



# PROFESSIONALISM AND ETHICS FOR PROSECUTORS AND DEFENSE ATTORNEYS IN ACCOUNTABILITY COURTS

CACJ CONFERENCE

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Ethics: The Rules of Professional Conduct apply in accountability courts

Professionalism: Teamwork and respect are critical in a non-adversarial setting

**OVERVIEW**

# PROSECUTORS

- Confidentiality: duty of confidentiality stems not from Rules of Professional Conduct but from HIPAA.
- “The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.”  
Formal AO 93-3
- No duty to report crime (drug use as criminal activity)
- Prosecutorial veto: currently not recommended on separation of powers grounds

# DEFENSE ATTORNEYS

- Advisor v. advocate
  - Know your role: advisor to the team or zealous advocate for the participants, or both?
- Ethical Considerations for Judges and Attorneys in Drug Court
  - <https://www.ndci.org/wp-content/uploads/ethicalconsiderations.pdf>
- Critical Issues for Defense Attorneys in Drug Court
  - <https://www.ndci.org/wp-content/uploads/Mono4.CriticalIssues.pdf>

# RULES OF PROFESSIONAL CONDUCT

- Competence
- Scope of Representation
- Communication
- Confidentiality v. Candor

## RULE 1.1 COMPETENCE

- “A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer’s level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Duty to become familiar with the accountability court model, CACJ Rules, and case law on accountability courts

## RULE 1.2 SCOPE OF REPRESENTATION

- Active, ongoing representation or does participant have to re-apply if they want counsel?
  - Duty to make this clear to clients so they know their options
- May limit scope and objectives of representation “if the limitation is reasonable under the circumstances and the client gives informed consent.”
- Must abide by a client’s decision about whether to request a sanction hearing

# RULE 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 1.0(h), 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.

Duty to advise clients on sanctions generally, to inform them of possible consequences, to be knowledgeable of the sanction matrix/grid



# **RULE 1.6 CONFIDENTIALITY V. RULE 3.3 CANDOR TOWARD THE TRIBUNAL**

- These duties can be in conflict
- If client confesses that he or she violated program rules, does the defense attorney have a duty to disclose this to the team?
- Example: client confesses drug use to you, but it was not picked up by a drug screen.

# ETHICS: JUDICIAL EX PARTE PROBLEMS

- Rule 2.9(A)(5) of the Code of Judicial Conduct:
- *Judges may initiate, permit, or consider ex parte communications when authorized by **law** to do so, such as ... when serving on therapeutic, problem-solving, or accountability courts, including drugs courts, mental health courts, and veterans' courts*
- But there is no special law for communications in accountability courts in Georgia

Attorneys: do NOT be on a text thread with just the coordinator and judge. Just add the other side immediately.

# QUESTIONS AND ANSWERS

