldn’t be “stirring up lawsuits.”
  + **Solicitation**
    - **Rule: A state may not prohibit truthful advertising aimed at the general public, but it may ban in-person solicitation by lawyers. The “potential for overreaching” was “significantly greater when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured, or distressed lay person.” (Ohralik v. Ohio St. Bar Assoc.)**
    - **See Rules 7.1-7.3.**
  + **Affiliations with Non-Lawyers**
    - **Ownership of law firms**
      * **Basic Rules:**
        + **A lawyer may not:**

**Share fees with non-lawyers. (Rule 5.4(a)).**

**Form a partnership with non-lawyers to provide legal services. (Rule 5.4(b)).**

**Practice law for profit in an association in which a non-lawyer owns any interest or of which a non-lawyer is an officer or director. (Rule 5.4(d)).**

*Note: This means that a person who is a lawyer and CPA may not even offer both types of service from his office if he works in an accounting firm owned by non-lawyers.*

* + - * + **A lawyer may:**

**Hire professionals to assist them, as long as they ensure that the professional follows the ethical rules.**

* + - * Purpose of Rule 5.4 – to protect “the lawyer’s professional independence of judgment.”
* **GENERAL RESPONSIBILITIES OF LAWYERS**
  + **Lawyer = A representative of clients, an officer of the legal system, and a public citizen with a special responsibility for the quality of justice.** (Nat’l Rules Preamble)
  + **Functions of Lawyers:** (Nat’l Rules Preamble)
    - Advisor – a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications.
    - Advocate – a lawyer zealously asserts the client’s positions under the rule of the adversary system.
    - Negotiator – a lawyer seeks a result advantageous to the client but consistent with the requirements of honest dealings with others.
    - Evaluator – a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.
  + **Basic Duties: To be competent, prompt and diligent (Nat’l Rules Preamble)**
  + Upon admission to the bar, a person becomes a lawyer and is subject to applicable law governing such matters as professional discipline, procedure and evidence, civil remedies, and criminal sanctions. (Rstmt. Sect. 1)
* **REGULATORY INFRASTRUCTURE FOR LAWYERS**
  + Lawyers are subject to the laws that govern the rest of society.
  + Purpose of Ethics Codes:
    - To guide lawyers in evaluating what conduct is proper; and
    - To provide a basis for disciplining lawyers who violate the rules.
  + Sources of Lawyer Rules:
    - Self-regulated: the legal profession sets and enforces its own standards of conduct.
      * Good idea v. bad idea?
        + Bad: If lawyers write the rules, they may be more protective of lawyers and impose less regulatory constraint than they would if state legislatures wrote them.
        + Good: It provides the legal profession with some independence from the state.
    - Court-Regulated:
      * In most states, the highest court in the state, not the legislature is responsible for adopting the rules of conduct that govern lawyers.
      * The state’s high court usually consults with the state bar association in drafting rules, and sometimes the general public. They also set licensing standards and control the licensing process.
      * The highest court in each state is ultimately responsible for enforcing its rules by disciplining those who violate them.
    - State and Local Bar Associations:
      * Some courts delegate lawyer regulatory functions to state bar associations.
      * State bars often administer bar exams and review candidates for admission.
      * A lawyer may be required to be a member of a bar association as a condition of obtaining a license to practice law.
      * Most bar committees have committees that draft ethical rules, etc.
    - Lawyer Disciplinary Agencies
      * Bar counsel’s offices or disciplinary counsel –bear the responsibility for investigating and prosecuting misconduct that violates the ethics codes.
      * Possible sanctions include disbarment, suspension and public or private reprimand.
      * These agencies are usually run by the highest courts in the state, by the state bar association, or by the court and the state bar.
    - The American Bar Association
      * = a private nonprofit membership organization.
      * The state bar associations are independent of, not subordinate to, the ABA.
      * ABA Rules are the Model Rules of Professional Conduct – they have no legal force unless adopted by the relevant governmental authority, usually a state’s highest court.
      * How are ethics rules usually written?
        + Usually, an ABA committee drafts a model rule or a set of revisions to existing rules.
        + Next, the model rule is debated and approved by the ABA through its House of Delegates.
        + Committees of state bar associations then review the model rules, often seeking feedback from members.
    - The American Law Institute
      * Wrote the Restatement of the Law Governing Lawyers. The Restatement is not the law, but it is the best available synthesis of information about “lawyer law.”
      * Includes black-letter rules, which often summarize the rule followed in a majority of jurisdictions.
    - Legislatures
      * Legislatures adopt constitutions and statutes, including criminal laws, banking laws, securities laws, and so on, that apply to everyone doing business in the state, including lawyers.
    - Law Firms and other Employers
      * Many employers often have their own rules of practice.
      * Some larger law firms have ethical infrastructures, ethics counsel or ethics committees.
      * Law firms and government agencies sometimes have stricter confidentiality rules than those imposed by the state ethics code.
    - Clients
      * While many individual clients have very little ability to “regulate” their lawyers, large corporations and government agencies are major consumers of legal services and have a great deal of bargaining power with law firms.
* **forming the lawyer-client relationship**
  + **GENERAL RULE:** 
    - **unless the lawyer and client have agreed otherwise, the lawyer, not the client should make decisions that “involve technical, legal, and strategic considerations” on the case. (Rule 1.2).**
  + Choosing clients:
    - GENERAL RULE: tHE LAWYER IS ALLOWED TO BE PICKY, AND DOESN’T HAVE TO ACCEPT EVERY CLIENT.
      * Exceptions:
        + A lawyer may not discriminate on the basis of race, religion, sex, disability, or another protected category under the law.
        + The lawyer has a duty to provide pro bono legal assistance.
        + A court may assign a lawyer to represent an indigent criminal defendant (and lawyers should accept unless they have “good cause.”
    - The lawyer has a duty to either only take clients with cases in an area of law he has knowledge in OR to compensate for inexperience through: (i) study of the area of law and/or (ii) affiliation with another lawyer.
      * Note: If the lawyer takes extra study to acquire competency, he may bill the client accordingly, provided his fee is reasonable.
  + LAWYERS RESPONSIBILITIES AS AGENTS
    - LAWYERS ARE AGENTS OF THEIR CLIENTS, CLIENTS ARE PRINCIPALS. This means the client is bound by whatever the lawyer decides to do.
    - Authority may be express, implied or apparent.
      * BUT, generally, the lawyer does not have the authority to settle the client’s case, unless the client expressly gives such authority.
  + CONTRACTUAL LIMITS ON REPRESENTATION
    - A lawyer may “limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” (Rule 1.2(c)).
    - There are limits – a lawyer cannot waive the duty of competent representation.
  + Clients with diminished capacity (or juveniles):
    - The lawyer should attempt to maintain a “normal” lawyer-client relationship. (Rule 1.14).
    - Factors to weigh in judging mental capacity:
      * Client’s ability to articulate reasoning leading to a decision;
      * Variability of state of mind;
      * Ability to appreciate consequences of a decision;
      * Substantive fairness of a decision;
      * The consistency of a decision with the known long-term commitments and values of the client.
  + **TERMINATION OF THE LAWYER-CLIENT RELATIONSHIP**
    - **Reasons for early termination:**
      * **When the client fires the lawyer (lawyer must withdraw).**
      * **When continued representation would involve unethical conduct (must withdraw).**
      * **When the lawyer wants to terminate the relationship and there would be no “material adverse effect on the interests of the client” (may withdraw).**
      * **When the client stops paying the fee (may withdraw).**
      * **When the case imposes an unreasonable financial burden on the lawyer (may withdraw).**
      * **When the client will not cooperate and is being “unreasonably difficult” (may withdraw).**
    - Duties to the client at the conclusion of the relationship:
      * IF THE CLIENT HAS PAID:
        + Most lawyer-client relationships end when all the work on the relevant matter has been completed. When the work is finished, the lawyer must return to the client “any papers and property to which the client is entitled” and must return any unearned payment to the client that may have been made (i.e. retainers).
      * IF THE CLIENT HAS NOT PAID (OR FEE IS DISPUTED):
        + The lawyer may retain the documents that the lawyer created for the client for which compensation has not been received, unless retention would “unreasonably harm the client.”
        + The lawyer may also hold on to any disputed portions of retainers.
* **duty of confidentiality**
  + **General Rule: A lawyer is obligated to keep confidential all information “relating to representation of a client” (that is not generally known). (Rule 1.6).**
    - **Exceptions (where lawyer MAY disclose) (Rule 1.6):**
      * **Where sharing the information will “prevent against reasonably certain death or substantial bodily harm” [against anyone by anyone];**
      * **Where the client has revealed intent to commit a crime or fraud;**
      * **Where there is reasonable certainty that the client’s conduct will result in substantial financial injury to the property of another person.**
    - **The lawyer is allowed to reveal information about client crimes and frauds ONLY IF the lawyer’s services were used in the perpetration of the criminal or fraudulent act.**
    - Under the Restatement, the lawyer must only keep the information confidential if “there is a reasonable prospect that doing so will adversely affect a material interest of the client, or the client has instructed the lawyer not to use or disclose such information.”
    - This may include that the lawyer is even representing the client, based on the client’s wishes.
  + When the lawyer may reveal:
    - The lawyer may reveal confidences to the extent necessary for the lawyer to obtain advice about complying with the rules of professional conduct. (Rule 1.6(b)(4)).
    - The lawyer may also reveal confidential information to the extent necessary to protect their own interests (i.e. against an allegation of misconduct) (Rule 1.6(b)(5)).
    - The lawyer may also reveal to comply with a law or court order. (Rule 1.6(b)(6)).
  + Purpose: To facilitate and encourage open communication between lawyers and clients.
  + What happens if the lawyer fails to protect confidences:
    - Her client may be harmed.
    - The lawyer may be:
      * Subject to professional discipline,
      * Liable in tort or contract for tort or intentional breach of duty,
      * Disqualified from representation of one or more clients, or
      * Enjoined by a court from further revelation
* **Attorney-Client Privilege**
  + Basic difference from Duty of Confidentiality
    - Duty to protect confidences is imposed by ethical rules, and privilege is evidence law.
    - Privilege provides that neither lawyer nor client may be compelled to testify about protected communications; the ethical rules require lawyers to protect confidential information, even if someone is not compelling the information in court.
    - Confidentiality covers all information “relating to the representation” that a lawyer obtains; privilege covers only communications between layer and client in which the client is seeking legal advice or other legal services.
  + Elements of attorney-client privilege
    - = COMMUNICATION + IN CONFIDENCE + FOR PURPOSE OF OBTAINING LEGAL ADVICE
    - Communication
      * Between lawyer (or agent of lawyer) and client
      * May be ANY mode of communication
      * Protects ONLY communication itself, not underlying facts, client identification, etc.
    - In Confidence
      * The client must REASONABLY BELIEVE that the communication is confidential.
    - For the purpose of obtaining legal assistance:
      * The client must be obtaining legal assistance – not business or personal advice. If the conversation has multiple parts, ONLY the legal assistance conversation is privileged.
  + exceptions to privilege – There is no privilege if…
    - The client seeks assistance with a crime or fraud:
      * the issue is whether the client intends to commit a crime/fraud, not whether they knew it was a crime, or that they actually carry it out.
      * Conversation is still privileged if the client is seeking advice about whether an action is legal – the problem occurs when the client is seeking advice about how to further their act.
      * Conversation is still privileged if the client is inquiring about a PAST act (NOT a continuing crime that results from a past act).
  + special cases:
    - JOINT REPRESENTATION CASES
      * If two clients hire a lawyer jointly, they are considered common clients with a common privilege.
      * The information between parties is however NOT privileged in a future case where the parties are adversaries.
    - corporate representation
      * The scope of the privilege to officers/employees of the corporation depends on the subject matter of the communication, not on who was doing the communicating.
      * Two tests:
        + Control group: Privilege only extends to corporate officials who have authority to mold organizational policy or take action in accord with the lawyer’s advice.
        + Subject matter test: Privilege extends to any employee of the corporation, so long as the communication relates to the subject matter of representation.
      * Because the lawyer represents the corporate entity, if the interests of an individual employee are adverse (i.e. pointing fingers), there is a conflict 🡪 lawyer must get consent to proceed.
      * Lawyer who represents corporation SHOULD NOT also represent the corporation’s customers.
  + WAIVER
    - can only be waived by the client (i.e. lawyer can only waive if the client authorizes it).
    - Waiver may occur by:
      * Inaction (series of events)
      * If the client or lawyer reveals the information to a non-privileged person.
      * NOT by mere negligence of the lawyer.
      * NOT by complying with court order to disclose information.
      * NOT by client death.
    - Waiver may be partial or entire.
  + work product doctrine
    - Protects notes and other material that a lawyer prepares “in anticipation of litigation” (but not documents ordinarily prepared in the organization’s business). This goes further than attorney-client privilege.
    - NOT ABSOLUTE: A judge can order disclosure of written or oral information if the opposing party can show “substantial need” for the material and that the opposing party is “unable without undue hardship to obtain the substantial equivalent” of the material by other means.
* **duty of competence**
  + **RULE: a LAWYER SHALL PROVIDE COMPETENT REPRESENTATION TO A CLIENT. (Rule 1.1).**
  + **Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**
  + Also, the skills necessary to “do good work” are part of competence – ability to read, interpersonal skills, diligence, care, creativity, etc.
  + When lawyers are charged with lack of competence, the charge usually accompanies neglect of client matters, failure to communicate, negligence, etc.
  + In criminal cases:
    - Defendants may appeal based on “ineffective assistance of counsel” (a 6th Amendment violation). Most judges are however unlikely to grant such an appeal, unless the representation was really awful + better representation would have made a difference.
* **duty of diligence**
  + **LAWYERS HAVE A DUTY TO DO THE WORK THEY HAVE BEEN HIRED TO DO + DO THE WORK WITHOUT UNDUE DELAY. (Rule 1.3).**
  + Note: A lawyer is not excused from the duty of diligence on a case if they leave a law firm, unless they formally withdraw from representation.
* **duty of candor**
  + **GENERAL RULES:**
    - **a lawyer must keep the client “reasonably” informed about the “status” of a “matter” and explain the work to the extent “reasonably necesssary” to permit the client to make “informed decisions” regarding representation. (Rule 1.4)**
    - **LAWYERS ARE PROHIBITED FROM ENGAGING IN “CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION.” (Rule 8.4(c)).**
    - **IN THE ROLE OF A COUNSELOR, A LAWYER SHALL EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT AND RENDER CANDID ADVICE. A lawyer may refer not only to law but other considerations, such as moral, economic, social and political factors that may be relevant. (Rule 1.2).**
  + A lawyer is also required to provide information to a client about matters that require informed consent, about which a client must make a decision, about the status of a matter, and about matters on which the client has requested information. (Rule 1.4).
  + Not clear whether the rule really requires utmost honesty to all parties.
  + Factors that might say a lie is “justifiable”:
    - Is the subject lied about either trivial or private?
    - Is anyone harmed by the lie?
    - Is the purpose to protect someone?
    - Does the person being lied to have a right to know the truth?
    - Is there a reason to tell the lie, or can the problem be solved without lying?
    - If you tell this lie, will you need to tell other lies to cover up the first one?
* **conflicts of interest**
  + **Present clients GENERAL RULE = [INSERT RULE 1.7 HERE]. Lawyers should “adopt reasonable procedures, appropriate for the size and type of firm/practice, to determine both in litigation and non-litigation matters the persons and issues involved” for the purpose of indentifying conflicts.**
    - Direct adversity = when the lawyer’s conduct on behalf of one client requires the lawyer to act against the interests of another current client.
    - Material limitation = if representation of one client would be “materially limited” by another responsibility of the lawyer.
      * (ex. obligations to another present client, a former client, someone else to whom a lawyer owes a duty, someone other than the client who is paying the lawyer’s fee, or the lawyer’s own financial, employment, personal or other interests)
    - Informed consent = the lawyer must communicate to a client all the information needed (risks, advantages, possible alternatives) for the client to understand the possible adverse effects that might befall the client if she waives the conflict, and this should be confirmed in writing.
  + **imputation of conflicts:**
    - **general rule: a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client. (Rule 1.10).**
      * If the conflicted lawyer leaves the firm, the remaining lawyers are no longer infected by the ex-lawyer’s conflict UNLESS the new matter is substantially related to the old matter AND one of the remaining lawyers possesses material confidences from the work.
      * If a conflicted lawyer at a new firm is caused by a lawyer’s former work as a non-lawyer, they can be screened off from the conflict. If it comes from prior lawyer work, the conflict is now imputed to the entire firm.
      * SCREENING: Some states allow firms to “screen” the conflicted lawyer from any contact with the matter that causes the conflict to allow firm representation.
        + Screening CANNOT remedy conflicts between two present clients in a firm or for conflicts between a present and former client of the same firm.
        + Steps to screening:

Tell all other lawyers in the firm not to discuss the matter with the isolated former lawyer.

Prohibit all discussion of the matter in the presence of the lawyer.

Bar lawyers from allowing the isolated lawyer to have access to any relevant documents.

Keep all relevant documents in a locked file cabinet.

* + **representing multiple clients:**
    - General Rules:
      * A lawyer representing multiple clients should not regard himself as a “mere scrivener” who is simply recording preferences – he must still offer competent representation.
      * The lawyer owes both clients a duty of loyalty, which might be compromised if the lawyer keeps secrets from either client 🡪 important that clients understand effect of joint representation on confidentiality.
      * If one client ends up suing another, the lawyer may not continue representing both clients 🡪 lawyer should withdraw from representing one client, and may get consent from withdrawn client to represent the other.
    - Criminal Co-Defendants
      * Clients may waive conflict, but the judge may still disqualify counsel if there is a “great risk of prejudice” resulting from the conflict.
      * Joint representation may involve significant sacrifice of the interests of one client on behalf of another (i.e. plea agreements, one testifying against another, etc).
      * Affects the defendant’s 6th Amendment Right to Counsel
    - Representing both spouses in a divorce or family members in estate planning:
      * Substantive family law varies by state; remember to ask if can represent under general conflict rules.
    - Representing insurance companies and insured persons:
      * If the lawyer is working for an insurance company but hired to handle a matter for an insured person, the insured is always a client, and the insurance company may or may not be. The lawyer can represent both, as long as there is no conflict.
      * The lawyer CANNOT reveal confidential information from insured person to the insurer.
      * If the damage award may exceed the amount covered by insurance policy, a conflict may exist.
    - Representing plaintiffs in class action suits:
      * If the clients concerns and desired remedies are more common that conflicting, and the claims are too small to justify the costs of individual litigation, a class action could be a proper strategy.
      * May be conflicts among members of class. Lawyer considering filing a class action must discuss potential risks and benefits in detail with individual clients.
  + **conflicts caused by former clients**
    - Former = Lawyer has formally concluded representation (usually).
    - **general rule: [insert rule 1.9]. A lawyer’s duties to a former client are limited mainly to protecting confidences, avoiding side-switching, and refraining from attacking the work the lawyer did for the former client.**
      * A lawyer may not do work on behalf of a new client if that work involves “the same or a substantially related matter” as a former representation and the new client’s interests are “materially adverse to the interests of the former client,” unless the former client gives informed consent in writing. (Rule 1.9(a)).
      * “matter” = a subject of representation
      * “substantial relationship” = asks whether the lawyer, in the course of her work on the first matter, would normally have learned information that could be used adversely to the former client in the second. Issue is COMMON FACTS.
      * “information” = facts, how the client approaches legal disputes, etc.
      * “representation” = we consider how much responsibility the lawyer had on the matter, how long they were on it, etc.
    - If information about former clients is made public or becomes outdated, the lawyer is not precluded from representing the new client based on that knowledge.
    - Difference between conflict with former client and all present clients:
      * The conflict caused by the former client is always consentable.
      * For former, must have “substantial relationship”; for current, ANY client counts.
  + How to evaluate/resolve a conflict:
    - 1 – clearly identify the clients and determine whether each is a present or former client;
      * How to determine whether former or present client:
        + Length of representation – how long and when
        + Kind of interactions
        + Any formal termination of representation or agreement as to duration
    - 2 – determine whether a conflict of interest exists;
    - 3 – decide whether the lawyer is permitted to represent the client despite the existence of a conflict (i.e. consentable?);
      * CONFLICTS THAT ARE NOT CONSENTABLE:
        + Where the lawyer would represent opposing parties in the same litigation.
        + Where representation is prohibited by law.
    - 4 – if the conflict is consentable, consult with the client affected and receive their informed consent.
  + Possible consequences of representing a client in the face of a conflict:
    - Legal sanctions:
      * Disqualification
      * Discipline
      * Malpractice liability
      * Injunction against representation (transactional case)
      * Fee forfeiture
    - Business Repercussions:
      * Client may retain a different lawyer
      * Client may mistrust lawyer
      * Professional reputation may suffer
* **prohibition from advising or assisting client’s crimes or frauds** 
  + **“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.” (Rule 1.2(d).**
    - **Fraud = “conduct that is fraudulent under substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.”** It is NOT “merely negligent misrepresentation or negligent failure to apprise another of relevant information.”
    - This may include an act by the lawyer, a failure to act, or a material misrepresentation (including an omission or half-truth).
    - Purpose:
      * To encourage frank communication between clients and lawyers,
      * To prevent harm to the public,
      * To protect the “integrity of the profession” by allowing lawyers to blow the whistle if their own work is being used to commit crimes or frauds.
  + General rule for corporations: the lawyer must report misconduct to highest corp. authorities, and may report to public officials.
  + For lawyers who practice before the SEC:
    - Lawyers are required to report any information about securities fraud to the highest officials of the corporation.
    - If the fraud is likely to harm investors, the reporting lawyer MAY report the matter to the SEC.
* **duty to the courts**
  + Two basic views of lawyer’s role: hired gun v. officer of the court
  + **Investigation needed before filing a complaint:**
    - **Basic Rule: Lawyers are not expected to limit themselves to filing “sure winners,” but they are not allowed to file “frivolous” lawsuits that have virtually no chance of succeeding. (Rule 1.3)**
      * **Also: FRCP 11 – A party’s legal theory must be “warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.” Factual assertions must have “evidentiary support or, if specifically so identified, be likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.”**
        + Difference between Ethics Rule 3.1 and FRCP 11:

Sanctions:

Violation of Rule 3.1 can result in bar disciplinary action against an attorney.

Violation of FRCP is punished by a judge in a civil action, and can result in non-monetary directives or monetary sanctions against a lawyer or a party.

“Safe Harbor”

FRCP 11 has a “safe harbor” provision not found in Rule 3.1.

If an opposing party makes a motion complaining that a lawyer has violated FRCP 11, the lawyer may withdraw the allegedly frivolous pleading within 21 days after the opposing counsel’s motion and suffer no sanction other than having to pay the attorneys’ fees that the opposing party incurred for making the motion.

Although Rule 1.3 has no safe harbor provision, a bar counsel would be unlikely to file a charge against a lawyer for filing a frivolous pleading that the later withdrew because of FRCP 11.

* + - What this means: Facts need not be “fully substantiated” before suit is filed, and discovery may be needed to “develop vital evidence.” BUT, lawyers must “inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith arguments in support of their clients’ positions.” (Rule 1.3, comment 2)
    - Consequences of filing frivolous pleadings:
      * Rule 1.3 – sanction, etc.
      * FRCP – civil sanctions
      * Liability for malicious prosecution tort – Plaintiff must prove:
        + That she won the previous suit in which she was a defendant,
        + That the prior suit was brought without probable cause,
        + That the prior suit was brought with malice, and
        + That the plaintiff was injured despite having won the prior suit.
        + BUT, A lawyer can prove that there was “probable cause” for the previous suit, defeating a claim for malicious prosecution, if the lawyer had a “reasonable belief” that facts could be established and that, under those facts, the client had a valid claim.
  + **Truthfulness in Litigation**
    - **Basic Rule: Once a case has been filed, the lawyers are bound by court rules and ethical rules to be honest with the tribunal. (See Rules 3.3 and 8.4(c)).**
    - **Lawyer’s duties if a client or witness intends to give false testimony:**
      * **Basic Rule: If a lawyer KNOWS the evidence is false, he may not present it. If a lawyer REASONABLY BELIEVES that the testimony is false, he may either choose to give the client/witness the benefit of doubt and present it, or refuse to offer it. BUT, if the person testifying is a criminal defendant, the lawyer MUST allow the testimony.**
      * A lawyer or witness that lies under oath may be found guilty of the crime of perjury.
      * When coaching a witness before testimony, a lawyer must be sure that they are not encouraging false testimony.
    - **Concealment of Evidence:**
      * **Basic Rule: A lawyer SHOULD NOT conceal evidence. (Rule 3.4(a)).**
      * **Duties in respect to evidence of crimes:**
        + **When the duty begins:**

**If a lawyer has no knowledge that a violation of law has been committed and no criminal investigation is foreseeable 🡪 no duty.**

**If the investigation has begun or is about to be instituted 🡪 duty to turn over evidence.**

* + - * + In criminal cases, prosecutors may not use discovery to obtain information from defendants. If a prosecutor requires a suspect to answer questions before a grand jury, the suspect may refuse to testify to avoid self-incrimination.
        + If a lawyer for a suspect in a criminal case were to take possession of physical evidence, the lawyer could help the client to avoid prosecution by hiding it.
        + On rare occasions, judges grant warrants to search lawyer’s offices, but because such searches could breach attorney-client privilege in all of the lawyer’s cases, prosecutors are reluctant to ask for such searches and judges hesitate to authorize them.
        + **The Rule does not prohibit all concealment or destruction of evidence but only “unlawful” concealment or destruction.** Nor does the rule prohibit concealment or destruction of every object or document in the possession of a suspect or other witness, but only material having “potential evidentiary value.” 🡪 MAY GIVE THE ATTORNEY MORE ROOM TO CONCEAL EVIDENCE IN CIVIL CASES (i.e. not share until discovery).
        + **If the conduct at issue would violate a criminal obstruction of justice statute, the destruction or concealment is unlawful. If the conduct violates a court order, it is unlawful because it is a contempt of court. Similarly, a lawyer may violate Rule 3.4(a) by failing to comply with a discovery request or with discovery rules imposing an ongoing duty of disclosure.**
        + Suggestions for dealing with evidence of a crime:

If a client tells a lawyer about the location of evidence, the lawyer may inspect the evidence but should not disturb it or move it unless doing so is necessary to examine or test the evidence.

If the lawyer merely inspects the evidence without disturbing it, the lawyer’s knowledge of its location remains privileged.

In many states, a lawyer may take temporary possession of client crimes for the purpose of conducting a limiting examination. Applicable law may require the lawyer to turn evidence over to the police/prosecuting authority.

If a client delivers physical evidence of a crime to a lawyer, the lawyer must turn the evidence over to law enforcement authorities within a reasonable period of time. This rule applies to documents and physical evidence.

A prosecutor who receives evidence of a crime from the lawyer for a suspect should take steps to avoid revealing to a jury the fact that the incriminating evidence came from the defendant’s lawyer.

* + - * **In Civil Cases:**
        + **Obligations governed by civil discovery rules + professional responsibility rules.**
        + **When the duty arises:**

**When a civil case is commenced 🡪 lawyer must disclose based on discovery rules.**

**Some laws require the preservation of business records for specified periods of time even when no dispute is foreseeable.**

* + - * Consequences of concealing evidence:
        + Ethics rule violation.
        + Possible federal obstruction of justice statute violation (statute prohibits the concealment, alteration, and destruction of documents by any person who knows that the documents are covered by grand jury subpoena.
    - **Adverse legal authority:**
      * **A lawyer may not knowingly fail to disclose legal authority in the controlling jurisdiction that the lawyer knows is directly adverse to her client’s legal position, if their opponent has not already informed the judge of the adverse authority.**
      * **The lawyer DOES NOT have to disclose:**
        + **Adverse law from another jurisdiction.**
        + **Authority that is not “directly adverse” – does not have to disclose bad dictum or holdings.**
        + **Persuasive authority, such as statements in treatises and law review articles, need not be disclosed.**
      * Reason for rule: We think cases should be decided within the complete framework of the law.
    - **Disclosures in Ex-Parte Proceedings (Rule 3.3(d)).**
      * **Rule: A lawyer must inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.**
      * BUT, ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE STILL APPLY.
  + **DUTY TO REFRAIN FROM IMPROPER INFLUENCES ON JUDGES AND JURIES** 
    - **Basic Rule: A lawyer may not seek to influence a judge, prospective juror or other official by means prohibited by law. (Rule 3.5(a)).**
    - **Relationship with Judges**
      * **Ex Parte Communication**
        + **Basic Rule: A lawyer must not communicate with a judge about a pending case, orally or in writing, unless the lawyers for all parties to the case are privy to the communication. (Rule 3.5(b)).**
        + A lawyer may have a personal friendship with a Judge, but should be sure to avoid communications about their cases.
        + Lawyers ARE allowed to call judges’ secretaries or clerks to make minor, routine procedural inquiries about pending cases without having to notify the other parties.
      * **Campaign Contributions**
        + **Basic Rule: It is generally not improper for a lawyer to make a contribution to a judge’s campaign,** but many states set limits on the amount of money a judge may receive from a lawyer without having to disqualify himself from all proceedings in which the lawyer is involved.
    - **Relationship with the Jury**
      * **Basic Rule: Lawyers may not communicate directly with jurors during a proceeding unless permitted by law or by the judge.**
      * **“Advocate-Witness Rule” (See Rule 3.7).**
        + Two purposes:

To avoid any situation that could prejudice the tribunal and the opposing party;

To avoid a conflict of interest between the lawyer and client.

* + - * **Lawyers should avoid attempting to appeal to jurors’ racial and other prejudices. (Comment to Rule 8.4).**
      * **Interviewing Jurors Post-Trial (See Rule 3.5).**
* **Duties to adversaries and 3rd parties**
  + **cOMMUNICATIONS BETWEEN LAWYERS AND 3RD PERSONS**
    - **Deception of 3rd parties**
      * **Basic Rules: A lawyer has a duty to avoid making material false statements. (See Rule 4.1(a)).**
      * What about a false statement by a client in the lawyer’s presence?
        + The lawyer would be foolish to allow her client to lie 🡪 possible obstruction of justice charge for client.
        + Could be argued that the lawyer’s presence during the client’s false statement is a “use” of the lawyer’s services to commit a fraud under Rules 1.6(b) and 4.1(b).
      * What about in making investigations?
        + Some courts exclude evidence obtained by misrepresentations, others allow it.
        + At least one bar association has issued an opinion endorsing misrepresentations by investigators as a means to obtain evidence.
      * During negotiations?
        + The text of Rule 4.1 does not allow lawyers to lie for the purposes of bargaining (b/c it does not allow a lawyer to knowingly make a false statement of material fact).
        + But, the comment justifies a “negotiation” exception to the requirement of honesty.
    - **Receipt of inadvertently transmitted information:**
      * **See Rule 4.4(b).**
      * For metadata:
        + Metadata = Data that does not appear in print but that is embedded in electronic copies of documents. Can reveal who worked on a document, what changes were made, content of supposedly deleted suggestions from one person to another.
        + Even though documents can be “scrubbed,” and transmission of metadata avoided, many lawyers are not aware of the risks associated with the electronic transmission of documents, so metadata remains commonplace.
        + If a lawyer e-mails a document containing metadata to another lawyer, may the receiving lawyer “mine” it for the metadata?

States differ on the issue.

* + - **Contact with Represented Persons**
      * **See Rule 4.2 – applies to communications initiated by the lawyer AND to those initiated by the represented person.**
      * Role of Paralegal/Investigator:
        + A lawyer can’t get around this rule by having a paralegal or investigator, etc call the opposing party 🡪 Lawyer cannot attempt to violate rule “through the acts of another.” (Rule 8.4(a)).
      * Role of Client:
        + If the lawyer initiates discussion with the client and essentially uses the client to obtain from the other party information that the lawyer wants to obtain, the lawyer’s involvement is not proper.
    - **Contact with Unrepresented Persons**
      * **Basic Rule: A lawyer must not mislead the unrepresented party about the fact that the lawyer is representing a client. She should not give advice to the unrepresented person except for advising the person to get a lawyer. The lawyer may prepare relevant documents for both parties to sign, etc. (See Rule 4.3).**
      * Why have rules about contact:
        + There is a risk that the lawyer will take advantage of his greater knowledge and sophistication.
        + There is a risk that the unrepresented person will not understand if the lawyer is representing a client whose interests are adverse to his.
        + The unrepresented person may provide information or agree to settlement terms that he would have rejected if he had obtained the advice of a lawyer.
  + **Duties of Prosecutors:**
    - **Basic Rule: The rules of contact apply uniformly to all lawyers, but prosecutors have some extra duties because of their prosecutorial role.**
    - **Required investigation by prosecutors before charges are filed:**
      * **Basic Rule: The prosecutor must have probable cause (= something more than a “reasonable suspicion”). (Rule 3.8).**
    - **Concealment of exculpatory evidence:**
      * **Basic Rule: Prosecutors must disclose exculpatory evidence to the defense, even if the defendant has not requested it. (Rule 3.8(d)).**
* **DUTY TO ENGAGE IN PRO BONO WORK**
  + The Unmet Need for Legal Services
    - Only 39% of the moderate-income households and 29% of the low-income households turn to the civil justice system for assistance – the majority either tried to solve the problems themselves or sought help from someone other than a lawyer, or took no action.
    - 1994 study – 80-90% of the poor in America do not have access to legal services
    - Situations where people desperately need lawyers:
      * When they have been arrested and face possible imprisonment.
      * If someone is about to be evicted, etc.
      * Where a person faces domestic violence or termination of parental rights or child custody.
  + **Sources of free legal services for those who cannot afford legal fees:**
    - **Criminal defendants have a constitutional right to counsel for indigent litigants.**
      * Where counsel comes from: volunteer lawyers; lawyers may be appointed without fees; some states make contracts with lawyers who provide defense services to indigents at fixed fees/hourly rates.
      * **See Rule 6.2 – Accepting appointments.**
    - **Civil legal aid**
      * **No constitutional right to counsel in civil cases.**
        + But, there is a possible argument that the Due Process Clause requires appointment of counsel for indigent civil litigants when, under the circumstances, proceeding without such counsel would be fundamentally impaired, but courts have rarely applied it to provide counsel.
      * Other types of aid:
        + Legal Services Corporation

= Congress, state and local governments, and private donors have created a network of salaried legal aid lawyers who provide advice and representation to some poor people 🡪 pays for about 1/3 of civil legal services

* + - * + Programs funded by foundations, charitable donations, and other sources.
        + Students in law school clinics contribute time in uncompensated service to poor people.
        + IOLTA – “interest on lawyers’ trust accounts”.

All 50 states have IOLTA programs, but they are controversial.

* + - **Fee-shifting statutes** 
      * **In a number of statutes, particularly civil rights and consumer protection laws, Congress and the state legislatures have included fee-shifting provisions to encourage plaintiffs to bring cases to enforce the statutes. Most of these laws allow courts to order a losing party to pay the prevailing party’s lawyers’ fee, thereby “shifting” that cost.**
    - **Pro bono representation**
      * **Basic Rule: Lawyers are encouraged to spend at least 50 hours per year providing pro bono assistance to those in need. (Rule 6.1).**
    - **Loan forgiveness and scholarships for public service lawyers**
      * **Why? Another strategy for expanding the resources available to those who cannot pay for them is to remove the barriers to public service caused by the very high cost of attending law school.**
      * How this is occurring:
        + Many law schools have created public interest law scholarship programs.
        + 2007 – College Cost Reduction and Access Act – Congress created an income-based repayment plan for paying off educational debt. Creates a loan forgiveness program for all borrowers, including lawyers, who spend 10 years of full-time employment in public service.
  + **Restricting legal services: limiting the role of lay advocates**
    - **Today nearly every state has a statute barring nonlawyers from practicing law or a court doctrine permitting the state bar association or state officials to bring suits to enjoin unauthorized practice 🡪 this arguably is part of the reason there is a shortage of legal services for low-income individuals.**
* **legal fees**
  + **BASIC RULE: fEES MUST BE REASONABLE. (See Rule 1.5(a) for guidelines for what is “reasonable.”) A LAWYER MUST DISCLOSE THE BASIS OR RATE OF FEE AND EXPENSES TO BE CHARGED before or within a reasonable time after commencing the representation.**
    - disclosures suggested: the basis, rate or total amount of the fee and any costs or expenses and disbursements that will be charged to the client.
    - Examples of “unreasonable” fee tactics:
      * If the lawyer does not have records to show how much time was spent and what was done during that time.
      * If the fee was disproportionate to the services provided.
  + Lawyer-Client Fee Contracts
    - When a client hires a lawyer to represent them, the client and lawyer enter into a contract – either oral or a formal written agreement. All of the usual rules of contract law apply.
    - Communication about fee arrangements:
      * In writing?
        + ONLY CONTINGENT FEE agreements must be in writing.
      * Modification of fee arrangements?
        + Follows contract law – an agreement modifying an initial contract is enforceable if it is “fair and equitable in view of circumstances not anticipated by the parties when the contract was made.”
      * Some courts hold that the lawyer can simply notify the client of a rate change, others say that the lawyer must get consent before raising fees.
    - **Lien on property:**
      * **basic rule: a lawyer may acquire a lien authorized by law to secure the lawyer’s fee or expenses. (Rule 1.8(i)).**
      * **But, a lien acquired on property would likely constitute a business transaction, so the client is entitled to fair terms, a clear explanation of the terms in writing, and written encouragement and opportunity to seek the advice of an independent lawyer before the client agrees to give a lawyer a lien on the property. (Rule 1.8(a) comment).**
    - Conflicts:
      * Most conflicts about fees are caused by inadequate disclosure about fees at the outset of the representation or inadequate consultation with the client about fees as the representation progresses.
      * If a lawyer withdraws from representation with good cause, the lawyer is entitled to payment for the work done. If they withdraw without good cause, it may be looked at as a breach of contract, and the lawyer may forfeit right to recover fees.
      * **If there is a dispute about the amount of the fee, the lawyer is to distribute undisputed portions of the settlement (or leftover retainer) and keep the disputed portions in the client trust account. (Rule 1.15(e)).**
      * **For limitations on lawyer’s liability in fee disputes:**
        + See Rule 1.8(h).
        + **Basic Rule: A lawyer may settle with a client who does not have independent legal advice, but the lawyer must advise the client in writing that it is a good idea to get advice from another lawyer before making such a settlement.**
        + **Think Business Organizations – may form a Corp or LLP or other entity that may give lawyers less liability. But, this is okay, ONLY IF “the lawyer remains personally liable to his client for his or her own conduct.” (Rule 1.8)**
      * Fee Arbitration:
        + Comment to Rule 1.5 – If a jurisdiction has set a mandatory mediation or arbitration process for resolution of fee disputes, a lawyer must comply with it. If the available process is voluntary, the comment urges that a lawyer “should conscientiously consider submitting to it.”
        + The ABA Ethics Committee has concluded that an agreement to go to arbitration in the retainer agreement is proper, as long as the client is carefully advised to the advantages and disadvantages of arbitration, the client gives informed consent, and the provision does not insulate the lawyer from liability that might otherwise be imposed by law.
      * Collection of Fees:
        + If the client doesn’t pay, the lawyer may…

Contact the client to request payment.

Sue the client to collect the fee.

Use a collection agency, as long as they do not use improper methods of fee collection.

* + - * + Lawyers ARE subject to the Fair Debt Collection Practices Act. This means that they should not…

Commit any acts of harassment against a debtor or make a frivolous claim,

Retain documents or unearned fees that should not be turned over to a client as leverage to secure payment of fees,

Make any false or misleading statements about the fee claim,

Reveal information to a third party (or threaten to do so) to get a client to pay a fee.

* + - Retainers:
      * Retainer = advance payment to which the lawyer charges fees against as they are earned.
        + The advance is deposited in the lawyer’s client trust account, and the lawyer withdraws portions of the advance as they are earned. At the end of representation, the unearned portion of the advance must be returned to the client.
      * Another type of retainer is a lump-sum payment paid in advance to secure the lawyer’s availability for period of time or for a particular task.
    - Contingent Fees
      * NOT ALLOWED IN CRIMINAL OR DOMESTIC RELATIONS CASES.
      * No limit in the rules as to what percentage of recovery the lawyer can take, but must still meet the Rule 1.5 “reasonable” requirement.
      * Two types:
        + The contingent fee the lawyer receives is calculated as a percentage of the client’s recovery.
        + Client pays an hourly fee or flat fee, but pays the lawyer an additional fee if a specified result is achieved.
      * Positives of contingent fees:
        + Allow access to justice for people who otherwise cannot afford a lawyer.
        + Use of a contingent fee usually aligns the interests of lawyer and client – the better the client does, the better the lawyer does.
  + Fees & Law Firms
    - Reasons why overbilling may occur:
      * Some lawyers do not perceive that writing down phony hours is dishonest.
      * Lawyers make more money if they bill more hours, so the atmosphere may encourage billing more hours.
      * Partners may pressure their lawyers to bill a certain number of hours.
    - Guidelines for Ethical Billing:
      * A lawyer billing by the hour may not bill for more hours than she actually worked. The lawyer can however round up to the nearest billing increment.
      * No inventing hours that weren’t really worked.
      * No profits on costs – no additional billing for “overhead,” – that should be covered by the hourly fee.
      * No billing two clients for one period of time.
      * No billing a second client for recycled work.
      * No doing unnecessary extra work in order to justify billing more hours.
      * No billing clients or the firm for personal expenses or marking up expense receipts.
      * A lawyer should not bill at their hourly rate for clerical services.
      * Billing for time spent billing is improper.
  + **Sharing Fees**
    - **Basic Rule: Lawyers can share fees, but lawyers cannot share legal fees with non-lawyers. (Rules 1.5(e) and 5.4(a)).**
  + **Lawyer as custodian of client property and documents:**
    - **Basic Rule: Lawyers have a fiduciary duty to protect their clients’ possessions and to turn money and property over to clients upon request. (Rule 1.15).**
    - Client Trust Accounts:
      * If a lawyer takes possession of money from a client or third party in connection with representation, she must keep it “separate from the lawyer’s own property.” Lawyers should keep detailed records of deposits into and withdrawals from the client trust account. (Rule 1.15).
      * Property other than money must be “appropriately safeguarded,” and the lawyer must keep “complete records” of the funds or other property for a period specified by state rules.
    - Responsibility for Client Property
      * When a lawyer receives a settlement check or other funds that should be paid to a client, the lawyer is obligated to notify the client and to make prompt payment of all funds due to the client.
  + “Special” Money Issues
    - A collections lawyer can purchase claims from a client and pursue them on his own behalf, as long as the lawyer ceases representation of the client.
    - Lawyers may pay court costs and litigation costs for clients, but cannot pay living expenses or the like. (Rule 1.8(e)).
    - Publication Rights – see Rule 1.8(d).
    - A third party may pay a lawyer’s fee, but only if the client consents after being advised, the third person does not direct the lawyer’s decisions or otherwise interfere with the representation, and the lawyer avoids sharing with the third person any confidences learned in the course of the representation.
* **“PUNISHMENT” FOR BAD ACTS**
  + **Under the Ethics Code (Rules)**
    - How a Disciplinary case proceeds:
      * Complaint by Client or by a lawyer 🡪 bar counsel investigates complaint 🡪 complaint dropped if it doesn’t warrant charge, OR charges filed if warranted by investigation 🡪 hearing committee conducts hearing, makes factual findings, recommends sanction 🡪 hearing committee decision reviewed by judicial agency and/or by highest state court 🡪 reviewing body makes final decision on sanction
    - Common disputes with lawyers:
      * Fee disputes, including allegations that lawyers charged much more than they said they would and refused to give clients information about the basis for fees
      * Delays in completing work and low quality of performance
      * Conflicts of interest
      * Failure to keep confidences
      * Failure to perform promised services
    - **Liability for Others:**
      * **For an employee:**
        + **Partners and/or the managerial authority in a law firm must “make reasonable efforts” to ensure the firm employees conform to the Rules of Professional Conduct. (Rule 5.1)**
        + A lawyer may be disciplined for violating a rule by inducing/ assisting another person to do something that violates the rules.
        + **Supervising lawyers are liable for the ethical acts of lawyers they are supervising if they direct the act or know of the purported act and do not prevent it. (Rule 5.1)**
      * **For peers:**
        + **Most codes do not require lawyers to report every violation of a rule by another lawyer – they must just report those that raise “a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer.” (Rule 8.3)**
        + Duty is triggered by objective knowledge. Question is whether “a reasonable lawyer in the circumstances would have a firm opinion that the conduct in question more likely than not occurred.”
      * **For superiors:**
        + **Subordinate lawyers may be held accountable for unethical actions that they were ordered to undertake if the supervisor’s instruction was not based on a “reasonable resolution of an arguable question of professional duty.” (Rule 5.2)**
        + A lawyer who is told to do something that the lawyer thinks is unethical has several options:

Accept the directions of the superior

Argue with the superior

Discuss the problem with another superior

Do more research or investigation to try to clarify the problem

Ask to be relieved from work on the matter, or

Resign (or be fired) from employment

* + **Under civil/criminal law:**
    - Fiduciary duties are owed by a lawyer to a client:
      * Safeguarding the client’s confidences and property.
      * Avoiding impermissible conflicting interests.
      * Adequately informing the client.
      * Following instructions of the client.
    - **Legal malpractice:**
      * **= a claim brought against a lawyer for professional misconduct that is alleged to have caused (but for causation) harm to another person.**
      * Includes claims for: tort claim for negligence, breach of contract between lawyer and client, breach of fiduciary duty.
      * Client Remedies: Damages, injunction (for compliance), return of property, alteration or cancellation of a legal document, etc.
* **Miscellaneous**
  + Basic Bar Admission Requirements:
    - Graduation from an accredited undergraduate college;
    - Graduation from a law school that meets the state’s educational requirements;
    - Submission of an application for admission to the bar;
    - A finding that the applicant is of good moral character and is fit for the practice of law; and
    - A passing score on the bar examination administered by the state.
    - THESE MUST BE CONSISTENT TO YOUR LAW SCHOOL APPLICATION.
  + Bar Admission and Disciplinary Procedures (Rule 8.1):
    - An applicant for admission to the bar shall not:
      * Knowingly make a false statement of material fact; or
      * Fail to disclose a fact necessary to correct a misapprehension or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.
    - In order to become a lawyer and qualify to practice law, a prospective lawyer must comply with requirements of the jurisdiction related to education, other demonstration of competence (i.e. bar exam), and character. (Rstmt. Sect. 2)