ETHICAL PITFALLS FOR THE COMMUNITY LAWYER: AN OUTLINE FOR DISCUSSION AMONG GENERAL PRACTITIONERS

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State Bar of Texas
ETHICS & THE SMALL LAW FIRM
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CURRICULUM VITAE

Background

Roy B. Ferguson was born in New Port Beach, California, on August 20, 1968, and quickly came to his senses and moved to Texas in 1970. He attended Stratford High School in Houston, Texas, and obtained a bachelor of science in civil engineering from the University of Texas at Arlington. He graduated from St. Mary's University School of Law in December of 1994, and was admitted to the State Bar of Texas in May of 1995. He worked for several law firms before opening The Ferguson Law Firm in 1997, in Missouri City, Texas. He and the firm relocated to Marfa, Texas, in 1999. He is married to Judge Pene S. Ferguson, the mother of their three children, Victoria Joy, Archer, and Alissa. Together, they coach the 1A Fort Davis High School Mock Trial Team, which qualified for the state championships three consecutive years.

Areas of Practice

The Ferguson Law Firm is a general civil practice, concentrating on family law, real estate litigation and transaction, and commercial disputes. Pene Ferguson concentrates her practice on construction law and related disputes.

Affiliations

State Bar of Texas
Member – General Practice, Solo and Small Firm Section of the State Bar of Texas
Secretary/Treasurer: 2006-2007
Member – Family Law Section of the State Bar of Texas
Trans-Pecos Bar Association
Licensed to practice before the United States Supreme Court
Pro Bono College of the State Bar of Texas

Reported Cases

Nelson v. Nelson, 2006 Tex. App. LEXIS 2175 (Tex. App. -- Eastland 2006, no pet)

ETHICAL PITFALLS OF THE COMMUNITY LAWYER:
An Outline for Discussion among General Practitioners

Being a general practitioner in a small law firm is a uniquely rewarding, and risky, proposition. It is difficult to compete with the larger firms, the high-dollar advertisers, and the specialists. Every solo practitioner fears the day that the influx of clients or income simply dries up. But whether you live in a big city or a tiny town, you can protect yourself and your practice by becoming a "community lawyer."

A community lawyer is a general practitioner who represents people and families for a lifetime; he becomes their guide through the legal system, in much the same way a family doctor guides his patients through all types of sickness and injury over the course of their lives.

I. Benefits to being a "community lawyer."

- First and foremost, you will always have a steady influx of new and return clients.
- You will enjoy a stable and consistent income.
- You will be well known and respected in the community, and will have a minimal advertising budget.
- So long as you avoid the traps described below, you will have unmatched job security, irrespective of the economy or competition.
- You will rarely lose clients to specialists. Once they come to trust you, your clients will want you to oversee their legal matters, even when you involve a specialist.
- You will be used as local counsel for many out-of-town law firms, at the insistence of your clients.
- You will have a better rate of collection than many other general practitioners.
- You will enjoy a sense of belonging that only a community representative can experience.

II. Keys to becoming a "community lawyer."

- Develop a relationship of trust with the members of your target community
    - Become a familiar face in the community.
    - Encourage members of your community to visit with you whenever they think they might have a legal issue or claim.
    - Encourage potential clients to exercise self-help whenever appropriate.
    - Discourage potential clients from pursuing unnecessary claims.
    - Do not sue or act adversely to clients (often improperly termed "*former* clients").
    - Happily refer potential clients to other competing attorneys and firms in the area.
    - Build legal "teams" to handle issues involving areas of law best handled by specialists.
    - Do not charge potential clients for inquiries that don't lead to further action on your part.
    - Do not charge for initial consultations, or additional consultations with existing or past clients regarding new matters.

    - Hold yourself to a higher ethical standard than required by the Texas Disciplinary Rules of Professional Conduct.[i]
- Develop a pattern of success in your local courts.
- Develop a practice that targets the needs of your clientele.
    - Become a jack of all trades, and a master of few.
    - Attend appropriate CLE and remain on top of changes in the law, in all major areas of local interest.
    - Remember: no matter is too large or too small to deserve your attention.
- Build a consistent legal team that covers each and every legal need of your community. [ii]
    - Bring in experts.
    - Build a referral list of specialists.
    - Build an e-mail community of lawyers for getting quick answers to specialized questions.

III. Keys to maintaining a successful community practice.

- Keep a long-term vision of your relationship with your community of choice.
- Build "bubbles of representation."
- Remember that free consultations are free advertising.
    - **You may reach more potential clients in your target community with a free thirty minute consultation than with a pricey thirty minute infomercial.**
- Remember the Ethics Hotline, but use it with care.
- Build a relationship of trust with your local judiciary.[iii]
    - Always follow Rule 3.03, even when your opposing counsel does not.
    - Never attempt to *ex parte* your judge.
    - Do not ask the Judge for something that your client shouldn't get.
        - **If you would not grant your client's request if you were on the bench, do not ask the Judge to do so.**
- Charge sizeable retainers, sufficient to cover the entire anticipated cost of smaller matters, or at least 50% of the anticipated cost of larger matters.
    - Requiring substantial retainers will weed-out potential clients most likely to be unable to pay your bill.
    - **You will make more money with fewer clients if you avoid working for free.**
- Be flexible on payment plans, but pursue collection of unpaid accounts.
    - Pursuing collection as a rule will weed-out potential clients most likely to refuse to pay your bill.
    - **If you do not value your services, neither will your clients.**

IV. Common Pitfalls.

- Protect yourself from yourself.
    - Listen to the little voice on your shoulder, not the one in your pocketbook.
        - **If you have to really struggle to figure out whether you should do something, don't do it.**

    - Scrupulously avoid conflicts of interest.[iv]
        - **If you merely follow the conflict of interest rules to the letter, you will almost certainly fail as a community lawyer.**
    - Remain loyal to your community members.
        - **There is no quicker way to harm your standing in the community than to act against your own client.**
    - Avoid "The Fallacy of the 'Former Client.'"[v]
        - **To the community lawyer, there is no such thing as a "former client."**
    - Do not betray members of the community.
        - **If a client will feel betrayed by you if you prevail for another client, reject that representation.**
- Never take a client because you need the money.
    - **Accept representation based upon the character of the client, not just the character of the claims.**
- Never strive to be the lowest bidder for a client.
- Never make a promise of outcome, or accept a client who demands one.
- Avoid the short walk on a shorter pier. Never get a consent or waiver of conflict.[vi]
    - **The need to obtain a waiver is proof that someone involved might end up feeling betrayed.**
- Rarely (if ever) act as an intermediary between community members.[vii]

V. Conclusion.

If you remember these simple rules, you can and will avoid many pitfalls that trip-up general practitioners on the road to long-term success. And, you will have a happier, and healthier, professional life.

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[i] Tex. Disciplinary R. Prof'l Conduct, Preamble: A Lawyer's Responsibilities, P7, 11, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005)(TEX. STATE BAR R. art. X, § 9).
[ii] Tex. Disciplinary R. Prof'l Conduct 1.01
[iii] Tex. Disciplinary R. Prof'l Conduct 3.01, 3.03, cmt 3, 15.
[iv] Tex. Disciplinary R. Prof'l Conduct 1.06
[v] Tex. Disciplinary R. Prof'l Conduct 1.09
[vi] Tex. Disciplinary R. Prof'l Conduct 1.06(c), (d), cmt 7-11; 1.07(a)(1); 1.09 cmt 10.
[vii] Tex. Disciplinary R. Prof'l Conduct 1.07

Addendum A
Selected Sections of the Texas Disciplinary Rules of Professional Conduct

The following are partial sections of the Texas Disciplinary Rules of Professional Conduct. Please note that only the provisions and portions of comments that are relevant to today's discussion are included below. Italics are for emphasis only, added by the speaker. Bracketed comments are editorializing by the speaker. With specific questions, refer to the full Rules, at the following address:

http://www.texasbar.com/ContentManagement/ContentDisplay.cfm?ContentID=13942

Preamble: A Lawyer's Responsibilities

7. In the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyers own interests. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. *They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action.* Within the framework of these Rules many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment. In applying these rules, lawyers may find interpretive guidance in the principles developed in the Comments.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. *The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct.* The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

11. The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. *The rules and Comments do not, however, exhaust the moral and ethical considerations that should guide a lawyer, for no worthwhile human activity can be completely defined by legal rules.*

Rule 1.01 Competent and Diligent Representation
(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:
(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
(2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

Comment:
Accepting Employment
1. A lawyer generally should not accept or continue employment in any area of the law in which the lawyer is not and will not be prepared to render competent legal services. Competence is defined in Terminology as possession of the legal knowledge, skill, and training reasonably necessary for the representation. Competent representation contemplates appropriate application by the lawyer of that legal knowledge, skill and training, reasonable thoroughness in the study and analysis of the law and facts, and reasonable attentiveness to the responsibilities owed to the client.
2. In determining whether a matter is beyond a lawyer's competence, relevant factors include the relative complexity and specialized nature of the matter, the lawyers general experience in the field in question, the preparation and

study the lawyer will be able to give the matter, and whether it is feasible either to refer the matter to or associate a lawyer of established competence in the field in question. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequences.
3. A lawyer may not need to have special training or prior experience to accept employment to handle legal problems of a type with which the lawyer is unfamiliar. Although expertise in a particular field of law may be useful in some circumstances, the appropriate proficiency in many instances is that of a general practitioner. A newly admitted lawyer can be as competent in some matters as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.
4. A lawyer possessing the normal skill and training reasonably necessary for the representation of a client in an area of law is not subject to discipline for accepting employment in a matter in which, in order to represent the client properly, the lawyer must become more competent in regard to relevant legal knowledge by additional study and investigation. If the additional study and preparation will result in unusual delay or expense to the client, the lawyer should not accept employment except with the informed consent of the client.
5. A lawyer offered employment or employed in a matter beyond the lawyer's competence generally must decline or withdraw from the employment or, with the prior informed consent of the client, associate a lawyer who is competent in the matter. Paragraph (a)(2) permits a lawyer, however, to give advice or assistance in an emergency in a matter even though the lawyer does not have the skill ordinarily required if referral to or consultation with another lawyer would be impractical and if the assistance is limited to that which is reasonably necessary in the circumstances.

Rule 1.06 Conflict of Interest: General Rule
(a) A lawyer shall not represent opposing parties to the same litigation.
(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
(1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or
(2) reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person or by the lawyers or law firm's own interests.
(c) A lawyer may represent a client in the circumstances described in (b) if:
(1) the lawyer reasonably believes the representation of each client will not be materially affected; and
(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.
(d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.
(e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.
(f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

Comment:
Loyalty to a Client
1. *Loyalty is an essential element in the lawyer's relationship to a client.* An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer must take effective action to eliminate the conflict, including withdrawal if necessary to rectify the situation. See also Rule 1.16. When more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by this Rule and Rules 1.05 and 1.09. See also Rule 1.07(c). Under this Rule, any conflict that prevents a particular lawyer from undertaking or continuing a representation of a client also prevents any other lawyer who is or becomes a member of or an associate with that lawyer's firm from doing so. See paragraph (f).

2. A fundamental principle recognized by paragraph (a) is that a lawyer may not represent opposing parties in litigation. The term opposing parties as used in this Rule contemplates a situation where a judgment favorable to one of the parties will directly impact unfavorably upon the other party. Moreover, as a general proposition loyalty to a client prohibits undertaking representation directly adverse to the representation of that client in a substantially related matter unless that client's fully informed consent is obtained and unless the lawyer reasonably believes that the lawyer's representation will be reasonably protective of that client's interests. Paragraphs (b) and (c) express that general concept.

Meaning of Directly Adverse

6. Within the meaning of Rule 1.06(b), the representation of one client is directly adverse to the representation of another client if the lawyer's independent judgment on behalf of a client or *the lawyer's ability or willingness to consider, recommend or carry out a course of action will be or is reasonably likely to be adversely affected by the lawyer's representation of, or responsibilities to, the other client.* The dual representation also is directly adverse if the lawyer reasonably appears to be called upon to espouse adverse positions in the same matter or a related matter. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not constitute the representation of directly adverse interests. Even when neither paragraph (a) nor (b) is applicable, a lawyer should realize that a business rivalry or personal differences between two clients or potential clients may be so important to one or both that one or the other would consider it contrary to its interests to have the same lawyer as its rival even in unrelated matters; and in those situations a wise lawyer would forego the dual representation.

Full Disclosure and Informed Consent

[OMITTED FOR YOUR PROTECTION!]

Non-litigation Conflict Situations

13. Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

14. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation may be permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

15. Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration it may be unclear whether the client is the fiduciary or is the estate or trust including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

Rule 1.07 Conflict of Interest: Intermediary [WARNING – PROBLEMS MAY BE CLOSER THAN THEY APPEAR!]

(a) A lawyer shall not act as intermediary between clients unless:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the client's best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.

(e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct.

Comment:
1. A lawyer acting as intermediary may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis. For example, the lawyer may assist in organizing a business in which two or more clients are entrepreneurs, in working out the financial reorganization of an enterprise in which two or more clients have an interest, in arranging a property distribution in settlement of an estate or in mediating a dispute between clients. *The lawyer seeks to resolve potentially conflicting interests by developing the parties' mutual interests.* The alternative can be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complication or even litigation. Given these and other relevant factors, all the clients may prefer that the lawyer act as intermediary.
2. Because confusion can arise as to the lawyer's role where each party is not separately represented, it is important that the lawyer make clear the relationship; hence, the requirement of written consent. Moreover, a lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. See also Rule 1.06 (b).
4. *In considering whether to act as intermediary between clients, a lawyer should be mindful that if the intermediation fails the result can be additional cost, embarrassment and recrimination. In some situations, the risk of failure is so great that intermediation is plainly impossible. Moreover, a lawyer cannot undertake common representation of clients between whom contested litigation is reasonably expected or who contemplate contentious negotiations. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the client's interests can be adjusted by intermediation ordinarily is not very good.*

Confidentiality and Privilege
7. Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Consultation **[WARNING!]**
8. In acting as intermediary between clients, the lawyer should consult with the clients on the implications of doing so, and proceed only upon informed consent based on such a consultation. The consultation should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances.
9. Paragraph (b) is an application of the principle expressed in Rule 1.03. Where the lawyer is intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

Rule 1.09 Conflict of Interest: Former Client [FOR THE COMMUNITY LAWYER, THERE IS NO SUCH THING]
(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:
(1) in which such other person questions the validity of the lawyer's services or work product for the former client;
(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
(3) if it is the same or a substantially related matter.

Comment:
1. Rule 1.09 addresses the circumstances in which a lawyer in private practice, and other lawyers who were, are or become members of or associated with a firm in which that lawyer practiced or practices, may represent a client against a former client of that lawyer or the lawyers former firm. Whether a lawyer, or that lawyer's present or former firm, is prohibited from representing a client in a matter by reason of the lawyer's successive government and private employment is governed by Rule 1.10 rather than by this Rule.
3. Although paragraph (a) does not absolutely prohibit a lawyer from representing a client against a former client, it does provide that the latter representation is improper if any of three circumstances exists, except with prior consent. The first circumstance is that the lawyer may not represent a client who questions the validity of the lawyer's services or work product for the former client. Thus, for example, a lawyer who drew a will leaving a substantial

portion of the testator's property to a designated beneficiary would violate paragraph (a) by representing the testator's heirs at law in an action seeking to overturn the will.
4. Paragraph (a)'s second limitation on undertaking a representation against a former client is that it may not be done if there is a reasonable probability that the representation would cause the lawyer to violate the obligations owed the former client under Rule 1.05. *Thus, for example, if there were a reasonable probability that the subsequent representation would involve either an unauthorized disclosure of confidential information under Rule 1.05 (b) (l) or an improper use of such information to the disadvantage of the former client under Rule 1.05 (b) (3), that representation would be improper under paragraph (a).* Whether such a reasonable probability exists in any given case will be a question of fact.
4A. The third situation where representation adverse to a former client is prohibited is where the representation involves the same or a substantially related matter. The "same" matter aspect of this prohibition prevents a lawyer from switching sides and representing a party whose interests are adverse to a person who sought in good faith to retain the lawyer. It can apply even if the lawyer declined the representation before the client had disclosed any confidential information. This aspect of the prohibition includes, but is somewhat broader than, that contained in paragraph (a) (1) of this Rule. The "substantially related" aspect, on the other hand, has a different focus. *Although that term is not defined in the Rule, it primarily involves situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client's disadvantage or for the advantage of the lawyer's current client or some other person.* It thus largely overlaps the prohibition contained in paragraph (a)(2) of this Rule.
10. *This Rule is primarily for the protection of clients and its protections can be waived by them. A waiver* [**OH NO, NOT ANOTHER ONE!]** *is effective only if there is consent after disclosure of the relevant circumstances, including the lawyer's past or intended role on behalf of each client, as appropriate.* See Comments 7 and 8 to Rule 1.06.

Rule 3.01 Meritorious Claims and Contentions
A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.
Comment:
1. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, affects the limits within which an advocate may proceed. Likewise, these Rules impose limitations on the types of actions that a lawyer may take on behalf of his client. See Rules 3.02-3.06, 4.01-4.04, and 8.04. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.
2. All judicial systems prohibit, at a minimum, the filing of frivolous or knowingly false pleadings, motions or other papers with the court or the assertion in an adjudicatory proceeding of a knowingly false claim or defense. A filing or assertion is frivolous if it is made primarily for the purpose of harassing or maliciously injuring a person. It also is frivolous if the lawyer is unable either to make a good faith argument that the action taken is consistent with existing law
or that it may be supported by a good faith argument for an extension, modification or reversal of existing law.
3. A filing or contention is frivolous if it contains knowingly false statements of fact. It is not frivolous, however, merely because the facts have not been first substantiated fully or because the lawyer expects to develop vital evidence only by discovery. Neither is it frivolous even though the lawyer believes that the client's position ultimately may not prevail. In addition, this Rule does not prohibit the use of a general denial or other pleading to the extent authorized by applicable rules of practice or procedure. Likewise, a lawyer for a defendant in any criminal proceeding or for the respondent in a proceeding that could result in commitment may so defend the proceeding as to require that every element of the case be established.

Rule 3.03 Candor Toward the Tribunal
(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal;
(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;
(4) fail to disclose to the tribunal 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

(5) offer or use evidence that the lawyer knows to be false.
(b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.
(c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

Comment:
Misleading Legal Argument
3. *Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but should recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(4), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.*
7. It is possible, however, that a lawyer will place testimony or other material into evidence and only later learn of its falsity. When such testimony or other evidence is offered by the client, problems arise between the lawyer's duty to keep the client's revelations confidential and the lawyer's duty of candor to the tribunal. Under this Rule, upon ascertaining that material testimony or other evidence is false, the lawyer must first seek to persuade the client to correct the false testimony or to withdraw the false evidence. If the persuasion is ineffective, the lawyer must take additional remedial measures.
8. When a lawyer learns that the lawyer's services have been improperly utilized in a civil case to place false testimony or other material into evidence, the rule generally recognized is that the lawyer must disclose the existence of the deception to the court or to the other party, if necessary rectify the deception. See paragraph (b) and Rule 1.05(h). See also Rule l.05(g). Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal by the lawyer but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer would be aiding in the deception of the tribunal or jury, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.02(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Refusing to Offer Proof Believed to be False
15. *A lawyer may refuse to offer evidence that the lawyer reasonably believes is untrustworthy, even if the lawyer does not know that the evidence is false.* That discretion should be exercised cautiously, however, in order not to impair the legitimate interests of the client. Where a client wishes to have such suspect evidence introduced, generally the lawyer should do so and allow the finder of fact to assess its probative value. A lawyer's obligations under paragraphs (a)(2), (a)(5) and (b) of this Rule are not triggered by the introduction of testimony or other evidence that is believed by the lawyer to be false, but not known to be so.