

client, and this duty extends to the practitioner's employees as well. Neither practitioner nor his employees shall accept employment which involves the disclosure or use of a client's confidences without knowledge and consent of the client even though there are other available sources of information. A practitioner shall not continue employment when he discovers that this obligation presents a conflict in his duty between the former and the new client.

(b) If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included in the confidence which a practitioner is bound to respect. The practitioner may properly make such disclosures to prevent the act or protect those against whom that is threatened.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES REGARDING WITNESSES, OTHER LITIGANTS AND THE PUBLIC

**§1103.24 Use of adverse witnesses.**

A practitioner shall not be deterred from seeking information from a witness connected with or reputed to be biased in favor of an adverse party, if the ascertainment of the truth requires that such a person be called as a witness in a proceeding.

**§1103.25 Treatment of witnesses, litigants and other counsel.**

(a) A practitioner shall always treat adverse witnesses and other litigants with fairness and due consideration. He should never minister to the prejudice of a client in a trial or conduct in a cause. The client has no right to demand that the practitioner representing him abuse the opposing party or indulge in offensive personal attacks.

(b) A practitioner shall not attempt to obstruct Board investigations or corruptly to influence witnesses and potential witnesses during an investigation.

(c) In conducting a case it is improper for a practitioner to allude to the personal history or the personal pe-

culiarities or idiosyncracies of practitioners on the other side, or otherwise engage in personal abuse of other practitioners.

**§1103.26 Discussion of pending litigation in the public press.**

Attempts to influence the action and attitude of the members and administrative law judges of the Board through propaganda or through colored or distorted articles in the public press, should be avoided. However, it is not against the public interest or unfair to the Board if the facts of pending litigation are made known to the public through the press in a fair and unbiased manner and in dispassionate terms. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

**§1103.27 Candor and fairness in dealing with other litigants.**

(a) The conduct of practitioners before the Board and with other practitioners should be characterized by candor and fairness. The practitioner shall observe scrupulously the principles of fair dealing and just consideration for the rights of others.

(b) It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of cases.

(d) A practitioner shall not offer evidence which he knows the Board should reject, in order to get the same before

### §1103.28

the Board by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Board, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid performance of an agreement fairly made only because it is not made in writing.

### §1103.28 Negotiations with opposing party.

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

### §1103.29 Public communication and solicitation.

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) The use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) Statements intended or likely to create an unjustifiable expectation;

### 49 CFR Ch. X (10-1-01 Edition)

statements of fee information which are not complete and accurate;

(3) Statements containing information on past performance or prediction of future success;

(4) Statements of prior Board employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) Statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a practitioner make a solicitation which involves the use of undue influence.

(c) A practitioner shall not solicit a potential client who is apparently in a physical or mental condition which would make it unlikely that he could exercise reasonable, considered judgment as to the selection of a practitioner.

(d) A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner.

(e) If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission.

(f) A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

(g) A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

### §1103.30 Acceptance of employment.

(a) The practitioner must decline to conduct a case or to make a defense