

to be unlawful, even though there is some support for an argument that the conduct is legal.

§ 10.85 Representing a client within the bounds of the law.

(a) In representation of a client, a practitioner shall not:

(1) Initiate or defend any proceeding before the Office, assert a position, conduct a defense, delay a trial or proceeding before the Office, or take other action on behalf of the practitioner's client when the practitioner knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a practitioner may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the practitioner is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the practitioner knows or it is obvious that the evidence is false.

(7) Counsel or assist a client in conduct that the practitioner knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(b) A practitioner who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

§ 10.86 [Reserved]

§ 10.87 Communicating with one of adverse interest.

During the course of representation of a client, a practitioner shall not:

(a) Communicate or cause another to communicate on the subject of the representation with a party the practitioner knows to be represented by another practitioner in that matter unless the practitioner has the prior consent of the other practitioner representing such other party or is authorized by law to do so. It is not improper, however, for a practitioner to encourage a client to meet with an opposing party for settlement discussions.

(b) Give advice to a person who is not represented by a practitioner other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the practitioner's client.

§ 10.88 Threatening criminal prosecution.

A practitioner shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in any prospective or pending proceeding before the Office.

§ 10.89 Conduct in proceedings.

(a) A practitioner shall not disregard or advise a client to disregard any provision of this Subchapter or a decision of the Office made in the course of a proceeding before the Office, but the practitioner may take appropriate steps in good faith to test the validity of such provision or decision.

(b) In presenting a matter to the Office, a practitioner shall disclose:

(1) Controlling legal authority known to the practitioner to be directly adverse to the position of the client and which is not disclosed by opposing counsel or an employee of the Office.

(2) Unless privileged or irrelevant, the identities of the client the practitioner represents and of the persons who employed the practitioner.

(c) In appearing in a professional capacity before a tribunal, a practitioner shall not:

(1) State or allude to any matter that the practitioner has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the practitioner has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert the practitioner’s personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert the practitioner’s personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the practitioner may argue, on the practitioner’s analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Engage in undignified or discourteous conduct before the Office (see §1.3 of the subchapter).

(6) Intentionally or habitually violate any provision of this subchapter or established rule of evidence.

§§ 10.90–10.91 [Reserved]

§ 10.92 Contact with witnesses.

(a) A practitioner shall not suppress any evidence that the practitioner or the practitioner’s client has a legal obligation to reveal or produce.

(b) A practitioner shall not advise or cause a person to be sequestered or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein.

(c) A practitioner shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’ affidavit, testimony or the outcome of the case. But a practitioner may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending, testifying, or making an affidavit.

(2) Reasonable compensation to a witness for the witness’ loss of time in attending, testifying, or making an affidavit.

(3) A reasonable fee for the professional services of an expert witness.

§ 10.93 Contact with officials.

(a) A practitioner shall not give or lend anything of value to a judge, official, or employee of a tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action.

(b) In an adversary proceeding, including any *inter partes* proceeding before the Office, a practitioner shall not communicate, or cause another to communicate, as to the merits of the cause with a judge, official, or Office employee before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if the practitioner promptly delivers a copy of the writing to opposing counsel or to the adverse party if the adverse party is not represented by a practitioner.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a practitioner.

(4) As otherwise authorized by law.

§§ 10.94–10.99 [Reserved]

§ 10.100 Canon 8.

A practitioner should assist in improving the legal system.

§ 10.101 Action as a public official.

(a) A practitioner who holds public office shall not:

(1) Use the practitioner’s public position to obtain, or attempt to obtain, a special advantage in legislative matters for the practitioner or for a client under circumstances where the practitioner knows or it is obvious that such action is not in the public interest.

(2) Use the practitioner’s public position to influence, or attempt to influence, a tribunal to act in favor of the practitioner or of a client.

(3) Accept any thing of value from any person when the practitioner knows or it is obvious that the offer is for the purpose of influencing the practitioner’s action as a public official.

(b) A practitioner who is an officer or employee of the United States shall not practice before the Office in patent