

PROFESSIONAL RESPONSIBILITIES OUTLINE

I Exam Checklist

- A) Checklist of Duties Owed to Clients: Mnemonic: "Clients love fierce counsel."
- 1) Confidentiality:
 - (a) Duty of confidentiality
 - (b) Attorney client privilege
 - 2) Loyalty
 - (a) Conflicts of Interest
 - 3) Financial Responsibility
 - (a) Attorney Fees
 - (b) Client Trust accounts
 - 4) Competence & other common sense duties
 - (a) Duty of competence
 - (b) Duty of diligence
 - (c) Duty to communicate
 - (d) Duties on withdrawal
- B) Checklist of Duties Owed to Other Third Parties: Mnemonic: "Courts feel differently"
- 1) Candor: owed to the 1) public & 2) to the tribunal
 - (a) Duty of candor owed to the public
 - (i) Advertising
 - (ii) Solicitation
 - (b) Duty of candor owed to the tribunal:
 - (i) Duty to present facts & E truthfully
 - (ii) Duty to produce E
 - (iii) Duty to uphold the law
 - 2) Fairness: owed to parties & OC
 - (a) Fair dealings w/others
 - (b) Dealings w/press:
 - (c) Special duties of prosecutors
 - 3) Dignity/Decorum: owed to profession, third parties
 - (a) Duty to preserve the impartiality & decorum of the tribunal
 - (b) Duty to expedite cases
 - (c) Additional duties to profession & public
 - 4) And other reasonable things: public etc.
 - (a) Duties of subordinate lawyers
- C) Essay Tip: For each individual or entity, including tribunal & third parties match up a duty & note the conflicts of duties that might exist.

II Duty Owed to Client: Duty of Confidentiality & Attorney Client Privilege

- A) Duty of Confidentiality
- 1) Blurb: *A L generally must not reveal information relating to a client's representation, even if the information was acquired before or after the attorney-client relationship no matter the source.*

- 2) A number of exceptions exist Under BOTH the RPC AND CA:
 - (a) Exceptions under the RPC: (6)
 - (i) Cl gives informed consent
 - (ii) Disclosure is impliedly authorized in order to carry out representation
 - (iii) L reasonably believes disclosure is necessary to prevent a person's reasonably certain death or substantial bodily harm
 - (iv) Disclosure is necessary to prevent cl from committing a crime/fraud likely to cause substantial financial loss AND the cl is using/has used the L's services to commit the crime/fraud
 - (v) Disclosure is required by ct, ethics rules, or certain statutes
 - (vi) Disclosure is necessary to collect a fee/protect L
 - (vii) Disclosure is necessary to obtain confidential legal advice @ L's duty to comply w/ethics
 - (b) Exceptions under CA: Under CA law, a L has a duty to maintain "her cl's confidences and secrets." Nevertheless, she may reveal information relating to representation if:
 - (i) Collecting fees, to defend against IAC/legal malpractice
 - (ii) Compelled by law or ct order
 - (iii) when necessary to prevent a criminal act that is likely to cause death/substantial bodily injury AFTER 1) you have made a good faith effort to persuade cl not to commit act & 2) have informed cl of decision to reveal confidences if reasonable under circumstances
 - (iv) **Not permitted to disclose** to prevent a cl from committing crime/fraud likely to cause substantial financial loss etc

B) Attorney Client Privilege:

- 1) *Blurb*: The attorney cl privilege allows a cl to refuse to T & to prevent her L from testifying in ct about confidential communications pertaining to rendition of legal services bw L & cl or respective agents (E.g., if learn from cl's old buddy that cl had drinking problem, not protected)
- 2) Exceptions:
 - (a) Majority:
 - (i) Does not apply where the cl seeks the L's services to aid anyone in committing a crime/fraud
 - (ii) Relevant to a dispute arising out of L-cl relationship
 - (iii) Civil litigation arises bw 2 persons who were formerly joint cls of L
 - (iv) Relates to E re competency or intention of cl n disposing property by will/inter vivos transfer
 - (b) CA: additional exception – if L reasonably believes necessary to prevent criminal act likely to result in death/substantial bodily harm
- 3) Duration:
 - (a) Majority rule: continues indefinitely even after attorney-cl relationship terminated
 - (b) CA: continues until cl's death & personal representative discharged

III Duty of Loyalty Owed to Cl: Conflicts of Interest

A) *Blurb* of law:

- 1) *A L owes a duty of loyalty to cl. Thus, L may not represent a if creates a conflict of interest – where representation of a cl will either be directly adverse to interests of another cl OR will be materially limited by L's own interests, interests of another cl, former cl or 3rd person.*

- 2) Situations where Despite conflict of interest: L may undertake representation
 - (a) 1) L reasonably believes he can competently & diligently represent ea cl 2) representation not prohibited by law 3) does not involve assertion of one claim by cl against other cl in same case & 4) ea client gives informed written consent (understands conflict: Note - if required to divulge a cl's confidential info to get such consent, conflict unconsentable)
- B) Imputed Disqualification (**Tip: Issue spotter** – look for colleagues conflicts + your own)
 - 1) *Rule Blurb*: If L faces a conflict of interest, no L in that L's firm may represent the cl bc L's conflict is imputed to all members of the firm. (What constitutes a "firm" – Ls who work closely together/share responsibilities).
 - 2) *Remedies*: Refuse to take the case, advise multiple cls to get separate counsel/withdraw
 - 3) Situations where general rule of imputed disqualification doesn't apply & where an "ethical wall" may make representation reasonable by blocking off any contact on matter bw conflicted L & other firm members.
 - (i) Conflicts caused by former & current govt Ls (see below)
 - (ii) Conflicts caused by a purely personal interest of conflicted L that would not affect ability of other firm members to represent cl
 - (1) **CA**: disqualification rules apply but L not subject to discipline for imputed conflict
- C) Conflicts Between Ls & Cls:
 - 1) Business Transactions/Adverse Interests
 - (a) Transactions:
 - (i) General rule: L must not enter into a business transaction w/a cl OR knowingly acquire an ownership/pecuniary interest adverse to client unless (3): 1) terms of the transaction are fair & reasonable to the cl at the time the transaction is entered into + fully disclosed to the cl in writing 2) the cl is advised to seek independent legal counsel & 3) Cl gives informed legal consent (understanding L's role)
 - (1) Majority v CA:
 - a. Majority: L may acquire a lien to secure fees/expns
 - b. CA: no liens for cl's paper or property
 - (ii) **Tip**: Be cautious if investment is by individual firm members/represents firm's major assets bc may distort firm's advice etc.
 - (b) Board Service:
 - (i) No automatic bar to serving on the Board of Directors of corporate cl but strongly discouraged bc likely to compromise duty of confidentiality & loyalty (E.g., A L who is member of Disney Board of directors hired to investigate CEO for SEC violations).
 - (ii) Exception: May serve as director, officer or member of legal services organization if: 1) it's not your ER & 2) do not knowingly participate in a decision/action of organization adverse to your cl.
 - 2) Limiting Liability:
 - (a) Majority v CA:
 - (i) Majority: L is prohibited from prospectively limiting liability for malpractice UNLESS cl has independent legal representation
 - (ii) CA: no limiting of malpractice in any circumstances

- (b) Settling Malpractice Cl w/Unrepresented or former cl: Can't settle w/o 1) advising client in writing of need to get independent legal counsel & 2) providing cl w/sufficient opportunity
- 3) Publication Rights Ks: Majority v CA
 - (a) Majority: before representation is concluded – L must not acquire literary/media rights to account substantially based on information relating to information (E.g., Johnny Cochrane, OJ)
 - (b) CA: May if: judge ensures D understands conflict + waives it. "Hollywood."
- 4) Loans & Advances to cl: Majority v CA
 - (a) Majority: L prohibited from providing financial assistance to cl + in connection w/litigation EXCEPT: 1) to advance ct costs/expenses of litigation & 2) to pay ct costs/expenses for indigent
 - (b) CA: L prohibiting from providing financial assistance to cl in all contexts but may lend money for any purpose 1) after L is hired & 2) if cl gives written promise to repay.
- 5) Use/Communication of information relating to representation of cl to 1) cl's disadvantage & 2) without cl's informed consent violates duty of confidentiality & loyalty.
- 6) Gifts to L/L's family: Majority v CA
 - (a) Majority: L must not solicit a substantial gift from cl OR prepare instrument giving L/person related to L such a gift
 - (b) CA: may draft instrument but may not induce gift
- 7) Close relationships w/L for other side: Majority v CA
 - (a) Majority: If related by blood/marriage, must get cl's informed consent before represent diff cls in same matter/substantially related matters
 - (b) CA: also if 1) 1 cl is a cl of the other L 2) lawyers live together or 3) Ls in intimate personal relationship
 - (c) Note: Such conflicts not imputed to firm bc personal
- 8) Trial counsel as necessary W: Majority v CA
 - (a) Majority: L may not serve as trial counsel where likely to be a necessary W. Should refuse employment/withdraw. 3 exceptions: 1) T won't prejudice cl 2) T will relate solely to an uncontested matter 3) concern only nature & value of legal services to cl 4) If withdrawal to T would result in substantial hardship to cl (bc L has distinctive value: i.e., only expert on widgets)
 - (b) CA: trial counsel prohibited from testifying before a jury UNLESS 1) T will concern an uncontested matter or 2) nature/value of services or 3) cl consents.
- 9) Sex w/client: Majority v CA
 - (a) Majority: no consensual sexual relationship unless pre-existing before L & cl
 - (b) CA: L prohibited from demanding sexual relations as a condition, coercion/undue influence, acting incompetently bc of sex
- D) Conflicts Bw Cls: **Tip:** To spot issues, for each cl ask yourself all duties you may have & watch for breach of confidentiality & multiple representation.
 - 1) When Cls are on opposite sides of the same matter: See above. May not represent if directly adverse or is significant risk that presentation of a cl will be materially limited. (E.g., Firm represents Texaco in labor matters; Lundwall asks you to help him sue Texaco for cutting his benefits. Imputed disqualification for whole firm. Conflict unwaivable bc directly adverse to current interests)

- 2) When L is opposing present cl's interests:
 - (a) CA: prohibits L from taking a case adverse to cl now representing
 - (i) EXCEPTION: Joint representation of insurance co & policyholder permissible so long as insurer's interest is ONLY as an indemnity provider
 - (b) ABA: doesn't prohibit but rarely reasonable
 - 3) When L representing cls w/inconsistent positions: E.g., arguing for constitutionality of mandatory sentencing guidelines for 1 cl & then arguing against for another cl.
 - (a) Permissible but requires ea client's informed consent BUT if either materially disadvantaged, L must withdraw
 - 4) When L representing multiple cls in the same matter:
 - (a) **Exam Tip:** flag "potentials" for conflict. Note that an actual conflict may not have arisen
 - (b) Dual representation in criminal matters: May compromise duty of loyalty & 6th A right to effective assistance of counsel.
 - 5) New cls in matters related to former cl's:
 - (a) Rule: A L who formerly represented a cl in a matter may not represent another cl in the same or a substantially related matter IF cl's interests are materially adverse to former cl's interest OR about whom the L has acquired confidential (not publicly known) material information UNLESS cl gives informed + written consent OR disqualified L is timely screened AND does not share in any part of the fee.
 - (i) Imputed Disqualification rules apply
 - (ii) Note that even if you left the firm – imputed disqualification applies to your former firm: IF any remaining L has confidential material information
 - 6) Former govt L now in private practice: ABA v CA – note same rules apply to judges, arbitrators, mediators & law clerks
 - (a) ABA: if a govt L worked personally AND substantially on a "matter" (i.e., a specific dispute bw specific ppl over specific issues) then it would be a conflict to work on the same matter in private practice. If conflict → need informed, written consent.
 - (b) CA: prosecutors barred from later working on defense of same case.
 - (i) **Key exceptions to imputed disqualification of colleagues of former govt L: Rule NA if:**
 - (1) Govt L screened off - "ethical wall" AND
 - (2) Govt L doesn't share any part of fee in matter (pre-arranged salaries/partnership shares ok) AND
 - (3) Govt ER is informed (but no need to consent)
- E) Conflicts Due to Third Party Interference:
- 1) Compensation for services from third party:
 - (a) General rule: A L must not accept compensation from a third party for representing a cl UNLESS 1) cl gives informed consent 2) there is no interference w/L's independent professional j'ment & 3) information relating to representation remains confidential.
 - (b) CA: informed consent must be in writing
 - 2) Organizational clients: L who is employed to represent an organization owes its duty of loyalty to act in the organization's best interests (Note: no prohibition on also representing directors, officers etc so long as no conflict)

- (a) For securities lawyers: mandatory internal reporting & permissive external reporting on suspected securities violations under *Sarbanes-Oxley*
 - (i) Must report E to CLO for “appropriate response.” If CLO fails to take appropriate response, L must report to BOD, audit committee or committee of outside directors.
 - (ii) May reveal to SEC confidential information reasonably necessary to rectify OR stop cl from committing a violation that causes substantial financial injury to cl/investors or to prevent client from committing OR suborning perjury to SEC
 - (1) **Note:** conflicts w/CA’s duty on confidentiality not permitting L to reveal confidential information to prevent substantial financial injury but federal law preempts. NO civil Liability for L.

IV Duty of Financial Responsibility to Client

A) Attorneys Fees

- 1) In non-contingent fee cases: ABA v CA
 - (a) ABA: agreements must include 1) how fee is calculated 2) what services covered & 3) L & cl’s duties
 - (b) CA: requires agreements to be in writing UNLESS 1) fee under \$1000 2) corporate cl 3) routine services for regular cl or 4) emergency/impractical
- 2) Contingent Fee cases: Where the fee is dependent on successful resolution of cl’s case & is payable from j’ment proceeds.
 - (a) ABA: Contingent fees must e in writing + signed by cl + contain 1) L’s total % of recovery 2) what expenses are to be deducted from recovery 3) & whether % is taken before or after expenses
 - (b) CA:
 - (i) Additional requirements – 4) How work not covered by the contingency will be paid & 5) that all L’s fees are negotiable – there is no “standard” percent of recovery.
 - (ii) Allows charging liens to guarantee collection from an award to be written into contingency agreements – but NOT hourly agreements.
 - (c) Types of actions allowing contingent fees:
 - (i) ABA: Can’t be used for domestic relations or criminal cases
 - (ii) CA: May be used for divorces provided the fee arrangement won’t “encourage the breakup of an otherwise savable marriage.”
 - (d) If L is terminated before the j’ment is awarded: Only if & when Cl recovers, L can recover in quantum meruit – in proportion to the work he did/services rendered.
- 3) How High is too high for fees:
 - (a) ABA: Fees must be reasonable & take into account the Lodestar factors: time spent, labor, novelty, difficulty, skill required, L’s reputation in community, result obtained, demands on the L, the L’s experience, what other L’s in the surrounding community charge for the same work w/the same experience etc.
 - (b) CA: fees must not be unconscionably high
 - (i) CA: Ls required to submit to arbitration to settle fee disputes if cl wishes
 - (ii) ABA: encourages arbitration

- 4) Fee splitting (e.g., referral fees): **Exam Tip:** Focus on the party/entity the L is splitting fees with
 - (a) Permissible to split fees w/other Ls in your firm
 - (b) Permissible to split fees w/Ls in other firms IF: 1) total fee is ethical 2) written disclosure & consent 3) proportional to work done by each L UNLESS each is jointly responsible for the action
 - (c) Fee splitting w/non-Ls not allowed (Rationale: protects L's independence of j'ment & prevents unauthorized practice of law). EXCEPTIONS:
 - (i) Death benefits paid for reasonable time to deceased L's firm
 - (ii) Pension/salaries for non-L employees
 - (iii) Ls may share ct awarded legal fees w/non-profit organization that employed/recommended them
 - (iv) May pay usual charges of a qualified referral service
 - 5) Partnership w/non-lawyers in providing legal services: "or multi-disciplinary practice." (e.g., one stop shopping, CPA & L work together): prohibited. Non-Ls can't be partners, shareholders, officers or control/direct L's professional j'ment (e.g., a non-L can't be a SH of a lawfirm)
 - 6) If L provides "law related" ancillary services along w/legal services, she is subject to ethical rules.
 - (a) If services provided by separate entity + controlled by L, she must take reasonable measures to ensure cl knows protections of cl-L relationship don't apply
- B) Client Trust Accounts:
- 1) L's duty to safeguard cl's property by labeling & storing it in safe place (e.g., safe, deposit box)
 - 2) Money held for cl must be placed in cl trust account, include \$ recieed on his behalf, advances for ctss, expenses & fees. Commingling, borrowing w/personal \$ not allowed.
 - (a) Normally – use an individual, interest bearing account to hold cl funds & interest belongs to cl
 - (b) Smaller funds held for short period of time + for several cls at once deposited into a "pooled" cl trust account. MUST be a checking account, usually IOLTA. Interest first pays bank service charges & remainder to State Bar to fund legal services for poor. Withstood takings challenges
 - 3) If disputes claim for fees/third party has lawful claim over your cl's funds/property in your custody: you must withhold disputed portion in cl trust account until claim resolved. Can't dispense.
- C) Duty to keep records:
- 1) General duty: to keep good records & render accountings, notify cl of \$ & property recieed on his behalf, & pay \$ promptly to cl.
 - 2) CA: records of cl property must be kept for 5 yrs after final distribution + make records available for audit by State Bar

V Duty of Competence & Other Common Sense Duties to Clients

- A) Duty of Competence: L has duty to render competent service OR is 1) subject to discipline by Bar 2) disqualification as counsel & 3) civil malpractice liability.
- 1) Definition of competence: Competence means using the legal skill, knowledge, thoroughness & preparation reasonably necessary for representation.
 - (a) So L not permitted to take on a case if don't know relevant law, if can't put in time to learn it w/o undue delay/expense to cl or unless associate w/competent L.

- 2) Malpractice v disciplinary action:
 - (a) Malpractice: a civil case brought by the P for money damages.
 - (i) Must prove a legal claim – such as breach of K or tort.
 - (ii) If theory of negligence: P must prove D failed to use reasonable due care of general practitioner/certified specialist under similar circumstances
 - (iii) Ethical violation is relevant but does not create presumption of malpractice
 - (b) Disciplinary action: brought by the State Bar to discipline L & protect public from L
- B) Duty of diligence: Duty to diligently, promptly & zealously pursue case to completion
- C) Duty to communicate: Duty to keep cl informed about case, including settlement offers & returning phone calls/e-mail.
- D) Accepting Representation: L is free to accept/reject any case.
 - 1) L *should* accept as part of duty to public & profession: 1) the case of the defenseless & oppressed & 2) pro bono work (ABA recommends min 50 hrs).
 - 2) L *must* reject case if 1) accepting case would violate law/ethical rule 2) L not competent – under some physical/mental condition 3) would require L to make a frivolous legal argument by violating duty of candor to ct.
- E) Scope of representation:
 - 1) Cl makes decisions about substantive rights (testify in criminal case, accept plea bargain, waive jury trial, whether to T – if criminal D she has a right to testify. If in civil case, you don't call her bc suborning perjury in violation of duty of candor to the ct) but L makes decisions relating to procedure & legal strategy (e.g., choice of motions, whether to call a particular W, what E to introduce etc).
- F) Duties on withdrawal from representation
 - 1) 3 ways to leave a case before matter resolved:
 - (a) cl fires you
 - (b) mandatory withdrawal: continuing representation would violate a law/ethical rule, problems w/L's competence, knowingly pursuing a frivolous claim – if prosecutor must have PC or dismiss
 - (c) Permissive withdrawal: L may withdraw if good cause + withdrawal not cause undue delay or disruption + materially prejudice the cl. E.g., failure to pay, acting illegally etc.
 - (d) Procedures to withdraw: 1) timely notice to the cl 2) promptly returning any unspent fee & expense advances + material (papers & property of the cl – everything needed to pursue case, even work product – even if cl has not paid).
 - (i) CA: prohibits withholding cl's materials for money
 - 2) Refusal of a settlement offer by cl may be grounds to withdraw
- G) Other Duties
 - 1) ABA: no consensual sex w/cl unless pre-existing
 - 2) CA: don't demand sex, coercion, condition for representation etc.

VI Duties of Candor to Public & Dignity of Profession:

- A) General rule: A state can regulate L's advertising & solicitation subject to L's Q right to free speech – protected under the limited commercial speech doctrine of the 1st A – requiring the govt to assert a

substantial state interest, for the regulation to directly advance that interest & for the regulation to be narrowly tailored.

- B) Advertising: refers to L's communication w/the public at large.
- 1) General Rule: Advertising must not be false, misleading or deceptive in containing OR omitting material information. E.g., it must not raise unjustified expectations/make unverifiable comparisons.
 - (a) CA: presumes improper any ad that contains: guarantees, warranties or predictions of a result
 - (b) For claims of legal specialties:
 - (i) L may explain her "field" (e.g., limited to practice in fed ct) but may not advertise she specializes unless she is a certified specialist. ABA requires 4Es: Education, Experience, Examination, & Evaluations. Certification must be by approved organizations + certifying organization must be identified in all communications.
 - (c) Advertising may not harass/solicit someone who has indicated desire to be left alone
 - (d) All ads must be labeled as advertising & if applicable, a 'dramatization' or 'impersonation.' Must identify at least 1 L responsible for contents + L must keep records of content & placement for 2 yrs.
- C) Solicitation: Refers to individualized contact w/lawyers
- 1) L may not seek professional employment for pecuniary gain by initiating a live/telephone contact w/prospective cl.
 - (a) CA: extends this to real time AND presumes communications made at scene of accident/en route to hospital or cls you know are not in physical/mental state to render reasonable j' ment unethical
 - 2) L not permitted to employ agents to solicit (e.g., having law clerk solicit for you unethical)

VII Duty of Candor to the Court & Fairness to Adversary

- A) Duty to present Facts & E truthfully: L prohibited from engaging in any conduct involving dishonesty, fraud, misrepresentation or deceit. Duty of candor may override duty of loyalty & confidentiality.
- B) Duty to present facts & E truthfully: L prohibited from making false statement of material fact/failing to correct false statement of material fact/law.
- 1) Client perjury: L prohibited from knowingly facilitating cl perjury.
 - (a) Civil matter: L must refuse to call cl
 - (b) Criminal matter: Ds have a 5th A right to T on own behalf & 6th A right to effective assistance of counsel.
 - (i) If criminal D tells L he intends to testify falsely, L must take reasonable remedial measures: must attempt to withdraw. Duty to take reasonable remedial measures ends w/proceeding (after time for appeal has run/final j' ment)
 - (1) ABA v CA:
 - a. ABA: must tell the judge bc not allow a fraud to be perpetrated on the ct
 - b. CA: may allow D to testify in narrative fashion if know D's T will be false + not refer to it in closing. **Tip: highly tested**
- C) Duty to not counsel/assist a W to testify falsely or become "unavailable." (Note: permissible to pay basic expenses of W & reasonable fees for expert but T can't be contingent on fees)

- D) Duty to produce E:
- 1) L must not obstruct access to/tamper w/fruits or instrumentalities of a crime. If turned over to L, L must turn over to authorities after inspecting it w/in reasonable time but must not disclose what cl communicated about the E. Protects cl communications not actual instrumentality (e.g., like pre-existing docs don't become confidential by giving to L)
 - 2) May look but not touch. E.g., if cl tells you where gun is & you go & see it & only look. Need not deliver to cops.
 - 3) But if tamper with E etc, may be compelled to produce it for authorities AND tell them where it was found bc denied them opportunity to use it for E. Balance need for E w/duty of confidentiality
 - 4) Prosecutors special duty under *Brady* to disclose exculpatory E favorable to the D (e.g, impeachment of State's Ws etc)
 - 5) Ex Parte proceedings: bc communications w/judge w/o adversary being present. Must reveal relevant information even if adverse.
- E) Duty to state the law truthfully: duty to cite to adverse authority if in controlling jx & directly on point.
- F) Duty to uphold the law:
- 1) MUST Withdraw if continued representation requires L to commit/assist in crime.
 - 2) MAY withdraw if continued representation & you reasonably believe cl engaged in acts that are criminal/fraudulent.
 - 3) ABA permits you to break confidentiality to prevent/rectify crimes causing substantial financial loss if L's services employed in crime.

VIII Additional Duties of Fairness

- A) Duty to deal fairly w/others: Must promote public confidence in integrity & efficiency of legal system.
Tip: always throw in essay bc always versatile, duty not to lie to others, violate legal rights to get E, can't talk to OP if represented by counsel w/o counsel's consent, can't talk to high level corporate official of corp that's OP.
- 1) CA: can't talk to current EEs whose communication might bind or be imputed to corp OR constitute an admission.
 - 2) No need to have consent to talk to former EE, even if high end
 - 3) No need to get consent to talk to unrepresented, non-EE
- B) Dealing with the press: Balance D's right to fair trial against press & public's right to know. L & agents must avoid statements that have a substantial likelihood of materially prejudicing the case.
- 1) EXCEPTIONS: matters in public record, routine booking information, warning public, asking public assistance in investigation, and statements to protect cl from substantial undue prejudice from recent publicity not self-initiated
- C) Special Duty of prosecutors: not unduly heighten public condemnation of accused, have PC, *Brady*

IX Duty to preserve the dignity of the ct & additional duties

- A) Duty to preserve the impartiality & decorum of the tribunal:
- 1) can't try to influence/talk to prospective or empaneled juror before & during trial. But may interview juror after trial so long as don't harass or influence future jury service.
 - 2) No chicanery: E.g., referring to inadmissible T etc

- B) Duty to expedite cases (ABA) v CA: must not delay cases. **Have a duty to follow valid procedural rules/ct orders unless good faith challenge to validity. Must not abuse/obstruct discovery.**
- C) Additional duties to profession and public:
- 1) L must not engage in the unauthorized/unlicensed practice of law.
 - 2) CA: 1) registered legal service Ls 2) registered in house counsel for institution (but no individual representation/ct appearances) & 3) litigating & 4) non-litigating Ls practicing temporarily in state may practice if register w/Bar, pay dues & satisfy CLE.
 - 3) ABA: less restrictive. Governs multi jx practice & allows temporary practice by out of state L if 1) good standing &
 - (a) assoc w/locally admitted L OR services relate to ADR or arise out of matters reasonably related to L's practice in state where admitted
 - (b) AND no req for pro hac vice
- D) Reporting Misconduct:
- 1) ABA: L must report another L/judge's violation (legal/non-legal) if raises a substantial question as to that person's honesty, trustworthiness or fitness as a L.
 - 2) CA: self-reporting. E.g., L being charged w/felony, civilly liable for fraud/breach of fiduciary duty, sued for malpractice/sanctioned etc.
- E) Duties of subordinate Lawyers
- 1) If under control/supervision of another L (e.g., senior partner):
 - (a) Subordinate L is subject to discipline if clear violation
 - (b) If debateable problem, partner solely liable
 - (c) If supervising partner's ratified action OR knew of conduct and failed to take action: liable
 - 2) Managing partners must make reasonable efforts to ensure everyone's conduct in firm, including non-Ls, comports w/professional obligations of Ls
 - (a) CA: can be disciplined for "inaction" – merely knowing about a fellow firm member's disciplinary violation AND doing nothing to prevent it.