

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**IN RE:** ) **PROMULGATION No. 2013-001**  
) )  
**ADOPTION OF THE VIRGIN ISLANDS** )  
**RULES OF PROFESSIONAL CONDUCT.** )  
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) )  
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**ORDER OF THE COURT**

Pursuant to its inherent authority and the authority granted to it by section 21(c) of the Revised Organic Act of 1954, as amended, and title 4, sections 32(b), 32(e), 32(f)(2) and 34(a) of the Virgin Islands Code, and after considering comments submitted by the Office of Disciplinary Counsel during the comment period, it is hereby

**ORDERED** that Supreme Court Rule 211, attached hereto as Exhibit 1, **IS HEREBY ADOPTED and WILL TAKE EFFECT** on February 1, 2014. It is further

**ORDERED** that Supreme Court Rule 203(a) be **AMENDED** by inserting the phrase “Virgin Islands Rules of Professional Conduct and“ between the words “adopts” and “the”, and by striking the phrase “Rules of Professional conduct and” after the word “ABA’s”. It is further

**ORDERED** that copies of this order be directed to the appropriate parties.

**SO ORDERED** this 23<sup>rd</sup> day of December, 2013.

/s/ Ive Arlington Swan  
**IVE ARLINGTON SWAN**  
Associate Justice

/s/ Maria M. Cabret  
**MARIA M. CABRET**  
Associate Justice

/s/ Rhys S. Hodge  
**RHYS S. HODGE**  
Chief Justice

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
Clerk of the Court

# EXHIBIT 1

## VIRGIN ISLANDS SUPREME COURT RULE 211

### VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT

#### 211.1.0 Terminology

- (a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time.
- (c) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- (d) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (g) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (k) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
- (l) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity.

A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

- (n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

### **211.1.1 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.

### **211.1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer**

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 211.1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (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.

### **211.1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **211.1.4 Communication**

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 211.1.0(e), is required by these Rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### **211.1.5 Fees**

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or other percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is

- contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.
- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
  - (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
  - (3) the total fee is reasonable.

### **211.1.6 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:
  - (1) to prevent reasonably certain death or substantial bodily harm;
  - (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;
  - (6) to comply with other law or a court order.

### **211.1.7 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.

### **211.1.8 Conflict of Interest: Current Clients: Specific Rules**

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as provided or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
  - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
  - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  - (1) the client gives informed consent;
  - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  - (3) information relating to representation of a client is protected as required by

Rule 211.1.6.

- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
  - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
  - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
  - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
  - (2) contract with a client for a reasonable contingent fee in a civil case.
- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

**211.1.9 Duties to Former Clients**

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
  - (1) whose interests are materially adverse to that person; and
  - (2) about whom the lawyer had acquired information protected by Rules 211.1.6 and 211.1.9(c) that is material to the matter;unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
  - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
  - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

### **211.1.10 Imputation of Conflicts of Interest: General Rule**

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 211.1.7 or 211.1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers of the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - (2) any lawyer remaining in the firm has information protected by Rules 211.1.6 and 211.1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 211.1.7.
- (d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 211.1.11.

### **211.1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees**

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
  - (1) is subject to Rule 211.1.9(c); and
  - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
  - (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.
- (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under government authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not

otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
  - (1) is subject to Rules 211.1.7 and 211.1.9; and
  - (2) shall not:
    - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or
    - (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 211.1.12(b) and subject to the conditions stated in Rule 211.1.12(b).
- (e) As used in this Rule, the term “matter” includes:
  - (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
  - (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

#### **211.1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral**

- (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.
- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.
- (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
  - (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (2) written notice is promptly given to the parties and any appropriate tribunal to

enable them to ascertain compliance with the provisions of this rule.

- (d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

### **211.1.13 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 action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, 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.
- (c) Except as provided in paragraph (d), if
  - (1) despite the lawyer's best efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or 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 information relating to the representation whether or not Rule 211.1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Paragraph (c) shall not apply with respect to information 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 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 211.1.7. If the organization's consent to the dual representation is required by Rule 211.1.7, 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.

#### **211.1.14 Client with Diminished Capacity**

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 211.1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 211.1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

#### **211.1.15 Safekeeping Property: Generally**

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

### **211.1.15-1 Client Trust Account Records**

- (a) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by Rule 211.1.15, and shall retain the following records for a period of five years after termination of representation:
  - (1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
  - (2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
  - (3) copies of retainer and compensation agreements with clients, as required by Rule 211.1.15-1;
  - (4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
  - (5) copies of bills for legal fees and expenses rendered to clients;
  - (6) copies of records showing disbursements on behalf of clients;
  - (7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;
  - (8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;
  - (9) copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyer; and
  - (10) copies of those portions of client files that are reasonably related to client trust account transactions.
- (b) With respect to client trust accounts required by Rule 211.1.15-1(a):
  - (1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;
  - (2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and
  - (3) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.
- (c) Records required by this Rule 211.1.15-1 may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.
- (d) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in Rule 211.1.15-1(a).
- (e) Upon the sale of a law practice, the seller shall make reasonable arrangements for the

maintenance of records specified in Rule 211.1.15-1(a).

### **211.1.15-2 Client Files**

- (a) For purposes of this Rule, a client's file shall consist of any documents, electronic and print format, writings, or property provided by the client or derived in the course of representation of the client, except:
  - (1) Lawyer's notes, impressions, internal memoranda, legal research and factual research, including investigative reports, prepared by or for the lawyer's use in the representation; and
  - (2) Documents that have not been filed with a tribunal, delivered, or served, unless the client has explicitly paid for the drafting or creation thereof; and
  - (3) Other drafted but unexecuted or undelivered documents, unless the client has explicitly paid for the drafting or creation thereof.
- (b) Upon the client's request, the lawyer shall surrender the client's file. The lawyer may charge the client reasonable costs for reproduction and retrieval if:
  - (1) The lawyer had previously provided copies of any part of the file to the client, in which case the lawyer may only charge for that portion of the file that was previously provided; and
  - (2) The charge does not prejudice the interests of a client in a matter that is currently pending.
- (c) The lawyer may, at no charge to the client, retain copies of all documents within the client's file.
- (d) A lawyer must maintain the client's file for 10 years after the conclusion of representation in a matter unless the lawyer delivers the file to the client or the client authorizes destruction of the file in a writing signed by the client, provided the time for appeal has expired and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.
- (e) At any time following the expiration of 10 years following the conclusion of the representation in a matter, a lawyer may destroy the client's files respecting the matter, provided the lawyer has provided reasonable notice to the client and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.
- (f) Notwithstanding Rules 211.1.15-2(d) and (e), a lawyer in a criminal matter must maintain the client's file for the life of the client if the matter resulted in a conviction and a sentence of death, natural life, life without parole, or an indeterminate sentence.
- (g) This Rule does not supersede or limit a lawyer's obligations to retain or destroy contents of a client's file as otherwise imposed by law, court order, or rules of a tribunal.
- (h) To protect the client's interest in case of lawyer death or incapacity, a lawyer should prepare a plan for succession. The plan must include, but is not limited to, the designation of another lawyer to act as successor counsel who is authorized to review client files, notify clients of the lawyer's death or incapacity, and act if immediate action on the client file is necessary to protect the client's interests. The designated lawyer should agree, in writing, to the assignment as successor counsel. Lawyers in a law firm of two or more lawyers may follow established firm guidelines for succession in lieu of designation of successor counsel.

- (i) Upon dissolution of a law firm or of any legal or professional corporation, or sale of a law practice, the partners or shareholders shall make reasonable arrangements for client files in accordance with Rules 211.1.15-2(d)-(g).

### **211.1.16 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:
  - (1) the representation will result in violation of the Rules of Professional Conduct or other law;
  - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing the interests of the client if:
  - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) the client has used the lawyer's services to perpetuate a crime or fraud;
  - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

### **211.1.17 Sale of Law Practice**

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted;

- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
  - (c) The seller gives written notice to each of the seller's clients regarding:
    - (1) the proposed sale;
    - (2) the client's right to retain other counsel or to take possession of the file; and
    - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.
- If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- (d) The fees charged clients shall not be increased by reason of the sale.

### **211.1.18 Duties to Prospective Client**

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 211.1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
  - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
  - (2) the lawyer who received the information took reasonable measures to avoid the exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
    - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (ii) written notice is promptly given to the prospective client.

### **211.2.1 Adviser**

In representing a client, a lawyer shall exercise independent professional judgment and

render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

#### **211.2.2 [Reserved for Future Use]**

#### **211.2.3 Evaluation by Use of Third Persons**

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 211.1.6.

#### **211.2.4 Lawyer Serving as Third-Party Neutral**

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

#### **211.3.1 Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

#### **211.3.2 Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **211.3.3 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;
  - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (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 211.1.6.
- (d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **211.3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information

to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

### **211.3.5 Impartiality and Decorum of the Tribunal**

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
  - (1) the communication is prohibited by law or court order;
  - (2) the juror has made known to the lawyer a desire not to communicate; or
  - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

### **211.3.6 Trial Publicity**

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), a lawyer may state:
  - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
  - (2) information contained in a public record;
  - (3) that an investigation of a matter is in progress;
  - (4) the scheduling or result of any step in litigation;
  - (5) a request for assistance in obtaining evidence and information necessary thereto;
  - (6) a warning of danger concerning the behavior or a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
  - (7) in a criminal case, in addition to subparagraphs (1) through (6):
    - (i) the identity, residence, occupation and family status of the accused;
    - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
    - (iii) the fact, time and place of arrest; and
    - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer

would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

### **211.3.7 Lawyer as Witness**

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - (1) the testimony relates to an uncontested issue;
  - (2) the testimony relates to the nature and value of legal services rendered in the case; or
  - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 211.1.7 or Rule 211.1.9.

### **211.3.8 Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
  - (1) the information sought is not protected from disclosure by any applicable privilege;
  - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other feasible alternative to obtain the information.
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public

condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 2.11.3.6 or this Rule.

- (g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - (1) promptly disclose that evidence to an appropriate court or authority, and
  - (2) if the conviction was obtained in the prosecutor's jurisdiction,
    - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

### **211.3.9 Advocate in Nonadjudicative Proceedings**

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 211.3.3(a) through (c), 211.3.4(a) through (c), and 211.3.5.

### **211.4.1 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 when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 211.1.6.

### **211.4.2 Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a 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.

### **211.4.3 Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the

lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

#### **211.4.4 Respect for Rights of Third Persons**

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

#### **211.5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers**

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
  - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

#### **211.5.2 Responsibilities of a Subordinate Lawyer**

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

#### **211.5.3 Responsibilities Regarding Nonlawyer Assistants**

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

- (a) a partner, and a lawyer who individually or together with other lawyers possesses 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;
- (b) 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
  - (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged by a lawyer if:
    - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
    - (2) the lawyer is a partner or 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.

#### **211.5.4 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 deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 211.1.17, 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 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 corporate director or officer thereof or occupies the 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.

### **211.5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) An individual who is not admitted to practice in this jurisdiction shall not:
  - (1) except as authorized by section 443 of title 4 of the Virgin Islands Code or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
  - (2) hold out to the public or otherwise represent that he or she is admitted to practice law in this jurisdiction.

### **211.5.6 Restrictions on Right to Practice**

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

### **211.5.7 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" denotes 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.

### **211.6.1 Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or

- (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

### **211.6.2 Accepting Appointments**

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client lawyer relationship or the lawyer's ability to represent the client.

### **211.6.3 Membership in Legal Services Organization**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 211.1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

### **211.6.4 Law Reform Activities Affecting Client Interests**

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of

a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

#### **211.6.5 Nonprofit and Court-Annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
  - (1) is subject to Rules 211.1.7 and 211.1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to Rule 211.1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 211.1.7 or 211.1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 211.1.10 is inapplicable to a representation governed by this Rule.

#### **211.7.1 Communications Concerning a Lawyer's Services**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

#### **211.7.2 Advertising**

- (a) Subject to the requirements of Rules 211.7.1 and 211.7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
  - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
  - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
  - (3) pay for a law practice in accordance with Rule 211.1.17; and
  - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
    - (i) the reciprocal referral agreement is not exclusive, and
    - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

### **211.7.3 Direct Contact with Prospective Clients**

- (a) A lawyer shall not by in person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
  - (1) is a lawyer; or
  - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
  - (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress or harassment.
- (c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
- (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### **211.7.4 Communication of Fields of Practice and Specialization**

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
  - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
  - (2) the name of the certifying organization is clearly identified in the communication.

### **211.7.5 Firm Names and Letterheads**

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 211.7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 211.7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

### **211.7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges**

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

### **211.8.1 Bar Admission and Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 211.1.6.

### **211.8.2 Judicial and Legal Officials**

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

### **211.8.3 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 professional authority.
- (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 authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 211.1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

#### **211.8.4 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 or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

#### **211.8.5 Disciplinary Authority; Choice of Law**

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