

Alaska Bar Rules:

Rule 15. Grounds For Discipline.

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(b) Unauthorized Practice of Law.

(1) For purposes of the practice of law prohibition for disbarred and suspended attorneys in subparagraph (a)(6) of this rule, except for attorneys suspended solely for non-payment of bar fees, "practice of law" is defined as:

(A) holding oneself out as an attorney or lawyer authorized to practice law;

(B) rendering legal consultation or advice to a client;

(C) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body which is operating in its adjudicative capacity, including the submission of pleadings;

(D) appearing as a representative of the client at a deposition or other discovery matter;

(E) negotiating or transacting any matter for or on behalf of a client with third parties; or

(F) receiving, disbursing, or otherwise handling a client's funds.

(2) For purposes of the practice of law prohibition for attorneys suspended solely for the non-payment of fees and for inactive attorneys, "practice of law" is defined as it is in subparagraph (b)(1) of this rule, except that these persons may represent another to the extent that a layperson would be allowed to do so.

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Rule 61. Suspension for Nonpayment of Alaska Bar Membership Fees, Fee Arbitration Awards, and Child Support Obligation.

(a) Any member failing to pay any fees within 30 days after they become due shall be notified in writing by certified or registered mail that the Executive Director shall, on April 1, petition a Justice of the Supreme Court of Alaska for an order suspending such member for nonpayment of fees.

(b) The Executive Director shall annually notify the clerks of court of the names and date of suspension of all members who have been then or previously suspended and not reinstated.

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of \$10.00 per week of delinquency (each portion of a week to be considered a whole week) but not exceeding a total of \$160.00 in penalties shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

(2) Any member who has been suspended for a year or more, upon determination of character and fitness as set forth in Rule 2(1)(d) by the Board, upon payment of all accrued dues, in addition to a penalty of \$160.00, shall be reinstated upon certification by the Executive Director to the

Supreme Court and the clerks of court that the member meets the standard of character and fitness set forth in Rule 2(1)(d) and that dues and penalties have been paid.

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Rule 63. Unauthorized Practice of Law - AS 08.08.230.

For purposes of AS 08.08.230 (making unauthorized practice of law a misdemeanor), "practice of law" is defined as:

(a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and

(b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which affect legal rights or duties.

Alaska Rules of Professional Conduct

Rule 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal a client's confidence or secret unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation and disclosures permitted by paragraph (b) below or Rule 3.3. For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information.

(b) A lawyer may reveal a client's confidence or secret to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain:

(A) death;

(B) substantial bodily harm; or

(C) wrongful execution or incarceration of another;

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

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

(4) to secure legal advice about the lawyer's compliance with these Rules;

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

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

(c) A lawyer must act competently to safeguard a client's confidences and secrets against inadvertent or unauthorized disclosure by the lawyer, by other persons who are participating in the representation of the client, or by any other persons who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. When transmitting a communication that includes a client's confidence or secret, the lawyer must take reasonable precautions to prevent this information from coming into the hands of unintended recipients.

Rule 1.7. Conflict of Interest: Current Clients.

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

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

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

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

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

(2) the representation is not prohibited by law;

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

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

(c) A lawyer shall act with reasonable diligence in determining whether a conflict of interest, as described in paragraphs (a) and (b) of this rule or Rules 1.8, 1.9, or 1.10, exists.

(d) For purposes of this rule, the term "client" does not include unidentified members of a class in a class action or identified members of a class when individual recovery is expected to be *de minimis*.

Rule 1.13. Organization as Client.

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in conduct or intends to engage in conduct (whether act or omission) related to the representation that violates a legal obligation to the organization, or that constitutes a violation of law that might reasonably be imputed to the organization, and that this conduct is likely to result in substantial injury to the organization, then the lawyer shall take the steps reasonably necessary to protect the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to: (1) the seriousness of the violation and its consequences, (2) the scope and nature of the lawyer's representation, (3) the person's responsibility within the organization and the person's apparent motivation, (4) the policies of the organization concerning such matters, and (5) any other relevant considerations. Any measures taken by the lawyer shall be designed to minimize disruption of the organization and the risk of revealing client confidences and secrets to persons outside the organization. Such measures may include among others:

(1) asking for reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law. The lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law, unless the lawyer reasonably believes that this is not necessary or is not in the best interest of the organization.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to timely and appropriately rectify a threatened or ongoing action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal client confidences and secrets, whether or not Rule 1.6 would permit the disclosures, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) does not apply to client confidences and secrets relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the circumstances of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) "Constituents" denotes officers, directors, employees and shareholders of a corporate client, or positions equivalent to officers, directors, employees, and shareholders held by persons acting for an organizational client that is not a corporation.

Rule 4.2. Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a party or person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

(a) With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) a partner in a law firm, and a lawyer who individually or together with other lawyers has comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) the lawyer is a partner or the lawyer individually or together with other lawyers has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) A lawyer shall advise a nonlawyer who ends an association with the lawyer not to disclose confidences and secrets protected by Rule 1.6 that were learned by the nonlawyer during the association.

(c) A lawyer who employs, retains, or forms an association with a nonlawyer shall advise the nonlawyer not to disclose confidences and secrets protected by Rule 1.6 learned by the nonlawyer during an association with another lawyer. If the nonlawyer participated in a matter that would create a conflict of interest for a lawyer under Rule 1.7 or Rule 1.9, the nonlawyer shall be screened from any participation in the matter.

(d) A lawyer who learns that any person employed by the lawyer has revealed a confidence or secret protected by these rules shall notify the person whose confidence or secret was revealed.

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a lawyer who is deceased, disabled, or whose whereabouts are unknown may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or other association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 5.7. Responsibilities Regarding Law-Related Services.

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" means services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Rule 8.3. Reporting Professional Misconduct.

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate disciplinary authority unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers' or judges' assistance program.

Rule 8.5. Disciplinary Authority; Choice of Law.

(a) Disciplinary Authority. A lawyer admitted to practice in Alaska is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Alaska is also subject to the disciplinary authority of this state if the lawyer provides or offers to provide any legal services in this state. A lawyer may be subject to the disciplinary authority of both Alaska and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Alaska Evidence Rules

Rule 503. Lawyer-Client Privilege.

(a) **Definitions.** As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(2) A representative of the client is one having authority to obtain professional legal services and to act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The authority to do so is presumed in the absence of evidence to the contrary.

(d) **Exceptions.** There is no privilege under this rule:

(1) *Furtherance of Crime or Fraud.* If the services of the lawyer were sought, obtained or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(2) *Claimants Through Same Deceased Client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(3) *Breach of Duty by Lawyer or Client.* As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer; or

(4) *Document Attested by Lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) *Joint Clients.* As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.