

2018 Tax Court Judicial Conference, Ethics Panel, Authorities (Model Rules), Hypo. 9.

APPLICABLE ABA MODEL RULES (HYPO 9)

Rule 1.1: Competence

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

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

Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives **informed consent**, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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

....

(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**;

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer **shall not represent** a client or, where representation has commenced, shall withdraw from the representation of a client if:

(3) the client **has used the lawyer's services to perpetrate** a crime or **fraud**;

Rule 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

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(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

.....

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

Rule 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

....

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;