



IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

BURT NEWSOME, ET. AL.,  
Plaintiffs,

vs.

Case No.: CV-2015-900190

**HEARING DATE & TIME**

CLARK ANDREW COOPER, ET AL  
Defendants

*Tuesday, March 15, 2016 9:30 a.m.*

**SUPPLEMENT TO PLAINTIFFS' RESPONSE TO DEFENDANTS COOPER AND  
BALCH-BINGHAM'S AMENDED MOTION FOR SUMMARY JUDGMENT**

Comes now Plaintiffs and supplements their Response to Amended Motion for Summary  
Judgment of Defendants, Cooper and Balch-Bingham.

- Affidavit of Veronica Root

Respectfully submitted this the 11th day of March, 2016.

/s/Charles I. Brooks

Charles I. Brooks

Attorney for Plaintiffs

THE BROOKS LAW FIRM, P.C.

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Hueytown, Alabama 35023

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of this document on the following counsel of record by electronic filing and by placing same in the U.S. Mail first class postage prepaid:

S. Allen Baker  
Amelia K. Steindorff  
Balch & Bingham  
1901 Sixth Avenue North  
Birmingham, AL 35203

James E. Hill, Jr.  
Hill, Weisskopf & Hill  
Moody Professional Building  
2603 Moody Parkway, Suite 200  
Moody, AL 35004

Robert Ronnlund  
P. O. Box 380548  
Birmingham, AL 35238

on this the 11th day of March 2016.

**/s/ Charles I. Brooks**  
Charles I. Brooks

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

BURT NEWSOME, ET. AL.,  
Plaintiffs,

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Case No.: CV-2015-900190

CLARK ANDREW COOPER, ET AL  
Defendants

AFFIDAVIT OF VERONICA ROOT

Before Spitt Palka, the undersigned Notary Public for the State of Florida at Large, personally appeared Veronica Root, who says on oath as follows:

1. My name is Veronica Root,<sup>1</sup> and I am 33 years of age. I have personal knowledge of the facts stated in this affidavit.
2. I have been asked my opinion concerning the application of the Alabama Rules of Professional Conduct to certain emails sent by Clark Andrew Cooper that are implicated in Counts VI-VIII (Intentional Interference with a Business or Contractual Relationship) and Count IX (Defamation) of the complaint in this case.
3. *Qualifications.* My qualifications are as follows:
  - a. I am employed as an Associate Professor of Law at Notre Dame Law School, where I began teaching in 2014. Prior to this position, I was a Visiting Assistant Professor of Law at Notre Dame Law School from 2012 to 2014. I received my law degree from the University of Chicago Law School in 2008. From 2008-2009 I served as a law clerk on the U.S. Court of Appeals for the Fifth Circuit. From 2009-2012 I was an

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<sup>1</sup> My full legal name is Veronica Root Martinez.

associate attorney at Gibson Dunn in Washington, DC. During that time I represented clients in a variety of matters, including legal malpractice litigation.

- b. Since starting my career at Notre Dame, my primary areas of teaching have been Professional Responsibility, Corporate Compliance & Ethics, and Contracts. My scholarship is in the fields of compliance and professional ethics, and I am the author of several articles. Additionally, I have presented and taught several continuing legal education classes discussing lawyers' responsibilities under the Rules of Professional Conduct. You can find a fuller description of my background on my curriculum vitae, a true and correct copy of which is attached hereto as **Exhibit 1**. My opinions in this case are my own, not those of any organization with which I am affiliated.

4. *Opinions.* In summary, after review of the materials listed in paragraph 6 below, which contain the emails in question, and based on my training, experience and research, I have formed two opinions relating to this case:

- a. Clark A. Cooper violated Alabama Rule of Professional Conduct 7.3(b)(1)(iv) when he directly solicited Burt Newsome's clients and invoked specific matters where Burt Newsome was the attorney of record.
- b. When Clark A. Cooper's emails to Brian Hamilton dated January 30, 2013, May 4, 2013, and November 7, 2014 are read in tandem, concerns arise regarding whether Clark A. Cooper violated Alabama Rule of Professional Conduct 7.3(b)(vii).

5. *Rules of Professional Conduct.* I am familiar with and have personal knowledge of the Alabama Rules of Professional Conduct, and I am familiar with and have personal knowledge of the proper interpretation and application of such rules. In connection with this case, I have

reviewed the following Alabama Rules of Professional Conduct and the Model Rules of Professional Conduct on which the Alabama Rules are based:

- a. Alabama Rule of Professional Conduct 7.3 (attached hereto as **Exhibit 2**)
- b. Alabama Rule of Professional Conduct 1.6 (attached hereto as **Exhibit 3**)
- c. Alabama Rule of Professional Conduct 7.1 (attached hereto as **Exhibit 4**)
- d. Alabama Rule of Professional Conduct 1.4 (attached hereto as **Exhibit 5**)
- e. Alabama Rule of Professional Conduct 8.4 (attached hereto as **Exhibit 6**)

6. *Case Materials Reviewed.* In forming my opinions in this case, I reviewed the following case materials:

- a. Complaint (attached hereto as **Exhibit 7**)
- b. First Amended Complaint (attached hereto as **Exhibit 8**)
- c. Answer, Defenses and Counterclaim of Clark Andrew Cooper and Balch & Bingham LLP in Response to Plaintiff's Complaint and Exhibits A and B (attached hereto as **Exhibit 9**)
- d. Plaintiffs' Motion to Alter, Amend, or Vacate Orders of Dismissal or in the Alternative to Grant a New Trial (attached hereto as **Exhibit 10**)
- e. Amended Motion for Summary Judgment Made by Clark Cooper and Balch & Bingham LLP and attached documents (attached hereto as **Exhibit 11**)
- f. Affidavit of Brian Hamilton (attached hereto as **Exhibit 12**)

7. *Bases for Opinions.* The bases for my opinions are summarized below:

- a. *Clark A. Cooper violated Alabama Rule of Professional Conduct 7.3(b)(1)(iv).*
  - i. Alabama Rule of Professional Conduct ("Rule") 7.3 states in relevant part:

“(1) A lawyer shall not send . . . a written communication to a prospective client for the purpose of obtaining professional employment if . . . (iv) the written communication concerns a specific matter, and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter.”

- ii. Based on the documents I have been provided, it appears that Clark A. Cooper violated Alabama Rule of Professional Conduct 7.3(b)(1)(iv) on three occasions. On January 30, 2013, Clark A. Cooper sent a written communication via email to Brian Hamilton at Iberia Bank referencing a specific lawsuit filed by Burt Newsome on behalf of Iberia and asking for a recommendation on what to do to obtain additional matters from Iberia. On July 24, 2013, Clark A. Cooper sent a written communication via email to David Agee at Bryant Bank asking to “work with” Bryant Bank and referencing a specific lawsuit filed by Burt Newsome. On November 7, 2014, Clark A. Cooper again sent a written communication via email to Brian Hamilton at Iberia Bank referencing a specific lawsuit and asking if there was someone he should reach out to at Iberia to “build a relationship.” Each of these written communications referenced a specific matter and each acknowledged that the attorney-of-record in the matter was Burt Newsome.
- iii. Each of these emails qualifies as a written solicitation under Alabama Rule of Professional Conduct 7.3. As defined in 7.3(a), a solicitation includes “contact in person, by telephone, telegraph, or facsimile transmission, or by other communication directed to a specific recipient and includes contact by any written form of communication directed to a specific recipient.” Each of the three emails referenced above was a written communication directed to a

specific recipient, thus the emails qualify as a written solicitation. Normally, a lawyer is permitted to directly solicit professional employment from a prospective client “with whom the lawyer has . . . [a] current or prior professional relationship.” ALA. R. PROF. COND. 7.3(a). Rule 7.3(b)(iv), however, restricts the ability of a lawyer to solicit new business where the lawyer “knows or reasonably should know” that the client is represented by counsel. If Clark A. Cooper had reached out to Brian Hamilton and David Agee in an effort to obtain more business without referencing the cases filed by Burt Newsome, the email communications would not have violated Rule 7.3. Cooper’s referencing of specific matters and lawsuits in conjunction with his acknowledgment of Newsome’s role in the matter, however, makes Rule 7.3(b)(iv) directly applicable to Cooper’s actions.

iv. Any arguments suggesting that Rule 7.3(b)(1)(iv) does not apply to attorneys already in an attorney-client relationship with a client are misplaced. First, Rule 7.3(a) acknowledges that solicitation can occur when in a “current . . . professional relationship,” thus a current client can be solicited for new business. Second, the permission in Rule 7.3(a) to solicit current and past clients does not trump the restrictions in Rule 7.3(b)(1)(iv); it must still be adhered to. This becomes clear when one takes into account other restrictions in Rule 7.3(b)(1). For example, Alabama Rule of Professional Conduct 7.3(b)(1)(v) states that a lawyer shall not send a written communication to a prospective client “if it has been made known to the lawyer that the person to whom the communication is addressed does not want to receive the

communication.” If the permission in Rule 7.3(a) regarding the solicitation of current clients was not limited by the many restrictions in Rule 7.3(b), then an attorney would be free to continue to solicit clients who have indicated that they do not want to receive written communications. This would be an absurd reading of the rule.

v. Any arguments suggesting that Rule 7.3(b)(1)(iv) does not apply to attorneys engaged in “attorney-client communications” are also misplaced. Attorney-client communications are protected in two instances: when an attorney’s confidentiality duties are invoked by Alabama Rule of Professional Conduct 1.6 and when privileged communications occur. Neither is applicable to the emails at issue. Rule 1.6 restricts lawyers from “reveal[ing] information relating to representation of a client” without client consent. Privileged communications occur when a client seeks legal advice from counsel.<sup>2</sup> Neither Alabama Rule 1.6 nor evidentiary privilege rules are implicated by the emails at issue. Indeed, Alabama Rule 7.3 expressly contemplates a restriction on “attorney-client communications” when it references the solicitation of “current” clients in 7.3(a), but then lists restrictions on such communications in Rule 7.3(b). The fact that an attorney is in an attorney-client relationship with a client does not then protect every communication between those two parties; only those communications that arise as part of the representation are protected.

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<sup>2</sup> Privilege is an evidentiary rule invoked when a communication is made between privileged persons (e.g., a lawyer and a client) in confidence for the purpose of obtaining or providing legal assistance for the client. Restatement (3d) of the Law Governing Lawyers § 68.



vi. Finally, permitting Clark A. Cooper to directly solicit clients in specific matters where he knew that the parties were already represented would contravene the intent of the drafters of the Alabama Rules of Professional Conduct, which are relatively unique in their prohibition of such conduct. The Alabama Rules of Professional Conduct are based on the American Bar Association's ("ABA") Model Rules of Professional Conduct ("Model Rules"). Most states' rules of professional conduct are largely based on the ABA Model Rules with some small deviations. These deviations are particularly telling regarding the priorities of the individual state. Alabama Rule 7.3(b)(1)(iv) is a deviation from the ABA Model Rules, which do not contain a similar "anti-poaching" restriction. Thus, the restriction communicates a specific and strong determination by the state of Alabama that approaching currently represented individuals in an effort to solicit business is expressly prohibited.

b. *Clark A. Cooper's emails to Brian Hamilton, if read by the relevant factfinder as a continuous effort to solicit business from Iberia Bank, raise concerns regarding whether Clark A. Cooper violated Alabama Rule of Professional Conduct 7.3(b)(vii).*

i. "Misleading" or "unfair statements" are a violation of Alabama Rule of Professional Conduct 7.3(b)(vii). Brian Hamilton was misled by Clark A. Cooper's email on May 4, 2013 regarding Burt Newsome's arrest.

ii. Alabama Rule of Professional Conduct 7.3(b)(vii) prohibits written communication that "contains false, fraudulent, misleading, deceptive, or

unfair statement[s] or claim[s].” Rule 7.1 explains that a statement is considered misleading if it omits facts necessary to make the statement considered as a whole not materially misleading. ALA. R. PROF. COND. 7.3(a).

iii. Brian Hamilton’s affidavit indicates that he was misled by Clark A. Cooper’s May 4, 2013 email. Upon receiving Clark A. Cooper’s email, Brian Hamilton stopped his normal attorney-client relationship with Burt Newsome, because of concerns that Burt Newsome would not be able to practice law due to his arrest. *See* Hamilton Affidavit ¶¶ 4-6. It appears that Brian Hamilton resumed his normal professional interactions with Burt Newsome after it was clarified for Brian Hamilton that Burt Newsome’s arrest did not affect his ability to practice law. Thus, Brian Hamilton’s affidavit suggests that Clark A. Cooper’s email misled Brian Hamilton regarding Burt Newsome’s ability to practice law.

iv. While not technically applicable to the May 4, 2013 communication, because it was not a communication within the confines of an official matter where Clark A. Cooper was representing Brian Hamilton or Iberia Bank, Alabama Rule of Professional Conduct 1.4 is instructive regarding the appropriate standards for communication when lawyers are communicating with prospective clients regarding legal matters. When a lawyer is communicating with a client, he is to “explain [the] matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” ALA. R. PROF. COND. 1.4(b).

- v. When I teach ABA Model Rule 1.4(b), which is identical to Alabama Rule 1.4(b), I admonish my students that it is their responsibility as lawyers to ensure that they communicate in a manner that enables their clients to understand what is going on, so that the client is able to make informed decisions. The question is not what the lawyer meant to communicate; the relevant inquiry is what did the client understand after the lawyer's communication and was the lawyer's communication method adequate to promote the client's understanding of the relevant issues. Brian Hamilton's affidavit suggests that the communication method utilized by Clark A. Cooper led Brian Hamilton to misunderstand the implications of Burt Newsome's arrest. That misunderstanding is the result of Clark A. Cooper's choice and method of communication.
- vi. Lawyers in the state of Alabama are responsible for keeping abreast of the Alabama Rules of Professional Conduct. Alabama Rule of Professional Conduct 8.4 discusses lawyer misconduct and indicates that it is "professional misconduct for a lawyer to . . . [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." If Burt Newsome had been found guilty for the crime for which he was arrested, it may have qualified as a criminal act that reflects adversely on his fitness as a lawyer and might have impacted his license to practice law. *See* ALA. R. PROF. COND. 8.4, comment. It was, however, highly unlikely that Burt Newsome's arrest alone would impact his law license as he had not been convicted of committing a criminal act.

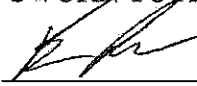
Clark A. Cooper's email failed to explain this distinction, which may have caused Brian Hamilton to assume incorrectly that Burt Newsome's law license was in imminent jeopardy following his arrest.

8. *Other matters.* I have agreed that I will be paid \$250 per hour for my time consulting on this matter; there are no additional benefits or compensation with which I will be provided, nor is my compensation contingent on the outcome of the case.

DATED this the 11 day of March 2016.

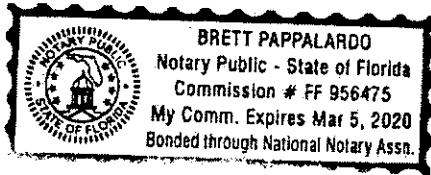
  
VERONICA ROOT

SWORN TO AND SUBSCRIBED before me on this the 11 day of March 2016.

  
NOTARY PUBLIC,  
STATE OF FLORIDA AT LARGE

My Commission Expires: 3/5/20

(Seal)



**EXHIBIT 1 TO THE AFFIDAVIT OF VERONICA ROOT:**

**CURRICULUM VITAE OF VERONICA ROOT**

# VERONICA ROOT

NOTRE DAME LAW SCHOOL • NOTRE DAME, IN 46556 • (574) 631-4766 (OFFICE) • VROOT@ND.EDU

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## EDUCATION

### **The University of Chicago Law School, Chicago, IL**

Juris Doctor, June 2008

- Managing Editor, *Chicago Journal of International Law*
- Hinton Moot Court Board
- Thomas R. Mulroy Prize for Excellence in Appellate Advocacy and Oral Argument
- Research Assistant, Professor Emily Buss

### **Georgetown University, McDonough School of Business, Washington, D.C.**

Bachelor of Science in Business Administration, May 2005, *cum laude*

- John Carroll Scholar
- Patrick Healy Fellow
- Interviewer, Alumni Admissions Program, 2005 – present
- Board Member, African-American Advisory Alumni Board, 2008 – 2012
- Board Member, Patrick Healy Fellow Alumni Board, 2010 – 2012

## ACADEMIC APPOINTMENTS

### **Notre Dame Law School, Notre Dame, IN**

*Associate Professor of Law*

July 2014 – present

Researched issues related to professional ethics, corporate governance, employment law, and corporate social responsibility. Taught classes in Contracts (Fall 2014), a foundation course in the first-year curriculum, and Professional Responsibility (Spring 2015), a course examining the ethical responsibilities of attorneys.

*Visiting Assistant Professor of Law*

July 2012 – June 2014

Taught Professional Responsibility (Spring 2014 & Spring 2013).

## SERVICE & PROFESSIONAL ACTIVITIES

### **LAW SCHOOL COMMITTEES**

Colloquium Committee, 2014 – present

Clerkship Committee, 2014 – present

### **PROFESSIONAL MEMBERSHIPS**

AALS Section on Professional Responsibility

AALS Section on Employment Discrimination

American Bar Association

American Bar Association Center for Professional Responsibility

## PROFESSIONAL LEGAL EXPERIENCE

### **Gibson Dunn, Washington, D.C.**

*Associate Attorney*

Nov. 2009 – June 2012

Represented clients before the U.S. Supreme Court and federal courts and agencies in matters involving administrative law, antitrust, education policy, employment law, intellectual property, internal investigations, legal malpractice, pleading standards, and white collar criminal law; drafted letter briefs and obtained asylum for two pro bono clients.

### **U.S. Court of Appeals for the Fifth Circuit, Shreveport, LA**

*Judicial Clerk to Judge Carl E. Stewart*

2008 – 2009

**JOURNAL PUBLICATIONS**

- *The Monitor-“Client” Relationship*, 100 VIRGINIA LAW REVIEW 523-585 (2014) ([SSRN link](#)).
- *Retaining Color*, 47 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 575-643 (2014) ([SSRN link](#)).
- *Somebody’s Watching Me: FCPA Monitorships and How They Can Work Better*, 13 UNIVERSITY OF PENNSYLVANIA JOURNAL OF BUSINESS LAW 321-381 (2011) (with F. Joseph Warin & Michael S. Diamant) ([SSRN link](#)).
- *Angelina and Madonna – Why all the Fuss? An Exploration of the Rights of the Child and Intercountry Adoption within African Nations*, 8 CHICAGO JOURNAL OF INTERNATIONAL LAW 323-354 (Summer 2007) (development).

**WORKS IN PROGRESS**

- *Modern-Day Monitors* (draft).
- *Destigmatizing Weight & Workplaces* (draft).
- *Defining Diversity* (draft).

**ADDITIONAL PUBLICATIONS**

- ABA SECTION OF CRIMINAL JUSTICE, PRACTICING UNDER THE FEDERAL SENTENCING GUIDELINES, *Chapter Seven: Determining the Sentence* (5th ed. 2010) (6th ed. 2011) (chapter in editions 1-4 prepared by others).
- *From Foster Care to Adulthood: University of Chicago Law School Foster Care Project’s Protocol for Reform 1* (2008) (with Emily Buss, Whitney A. Cox, Sarah E. Crane, Marlo M. Del Percio, Andrea C. Forton, Kathleen Hill, Anne W. King, Allison A. Lee, Alison R. Leff, Mary C. Lovejoy, Gwendolyn Baxter Morales, Heidi E. Mueller) ([online link](#)).

**ARTICLE PRESENTATIONS***Modern-Day Monitors*

- Faculty Colloquia, University of Illinois College of Law (Dec. 2014).
- Legal Scholarship Workshop, University of Chicago Law School (Nov. 2014) (by invitation).
- Corporate Compliance After the Crisis Panel, 2014 Southeastern Association of Law Schools Conference (Aug. 2014) (by invitation).
- Junior Faculty Workshop, Notre Dame Law School (July 2014).
- Culp Colloquium, Duke Law School (May 2014).

*The Monitor-“Client” Relationship*

- Legal Scholarship Workshop, University of Chicago Law School (Sept. 2013) (by invitation).
- Legal Scholarship Workshop, Northwestern University School of Law (Sept. 2013) (by invitation).
- Junior Faculty Workshop, Notre Dame Law School (Aug. 2013).
- 2013 Lutie A. Lytle Black Women Law Faculty Writing Workshop, sponsored by UNLV William S. Boyd School of Law (June 2013).
- Emerging Scholars Workshop, Duke Law School (May 2013).

*Retaining Color* (and other titles)

- Faculty Colloquium, Notre Dame Law School (Jan. 2013).

**ARTICLE PRESENTATIONS CONT'D.***Destigmatizing Weight & Workplaces* (and other titles)

- Legal Scholarship Workshop, University of Chicago Law School (Dec. 2012) (by invitation).
- Seventh Annual Employment & Labor Law Scholars' Forum, sponsored by Seton Hall Law School (Oct. 2012) (one of four junior scholars selected to present).
- Seventh Annual Labor & Employment Law Colloquium, co-sponsored by Loyola University Chicago School of Law and Northwestern University School of Law (Sept. 2012).

*Defining Diversity*

- New Perspectives on Diversity Panel, Law & Society Annual Meeting (May 2013).

**INVITED PRESENTATIONS & COMMENTARY***Ethical, Privilege, and Practical Issues In Cloud Computing, Privacy, and Corporate Data Protection*, Doral, FL (Feb. 2015).

- Presented as part of a continuing legal education course panel discussing cloud computing and the ethical obligations of lawyers; sponsored by the ABA Litigation Section Corporate Counsel's Committee.

*Lawyering in the Age of Social Media*, Notre Dame, IN (March 2014).

- Presented a continuing legal education course discussing the challenges social media poses for lawyers; sponsored by Notre Dame Black Law Students Association's Alumni Weekend.

*New Developments in Legal Ethics*, Notre Dame, IN (April 2013).

- Presented a continuing legal education course discussing the changes to the ABA Model Rules of Professional Conduct and the "crisis" in legal education; sponsored by Notre Dame Black Law Students Association's Alumni Weekend.

*Racial Preferences in University Admissions*, Notre Dame, IN (Jan. 2013).

- Provided commentary following the remarks of Roger Clegg, Center for Equal Opportunity; sponsored by the Notre Dame Federalist Society.

*Interrace Forum Committee Presentation on the History of Affirmative Action*, Notre Dame, IN (Nov. 2012).

- Presented on the history of the use of affirmative action by universities and the potential impact of *Fisher v. Texas*; sponsored by the Office of Multicultural Student Programs and Services.

*Debate on Affirmative Action and Supreme Court Case: Fisher v. Texas*, Notre Dame, IN (Oct. 2012).

- Moderated and provided commentary on debate between Ilya Shapiro, Cato Institute, and Melvin Butch Hollowell, Michigan NAACP; co-sponsored by Notre Dame Black Law Students Association & Federalist Society.



**CONFERENCES ATTENDED**

- ABA Litigation Section Corporate Counsel Committee's 2015 Corporate Counsel CLE Seminar; Doral, FL (Feb. 2015).
- Southeastern Association of Law Schools Annual Conference; Amelia Island, FL (August 2014).
- LEC Economics Institute for Law Professors; Steamboat Springs, CO (June 2014).
- Conducting Empirical Legal Scholarship; St. Louis, MO (June 2014).
- Law & Society Annual Meeting; Minneapolis, MN (May/June 2014).
- Duke Law School Culp Colloquium; Durham, NC (May 2014)
- 2013 Lutie A. Lytle Black Women Law Faculty Writing Workshop; Las Vegas, NV (June 2013).
- Law & Society Annual Meeting; Boston, MA (May/June 2013).
- American Bar Foundation Second Annual Conference of the Research Group on Legal Diversity; Chicago, IL (May 2013).
- Duke Law School Emerging Scholars Workshop; Durham, NC (May 2013).
- AALS 2013 Annual Meeting; New Orleans, LA (Jan. 2013).
- Seventh Annual Employment & Labor Law Scholars' Forum; Newark, NJ (Oct. 2012).
- Just the Beginning Foundation 2012 Conference; Chicago, IL (Sept. 2012).
- Seventh Annual Labor & Employment Law Colloquium; Chicago, IL (Sept. 2012).
- AALS Workshop for Pretenured People of Color Law School Teachers; Washington, DC (June 2012).
- AALS Workshop for New Law School Teachers; Washington, DC (June 2012).

**BAR ADMISSIONS**

District of Columbia (inactive), Illinois (inactive), U.S. Court of Appeals for the Fifth Circuit, and the U.S. District Court for the District of Columbia.

**EXHIBIT 2 TO THE AFFIDAVIT OF VERONICA ROOT:**

**ALABAMA RULE OF PROFESSIONAL REPONSIBILITY 7.3**

**Alabama Rules****LAWYER ETHICS & DISCIPLINE RULES / OTHER STATE BAR RULES RULES****RULES OF PROFESSIONAL CONDUCT****INFORMATION ABOUT LEGAL SERVICES**

*As amended through October 13, 2015*

**Rule 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no familial or current or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for or charge or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile transmission, or by other communication directed to a specific recipient and includes contact by any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) (2) of this rule.

**(b) Written Communication**

(1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or on behalf of a partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(i) the written communication concerns an action for personal injury or wrongful death arising out of, or otherwise related to, an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster giving rise to the cause of action occurred more than thirty (30) days prior to the mailing of the communication;

(ii) the written communication concerns a civil proceeding pending in a state or federal court, unless service of process was obtained on the defendant or other potential client more than seven (7) days prior to the mailing of the communication;

(iii) the written communication concerns a criminal proceeding pending in a state or federal court, unless the defendant or other potential client was served with a

warrant or information more than seven (7) days prior to the mailing of the communication;

(iv) the written communication concerns a specific matter, and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(v) it has been made known to the lawyer that the person to whom the communication is addressed does not want to receive the communication;

(vi) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence by the lawyer;

(vii) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim or is improper under Rule 7.1; or

(viii) the lawyer knows or reasonably should know that the person to whom the communication is addressed is a minor or is incompetent, or that the person's physical, emotional, or mental state makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(2) In addition to the requirements of Rule 7.2, written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

(i) a sample copy of each written communication and a sample of the envelope to be used in conjunction with the communication, along with a list of the names and addresses of the recipients, shall be filed with the office of general counsel of the Alabama State Bar before or concurrently with the first dissemination of the communication to the prospective client or clients. A copy of the written communication must be retained by the lawyer for six (6) years. If the communication is subsequently sent to additional prospective clients, the lawyer shall file with the office of general counsel of the Alabama State Bar a list of the names and addresses of those clients either before or concurrently with that subsequent dissemination. If the lawyer regularly sends the identical communication to additional prospective clients, the lawyer shall, once a month, file with the office of general counsel a list of the names and addresses of those clients contacted since the previous list was filed;

(ii) written communications mailed to prospective clients shall be sent only by regular mail, and shall not be sent by registered mail or by any other form of restricted delivery

or by express mail;

(iii) no reference shall be made either on the envelope or in the written communication that the communication is approved by the Alabama State Bar;

(iv) the written communication shall not resemble a legal pleading, official government form or document (federal or state), or other legal document, and the manner of mailing the written communication shall not make it appear to be an official document ;

(v) the word "Advertisement" shall appear prominently in red ink on each page of the written communication, and the word "Advertisement" shall also appear in the lower left-hand corner of the envelope in 14-point or larger type and in red ink. If the communication is a self-mailing brochure or pamphlet, the word "Advertisement" shall appear prominently in red ink on the address panel in 14-point or larger type;

(vi) if a contract for representation is mailed with the written communication, it will be considered a sample contract and the top of each page of the contract shall be marked "SAMPLE". The word "SAMPLE" shall be in red ink in a type size at least one point larger than the largest type used in the contract. The words "DO NOT SIGN" shall appear on the line provided for the client's Signature;

(vii) the first sentence of the written communication shall state: "If you have already hired or retained a lawyer in connection with [state the general subject matter of the solicitation], please disregard this letter [pamphlet, brochure, or written communication]" ;

(viii) if the written communication is prompted by a specific occurrence (e.g., death, recorded judgment, garnishment) the communication shall disclose how the lawyer obtained the information prompting the communication;

(ix) a written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem; and;

(x) a lawyer who uses a written communication must be able to prove the truthfulness of all the information contained in the written communication.

#### COMMENT

"Note from the reporter of decisions: The order amending Rule 7.3(b)(1), effective February 19, 2009, is published in that volume of Alabama Reporter that contains Alabama

cases from \_\_\_\_ So.2d."

There is a potential for abuse inherent in direct solicitation by a lawyer in person or by telephone, telegraph, or facsimile transmission of prospective clients known to need legal services. Direct solicitation subjects the non-lawyer to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services and may have an impaired capacity for reason, judgment, and protective self-interest. Furthermore, the lawyer seeking to be retained is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of prospective clients justifies some restrictions, particularly since the advertising permitted under Rule 7.2 offers an alternative means of communicating necessary information to those who may be in need of legal services. Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

The use of general advertising, rather than direct private contact, to transmit information from lawyer to prospective client will help to assure that the information flows cleanly as well as freely. Advertising is in the public view and thus subject to scrutiny by those who know the lawyer. This informal review is likely to help guard against statements and claims that might constitute false or misleading communications in violation of Rule 7.1. Direct, private communications from a lawyer to a prospective client are not subject to such third-person scrutiny and consequently are much more likely to approach (and occasionally cross) the line between accurate representations and those that are false and misleading.

Direct written communication seeking employment by specific prospective clients generally presents less potential for abuse or overreaching than in-person solicitation and is therefore not prohibited for most types of legal matters, but is subject to reasonable restrictions, as set forth in this rule, designed to minimize or preclude abuse and overreaching and to ensure the lawyer's accountability if abuse should occur. This rule allows targeted mail solicitation of potential plaintiffs or claimants in personal injury and wrongful death causes of action or other causes of action that relate to an accident, disaster, death, or injury, but only if the communication is not mailed until thirty (30) days after the incident. This restriction is reasonably required by

the sensitized state of the potential clients, who may be either injured or grieving over the loss of a family member, and the abuses that experience has shown can exist in this type of solicitation.

Common examples of written communications that must meet the requirements of subparagraph (b) of this rule are direct mail solicitation sent to individuals or groups selected because they share common characteristics, e.g., persons named in traffic accident reports or notices of foreclosure. Communications not ordinarily sent on an unsolicited basis to prospective clients are not covered by this rule. Also not covered by this rule are responses by lawyers and law firms to requests for information from a prospective client or newsletters or brochures published for clients, former clients, those requesting it, or those whom the lawyer or law firm has a familial or current or prior professional relationship.

Letters of solicitation and the envelopes in which they are mailed should be clearly marked 'Advertisement.' This will avoid the perception by the recipient that there is a need to open the envelope because it is from a lawyer or law firm, when the envelope contains only a solicitation for legal services. With the envelopes and letters clearly marked 'Advertisement,' the recipient can choose to read the solicitation or not to read it, without fear of legal repercussions.

In addition, the lawyer or law firm sending the letter of solicitation shall reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

General mailings to persons not known to need legal services, as well as mailings targeted to specific persons or potential clients, are permitted by this rule. However, these mailings constitute advertisement and are thus subject to the requirements of Rule 7.2 concerning delivery of copies to the general counsel, record keeping, inclusion of a disclaimer, and performance of the services offered at the advertised fee.

This Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement that the lawyer or the law firm is willing to offer. This form of communication is not directed to a specific prospective

client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

#### COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY

There is no comparable rule in the former Alabama Code of Professional Responsibility. Rule 7.3, before its amendment effective May 1, 1996, was a direct counterpart to Temporary DR 2-103, which was substantially adopted from Model Rule 7.3. The amendment, effective May 1, 1996, changed the rule substantially from what was Temporary DR 2-103.

**History.** Amended eff. 5-1-1996; Amended eff. 2-19-2009.

#### **Note:**

**Note from the reporter of decisions:** The order amending Rule 7.3(b)(1), effective February 19, 2009, is published in that volume of Alabama Reporter that contains Alabama cases from 999 So.2d.

**EXHIBIT 3 TO THE AFFIDAVIT OF VERONICA ROOT:**

**ALABAMA RULE OF PROFESSIONAL REPONSIBILITY 1.6**

**Alabama Rules****LAWYER ETHICS & DISCIPLINE RULES / OTHER STATE BAR RULES RULES****RULES OF PROFESSIONAL CONDUCT****CLIENT-LAWYER RELATIONSHIP***As amended through October 13, 2015***Rule 1.6. CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) 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.

**COMMENT**

A lawyer, as an officer of the court and as a part of the judicial system, is charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

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

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

**Authorized Disclosure**

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

When coverage is or may be disputed, a lawyer representing an insured pursuant to an insurance contract may disclose any information pertinent to the issue of coverage to the insurer as well as to the insured. Although the insurer in such a situation is not the appointed attorney's client, as opposed to the situation in a normal insurance defense relationship, such disclosure is impliedly authorized in order to carry out the representation. However, the lawyer should avoid disclosing information to the insurer that the lawyer knows would adversely affect insurance coverage for the insured, unless either such disclosure is approved by the insured or the lawyer has assurances that the insurer will not use the information to the insured's disadvantage.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

#### Disclosure Adverse to Client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

Several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). Similarly, a lawyer has a duty under Rule 3.3(a)(3) not to use false evidence. This duty is essentially a special instance of the duty prescribed in Rule 1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm. As stated in paragraph (b)(1), the lawyer has professional discretion to reveal information in order to prevent such consequences. The lawyer may make a disclosure in order to prevent homicide or serious bodily injury which the lawyer reasonably believes is intended by a client. It is very difficult for a lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical, the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by paragraph (b)(1) does not violate this Rule.

#### Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the clients' confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

#### Dispute Concerning Lawyer's Conduct

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(2) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and



client acting together. A lawyer entitled to a fee is permitted by paragraph (b)(2) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

#### Disclosures Otherwise Required or Authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

#### Former Client

The duty of confidentiality continues after the client-lawyer relationship has terminated.

#### COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY

Rule 1.6 eliminates the two-pronged duty under the former Code in favor of a single standard protecting all information about a client "relating to representation." Under DR 4-101, the requirement applied to information protected by the attorney-client privilege and to information "gained in" the professional relationship that "the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." EC 4-4 added that the duty differed from the evidentiary privilege in that it existed "without regard to the nature or source of information or the fact that others share the knowledge." Rule 1.6 imposes confidentiality on information relating to the representation even if it is acquired before or after the relationship existed. It does not require the client to indicate information that is to be confidential, or permit the lawyer to speculate whether

particular information might be embarrassing or detrimental.

Paragraph (a) permits a lawyer to disclose information where impliedly authorized to do so in order to carry out the representation.

Paragraph (b) redefines the exceptions to the requirement of confidentiality. Regarding paragraph (b)(1), DR 4-101(C)(5) provided that a lawyer "may reveal [t]he intention of his client to commit a crime and the information necessary to prevent the crime." This option existed regardless of the seriousness of the proposed crime.

With regard to paragraph (b)(2), DR 4-101(C)(4) provided that a lawyer may reveal "[c]onfidences or secrets necessary to establish or collect his fee or to defend himself or his employers or associates against an accusation of wrongful conduct." Paragraph (b)(2) enlarges the exception to include disclosure of information relating to claims by the lawyer other than for the lawyer's fee, for example, recovery of property from the client.

**EXHIBIT 4 TO THE AFFIDAVIT OF VERONICA ROOT:**

**ALABAMA RULE OF PROFESSIONAL REPOSIBILITY 7.1**

**Alabama Rules****LAWYER ETHICS & DISCIPLINE RULES / OTHER STATE BAR RULES RULES****RULES OF PROFESSIONAL CONDUCT****INFORMATION ABOUT LEGAL SERVICES**

*As amended through October 13, 2015*

**Rule 7.1. COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(c) compares the quality of the lawyer's services with the quality of other lawyers' services, except as provided in Rule 7.4; or

(d) communicated the certification of the lawyer by a certifying organization, except as provided in Rule 7.4.

**COMMENT**

This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

**COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY**

Rule 7.1 is a direct counterpart to Temporary DR 2-101,

which was substantially adopted from Model Rule 7.1.

**History.** Amended effective August 23, 2000.

**Note:**

**Note from the reporter of decisions:** The order amending Rule 7.1, effective immediately, is published in that volume of Alabama Reporter that contains Alabama cases from 763 So.2d.

**EXHIBIT 5 TO THE AFFIDAVIT OF VERONICA ROOT:**

**ALABAMA RULE OF PROFESSIONAL REPONSIBILITY 1.4**

Alabama Rules

LAWYER ETHICS & DISCIPLINE RULES / OTHER  
STATE BAR RULES RULES

RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP

*As amended through October 13, 2015*

Rule 1.4. COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

COMMENT

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party, and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail.

The guiding principle under this Rule is that the lawyer should fulfill the reasonable expectation of the client for information. In determining what is reasonable, the lawyer must consider that the lawyer has a duty to act in the client's

best interests. However, each client will have different levels of willingness, ability, and desire to participate intelligently in the representation. These levels are often dependent upon the kind of representation. Thus, the guiding principle is contingent upon the client's reasonable expectation but is limited or expanded by the client's willingness, ability and desire to participate in the particular representation, and by the practicability of the lawyer's meeting the client's expectations.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation.

Withholding Information

In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY

Rule 1.4 has no direct counterpart in the Disciplinary Rules. DR 6101(A) provided that a lawyer shall not "willfully neglect a legal matter entrusted to him." DR 9-102(B)(1) provided that a lawyer shall [p]romptly notify a client of the receipt of his funds, securities, or other properties." EC 7-8 stated that a lawyer "should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations." EC 9-2 stated that "a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client."

**EXHIBIT 6 TO THE AFFIDAVIT OF VERONICA ROOT:**

**ALABAMA RULE OF PROFESSIONAL REPONSIBILITY 8.4**

**Alabama Rules****LAWYER ETHICS & DISCIPLINE RULES / OTHER STATE BAR RULES RULES****RULES OF PROFESSIONAL CONDUCT****MAINTAINING THE INTEGRITY OF THE PROFESSION***As amended through October 13, 2015***Rule 8.4. MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so; or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Canons of Judicial Ethics or other law; or
- (g) Engage in any other conduct that adversely reflects on his fitness to practice law.

**COMMENT TO RULE 8.4 AS AMENDED EFFECTIVE OCTOBER 9, 1991**

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those

characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

This rule does not repeal, abrogate or modify Rule 14 of the Rules of Disciplinary Enforcement, which provide for mandatory disbarment or suspension under specified circumstances. (Amended effective October 9, 1991.)

**COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY**

With regard to paragraphs (a) through (d), DR 1-102(A) provided that a lawyer shall not:

- "(1) Violate a Disciplinary Rule.
- "(2) Circumvent a Disciplinary Rule through actions of another.
- "(3) Engage in illegal conduct involving moral turpitude.
- "(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- "(5) Engage in conduct that is prejudicial to the administration of justice.
- "(6) Engage in any other conduct that adversely reflects on his fitness to practice law."

Former DR 7-102(A)(B) provided that "[i]n his representation of a client, a lawyer shall not . . . (8) Knowingly engage in other illegal conduct . . ."

Paragraph (e) is substantially similar to DR 9-101 (C).

There is no direct counterpart to paragraph (f) in the former Alabama Code of Professional Responsibility. EC 7-34 stated in part that "[a] lawyer . . . is never justified in making a gift or a loan to a [judicial officer] except legitimate political campaign contributions under appropriate circumstances." EC 9-1 stated that a lawyer "should promote public confidence in our [lb]legal] system and in the legal profession."

Paragraph (g) was not included within the ABA Model Rules, but was carried from the former Alabama Code of Professional Responsibility DR 1-102(A)(6).