

New York Professional Responsibility Report

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1. Under new Rule 1.6 (a), before concluding that she has implied authority to reveal a client's confidence, a lawyer must first:
 - consult with the client and obtain the client's consent
 - believe that the disclosure will advance the best interests of the client
 - place a memo in the file supporting her conclusions.
2. Under Rule 1.6(a), authority to reveal a client's confidence may be implied only if the disclosure:
 - is customary among lawyers in the community
 - would be made by a disinterested lawyer
 - results in substantial benefit to the client.
3. According to Roy Simon, the "puzzling ambiguity" of Rule 1.6(a) may be ascribed to the Courts' failure:
 - to follow ABA MR 1.6(a)
 - to circulate draft rules for public comment
 - to adopt the COSAC recommendations.
4. Rule 1.6(b)(1) permits a lawyer to reveal a confidence when he reasonably believes:
 - the client intends to commit a crime
 - the client intends to commit the crime of murder
 - disclosure is necessary to prevent reasonably certain death or bodily harm.
5. Omission of the word "implicit" in Rule 1.6(b)(3) leaves open this question:
 - may a lawyer make explicit his reasons for withdrawing a previous opinion?
 - may a lawyer withdraw a previous opinion at his discretion?
 - is a lawyer subject to discipline for withdrawing a previous opinion?
6. Roy Simon construes Rule 1.6(b)(4) as permitting disclosure of a confidence to secure legal advice:
 - only from another lawyer associated with the lawyer
 - only from bar association ethics committees
 - from any lawyer with an independent perspective and greater expertise.
7. Construed literally, Rule 1.7(a)(1) would permit a lawyer to represent a client even if:
 - the representation is likely to involve the lawyer in representing differing interests
 - the lawyer is aware of a conflict with another client
 - there is a significant risk the lawyer's judgment will be adversely affected by his personal interests.
8. Rule 1.7(a)(2) differs from ABA MR 1.7(a)(2) by:
 - limiting its application to conflicts with the lawyer's own interests
 - providing clearly for conflicts between current and former clients
 - providing clearly for conflicts between a current client and "a third person."
9. A conflict between clients is consentable under Rule 1.7(b) if:
 - the lawyer asserts a claim by one client against another before a tribunal
 - the lawyer reasonably believes he can provide competent and diligent representation to both clients
 - the lawyer represents both clients in a litigation.
10. The phrase "confirmed in writing" in Rule 1.7(b)(4) means:
 - a written document signed by the client and the lawyer
 - a memorandum to her file signed by the lawyer before a witness
 - a writing by the client to the lawyer confirming the client's consent.
11. Mediators are trained to discharge their ethical responsibilities by:
 - studying hypotheticals that may arise in fact
 - attendance at law school programs on dispute resolution
 - compulsory attendance at mediations in progress.
12. A mediator has an obligation:
 - to report "serious crimes"
 - to keep all communications confidential
 - to report any evidence of a crime.

13. One source of guidance to mediators on ethics issues is:

- the New York State Bar Association*
- any judge of the Supreme Court*
- the Mediator Ethics Advisory Committee.*

14. Mediators in a CRDC contribute their services:

- voluntarily*
- at a reasonable fee set by each Center*
- on a scale fixed by MEAC reflecting experience and training.*

15. Mediators in special cases are required to receive more training than in others. Among the special cases are those involving:

- fee disputes between lawyer and client*
- child custody matters*
- landlord/tenant matters.*

16. The Supreme Court in New York County has imposed different Rules for mediators than for:

- referees and receivers*
- guardians*
- arbitrators and neutral evaluators.*

17. The ABA has devoted a section of its website, www.abanet.org to:

- the text of New York's CRDC Standards*
- a Clearing House for the mediator ethics opinions of 43 States*
- videos for training mediators.*

18. One opinion listed by the ABA (DC-1997-001) advises that a law firm providing mediation services for a nominal fee:

- is required to run a conflicts check, including of officers, directors and affiliates*
- need not run a conflicts check*
- must run a conflicts check of the parties, but not of officers, directors or affiliates.*

19. A mediator who discovers a conflict of interest during the mediation is required:

- to disclose the conflict and withdraw from serving*
- to disclose the conflict and continue to serve, if the parties consent*
- to withdraw from serving without disclosing the conflict.*

20. Rule 2.4 of the Rules of Professional Conduct requires a lawyer who serves as arbitrator or mediator to:

- inform unrepresented parties that the lawyer is not representing them*
- advise all parties of his duties as a third-party neutral*
- distribute a copy of the CRDC Standards to all parties.*

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