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PROFESSIONAL RESPONSIBILITY AND THE CHRISTIAN ATTORNEY: COMPARING THE ABA MODEL RULES OF PROFESSIONAL CONDUCT AND BIBLICAL VIRTUES

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I. INTRODUCTION

The purpose of this article is to consider some correlations between the ABA Model Rules of Professional Conduct (the “Model Rules” or “Rules”) and Holy Scripture.¹ Just as Christians are exhorted to pattern

¹ While this topic has not been discussed extensively in this article, the connection between Scripture and legal ethics has long been recognized. “When legal scholar David Hoffman published the United States’ first course on legal ethics over 160

their conduct directly on Jesus' life and teachings, and more generally on the moral guidance of the Old and New Testaments, so attorneys must conform their actions to rules of professional responsibility. These rules vary from state to state, but their best general embodiment is in the ABA Model Rules, adopted by the American Bar Association's House of Delegates on August 2, 1983, and subsequently amended.² The Preamble to the Rules notes:

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by *personal conscience* and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.³

While the ABA, for whatever reason, has eschewed making reference to an attorney's religious beliefs, it is clear that these are closely intertwined with the phrase "personal conscience." The Preamble goes on to note:

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.⁴

These "basic principles" are nowhere defined or listed, but most Christian attorneys will have no trouble in identifying them with truths in the Bible.⁵

years ago, his reading list began with the book of Proverbs from the Old Testament." Larry O. Natt Gantt, II, *Discovering the Biblical Principles in the Model Rules of Professional Conduct 1* (Aug. 2004) (unpublished discussion paper at the 2004 Summer Program in Christian Jurisprudence, Regent University School of Law) (on file with author) (citing Gordon J. Beggs, *Proverbial Practice: Legal Ethics from Old Testament Wisdom*, 30 WAKE FOREST L. REV. 831, 831-32 (1995)). Prof. Oates co-led this discussion with Prof. Gantt in 2004 and, for several years prior to that time, had been working on confirming this connection.

² See THOMAS D. MORGAN & RONALD D. ROTUNDA, 2006 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 1 (2006) (describing the history of the Model Rules).

³ MODEL RULES OF PROF'L CONDUCT pmb. para. 7 (2003) (emphasis added); see also *id.* R. 2.1 (allowing attorneys to counsel clients on nonlegal, including moral, considerations).

⁴ *Id.* pmb. para. 8 (2003).

⁵ Jewish practitioners will find the following discussion of use insofar as it relates to the books of the Torah. Muslims may find it less relevant, while Hindus, Jains, and many other religious adherents can at least appreciate the textual procedures herein

Something should be said about this article's methodology. The authors, each of whom has taught multiple classes in Professional Responsibility, decided several years back to produce a study comparing scriptural verses to relevant sections of the Model Rules to demonstrate to what degree the ABA's creation is compatible with biblical morality. This initial study is not intended to be exhaustive in nature, but rather is designed to highlight the principal similarities and differences between the Model Rules and biblical precepts in a way to assist Christian attorneys in matters of legal ethics. The idea has been to cover all sections of the Model Rules by offering at least a few relevant examples of Scripture that appear applicable to each rule under consideration. It has thus seemed best, even though this article is essentially about the Bible, to organize it according to provisions of the Rules, rather than vice versa.⁶

A determination was made to shorten the process of analysis by identifying core biblical virtues associated with the major subdivisions of each rule.⁷ A list of these virtues was drawn up by Professor Gantt and subsequently revised by the co-authors through multiple iterations.⁸ Nearly all of these values appeared in a biblical concordance and had cites potentially applicable to the rule subdivision in question. While it was clear that these core virtues would not necessarily cover *all* biblical material relevant to a rule, the authors believed that the scriptural references these virtues generated would be sufficient to convey a preliminary essence of "what the Bible had to say" about each rule. Clearly, there is a substantial overlap of virtues among rules; therefore, those virtues that are representative of a rule, but have appeared less frequently as being relevant to other rules, have been preferred in the discussion. Values of marginal applicability have been noted, where appropriate, in footnotes to the rules. The authors believed it was

employed. The authors believe that attorneys of all faiths will benefit by seeking to identify the ABA's basic truths in their personal religious beliefs, although as Christians the authors feel that the Bible is the appropriate context to be used.

⁶ For an example of a different approach, organizing legal information in a biblical manner, see J. Nelson Happy & S.P. Menefee, *Genesis!: Scriptural Citation and the Lawyer's Bible Project*, 9 REGENT U. L. REV. 89 (1997). See also S.P. Menefee & J. Nelson Happy, "In the Beginning Was the Word": *Planning for a Lawyer's Bible*, 2 FOUNDATIONS, Fall 1999, at 4-15 n.1.

⁷ Rule 3.3, Candor Toward the Tribunal, for example, is represented by honesty, responsibility, truthfulness, fairness, and integrity. Morality and knowledge were dropped as being too general, and justice was dropped as not being directly applicable. Zeal for a worthwhile cause was identified as a virtue of secondary importance.

⁸ The authors recognize in this article that there are seven commonly held virtues: four cardinal (prudence, temperance, fortitude, and justice) and three theological (faith, hope, and love). See 12 ENCYCLOPEDIA BRITANNICA 392 (15th ed. 1998). The authors have chosen to use the term virtue in a broader sense in order to facilitate discussion of the relevant connections the Model Rules have with the Bible.

important to say *something* about *each* rule, but the sections herein do not necessarily mirror the depth of biblical material about a Model Rule.

Additionally, where possible, biblical narratives modeling the rule in question have been added. These do not always include a reference to one of the virtues identified with a rule, but they may add understanding about the applicability of Holy Writ to situations envisioned by the Model Rules.

One important question the authors addressed was which version of the Bible should be referenced. Different Christian groupings and denominations use various versions of the Holy Scriptures. Due to its importance to the American legal tradition, the authors strongly considered using the King James Version (KJV) as the primary text for all scriptural references. Ultimately, however, the authors concluded that using the New King James Version (NKJV) as the primary text would better serve the article's purpose because that version retains much of the KJV wording but revises the antiquated verbiage of the KJV.⁹ Where a secondary text seemed to convey a better meaning, citations were also made to the KJV, the New International Version (NIV), or the New American Standard Bible (NASB).

II. CLIENT-LAWYER RELATIONSHIP

A. Rule 1.1: Competence

Rule 1.3: Diligence¹⁰

Two of the first three Model Rules describe the general work ethic attorneys are to uphold. First, Rule 1.1 states, "A lawyer shall provide *competent representation* to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation *reasonably necessary* for the representation."¹¹ Similarly, Rule 1.3 provides, "A lawyer shall act with *reasonable diligence and promptness* in representing a client."¹²

These standards, at first glance, certainly do not contradict Scripture, for the Bible is replete with passages and instances that encourage individuals to demonstrate the virtues of competence and diligence in their work.¹³ Scripture also supports particular aspects of

⁹ Therefore, any quotations to Scripture are to the NKJV unless noted otherwise.

¹⁰ Given their related emphases, Model Rules 1.1 and 1.3 are discussed together.

¹¹ MODEL RULES OF PROF'L CONDUCT R. 1.1 (2003) (emphasis added).

¹² *Id.* R. 1.3 (emphasis added).

¹³ See, e.g., 2 *Corinthians* 3:5 (NIV) ("Not that we are competent in ourselves to claim anything for ourselves, but our competence comes from God. He has made us competent as ministers of a new covenant . . ."); 2 *Timothy* 2:15 ("Be diligent to present yourself approved to God, a workman who does not need to be ashamed, rightly dividing the word of truth."); *Proverbs* 10:4 (promoting diligence), 21:5 (same); *Romans* 12:8 (same).

these rules, such as the importance of the virtues of knowledge and skill as they relate to individuals' ability to complete tasks before them,¹⁴ and the virtues of thoroughness, preparedness, and promptness as they relate to the manner by which those individuals complete those tasks.¹⁵ Furthermore, the comment to Rule 1.3 provides that lawyers are to act with "commitment," "dedication," and "zeal" in representing their clients; and these principles relate to the biblical virtue of zeal for a worthwhile cause.¹⁶

Despite this noncontradiction between the Rules and Scripture, many Christian scholars reason that the Bible goes beyond encouraging competence and diligence to promote "excellence."¹⁷ Classic Bible reference resources, like *Nave's Topical Bible*, do not include references to "excellence."¹⁸ However, many contemporary Christian ethicists underscore the virtue of excellence as it relates to work ethic.¹⁹ In defining this virtue, Buck Jacobs writes:

Excellence for a Christian is being the very best that God created you to be and not ever willingly settling for less. This may not mean that you are truly the best in the world at whatever you do. But it does mean that you will be the best YOU can be. Excellence is achieving your maximum God-given potential, progressively moving toward the highest utilization of all you have been sovereignly entrusted with.²⁰

In his discussion, Jacobs cites *Proverbs 22:29*, which reads, "Do you see a man who excels in his work? He will stand before kings; [h]e will not stand before unknown men."²¹ Conceptions of excellence, like Jacob's, draw from perhaps the most well-known scripture on work ethic,

For additional scriptures promoting diligence, see *infra* notes 281–82 and accompanying text.

¹⁴ See, e.g., *Proverbs* 13:16, 19:2 (promoting knowledge), 22:29 (NIV) (promoting skill).

¹⁵ See, e.g., *Deuteronomy* 19:18 (NIV) (promoting thoroughness); *1 Peter* 1:13, 3:15 (promoting preparedness); *2 Timothy* 2:21 (same); *Proverbs* 15:23 (promoting promptness).

¹⁶ See *Proverbs* 19:2 (NIV) ("It is not good to have zeal without knowledge, nor to be hasty and miss the way."); *Romans* 12:11 (NIV) ("Never be lacking in zeal, but keep your spiritual fervor, serving the Lord.").

¹⁷ See, e.g., DIANNA BOOHER, *YOUR SIGNATURE WORK: CREATING EXCELLENCE AND INFLUENCING OTHERS AT WORK* (2004); CHARLES GARRIOTT, *WORK EXCELLENCE: A BIBLICAL PERSPECTIVE OF WORK* (2005). Similarly, in the philosophy of lawyering papers that students write for Prof. Gantt's Professional Responsibility class, many students assert that they will uphold the virtue of "excellence" in their legal practice. See *Philosophy of Lawyering Student Papers* (on file with Larry O. Natt Gantt, II).

¹⁸ See ORVILLE J. NAVE, *NAVE'S TOPICAL BIBLE: A DIGEST OF THE HOLY SCRIPTURES* (1962).

¹⁹ See *supra* note 17.

²⁰ BUCK JACOBS, *A LIGHT SHINES BRIGHT IN BABYLON* 54 (2006).

²¹ *Proverbs* 22:29. Other versions translate "excels" differently. See, e.g., *id.* (KJV) ("Seest thou a man diligent in his business? [H]e shall stand before kings; he shall not stand before mean men.").

Colossians 3:23, which reads: “And whatever you do, do it heartily, as to the Lord and not to men”²²

These references to biblical excellence, competence, and diligence illustrate two differences between the biblical virtues and the concepts of competence and diligence in the Model Rules. First, the Model Rules’ concepts adopt a “reasonable person” standard, and such a “reasonableness” standard connotes work that is “fair, proper, or moderate under the circumstances.”²³ Although the comment to Rule 1.3 advocates “commitment,” “dedication,” and “zeal” in representing clients, the entire discussion is couched within the standard in the rule’s text of “reasonable diligence.”²⁴ The biblical principles, however, do not base competence on the circumstances or on a reasonable standard but on the amount of effort the individual applies to the task and the extent to which that effort deviates from the individual’s maximum potential.²⁵ The biblical principles are not measured primarily by the external aspects of the situation but by the internal effort of the individual.²⁶

Second, the Model Rules’ concepts speak nothing of an individual’s attitude toward his or her work; they focus on particular external work standards.²⁷ In contrast, the biblical standards emphasize more the attitudes of individuals to their work than their external results.²⁸ Similarly, numerous biblical passages refer generally to the importance

²² *Colossians* 3:23. Verse 24 continues, “knowing that from the Lord you will receive the reward of the inheritance; for you serve the Lord Christ.” *Colossians* 3:24.

²³ BLACK’S LAW DICTIONARY (8th ed. 2004) (first definition of *reasonable*). *Black’s* third definition of “reasonable” applies expressly to a person but is rather nondescript in defining it as “having the faculty of reason.” *Id.*

²⁴ MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 1 (2003).

²⁵ See *supra* note 16 and accompanying text.

²⁶ See *Colossians* 3:22 (“Bondservants, obey in all things your masters according to the flesh; not with eyeservice, as men-pleasers; but in sincerity of heart, fearing God”); cf. DENNIS W. BAKKE, JOY AT WORK: A CEO’S REVOLUTIONARY APPROACH TO FUN ON THE JOB (2005) (describing a Christian CEO’s philosophy in which the workplace should be a place where workers experience joy because they are encouraged to maximize their God-given talents).

²⁷ As noted, the comment to Rule 1.3 speaks to lawyers’ “commitment,” “dedication,” and “zeal,” but these qualities are relevant to the lawyer’s devotion to the representation of the client. They do not apply more generally to lawyers’ personal attitude to their work.

²⁸ For instance, *Colossians* 3:23 stresses working “heartily” (NKJV), or “with all your heart” (NIV). See also 2 *Timothy* 2:15 (“Do your best to present yourself to God as one approved, a workman who does not need to be ashamed and who correctly handles the word of truth.”). In this emphasis on doing your best, Christian excellence differs from perfectionism. Perfectionism can cause individuals to sacrifice other important responsibilities in the effort to obtain “perfect” results. In addition, Gordon Smith contends that perfectionism is linked to self-centeredness whereas biblical excellence is “rooted in the conviction that God deserves our best.” GORDON T. SMITH, COURAGE AND CALLING: EMBRACING YOUR GOD-GIVEN POTENTIAL 86–87 (1999).

of individuals' motives in the actions they take,²⁹ and Christian scholars emphasize the importance of motives as a component to moral actions.³⁰

B. Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

Rule 1.2 provides the general framework for describing the scope of a lawyer's representation of a client and the types of decisions that are within the lawyer's and the client's authority. The rule describes that clients have the authority to make decisions regarding the "objectives" of the representation and that lawyers are to consult with the client regarding the "means" by which those objectives are to be pursued.³¹ The rule also maintains that a lawyer's representation of a client does not constitute an endorsement of the client's views or activities, and it provides that lawyers may limit the scope of representation under certain circumstances.³² Finally, the rule adds that a lawyer shall not counsel a client to engage in conduct the lawyer knows is fraudulent, but a lawyer may discuss the legal ramifications of any proposed course of action with a client.³³

In allocating the decision-making between the client and lawyer, Rule 1.2(a) affirms the general notion that lawyers are agents of their clients.³⁴ The rule's emphasis on this aspect of the attorney-client

²⁹ See, e.g., *Proverbs* 16:2 (NIV) ("All a man's ways seem innocent to him, but motives are weighed by the LORD."), 21:2 ("Every way of a man is right in his own eyes; [b]ut the LORD weighs the spirits.").

³⁰ See, e.g., HADDON ROBINSON, *DECISION-MAKING BY THE BOOK* 86 (1991) ("Right deeds are righteous only if they proceed from right motives. There are a great many actions which, in and of themselves, are neither right nor wrong. They are made right when we act in love. They become wrong if we act in selfishness.").

³¹ MODEL RULES OF PROF'L CONDUCT R. 1.2 (2003). Most scholars agree that this last provision implies that lawyers are within their ethical bounds if they make "means" decisions they believe are in the client's best interest even if the client disagrees with the lawyer's decision. Larry O. Natt Gantt, II, *More Than Lawyers: The Legal and Ethical Implications of Counseling Clients on Nonlegal Considerations*, 18 *GEO. J. LEGAL ETHICS* 365, 407 (2005) (citing MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS' ETHICS* 73 (2d ed. 2002) (reasoning that the "means are for the lawyer [to decide] after consultation with the client")); see also CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* 157 (1986) (stating that the lawyer must consult with the client about the means of representation but that "the lawyer retains the ultimate prerogative to act"); Robert M. Contois, Jr., *Ethical Considerations: Independent Professional Judgment, Candid Advice, and Reference to Nonlegal Considerations*, 77 *TUL. L. REV.* 1223, 1226 (2003) ("Rule 1.2(a) reserves to the client control of the purposes of the engagement but allows the lawyer to choose the means to be employed in performing the legal services . . .").

³² MODEL RULES OF PROF'L CONDUCT R. 1.2 (2003).

³³ *Id.*

³⁴ See, e.g., Jan Ellen Rein, *Clients with Destructive and Socially Harmful Choices—What's an Attorney to Do?: Within and Beyond the Competency Construct*, 62 *FORDHAM L. REV.* 1101, 1136 (1994).

relationship therefore points to biblical virtues such as honor, loyalty, trustworthiness, and servanthood. The apostle Paul discusses in several epistles the importance of accountability and order in human structures, such as in work relationships.³⁵ In *Ephesians*, he specifically instructs workers to “be obedient to those who are your masters according to the flesh, with fear and trembling, in sincerity of heart, as to Christ.”³⁶

Scholars have recognized that, despite the customary agent-principal relationship between lawyers and clients, lawyers sometime dominate the attorney-client relationship by exerting power over their clients.³⁷ Christian lawyers should not follow this practice in light of Model Rule 1.2(a) and consonant biblical virtues. Biblical principles affirm that the general act of obeying one’s earthly employer can be an act that points to the employee’s humility in obeying God.³⁸ This obedience is subject to the preeminent principle that Christian lawyers should not follow instructions that violate God’s word.³⁹ Absent such conflict, Christian lawyers’ service to their clients can model the biblical virtue, which permeates Scripture, that individuals should serve others.⁴⁰

Rule 1.2(b) specifically implicates the biblical virtue of integrity. That section, as noted, maintains that a lawyer’s representation of a

³⁵ See *Colossians* 3:22–25; *Ephesians* 5:22–6:9; 1 *Peter* 2:12–19; see also ALEXANDER HILL, *JUST BUSINESS: CHRISTIAN ETHICS FOR THE MARKETPLACE* 155 (1997) (noting that Paul “regarded responsible human authority as a gift from God—a common grace for all—that provides necessary order”).

³⁶ *Ephesians* 6:5. Paul adds that workers should obey “not with eyeservice, as men-pleasers, but as bondservants of Christ, doing the will of God from the heart, with goodwill doing service, as to the Lord, and not to men, knowing that whatever good anyone does, he will receive the same from the Lord, whether *he is a slave or free.*” *Ephesians* 6:6–8.

³⁷ See, e.g., Serena Stier, *Legal Ethics: The Integrity Thesis*, 52 OHIO ST. L.J. 551, 556 (1991) (recognizing how the lawyer may “dominate” clients in the lawyer-client relationship).

³⁸ See *Ephesians* 6:5–8.

³⁹ Biblical scholars have recognized that, in comparing obedience to an earthly master to obedience to Christ, Paul gives the earthly obedience “higher meaning,” such that workers can place limits on that obedience so that they do not violate moral truths. WALTER C. KAISER, JR. ET AL., *HARD SAYINGS OF THE BIBLE* 643 (1996); see also *id.* at 574 (discussing *Acts* 17:6–7 and *Revelation* 13 and 18 as passages that demonstrate how God does not demand unconditional obedience to the state). For two examples of godly disobedience to authority, see *Daniel* 3:8–30 (recounting Shadrach, Meshach, and Abednego’s disobedience to a king’s command to worship a golden statue) and *Daniel* 6:1–28 (recounting Daniel’s disobedience to a kingly edict punishing anyone who prayed to a god or man other than the king).

⁴⁰ See, e.g., *Galatians* 6:2 (“Bear one another’s burdens, and so fulfill the law of Christ.”); 1 *Peter* 2:17 (NIV) (“Show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king.”), 4:10 (“Each one should use whatever gift he has received to serve others, faithfully administering God’s grace in its various forms.”).

client does not constitute an endorsement of the client's views or activities.⁴¹ Scripture does not condition workers' obedience to their masters on the workers' agreement with the masters' instructions.⁴² However, Scripture also does not instruct workers or those under the authority of others to follow blindly the directions of their superiors.⁴³ Christian lawyers thus must be careful not to hide behind their role in being an agent of their client to justify committing actions or furthering causes with which they find morally questionable. Lawyers need not agree with the objectives of their clients, but personal integrity demands that they maintain a moral justification for the actions they do on a client's behalf; lawyers' integrity suffers when they distance their personal morality from their professional lives.⁴⁴ Thus, Rule 1.2(b) reflects only part of the standard for Christian attorneys: although such attorneys are free to represent clients with which they disagree, they must justify such representation under larger moral principles that are consonant with scriptural truths.

Rule 1.2(c) specifically relates to the virtues of reasonableness and personal responsibility.⁴⁵ By requiring lawyers' scope limitations to be reasonable, the rule affirms the basic principle that lawyers remain responsible for their work for their clients; lawyers cannot avoid their basic duty to provide competent representation, for example, by enacting unreasonable limitations on their scope of service.⁴⁶ Scripture supports

⁴¹ MODEL RULES OF PROF'L CONDUCT R. 1.2 (2003).

⁴² For instance, Paul does not place such a condition on his instruction in *Ephesians* for slaves to obey their masters. See *Ephesians* 6:5-9.

⁴³ See, e.g., *supra* note 39 and accompanying text.

⁴⁴ See Larry O. Natt Gantt, II, *Integration as Integrity: Postmodernism, Psychology, and Religion on the Role of Counseling in the Attorney-Client Relationship*, 16 REGENT U. L. REV. 233, 248-62 (2003-2004). Lawyers may validate representing a client with whom they personally disagree by pointing to a higher ethical principle, such as protecting individual liberties. See NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 25-26 (3d ed. 2004). Nevertheless, personal integrity in Scripture requires individuals to take moral responsibility for their actions.

⁴⁵ Less directly, Rule 1.2(c) relates to the virtue of integrity. Specifically, the rule enables attorneys to maintain their personal integrity and still represent certain clients by allowing them to exclude from their representation certain actions that the lawyer finds personally distasteful. See MODEL RULES OF PROF'L CONDUCT R. 1.2 cmt. 6 (2003) (reasoning that attorneys may limit their representation to "exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent").

⁴⁶ Such limitation, however, may be a factor in assessing the level of competency required. See *id.* R. 1.2 cmt. 7 ("Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); *Lerner v. Laufer*, 819 A.2d 471 (N.J. Super. Ct. App. Div. 2003) (holding that attorney did not commit malpractice by not investigating the reasonableness of a property settlement agreement because the attorney had properly limited his scope of representation).

this notion of personal responsibility and underscores that individuals remain responsible for their own conduct and should not cast blame on someone else.⁴⁷

Finally, Rule 1.2(d) implicates the biblical virtues of honesty and discretion. In prohibiting lawyers from counseling or assisting a client in conduct that is criminal or fraudulent, the rule affirms that lawyers' advocacy role must be tempered by their larger obligation to uphold the laws of society. Such temperance is appropriate biblically in light of Paul's instructions for believers to submit to governmental authority.⁴⁸ The rule, however, adds that lawyers may discuss the legal consequences of a course of action with a client to assist that client in making a good faith effort to determine the "validity, scope, meaning, or application" of a law.⁴⁹ As the comment recognizes, this second part of the rule is not intended to discourage lawyers from giving their honest assessment of the client's course of conduct.⁵⁰ The comment adds, "There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed"⁵¹

Walking this line between counseling clients about problematic conduct and not assisting them in such conduct is not always easy, and it involves the biblical virtue of discretion. The New King James Version uses the term "discretion" nine times, seven of which pertain to the virtue at issue here.⁵² The Hebrew word translated as discretion in five of those passages is *m'zimmah*,⁵³ which means more fully "purpose, discretion, device."⁵⁴ In one of the verses, the respective Hebrew word is

⁴⁷ See, e.g., *Ezekiel* 18:20 ("The soul who sins shall die. The son shall not bear the guilt of the father, nor the father bear the guilt of the son. The righteousness of the righteous shall be upon himself, and the wickedness of the wicked shall be upon himself.").

⁴⁸ See *Romans* 13:1–7. This submission, of course, is not absolute. See *supra* note 39 and accompanying text.

⁴⁹ MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (2003).

⁵⁰ *Id.* R 1.2 cmt. 9 ("This prohibition [in (d)], however, does not preclude a lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct.").

⁵¹ *Id.*; see also CRYSTAL, *supra* note 44, at 475–78 (discussing the thorny ethical issues that arise in determining the scope of Rule 1.2(d)).

⁵² See BibleGateway.com, Quick Search Results: Discretion, <http://www.biblegateway.com/keyword/?search=discretion&version1=50&searchtype=all> (last visited Aug. 25, 2006) (listing the following relevant passages: *Psalms* 112:5; *Proverbs* 1:4, 2:11, 3:21, 5:2, 8:12, 19:11).

⁵³ JAMES STRONG, THE EXHAUSTIVE CONCORDANCE OF THE BIBLE 267 (1988), available at <http://bible.crosswalk.com/OnlineStudyBible/bible.cgi?new=1&word=discretion§ion=0&version=str&language=en>.

⁵⁴ FRANCIS BROWN ET AL., THE BROWN-DRIVER-BRIGGS HEBREW AND ENGLISH LEXICON 273 (Hendrickson Publishers 1996).

mishpat,⁵⁵ which more fully means “judgment, justice, ordinance.”⁵⁶ In the other of the verses, the respective Hebrew word is *sekel*,⁵⁷ which more fully means “prudence, insight, understanding.”⁵⁸ Based on these definitions, lawyers seeking to discern their ethical limitations in counseling clients will need discretion broadly defined as prudence, judgment, and understanding. Lawyers will develop such attributes from experience, but Scripture affirms that God is the source of true understanding: “Trust in the LORD with all your heart, [a]nd lean not on your own understanding; [i]n all your ways acknowledge Him, [a]nd He shall direct your paths.”⁵⁹ Christian attorneys should therefore not neglect their responsibility to pray and seek guidance from the Lord in making the tough decisions that arise in counseling clients about questionable conduct.

C. Rule 1.4: Communication

Rule 1.4 provides general standards that govern attorneys’ responsibility to communicate with their clients, including attorneys’ responsibility to explain matters to their clients so that the clients can make “informed decisions” relating to the representation.⁶⁰ In fostering communication from lawyer to client, the rule first affirms the biblical principle of promptness. Specifically, sections (a)(1), (a)(3), and (a)(4) of the rule instruct lawyers “promptly” to inform clients when they need to provide their informed consent to a decision and “promptly” to respond to clients’ reasonable information requests.⁶¹ Similarly, by directing lawyers to keep clients “reasonably informed about the status of the matter,” section (a)(3) encourages lawyers to communicate promptly with their clients when changes to the status of the matter occur.⁶² A lawyer’s failure to communicate promptly with clients is a common complaint raised by clients,⁶³ and lawyers are frequently disciplined or held liable for malpractice, in part, due to their failure to communicate.⁶⁴

⁵⁵ STRONG, *supra* note 53.

⁵⁶ BROWN ET AL., *supra* note 54, at 1048.

⁵⁷ STRONG, *supra* note 53.

⁵⁸ BROWN ET AL., *supra* note 54, at 968.

⁵⁹ *Proverbs* 3:5–6.

⁶⁰ MODEL RULES OF PROF’L CONDUCT R. 1.4 (2003).

⁶¹ *Id.* R. 1.4(a)(1), (4).

⁶² *See id.* R. 1.4(a)(3). Promptness is related to diligence, and for scriptures relevant to the relationship between the two virtues, see *infra* notes 281–82 (discussing Rule 3.2 (“Expediting Litigation”). *See also Proverbs* 15:23.

⁶³ *See, e.g.,* David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 826–27 n.109 (1992) (referencing statistics compiled by the State Bar of California showing that the most common allegations of lawyer misconduct involve “failure to perform, delay, abandonment” and “lack of communication”) (citing Stephen G. Bené, Note,

Rule 1.4 also relates to the biblical virtue of honesty. Rule 1.4(a)(5) specifically provides that, when the lawyer knows the client expects assistance in violation of the law, the lawyer must consult with the client about any ethical limitations on the attorney's conduct.⁶⁵ In requiring this open communication, the rule relates to passages in Scripture where believers who are in conflict are encouraged to go to one another and discuss the conflict so that they can be reconciled.⁶⁶ Although these passages relate to conflicts among believers, they point to a larger principle that Christians should strive for peace with others and should conduct their lives in a way that avoids unnecessary conflict with others.⁶⁷ By requiring attorneys to explain to their clients these potential ethical dilemmas, Rule 1.4 thus reflects biblical principles encouraging attorneys to be proactive in avoiding attorney-client conflicts.

Finally, Rule 1.4 relates to the biblical virtue of knowledge. This virtue is implicated in the rule's requirement that attorneys explain to clients matters that will affect their "informed consent" so that clients can make "informed decisions" regarding the representation.⁶⁸ The New King James Version of the Bible uses the word "knowledge" 164 times,⁶⁹ and the word as translated comes from several different Hebrew and

Why Not Fine Attorneys?: An Economic Approach to Lawyer Disciplinary Sanctions, 43 STAN. L. REV. 907, 911 (1991).

⁶⁴ See, e.g., Ronald C. Link, *Developments Regarding the Professional Responsibility of the Estate Administration Lawyer: The Effect of the Model Rules of Professional Conduct*, 26 REAL PROP. PROB. & TR. J. 1, 20 (1991) ("Studies show that malpractice claims are reduced considerably when the lawyer maintains an appropriate degree of communication with the client.").

⁶⁵ MODEL RULES OF PROF'L CONDUCT R. 1.4(a) (2003).

⁶⁶ *Matthew* 18:15 ("Moreover if your brother sins against you, go and tell him his fault between you and him alone. If he hears you, you have gained your brother."); see also ROBERT H. MOUNCE, *MATTHEW* 176 (1991) (reasoning that "reconciliation" is the goal of confronting others with whom one is in conflict).

⁶⁷ See *Romans* 12:18 ("If it is possible, as much as depends on you, live peaceably with all men."); *Philippians* 2:1-2 ("Therefore if *there is* any consolation in Christ, if any comfort of love, if any fellowship of the Spirit, if any affection and mercy, fulfill my joy by being like-minded, having the same love, *being* of one accord, of one mind."); 2 *Corinthians* 5:18 ("Now all things *are* of God, who has reconciled us to Himself through Jesus Christ, and has given us the ministry of reconciliation . . ."); see also RICK WARREN, *THE PURPOSE DRIVEN LIFE* 152-59 (2002) (discussing biblical approaches to reconciling relationships); *infra* notes 253-54 (discussing how principles of reconciliation relate to Rule 2.4 ("Lawyer Serving as Third-Party Neutral")).

⁶⁸ MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (2003).

⁶⁹ See BibleGateway.com, Quick Search Results: Knowledge, <http://www.biblegateway.com/keyword/?search=knowledge&version=50&searchtype=all> (last visited August 26, 2006).

Greek words.⁷⁰ Biblical scholars underscore, however, that knowledge as the Bible conceives of it is more than “mental knowledge”; it also includes “moral knowledge.”⁷¹ Moral knowledge is described as “affect[ing] a person’s will” and as “knowledge of the heart.”⁷² Scholars add that the book of *Proverbs*, which served as the foundation for legal ethics, deals principally with this kind of knowledge.⁷³ In supplementing the Model Rules with biblical principles, Rule 1.4’s reference to “informed decisions” and many of the Rules’ references to “informed consent”⁷⁴ thus should include more than an inquiry into whether clients understand the legal ramifications of a course of conduct. To be truly informed, clients should seek knowledge about the moral issues involved in their situation.⁷⁵

D. Rule 1.5: Fees

Rule 1.5 includes several provisions that govern attorneys’ fees and how they charge those fees to their clients. Rule 1.5(a) first provides the general standard that “[a] lawyer shall not make an agreement for, charge, or collect an *unreasonable* fee or an *unreasonable* amount for expenses.”⁷⁶ The rule continues to provide specific guidance on how attorneys are to communicate the basis of their fees with their clients, how they are to form contingency fee agreements with their clients, and how they are to split fees with other attorneys.⁷⁷

Rule 1.5 relates to various biblical virtues. In establishing the fee reasonableness requirement and the requirements for how lawyers are to determine their fee agreements, the rule relates to the virtues of reasonableness, honesty, integrity, and trustworthiness. Old Testament

⁷⁰ See EDWARD W. GOODRICK & JOHN R. KOHLENBERGER III, THE NIV EXHAUSTIVE CONCORDANCE 632 (1990) (addressing the word as translated in the New International Version).

⁷¹ See HAYFORD’S BIBLE HANDBOOK 678 (Jack W. Hayford ed., 1995) [hereinafter HAYFORD’S].

⁷² *Id.*; see *Proverbs* 1:7 (“The fear of the LORD is the beginning of knowledge . . .”).

⁷³ HAYFORD’S, *supra* note 71; see also Beggs, *supra* note 1 (discussing how early legal ethicists used *Proverbs* in formulating legal ethical principles).

⁷⁴ The Model Rules define the term “informed consent” in Rule 1.0(e) as “denot[ing] 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.” MODEL RULES OF PROF’L CONDUCT R. 1.0(e) (2003). Excluding any references in the comments, the Rules use that term in Rules 1.2, 1.4, 1.6, 1.7, 1.8, 1.9, 1.11, 1.12, 1.18, and 2.3.

⁷⁵ This relationship between the legal and moral issues affecting a client’s situation is also relevant to Rule 2.1. See *infra* notes 229–35 and accompanying text.

⁷⁶ MODEL RULES OF PROF’L CONDUCT R. 1.5 (2003) (emphasis added). Rule 1.5 also provides eight factors to be used in determining whether the legal fee is “reasonable.” *Id.*

⁷⁷ *Id.*

passages instruct individuals not to use “dishonest” scales or standards in their business transactions.⁷⁸ In that culture, no uniform system for weights and measures existed, and individuals commonly defrauded others in their business dealings by using weights that were lighter than they should have been.⁷⁹ These biblical passages are most analogous to a situation where a lawyer falsifies his billing record to overcharge his client. Such a falsification would violate both these biblical principles and Rules 1.5(b) to (e), which address different fee agreements and communications regarding fees.⁸⁰

More broadly, however, the biblical passages about dishonest scales relate to lawyers who “cheat” their clients by charging them exorbitant fees. According to biblical scholar R.K. Harrison, “The Law demanded the use of correct scales and weights because the Redeemer of Israel was not only mighty but just and delighted in honest dealings among his people.”⁸¹ Attorneys who charge unreasonable fees therefore should consider whether, by charging such fees, they are being dishonest with their clients. Christian ethicist Jerry White describes one of the five guidelines for Christian businesses as the goal for “reasonable profit.”⁸² He notes that defining “reasonableness” is difficult in this regard but advises that sellers of services, like lawyers, should consider Scripture’s “golden rule” and imagine themselves on the buying end in determining whether a fee is just and fair.⁸³ Under this framework, an attorney would violate biblical principles if he charged his client more than he thinks would be fair if he were the client. Thus, biblical principles appear to go beyond the baseline reasonableness requirement in Rule 1.5 to require Christian attorneys to consider fairness principles as well.⁸⁴

⁷⁸ *Proverbs* 11:1 (“Dishonest scales are an abomination to the LORD, [b]ut a just weight is His delight.”); *Leviticus* 19:35 (“You shall do no injustice in judgment, in measurement of length, weight, or volume.”).

⁷⁹ THE NIV STUDY BIBLE 171 n.19:35 (Kenneth Barker ed., 1985); R.K. Harrison, *Proverbs*, in EVANGELICAL COMMENTARY ON THE BIBLE 417–18 (Walter A. Elwell ed., 1989).

⁸⁰ See MODEL RULES OF PROF’L CONDUCT R. 1.5 (2003). Lawyers may violate these rule provisions even when they do not falsify the records if they exploit an arrangement by using “wasteful procedures.” *Id.* R. 1.5 cmt. 5 (“A lawyer should not exploit a fee arrangement based primarily on hour charges by using wasteful procedures.”).

⁸¹ Harrison, *supra* note 79, at 418.

⁸² JERRY WHITE, HONESTY, MORALITY & CONSCIENCE 79 (1996).

⁸³ *Id.* (referencing *Luke* 6:31, which reads, “[a]nd just as you want men to do to you, you also do to them likewise”).

⁸⁴ Specifically with regard to the virtue of trustworthiness, lawyers who charge clients unreasonable fees are breaching a trust that is part of the attorney-client relationship. Like the merchants who switch the weights, such lawyers are taking advantage of someone who has placed a trust in them. Trustworthiness concerns particularly arise in Rule 1.5(e) regarding fee splitting. Referring lawyers can breach a trust owed to their client when they craft fee-splitting arrangements that provide for joint

Biblical passages on money and wealth also go beyond the requirements in Rule 1.5 in two other important respects. First, these passages speak to the importance of financial responsibility and stewardship.⁸⁵ They underscore that money and other material possessions ultimately come from God and are entrusted to individuals and should be used for God's purposes.⁸⁶ Christian attorneys therefore should recognize that their fees are like tools God has given them to use in fulfilling His will on earth.⁸⁷ Individuals who fail to manage their money so that they are unable to contribute to godly causes are not being proper stewards of God's resources.⁸⁸

Second, many biblical passages caution individuals against being enticed by greed or the love of money.⁸⁹ Scripture goes beyond the text of Rule 1.5 in addressing attorneys' attitudes toward their fees, not just their actions regarding them. As theologian Gordon Fee reasons, "[T]he desire for wealth has inherent spiritual dangers, partly because wealth is unrelated to godliness in any way and partly because the very desire itself is like a trap . . . full of many hurtful desires that lead to all kinds of sin."⁹⁰ Christian attorneys therefore cannot claim virtuosity simply by looking at the amount of their fee or at whether they have followed the proper procedures for fee agreements. Rather, they must also search their hearts to consider the extent to which receiving that income has become the focus of their life.

responsibility but they never follow up with the attorney to whom the work was referred. See MODEL RULES OF PROF'L CONDUCT R. 1.5(e) (2003).

⁸⁵ See *Matthew* 25:14–30 (parable of the talents).

⁸⁶ See *2 Corinthians* 9:10 (NIV) ("Now he who supplies seed to the sower and bread for food will also supply and increase your store of seed and will enlarge the harvest of your righteousness. You will be made rich in every way so that you can be generous on every occasion, and through us your generosity will result in thanksgiving to God."); *1 Timothy* 6:7 ("For we brought nothing into *this* world, and it is certain we can carry nothing out.").

⁸⁷ Theologian Wayne Grudem adds, "It is most pleasing to God when gifts of money are accompanied by an intensification of the giver's own personal commitment to God . . ." WAYNE GRUDEM, SYSTEMATIC THEOLOGY: AN INTRODUCTION TO BIBLICAL DOCTRINE 957 (1994); see also *2 Corinthians* 9:7 ("So let each one give as he purposes in his heart, not grudgingly or of necessity; for God loves a cheerful giver.").

⁸⁸ Cf. *Matthew* 25:14–30 (describing how the master chastised the servant who failed to grow the talent that was entrusted to him).

⁸⁹ See, e.g., *Proverbs* 28:20 ("A faithful man will abound with blessings, [b]ut he who hastens to be rich will not go unpunished."), 30:8 ("Remove far from me vanity and lies: give me neither poverty nor riches; feed me with food convenient for me . . ."); *1 Timothy* 6:10 ("For the love of money is the root of all evil: which while some coveted after, they have erred from the faith, and pierced themselves through with many sorrows."); *Hebrews* 13:5 (NIV) ("Keep your lives free from the love of money and be content with what you have, because God has said, 'Never will I leave you; never will I forsake you.'").

⁹⁰ GORDON D. FEE, 1 AND 2 TIMOTHY, TITUS 145 (1988) (citations omitted).

E. Rule 1.6: Confidentiality of Information

Rule 1.6 addresses the significant standard in legal ethics that lawyers are not to disclose confidential client information. The rule specifically prohibits lawyers from revealing any information “relating to the representation” of the client.⁹¹ The rule provides several exceptions to the prohibition, including recently adopted standards allowing attorneys to disclose confidential information necessary to prevent substantial financial injury to others in certain cases.⁹²

In espousing the hallmark principle of attorney-client confidentiality, the rule highlights the biblical virtues of confidentiality and trustworthiness. *Proverbs* 11:13 exemplifies these principles; it reads, “A talebearer reveals secrets, but he who is of a faithful spirit conceals a matter.”⁹³ Other scriptures more broadly point to the importance of an individual’s faithfulness to another when that person puts his or her trust in the individual. For example, 1 *Corinthians* 4:2 provides, “Now it is required that those who have been given a trust must prove faithful.”⁹⁴ Rule 1.6, specifically 1.6(b)(6), also affirms the biblical principle of submission to authorities.⁹⁵ By instructing attorneys to reveal client confidences if necessary to comply with “other law or a court order,” the rule reminds attorneys that their obligations to government authority can trump their obligations to their clients.⁹⁶

Less directly, through certain of its exceptions to the general rule of confidentiality, Rule 1.6 also relates to the biblical principle of compassion. These exceptions include allowing attorneys, as noted, to

⁹¹ MODEL RULES OF PROF’L CONDUCT R. 1.6 (2003).

⁹² *Id.* R 1.6(b)(2), (3).

⁹³ *Proverbs* 11:13. Another version reads: “A gossip betrays a confidence, but a trustworthy man keeps a secret.” *Id.* (NIV). A similar sentiment is expressed in *Proverbs* 20:19, which reads, “He who goes about as a talebearer reveals secrets; [t]herefore do not associate with one who flatters with his lips.” Another passage in *Proverbs* adds that those who reveal secrets run the risk of damaging their reputation. *See Proverbs* 25:9–10.

⁹⁴ 1 *Corinthians* 4:2 (NIV); *see also* 1 *Timothy* 6:20 (encouraging Timothy to be faithful in being entrusted with the gospel). Being faithful to the trust another person commits in you relates to the faithfulness the Bible teaches that individuals should have when they confront a task with which God has entrusted them. For instance, when the apostle Paul describes his responsibility to preach the gospel, he writes, “If I preach voluntarily, I have a reward; if not voluntarily, I am simply discharging the trust committed to me.” 1 *Corinthians* 9:17 (NIV). This passage also highlights how trustworthiness relates to the virtue of personal responsibility, which entails being responsible for those things entrusted to you.

⁹⁵ The seminal biblical passage addressing a Christian’s obligation to submit to governmental authorities is *Romans* 13:1–7. *See also Exodus* 22:28 (“You shall not revile God, nor curse a ruler of your people.”); *Ezra* 7:26 (“Whoever will not observe the law of your God and the law of the king, let judgment be executed speedily on him, whether it be death, or banishment, or confiscation of goods, or imprisonment.”).

⁹⁶ MODEL RULES OF PROF’L CONDUCT R. 1.6(b)(6) (2003).

disclose information to prevent financial injury and also to prevent “reasonably certain death or substantial bodily injury.”⁹⁷ By including such exceptions, the rule recognizes that attorneys have duties to others that can override their duties to their clients. In allowing attorneys to disclose client confidences in certain instances to protect the interests of others, the rule affirms that individuals should be sensitive to the needs of others and should act to help others.⁹⁸

Although Rule 1.6 recognizes how an attorney’s duties toward others might supersede duties to clients, the rule does not go as far as the Bible in this recognition. Specifically, the rule’s exceptions merely provide that attorneys “may” reveal confidential information in certain cases. Nowhere does the rule *require* attorneys to reveal such information.⁹⁹ The rule therefore, for instance, only allows attorneys to reveal confidential information to prevent death or substantial bodily injury; under this rule, an attorney would not commit ethical misconduct if she sat on client confidences even if disclosing such information would have saved someone’s life.¹⁰⁰

Scripture, in contrast, underscores the sanctity of human life and does not authorize an attorney’s failure to protect another’s life under the cloak of client confidentiality.¹⁰¹ The attorney would, at a minimum, need to disclose to his client that he is going to reveal such information to the appropriate person in order to protect the other’s life. If the attorney’s disclosure to his client would heighten the danger to others, the attorney would be authorized to reveal the information without

⁹⁷ *Id.* R. 1.6(b)(1)–(3).

⁹⁸ For Scriptures that promote the importance of compassion, see 1 *Peter* 3:8 (“Finally, all of you be of one mind, having compassion for one another; love as brothers, be tenderhearted, be courteous”) and *Romans* 12:15 (“Rejoice with them that do rejoice, and weep with them that weep.”).

⁹⁹ MODEL RULES OF PROF’L CONDUCT R 1.6(b) (2003).

¹⁰⁰ This conclusion assumes that disclosure is not necessary to comply with other law. *See id.* R 1.6(b)(1), (6). Several states vary from this Model Rule in requiring attorneys to disclose such information. *See* Emiley Zalesky, *When Can I Tell a Client’s Secret? Potential Changes in the Confidentiality Rule*, 15 *GEO. J. LEGAL ETHICS* 957, 962 n.31 (2002) (listing the states that, in contrast to the Model Rules, require disclosure to prevent death or substantial bodily injury). The contours of Rule 1.6(b)(1) and its permissive versus mandatory approach have generated much discussion in legal scholarship. *See, e.g.*, Lewis Becker, *What Changes to the Model Rules Will Mean for Family Lawyers*, *FAM. ADVOC.*, Fall 2003, at 9; Krysten Hicks, *Thresholds for Confidentiality: The Need for Articulate Guidance in Determining When to Breach Confidentiality to Prevent Third-Party Harm*, 17 *TRANSNAT’L LAW*, 295, 298–301 (2004); David Lew, *Revised Model Rule 1.6: What Effect Will the New Rule Have on Practicing Attorneys*, 18 *GEO. J. LEGAL ETHICS* 881 (2005); Irma S. Russell, *Keeping the Wheels on the Wagon: Observations on Issues of Legal Ethics for Lawyers Representing Business Organizations*, 3 *WYO. L. REV.* 513, 535–537 (2003).

¹⁰¹ Scripture is replete with passages, most notably the Ten Commandments, that forbid murder and underscore the sanctity of human life. *See, e.g.*, *Exodus* 20:13; *Matthew* 19:18; *Romans* 13:9.

discussing the matter with his client. Breaking the client's confidence does not necessarily involve an outright misrepresentation, and Scripture condones the actions of certain individuals who concealed the truth from others because those persons did not have a need or right to know the whole truth.¹⁰²

Moreover, Scripture appears to condone an individual's lying in the narrow case of when necessary to prevent the death of innocent human life. For instance, in *Exodus* 1:15–21, the Pharaoh instructed the Hebrew midwives to kill male children born to Hebrew women. The midwives, however, let the boys live. When the Pharaoh questioned why they let the boys live, the midwives lied, telling Pharaoh that the Hebrew women gave birth before the midwives arrived. The Bible says that, in response to their actions, “God dealt well with the midwives: and the people multiplied, and grew very mighty. And so it was, because the midwives feared God, that He provided households for them.”¹⁰³

In another example, in *Joshua* 2, Rahab lied to the king of Jericho. Although she was hiding Hebrew spies on the roof of her home, she told the king that the men had left at dusk and that she did not know where they went.¹⁰⁴ Because of Rahab's actions, Joshua and his army spared Rahab and her family when they burned the city of Jericho.¹⁰⁵ New Testament passages affirm that Rahab was blessed because of her

¹⁰² For instance, in 1 *Samuel* 16:1–13, God instructs Samuel to travel to Bethlehem to anoint David as king. When Samuel protests that Saul will kill him if he does so, God responds, “Take a heifer with you, and say, ‘I have come to sacrifice to the LORD.’ Then invite Jesse to the sacrifice, and I will show you what you shall do; you shall anoint for Me the one I name to you.” 1 *Samuel* 16:2–3. Here, God does not instruct Samuel to lie because Samuel does perform the sacrifice. However, God's instructions did direct Samuel to make a deceptive statement because Samuel's statement was incomplete and hid the primary purpose of his visit. Other times, Jesus did not reveal the complete truth to his listeners in order to serve a larger purpose. See, e.g., *Matthew* 24:13–35 (not revealing his identity to the two disciples on the road to Emmaus in order to draw out their hearts); David R. Reid, Devotions for Growing Christians: Exercise in Ethics, <http://www.growingchristians.org/dfgc/ethics.htm> (last visited Nov. 4, 2006) (citing *Matthew* 13:10–13 and reasoning that “[c]oncealment of truth is only a sin when an obligation exists to reveal the hidden facts or there is an intent to lead astray into moral error”).

¹⁰³ *Exodus* 1:20–21. Although the passage does not expressly say that the midwives were blessed because of their lying, the verse indicating that God dealt well with the midwives comes immediately after their misrepresentation and begins with “therefore.” *Exodus* 1:21. But see Reid, *supra* note 102 (contending that the midwives were not blessed for lying but “for fearing God and refusing to participate in Pharaoh's program of infanticide”).

¹⁰⁴ *Joshua* 2:1–7.

¹⁰⁵ *Joshua* 6:25 (“And Joshua spared Rahab the harlot, her father's household, and all that she had. So she dwells in Israel to this day, because she hid the messengers whom Joshua sent to spy out Jericho.”).

actions.¹⁰⁶ In the cases involving imminent death of innocent victims, Scripture thus would deviate from the Model Rules in making the “may” in Rule 1.6(b) a “must,” therefore requiring attorneys to reveal client confidences in such cases.

F. Rule 1.7: Conflict of Interest: Current Clients

Rule 1.8: Conflict of Interest: Current Clients: Specific Rules

Rule 1.9: Duties to Former Clients

Model Rules 1.7 to 1.9 espouse the general principles for determining conflicts of interest. Rule 1.7 provides the standard for determining conflicts regarding current clients. The rule presents a two-layered structure for determining such conflicts. First, the rule defines a “concurrent conflict of interest,” and then the rule provides exceptions when a lawyer may represent a client notwithstanding the existence of such a conflict.¹⁰⁷ Rule 1.8 outlines detailed standards for specific situations that are fraught with the potential for conflicts among current clients.¹⁰⁸ Rule 1.9 delineates the general standard for assessing conflicts of interest between current clients and former clients.¹⁰⁹

In providing the general principle that lawyers should not represent a client when the representation creates a conflict of interest with another client, these rules relate to several biblical virtues. Most notably, the rule relates to the principle of loyalty. In Scripture, this principle is most often associated either with loyalty to God, or faithfulness, or with loyalty to those in leadership. For instance, Jesus

¹⁰⁶ See *Hebrews* 11:31 (“By faith the harlot Rahab did not perish with those who did not believe, when she had received the spies with peace.”); *James* 2:24–26 (“You see then that a man is justified by works, and not by faith only. Likewise, was not Rahab the harlot also justified by works when she received the messengers and sent them out another way? For as the body without the spirit is dead, so faith without works is dead also.”). Although the *Hebrews* passage states that Rahab was blessed by her faith, that faith, as the *James* passage indicates, was manifest in her specific actions of hiding the spies and sending them on another way. The passage does not specifically mention her lying to protect the spies, and some have argued that the lying was therefore not justified. See, e.g., Reid, *supra* note 102 (reasoning that “[n]o individual is ever forced to choose the lesser of two evils”). Nevertheless, her lying was not condemned, and her actions can be construed as an acceptable—although not perhaps the best—course of conduct. See also *Matthew* 1:5 (recounting that Rahab was in the ancestral line of Christ). Two other passages that might appear to condone dishonesty are 1 *Kings* 22:20–23 and 2 *Chronicles* 18:18–22. These passages record God’s sending out a “lying spirit” in order to deceive the false prophets counseling Ahab. 1 *Kings* 22:22; 2 *Chronicles* 18:21. Christian scholars, however, have explained that these passages reflect the common practice of many biblical writers to use an imperative verb form even though the verb pertains only to what God permitted to happen as opposed to what He willed to happen. See KAISER ET AL., *supra* note 39, at 230–31.

¹⁰⁷ MODEL RULES OF PROF’L CONDUCT R. 1.7 (2003).

¹⁰⁸ *Id.* R. 1.8.

¹⁰⁹ *Id.* R. 1.9.

recognizes the importance of single-minded devotion to God when he states in *Matthew* 6:24: “No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon.”¹¹⁰ Regarding loyalty to those in leadership, *Nave’s Topical Bible* lists several references relating to the principle of loyalty, and nearly all of them relate to loyalty to political leaders or those in authority.¹¹¹

In contrast, loyalty as implied in these rules is not loyalty to God or another authority but to the client. One might analogize loyalty to another authority and loyalty to client because lawyers serve as agents to their clients, and thus clients operate in a position of decision-making authority over their lawyers.¹¹² However, greater give-and-take exists in a lawyer-client relationship than in most relationships between rulers and their subjects.¹¹³

A related biblical principle that may better capture the nature of the attorney-client relationship is trust. *Nave’s Topical Bible* associates “trust” with “faith,”¹¹⁴ but the concept of “faith” as described in Scripture connotes more than trust—it connotes commitment or devotion.¹¹⁵ Trust in a narrower sense connotes the belief that someone is actually the person—in character as well as identity—he or she purports to be.¹¹⁶ The principle is embodied in biblical passages referenced earlier which provide that an individual who betrays a confidence is not

¹¹⁰ *Matthew* 6:24.

¹¹¹ See NAVE, *supra* note 18, at 810. For instance, *Nave’s* lists, *inter alia*, the following verses as relating to “loyalty”: *Exodus* 22:28 (“You shall not revile God, nor curse a ruler of your people.”), *Proverbs* 24:21 (“My son, fear the LORD and the king; [d]o not associate with those given to change . . .”), *Romans* 13:1 (“Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God.”), and *Titus* 3:1 (“Remind them to be subject to rulers and authorities, to obey, to be ready for every good work . . .”).

¹¹² *Cf.* *State v. Ali*, 407 S.E.2d 183 (N.C. 1991) (holding that tactical decisions of fully informed client should prevail over lawyer’s decision due to principal-agent nature of relationship).

¹¹³ For instance, in contrast to the typical decision making allocation between ruler and subject, many scholars have interpreted Model Rule 1.2 as allowing attorneys to make tactical decisions regarding the means of the representation. See Gantt, *supra* note 31. Also, other scholars have stressed how the attorney-client relationship takes on the characteristics of a friendship. See Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1071 (1976) (reasoning that the lawyer is like a “special-purpose” or “limited purpose” friend to his client).

¹¹⁴ NAVE, *supra* note 18, at 1342.

¹¹⁵ HAYFORD’S, *supra* note 71, at 595 (defining the concept of faith as used in Scripture as “a belief or confident attitude toward God, involving commitment to His will for one’s life”).

¹¹⁶ *Hayford’s Bible Handbook* adds that the Hebrew word *chasah* translated as “trust” connotes “to trust, to hope, to make someone a refuge.” HAYFORD’S, *supra* note 71, at 784.

trustworthy.¹¹⁷ The conflicts rules, in turn, relate to trust in that they foster clients' ability to trust their attorneys; the rules prohibit attorneys from being duplicitous by representing conflicting causes at the same time.

These related principles of loyalty and trust relevant to Rules 1.7 to 1.9 are perhaps best seen by analyzing narrative passages describing the relationships between certain biblical characters. The classic example of loyalty between biblical characters is the loyalty between Jonathan and David in the Old Testament. Jonathan and David were close friends; therefore, when Saul, Jonathan's father, instructs Jonathan and the royal attendants to kill David, Jonathan tells David of his father's plan and encourages David to hide.¹¹⁸ Jonathan then speaks well of David to his father, and Saul temporarily abandons his plan to kill David.¹¹⁹ When Saul resumes his plot, Jonathan again demonstrates his faithfulness to his friend by telling him, "Whatever you yourself desire, I will do *it* for you."¹²⁰ As Jonathan continues to side with David, his father grows angry at him, even trying to kill Jonathan for "choosing" David over Saul.¹²¹ Before David is finally forced to become a fugitive, Jonathan manages one last meeting with David and tells him, "Go in peace, since we have both sworn [friendship] in the name of the LORD, saying, 'May the LORD be between you and me, and between your descendants and my descendants, forever.'"¹²²

This biblical narrative on loyalty illustrates the importance of loyalty to a worthwhile cause, here, the saving of David from the murderous plot of Saul. Loyalty to a cause, no matter what its content, however, is not a biblical virtue; for Scripture speaks of the virtue of

¹¹⁷ See *supra* note 93 and accompanying text (discussing *Proverbs* 11:13, which reads, "[a] talebearer reveals secrets, [b]ut he who is of a faithful spirit conceals a matter").

¹¹⁸ 1 *Samuel* 19:1–2. The *New Bible Commentary* underscores the importance of the narrative of Jonathan and David's friendship in 1 *Samuel*:

Though it forms a part of the more significant story of the relationship between David and Saul, this section of 1 *Samuel* concentrates more on Jonathan than on Saul. The biblical writer had a purpose in describing so fully this proverbial friendship. He wanted to demonstrate beyond any doubt that the man whom David displaced from succeeding to the throne was his best friend.

NEW BIBLE COMMENTARY: 21ST CENTURY EDITION 314 (G.J. Wenham et al. eds., 1994). In their book, *The Word on Management*, John Mulford and Bruce Winston recognize how the story of Jonathan and David relates to the principle of loyalty. See JOHN E. MULFORD & BRUCE E. WINSTON, *THE WORD ON MANAGEMENT* 121 (1996).

¹¹⁹ 1 *Samuel* 19:4–6.

¹²⁰ 1 *Samuel* 20:4.

¹²¹ 1 *Samuel* 20:30 (NASB).

¹²² 1 *Samuel* 20:42. The word "friendship" is inserted in the New King James Version quoted in the text to signify to what Jonathan and David were swearing; the New International Version includes this word in its translation. See *id.* (NIV).

turning from an illicit cause to a cause for Christ.¹²³ For Christians, loyalty to God predominates over loyalty to a client. The question therefore remains whether loyalty to a client is a virtue. Certainly, Christians are called to serve others.¹²⁴ However, the virtuosity of service to a client cannot be answered in the abstract for it depends on the express purpose of the representation and the underlying purpose for why the attorney is representing the client at issue.¹²⁵ What can be answered is that a lawyer who betrays a trust placed in him by one client to serve the interests of another commits a form of disloyalty that can be virtuous only in the narrowest of circumstances,¹²⁶ for Scripture points to the importance of an individual's faithfulness to another when that person puts his or her trust in the individual.¹²⁷

This discussion of loyalty relates to similar virtues implicated by Rules 1.7 to 1.9: confidentiality and honesty. Biblical passages related to confidentiality are discussed above in the section on Rule 1.6. Passages relating to honesty are numerous and are discussed below in the section on Rule 3.1.¹²⁸ These two virtues pertain to the conflicts rules in particular ways. First, honesty is implicated in that lawyers who compromise their representation of certain clients because of duties to other clients are not honestly disclosing to the former group the interests that affect their ability to represent those clients competently. At a minimum, the rules provide that when the potential for a conflict reaches a certain threshold, lawyers must obtain the "informed consent" of their clients to continue the representation.¹²⁹

¹²³ For an illustration of how loyalty to the cause of Christ is preeminent, see *Matthew* 10:35 (KJV) ("For I am come to set a man at variance against his father, and the daughter against her mother, and the daughter in law against her mother in law."). See also *supra* notes 34–44 and accompanying text (regarding submission to authority in the context of Rule 1.2).

¹²⁴ See, e.g., *Mark* 9:35 (NIV) ("Sitting down, Jesus called the Twelve and said, 'If anyone wants to be first, he must be the very last, and the servant of all.'"). In their philosophy of lawyering papers, many students speak highly of the importance of service as an attribute of the lawyer-client relationship. See *Philosophy of Lawyering Student Papers*, *supra* note 17.

¹²⁵ For instance, lawyers who represent a seemingly repugnant cause may properly justify such representation because it serves a higher principle, such as preserving individuals' freedom of religion. See *CRYSTAL*, *supra* note 44, at 25.

¹²⁶ See *supra* notes 101–06 and accompanying text (discussing passages in which condoned deception was limited to instances where it was needed to save innocent life).

¹²⁷ See, e.g., *1 Corinthians* 4:2 (NIV) ("Now it is required that those who have been given a trust must prove faithful.").

¹²⁸ See, e.g., *Ephesians* 4:25 ("Therefore, putting away lying, 'Let each one of you speak truth with his neighbor,' for we are members of one another.").

¹²⁹ See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.7(b)(4), 1.8(a)(3), 1.8(f)(1), 1.9(a)–(b) (2003).

Second, protecting client confidentiality is a pivotal reason why lawyers are to avoid conflicts of interest. Lawyers representing multiple clients in the same matter face confidentiality problems in that, as the comment to Rule 1.7 provides, “[E]ach client has the right to be informed of anything bearing on the representation that might affect that client’s interests and the right to expect that the lawyer will use that information to that client’s benefit.”¹³⁰ Moreover, even when lawyers are not representing multiple clients in the same matter, clients have the right to expect that the lawyers will not use confidential information learned from one client to the advantage of another.¹³¹ Rule 1.9, in fact, expressly adopts a purpose of protecting confidential information in assessing whether a lawyer’s representation of a current client conflicts with his or her former representation of a former client.¹³²

These rules also relate to the broader biblical virtue of integrity.¹³³ As noted in the discussion of integrity throughout this article, personal integration is central to integrity. Individuals with integrity evidence holistic living in which they integrate the various aspects of their lives.¹³⁴ Integrity is not one virtue, but a “complex of virtues,” which “work[] together to form a coherent character, an identifiable and trustworthy personality.”¹³⁵ This view of integrity relates to character.

¹³⁰ *Id.* R. 1.7 cmt. 31.

¹³¹ Lawyers who know information advantageous to their client but are unable to use that information are materially limited in their representation of that client. *See id.* R. 1.7 cmt. 8.

Even where there is not direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.

Id.

¹³² Rule 1.9 provides that such a conflict may exist if the current and former matters are “substantially related.” *Id.* R. 1.9. In defining “substantial relationship,” the comment provides that matters are such “if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” *Id.* R. 1.9 cmt. 3.

¹³³ In addition to the virtues discussed in the text, Rule 1.8 relates to the virtue of reasonableness. Specifically, sections (a), (h), and (i) use “reasonableness” as a standard for assessing the ethicality of attorney actions. *See id.* R. 1.8(a), (h)–(i). As a virtue, reasonableness relates to prudence, and Scripture encourages individuals to be prudent in their actions. *See, e.g., Proverbs 12:23* (“A prudent man conceals knowledge, [b]ut the heart of fools proclaims foolishness.”).

¹³⁴ *See Gantt, supra* note 44, at 248. (“[C]entral to integrity is personal integration.”); *see also* Richard Higginson, *Integrity and the Art of Compromise*, in *FAITH IN LEADERSHIP: HOW LEADERS LIVE OUT THEIR FAITH IN THEIR WORK—AND WHY IT MATTERS* 19, 20–23 (Robert Banks & Kimberly Powell eds., 2000) (describing five layers of integrity, with one being “personal consistency” and another being integrated living).

¹³⁵ ROBERT C. SOLOMON, *ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS* 168 (1992).

Scripture illustrates this view of integrity. The word “integrity” is used twenty times in the New King James Version, nineteen of which occur in the Old Testament.¹³⁶ Biblical scholars state that the basic meaning of the underlying word as it is translated in Scripture is “wholeness, usually in the sense of whole-heartedness or sincerity, rather than faultlessness.”¹³⁷ In commenting on the use of “integrity” in *Psalms* 26, Robert Higginson observes:

It is interesting that the psalmist twice paints the scene of *walking in one's integrity*, the picture perhaps being that of a path or channel, a settled groove within which the good person operates, or of a godly ambience or atmosphere surrounding everything that he or she does. Integrity becomes the air one breathes or the ground one treads.¹³⁸

Similarly, although the translators did not use the word “integrity,” this principle of wholeness, or integration, is embodied in other passages, such as when Jesus censures the Pharisees for being “like whitewashed tombs, which indeed appear beautiful outwardly, but inside are full of dead *men's* bones and all uncleanness.”¹³⁹

The conflicts rules implicate this biblical view of integrity in that they limit attorneys' ability to “play a role” or “switch hats” depending on the client in the room. The ABA recognizes that attorneys must demonstrate a core of consistency in their representation of clients such that they preserve their “loyalty and independent judgment,” which the ABA calls “essential elements in the lawyer's relationship to a client.”¹⁴⁰

In regulating conflicts, the ABA seeks primarily to safeguard attorneys' obligations to their clients.¹⁴¹ In Rule 1.7(a)(2), the ABA recognizes that the “personal interest” of a lawyer may give rise to a

¹³⁶ See BibleGateway.com, Keyword Search Results: Integrity, <http://www.biblegateway.com/keyword/?search=integrity&searchtype=all&version1=50&spanbegin=1&spanend=73> (last visited Nov. 17, 2006). The word occurs twenty-two times in the New International Version, including three times in the New Testament. See *id.* <http://www.biblegateway.com/keyword/?search=integrity&searchtype=all&version1=31&spanbegin=1&spanend=73> (last visited Nov. 17, 2006).

¹³⁷ DEREK KIDNER, *PSALMS 1–72: AN INTRODUCTION AND COMMENTARY ON BOOKS I AND II OF THE PSALMS* 118 (1973), quoted in Higginson, *supra* note 134, at 23.

¹³⁸ Higginson, *supra* note 134, at 23–24 (emphasis added). Specifically, *Psalms* 26:1 reads: “Vindicate me, O LORD, [f]or I have walked in my integrity. I have also trusted in the LORD; I shall not slip.” Similarly, *Psalms* 26:11 reads: “But as for me, I will walk in my integrity; [r]edeem me and be merciful to me.” The New International Version translates the phrase “walk(ed) in my integrity” as “lead (led) a blameless life.” *Psalms* 26:1, :11 (NIV).

¹³⁹ *Matthew* 23:27.

¹⁴⁰ MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 1 (2003).

¹⁴¹ See *id.* R. 1.7(a)(2) (providing that in cases where there is not direct adversity, conflicts are measured by whether the representation of one client will be “materially limited” by the lawyer's responsibilities to another client).

conflict of interest.¹⁴² In this recognition, the rule seeks to ensure that such interests do not “materially affect” the lawyer’s representation of the client;¹⁴³ and thus the rule affirms that the principal emphasis in the Rules is safeguarding the clients’ interests, not preserving the lawyer’s integrity. Yet, by raising the factor of such “personal” conflicts, the Rules do recognize that attorneys are more than merely agents of their clients. The Rules at least appreciate that attorneys’ own integrity, being true to their personal convictions, may limit their ability to represent certain clients.¹⁴⁴ In this regard, the Rules acknowledge the biblical principle of personal wholeness or integrity.

G. Rule 1.10: Imputation of Conflicts of Interest: General Rule

Rule 1.10(a) states the general rule that when a lawyer is conflicted from representing a client under Rules 1.7 and 1.9, that conflict is imputed to all the members of the lawyer’s firm.¹⁴⁵ The general concept of imputation is not antithetical to Scripture. The Bible, in fact, employs the principle of imputation in major theological doctrines, such as the imputation of Adam’s sins to mankind, the imputation of believers’ sin to Christ, and the imputation of Christ’s righteousness to believers.¹⁴⁶ The ABA, however, went beyond the general notion of imputation and made important policy decisions in applying this principle to attorneys’ conflicts of interest. According to Nathan Crystal:

The rationale for the rule of imputed disqualification is based upon the fact that lawyers practicing in a firm have access to firm files and have mutual financial interests. As a result, *it is assumed* that any confidential information that one member of the firm has is accessible to other members of the firm and that any conflict of interest that affects a member of the firm will also affect other members. One can question the validity of these assumptions, especially in large firms, but the principle of imputed disqualification seems to be firmly established in the law of professional ethics.¹⁴⁷

An important limitation of the rule of imputed disqualification pertains to lawyers moving between firms. In light of the general rule,

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Cf. id.* pmb. para. 9 (“Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system, and to *the lawyer’s own interest* in remaining an ethical person while earning a satisfactory living.”) (emphasis added).

¹⁴⁵ *Id.* R. 1.10(a). The only exception the rule provides is if the conflict was due to 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 in the firm.” *Id.*

¹⁴⁶ HAYFORD’S, *supra* note 71, at 652–53 (citing, *inter alia*, *Romans* 5:12–19; *1 Corinthians* 15:21–22; *2 Corinthians* 5:21).

¹⁴⁷ CRYSTAL, *supra* note 44, at 289 (emphasis added).

one could imagine scenarios in which a lawyer's imputed disqualification could have tremendous effect if it automatically disqualified all members of any new firm he joined. The ABA rejected this "double imputation" in favor of the more limited approach adopted by Rules 1.9(b) and 1.10(b). These rules provide for imputation only if the new matter is the same or "substantially related" to the client of the former firm or former firm member and the lawyer whose disqualification may be imputed actually has confidential information "material" to the matter.¹⁴⁸ Courts had rejected the principle of automatic double imputation as being unsound as a matter of policy,¹⁴⁹ and the ABA later codified this limitation in Rules 1.9(b) and 1.10(b).

Despite this limitation, the ABA has rejected screening attorneys as a remedy to avoid the general policy in Rule 1.10 of imputing disqualification to all firm members.¹⁵⁰ Although the ABA has adopted screening in a number of special circumstances—former government lawyers (Rule 1.11), former judges or third-party neutrals (Rule 1.12), and prospective clients (Rule 1.18)—its continued rejection of screening in the general rule of Rule 1.10 is noteworthy because several

¹⁴⁸ Rule 1.9(b) and 1.10(b) are corollaries. Rule 1.9(b) applies these principles in determining what clients a lawyer's new firm is conflicted from representing when a lawyer moves from one firm to another; Rule 1.10(b) applies these principles in determining what clients the lawyer's former firm is conflicted from representing when the lawyer leaves that firm. MODEL RULES OF PROF'L CONDUCT R. 1.9(b), 1.10(b) (2003).

¹⁴⁹ See *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp.*, 518 F.2d 751, 753–54 (2d Cir. 1975) (holding that "it would be absurd to conclude that immediately upon their entry on duty they become the recipients of knowledge as to the names of all the firm's clients, the contents of all files relating to such clients, and all confidential disclosures by client officers or employees to any lawyer in the firm").

¹⁵⁰ The ABA addressed the issue of screening when it adopted the Model Rules in 1983. Parties argued in favor of screening, but the ABA rejected screening as a remedy. CRYSTAL, *supra* note 44, at 291–92. According to Hazard & Hodes, the drafters apparently concluded "that clients were entitled to assurances of confidentiality, and that this was possible only by a rule that disqualified the entire firm that hired a personally disqualified lawyer." *Id.* at 292 (citing 1 GEOFFREY HAZARD, JR. & WILLIAM HODES, *THE LAW OF LAWYERING* § 14.8, at 14-20 (3d ed. 2001)). Later, when the Model Rules underwent significant revision, the Ethics 2000 Commission recommended that Rule 1.10 be amended to allow screening as a remedy to avoid imputation when a personally disqualified lawyer joins a new firm. See ABA Center for Professional Responsibility, Ethics 2000 Commission Report on the Model Rules of Professional Conduct: Rule 1.10, <http://www.abanet.org/cpr/e2k/e2k-rule110.html> (last visited Nov. 4, 2006) (providing the text of the Commission's recommended revision). The ABA House of Delegates, however, rejected the recommendation when it voted on the revision in August 2001. See ABA Center for Professional Responsibility, Ethics 2000 Commission Report on the Model Rules of Professional Conduct: Rule 1.10 as Passed by House, <http://www.abanet.org/cpr/e2k/e2k-rule110h.html> (last visited Nov. 4, 2006) (outlining the actions of the ABA House of Delegates on the Ethics 2000 recommended revisions).

jurisdictions allow screening under similar circumstances.¹⁵¹ In not allowing screening in the general rule, the ABA took the cautious route, deciding that the potential problems with screening outweigh its benefits.

Rule 1.10 thus can be said to relate to the biblical principle of prudence. Bible translators rarely have selected the term “prudence” to reflect connotations contained in the original Hebrew or Greek.¹⁵² However, the word is used in key verses in *Proverbs*, in which the author explains the purpose of the book:

The proverbs of Solomon son of David, king of Israel:
for attaining wisdom and discipline; for understanding words of insight; for acquiring a disciplined and prudent life, doing what is right and just and fair;
for giving prudence to the simple, knowledge and discretion to the young.¹⁵³

The Hebrew word translated as “prudence” in verse 4 is ‘*ormah*.¹⁵⁴ The term also appears in two verses in *Proverbs* 8: “You who are simple, gain prudence; you who are foolish, gain understanding . . . I, wisdom,

¹⁵¹ In the Ethics 2000 Commission’s Reporter’s Explanation of Changes, the Reporter noted that, at that time, seven jurisdictions had adopted rules that allowed screening of lateral hires. See ABA Center for Professional Responsibility, Ethics 2000 Commission Report on the Model Rules of Professional Conduct: Reporter’s Explanation of Changes to Rule 1.10, <http://www.abanet.org/cpr/e2k/e2k-rule110rem.html> (last visited Nov. 4, 2006). The Reporter added, “The testimony the Commission has heard indicates that there have not been any significant numbers of complaints regarding lawyers’ conduct under these Rules.” *Id.* Several judicial decisions have considered the propriety of screening, with some adopting the Model Rules’ approach and others permitting screening. See, e.g., *Manning v. Waring, Cox, James, Sklar & Allen*, 849 F.2d 222 (6th Cir. 1988) (permitting screening as a general rule); *Roberts v. Hutchins*, 572 So. 2d 1231, 1234 n.3 (Ala. 1990) (not allowing screening); *Kala v. Aluminum Smetling & Ref. Co.*, 688 N.E.2d 258 (Ohio 1998) (permitting screening as a general rule). The *Restatement of Law Governing Lawyers* and the New York Court of Appeals allow for screening of disqualified lawyers only if the confidential information held by the lawyer is “unlikely to be significant in the subsequent matter.” *RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS* § 124(2)(a) (2000); see also *Kassis v. Teacher’s Ins. & Annuity Ass’n*, 717 N.E.2d 674, 671 (N.Y. 1999).

¹⁵² The New King James Version uses the word “prudence” seven times. See BibleGateway.com, Keyword Search Results: Prudence, <http://www.biblegateway.com/keyword/?search=prudence&searchtype=all&version1=50&spanbegin=1&spanend=73> (last visited Nov. 15, 2006). The New International Version uses the term five times. See *id.* <http://www.biblegateway.com/keyword/?search=prudence&searchtype=all&version1=31&spanbegin=1&spanend=73>.

¹⁵³ *Proverbs* 1:1–4 (NIV). The New King James Version translates verses three and four as, “To receive the instruction of wisdom, justice, judgment, and equity; [t]o give prudence to the simple, to the young man knowledge and discretion.” *Proverbs* 1:3–4. The word translated as “simple” is *p’tha’iy*, which is defined as “foolish, simple,” JAMES STRONG, A CONCISE DICTIONARY OF THE WORDS IN THE HEBREW BIBLE 97, reprinted in THE HEBREW-GREEK KEY STUDY BIBLE: KING JAMES VERSION (Spiros Zodhiates ed., 1991) [hereinafter *Zodhiates*], or “lacking wisdom,” BROWN ET AL., *supra* note 54, at 834.

¹⁵⁴ STRONG, *supra* note 153, at 92.

dwell together with prudence; I possess knowledge and discretion.”¹⁵⁵ Hebrew lexicons indicate that the word as used here primarily means “prudence” but can also mean “discretion: guile, subtilty, wilily, and wisdom.”¹⁵⁶

Despite the relative infrequent use of the term “prudence,” it is clear that Scripture esteems prudence as an important virtue. Bible translators, for instance, have often used the word “prudent” to capture the meaning in the original text.¹⁵⁷ Moreover, topical Bibles include numerous entries under the concept of prudence.¹⁵⁸

Prudence is a broad concept, but certain aspects of the term specifically relate to Model Rule 1.10. First, one aspect of prudence in Scripture is avoiding haste and seeking wise counsel before acting.¹⁵⁹ A second aspect noted in Scripture is foreseeing danger and thus knowing how to avoid it.¹⁶⁰ Third, *Nave’s Topical Bible* lists under “prudence” scripture in the epistles in which Paul encourages the early believers not to eat food sacrificed to idols if that action causes others to stumble.¹⁶¹

By taking the cautious route and imputing conflicts without the possibility for screening, Rule 1.10 reflects these three aspects of biblical prudence. Proponents of screening contend that preventing screening: (1) assumes that lawyers will violate their duties to their former clients; (2) penalizes clients of the new firm, and (3) unfairly decreases lawyer

¹⁵⁵ *Proverbs* 8:5, :12. Another version translates these verses: “O ye simple, understand wisdom [‘ormah]: and, ye fools, be ye of an understanding heart . . . I wisdom dwell with prudence, and find out knowledge of witty inventions.” *Id.* (KJV).

¹⁵⁶ See BROWN ET AL., *supra* note 54, at 791 (defining the term simply as “prudence”); STRONG, *supra* note 153, at 92 (defining the term as “discretion: guile, prudence, subtilty, wilily, and wisdom”); Zodhiates, *supra* note 153, at 1648 (providing its own section on “Lexical Aids to the Old Testament” and there defining the term as “prudence, discretion, and wisdom”).

¹⁵⁷ The New King James Version uses the term twenty-two times. See Crosswalk.com, Verse Search Results: Prudent, <http://bible.crosswalk.com/OnlineStudyBible/bible.cgi?new=1&word=prudent§ion=0&version=nkj&language=en> (last visited Nov. 17, 2006). The New International Version uses the term eleven times. See *id.* <http://bible.crosswalk.com/OnlineStudyBible/bible.cgi?word=prudent§ion=0&version=niv&new=1&oq=prudent> (last visited on Nov. 17, 2006).

¹⁵⁸ See NAVE, *supra* note 18, at 1017–18.

¹⁵⁹ See, e.g., *Proverbs* 24:6 (“For by wise counsel you will wage your own war, [a]nd in a multitude of counselors *there is safety.*”), 25:8 (“Do not go hastily to court; [f]or what will you do in the end, [w]hen your neighbor has put you to shame?”). *Nave’s* lists both of these passages under its entries for “prudence.” NAVE, *supra* note 18, at 1017–18.

¹⁶⁰ See *Proverbs* 22:3 (“A prudent man foresees evil and hides himself, [b]ut the simple pass on and are punished.”).

¹⁶¹ NAVE, *supra* note 18, at 1018 (referencing 1 *Corinthians* 8:8–13); see also *Romans* 14:13–21 (instructing believers not to eat or drink anything that would cause others to stumble in their faith); 1 *Corinthians* 6:12 (“All things are lawful for me, but all things are not helpful. All things are lawful for me, but I will not be brought under the power of any.”).

mobility.¹⁶² Despite these concerns, the ABA's continued rule of imputation demonstrates prudence by recognizing the high level of temptation that attorneys face to violate client confidences and the high level of difficulty that exists to discover and prove such breaches.¹⁶³ Moreover, although the ABA has rejected the "appearance of impropriety" standard as a basis for disqualifying lawyers,¹⁶⁴ its refusal to allow screening generally does recognize that screening may feed into the skepticism the public already exhibits towards lawyers' ability to police themselves.¹⁶⁵

Another biblical principle that is relevant to Model Rule 1.10 is accountability. Throughout Scripture, the Bible speaks of the importance of Christians operating in community. Most notably, Paul uses the metaphor of the "body" to show how Christians need each other to function most effectively in fulfilling the Christian mission.¹⁶⁶ In addition, the principle of biblical accountability is exemplified in the many relationships in Scripture in which individuals serve with or under others so that they can grow in their faith. The most evident example is in the ministry of Jesus himself in which he selected the twelve disciples so that he could teach and mentor them so that they, in turn, could be the leaders of the faith.¹⁶⁷ Paul also demonstrated the importance of this mentoring relationship in his association with Timothy.¹⁶⁸

By instituting imputation, Rule 1.10 specifically points to principles of accountability in recognizing that lawyers working in a firm normally benefit professionally from being accountable to one another. For instance, the comment to Rule 1.6 ("Confidentiality") recognizes that lawyers in firms may discuss with each other information relating to their clients,¹⁶⁹ presumably often because they are able to glean insights from each other which will benefit the representation. In imputing conflicts, the rule affirms that lawyers in firms often consult with each other and that therefore the best policy, at least under the general rule

¹⁶² CRYSTAL, *supra* note 44, at 292.

¹⁶³ See FREEDMAN & SMITH, *supra* note 31, at 287 (outlining several reasons why the general prohibition against screening "relies on presumptions that are based on common sense and the practicalities of proof").

¹⁶⁴ CRYSTAL, *supra* note 44, at 288.

¹⁶⁵ See FREEDMAN & SMITH, *supra* note 31, at 288 ("A major purpose of the conflict rules is to allay that [public] skepticism, and an unpolicable assurance of screening by a law firm is not likely to achieve that goal."); see also *Public Perceptions of Lawyers, Consumer Research Findings*, 2002 A.B.A. SEC. OF LITIG. REP. 4 (finding that the public believes that lawyers do a poor job of policing themselves).

¹⁶⁶ 1 *Corinthians* 12:12–31.

¹⁶⁷ See *Matthew* 4:18–22 (calling of the first disciples); *Luke* 5:1–11 (same).

¹⁶⁸ See 1 *Timothy* 6:11–21 (Paul's charge to Timothy); 2 *Timothy* 3:10–4:22 (same).

¹⁶⁹ MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. 5 (2003).

for conflicts, is to disqualify the entire firm and remove any temptation to violate any screening mechanism.

H. Rule 1.11: Special Conflicts of Interest for Former and Current Government Officers and Employers

Rule 1.12: Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

Rule 1.18: Duties to Prospective Client

The above rules relate to conflicts of interest in particular areas. Model Rule 1.11 establishes standards that determine when lawyers moving in and out of government service are conflicted from current work activities.¹⁷⁰ Model Rule 1.12 provides standards for conflicts when lawyers move from serving as judges or third-party neutrals on a matter to representing one of the parties involved.¹⁷¹ Model Rule 1.18 outlines standards for deciding when lawyers may be conflicted because of their consultation with a former prospective client.¹⁷²

Because these rules also concern conflicts of interest, they relate to the same biblical principles as the conflicts rules above: confidentiality, loyalty, prudence, accountability, and integrity. What is noteworthy about these particular rules, however, is that they allow screening of attorneys who are conflicted because of their former service as a government lawyer (Rule 1.11(b)),¹⁷³ their former service as a judge or other third-party neutral (Rule 1.12(c)),¹⁷⁴ or their consultation with a former prospective client (Rule 1.18(d)).¹⁷⁵

The question therefore arises whether the fact that screening is allowed in these rules is less biblically “prudent” than the disallowance of screening in Rule 1.10. As noted above, biblical prudence refers generally to discretion and wisdom,¹⁷⁶ so it is difficult to conclude that biblical prudence leads to any specific conclusions about whether screening or general imputation is less prudent.¹⁷⁷ Monroe Freedman

¹⁷⁰ *Id.* R. 1.11.

¹⁷¹ *Id.* R. 1.12(a).

¹⁷² *Id.* R. 1.18(c).

¹⁷³ *Id.* R. 1.11(b).

¹⁷⁴ *Id.* R. 1.12(c).

¹⁷⁵ *Id.* R. 1.18(d).

¹⁷⁶ *See supra* note 156 and accompanying text.

¹⁷⁷ Rule 1.18 provides that lawyers who receive confidential information from a prospective client are not disqualified, and thus need not be screened, unless that information “could be significantly harmful” to that former prospective client. MODEL RULES OF PROF’L CONDUCT R. 1.18(c) (2003). Moreover, the comment to Rule 1.10 provides that lawyers are not disqualified where the person who is conflicted is a nonlawyer although the comment does recommend that such nonlawyer should be screened. *Id.* R. 1.10 cmt. 4. Analyzing whether these exceptions to imputation and lawyer screening are

and Abbe Smith contend that the reason screening has been allowed in these cases is due to business pressures on lawyers to increase their job mobility.¹⁷⁸ It is difficult to justify, then, why screening is allowed in certain contexts but not in the general context.¹⁷⁹ If this distinction is not justifiable, biblical principles of equity and justice would support treating like situations alike.

Regarding biblical prudence, however, what can be said is that such prudence recognizes that individuals are subject to temptations and that avoiding those temptations to sin is important in avoiding committing the sin itself. For instance, *Proverbs 27:12* reads, “A prudent man foresees evil and hides himself”¹⁸⁰ Thus, *if* screening is allowed, setting up proper screening procedures would be prudent.

In these rules, screening is appropriate if “the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom” and “written notice is promptly given” to the respective parties, in Rules 1.11 and 1.12, so that they can “ascertain compliance with the provisions of this rule.”¹⁸¹ The ABA adopted in 2001 a new rule, Rule 1.0(k), which defines “screened.” That rule defines the term as “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.”¹⁸² The comment to Rule 1.0, in turn, provides more information on appropriate screening, most importantly that the disqualified lawyer should acknowledge the obligation not to communicate about the matter and that the other lawyers working on the matter should be informed of the screening.¹⁸³ The comment provisions, although important, are not binding,¹⁸⁴ and the comment adds that “[a]dditional screening measures that are appropriate for the particular matter will depend on the circumstances.”¹⁸⁵

biblically prudent is too specific based on the general nature of the biblical passages on that virtue.

¹⁷⁸ FREEDMAN & SMITH, *supra* note 31, at 285–86.

¹⁷⁹ *See id.* at 286 n.106.

¹⁸⁰ *Proverbs 27:12*.

¹⁸¹ MODEL RULES OF PROF'L CONDUCT R. 1.11(b), 1.12(c) (2003). Rule 1.18(d)(2) provides for written notice to the prospective client but does not require such client to determine the propriety of the screening. *Id.* R. 1.18(d)(2).

¹⁸² *Id.* R. 1.0(k).

¹⁸³ *Id.* R. 1.0 cmt. 4.

¹⁸⁴ *See id.* pmb. para. 14 (“Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.”).

¹⁸⁵ *Id.* R. 1.0 cmt. 9.

The ABA thus has sought to find a balance by requiring screening but not being too restrictive in dictating how the screening should be implemented. Many biblical passages point to the individual's ability to "pick his battles" wisely and discern when it is best to avoid conflict.¹⁸⁶ In this respect, the ABA's balance may demonstrate prudence; it required the basic elements of screening but "picked its battles" by not mandating universal screening dictates in all circumstances.

I. Rule 1.13: Organization as Client

Rule 1.13 covers a lawyer's basic ethical responsibilities when representing organizations. The rule begins by providing the foundational principle that lawyers who represent organizations represent the organization, not its constituents.¹⁸⁷ The rule then provides standards governing how lawyers should proceed when they learn that one of the constituents is acting in a way that injures the organization.¹⁸⁸

In affirming the lawyers' duty to their client, the organization, Rule 1.13 affirms biblical principles of loyalty, which are described above. As with representing two clients with conflicts, a lawyer confronts problems when representing both an organization and its constituents for, as quoted above from *Matthew*, "No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon."¹⁸⁹

Rule 1.13(c) also relates to the biblical principle of confidentiality. Specifically, this rule allows an attorney to reveal confidential information of the organization to someone outside the organization if the highest authority fails to address a clear violation of law that the lawyer believes will result in "substantial injury" to the organization.¹⁹⁰ Although revelations of confidential information can often be seen as a breach of trust,¹⁹¹ such revelation here actually affirms the principle of trust because the revelation is necessary for the attorney to uphold his loyalty to his client, the organization.

¹⁸⁶ See, e.g., *Matthew* 12:14–16 (Jesus in avoiding his enemies); *Mark* 3:7 (same); *John* 11:47–54 (same); *Acts* 16:3 (Paul in circumcising Timothy because of the Jews who lived where they were traveling).

¹⁸⁷ MODEL RULES OF PROF'L CONDUCT R. 1.13(a) (2003).

¹⁸⁸ *Id.* R. 1.13(b)–(f). Rule 1.13(g) addresses the situation when a lawyer who is representing an organization also represents one of its constituents. See *id.* R. 1.13(g).

¹⁸⁹ *Matthew* 6:24.

¹⁹⁰ MODEL RULES OF PROF'L CONDUCT R. 1.13(c) (2003). In response to the Enron and other corporate scandals, the ABA amended the rule in 2003 to adopt this "reporting out" provision. See CRYSTAL, *supra* note 44, at 478.

¹⁹¹ See *Proverbs* 11:13 ("A talebearer reveals secrets, [b]ut he who is of a faithful spirit conceals a matter.").

One might contend that lawyers may nevertheless be duplicitous in dealing with constituents who believe the lawyers are representing them, not the organization. However, the rule avoids such an ethical quandary and affirms the biblical virtue of honesty by requiring attorneys in Rule 1.13(f) to explain to the organization's constituents that they represent the organization when the attorneys learn that the organization's interest and those of the constituent with which they are dealing are adverse.¹⁹²

J. Rule 1.14: Client with Diminished Capacity

Model Rule 1.14 provides the ethical guidelines for how attorneys are to deal with clients with diminished capacity, whether because of minority, mental impairment, or some other reason.¹⁹³ The theme of the rule is that attorneys representing such persons should "as far as reasonably possible, maintain a normal client-lawyer relationship with the client."¹⁹⁴ An attorney is authorized to consult others or seek the appointment of a guardian ad litem only under very limited circumstances.¹⁹⁵ The comment to the rule underscores this theme: "The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect."¹⁹⁶

In presenting this theme, Rule 1.14 affirms the biblical virtue of respect, specifically respect for the personhood of others. Scripture teaches that all individuals are created in the image of God.¹⁹⁷ Moreover, Jesus spent considerable time ministering to the disabled, healing many of them.¹⁹⁸ In recounting these healings, Scripture often records how the individuals were touched spiritually as well as physically.¹⁹⁹ By affirming individuals' worth, even when their ability to make decisions may be "diminished," Rule 1.14 is in harmony with biblical principles of self-worth.

¹⁹² MODEL RULES OF PROF'L CONDUCT R. 1.13(f) (2003).

¹⁹³ *Id.* R. 1.14.

¹⁹⁴ *Id.* R. 1.14(a).

¹⁹⁵ Specifically, the lawyer can take such protective measures "[w]hen 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." *Id.* R. 1.14(b).

¹⁹⁶ *Id.* R. 1.14 cmt.

¹⁹⁷ *Genesis* 1:26 ("Then God said, 'Let Us make man in Our image, according to Our likeness; let them have dominion over the fish of the sea, over the birds of the air, and over the cattle, over all the earth and over every creeping thing that creeps on the earth.'").

¹⁹⁸ For instance, Jesus healed a man with leprosy (*Matthew* 8:2-4), a paralyzed man (*Matthew* 9:2-7), two blind men (*Matthew* 9:27-31), a deaf mute (*Mark* 7:31-37), and a crippled woman (*Luke* 13:11-13), among others.

¹⁹⁹ *See John* 9:1-34 (reciting the story of the healing of a man born blind).

Rule 1.14 also relates to the principles of confidentiality, prudence, and discretion. The rule asserts that information relating to the representation of individuals with diminished capacity remains confidential and can be revealed only to the extent needed to take protective actions to protect the client's interests.²⁰⁰ As for prudence and discretion, the rule involves these principles in requiring attorneys to make the difficult decision of whether to take protective action in dealing with a client with diminished capacity.²⁰¹ The rule does not give attorneys much guidance in making this decision; in two instances the lawyer's actions are based on what he deems "reasonable."²⁰² The biblical virtues of prudence and discretion can guide Christian attorneys in making this decision. As noted above, one aspect of biblical prudence is avoiding haste and seeking wise counsel before acting,²⁰³ and a related aspect is foreseeing danger and thus knowing how to avoid it.²⁰⁴ In considering whether to take protective action, attorneys applying these principles would deliberate intently before making such decision and would, when possible, consult with others.

K. Rule 1.15: Safekeeping Property

Rule 1.15 provides several guidelines for how attorneys should handle and manage client funds when they receive and deliver them.²⁰⁵ In outlining these guidelines, the rule relates to the biblical principle of honesty. One of the Ten Commandments provides, "You shall not steal."²⁰⁶ The rule follows this principle by specifically requiring attorneys to properly identify the property of clients and to maintain such property separately from the lawyer's own property. In addition, the rule requires attorneys to keep accurate records of account funds and other property owned by the client.²⁰⁷ Lawyers are consistently disciplined for failing to manage client funds and maintain accurate

²⁰⁰ MODEL RULES OF PROF'L CONDUCT R. 1.14(c) (2003); see *Proverbs* 11:13 (encouraging the keeping of secrets confidential).

²⁰¹ MODEL RULES OF PROF'L CONDUCT R. 1.14(b) (2003).

²⁰² *Id.*

²⁰³ See *supra* note 159 and accompanying text.

²⁰⁴ E.g., *Proverbs* 22:3 ("A prudent man foresees evil and hides himself, [b]ut the simple pass on and are punished."). For a more detailed discussion on how prudence relates to discretion, see the sections above on Rules 1.2 and 1.10.

²⁰⁵ MODEL RULES OF PROF'L CONDUCT R. 1.15 (2003).

²⁰⁶ *Exodus* 20:15. Stealing often begins with coveting another's property, and *Exodus* 20:17 reads, "You shall not covet your neighbor's house; you shall not covet your neighbor's wife, nor his male servant, nor his female servant, nor his ox, nor his donkey, nor anything that is your neighbor's."

²⁰⁷ MODEL RULES OF PROF'L CONDUCT R. 1.15(a) (2003).

records.²⁰⁸ Scripture, however, affirms the importance of attending to the details in developing any enterprise; *Proverbs* 24:3–4 provides, “Through wisdom a house is built, [a]nd by understanding it is established; [b]y knowledge the rooms are filled with all precious and pleasant riches.”²⁰⁹

Rule 1.15 also relates to the biblical virtues of personal responsibility and trustworthiness.²¹⁰ As noted above, *1 Corinthians* 4:2 states, “Now it is required that those who have been given a trust must prove faithful.”²¹¹ Although Paul wrote this passage expressly in the context of being trusted with information, not property, nothing indicates that the principles in the passage do not extend to property. Moreover, the importance of a person’s managing property entrusted to him relates to the biblical principle of stewardship. Stewardship is evidenced in the story of God’s creation. The first thing God said to Adam and Eve was “[b]e fruitful and multiply; fill the earth and subdue it; have dominion over the fish of the sea, over the birds of the air, and over every living thing that moves on the earth.”²¹² Scholars have interpreted this passage as indicating the responsibility mankind has for managing creation, which God entrusted to it at the beginning at time.²¹³ In a similar way, lawyers who are entrusted with client property have a responsibility to manage it well and ensure that the “entrustor’s” interests are protected.

L. Rule 1.16: Declining or Terminating Representation

Rule 1.16 presents provisions governing when attorneys must decline representation and withdraw from representation and when they may withdraw from representation.²¹⁴ In presenting these guidelines, the rule relates to several biblical virtues. First, the rule affirms the importance of the biblical principle of competency, which is discussed above in detail regarding Rule 1.1 (“Competence”). Specifically, Rule 1.16(a)(2) relates to the biblical principle by providing that attorneys must decline representation when “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the

²⁰⁸ See AM. BAR ASS’N, ANNOTATED MODEL RULES OF PROF’L CONDUCT 249–57 (5th ed. 2003) [hereinafter ANNOTATED MODEL RULES] (listing cases concerning lawyers’ violations of Rule 1.15).

²⁰⁹ *Proverbs* 24:3–4.

²¹⁰ As noted in footnote 94, *supra*, trustworthiness relates to the virtue of responsibility, which entails being responsible for those things entrusted to you.

²¹¹ *1 Corinthians* 4:2 (NIV); see also *1 Timothy* 6:20.

²¹² *Genesis* 1:28. The stewardship principle is also extended to the gifts and talents God gives individuals. See *Matthew* 25:14–30 (parable of the talents).

²¹³ See Herb Williamson, What Does the Bible Say About Stewardship?, <http://www.umcgiving.org/News/pdfs/AboutStewardship.pdf> (last visited Nov. 4, 2006).

²¹⁴ MODEL RULES OF PROF’L CONDUCT R. 1.16 (2003).

client.”²¹⁵ By including this provision, the rule relates to *Colossians* 3:23, which reads: “And whatever you do, do it heartily, as to the Lord and not to men”²¹⁶ Christian lawyers should seek high standards in their representation and if their impairment would cause them to believe they are not upholding such standards, they must terminate the representation.

In the rule’s section on when an attorney may withdraw from representation, the rule first relates to the biblical principle of submission to authorities. Rule 1.16(b)(2) and (3) expressly provide that lawyers may withdraw if “the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent” or if “the client has used the lawyer’s services to perpetrate a crime or fraud.”²¹⁷ In recognizing a lawyer’s responsibility to submit to the state and not commit crime or fraud,²¹⁸ the rule affirms the biblical principle of submitting to governing authorities. This principle relates specifically to various Model Rules, and the seminal biblical passage on this point is *Romans* 13:1–3, which reads:

Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God. Therefore whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves. For rulers are not a terror to good works, but to evil. Do you want to be unafraid of the authority? Do what is good, and you will have praise from the same.²¹⁹

In section (b)(4), the rule also relates to the virtue of integrity. That section allows the lawyer to withdraw from representation if “the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.”²²⁰ The lawyer’s personal integrity is upheld through the rule because the lawyer is allowed to prioritize such integrity over continued devotion to his client; lawyers are not required to continue representation when such representation violates a principle the lawyer deems central to his or her character.²²¹

²¹⁵ *Id.* R. 1.16(a)(2).

²¹⁶ *Colossians* 3:23. The next verse continues, “knowing that from the Lord you will receive the reward of the inheritance; for you serve the Lord Christ.” *Colossians* 3:24.

²¹⁷ MODEL RULES OF PROF’L CONDUCT R. 1.16(b)(2)–(3) (2003).

²¹⁸ *See id.* R. 8.4(b)–(c) (providing that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects” or to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation”).

²¹⁹ *Romans* 13:1–3.

²²⁰ MODEL RULES OF PROF’L CONDUCT R. 1.6(b)(4) (2003).

²²¹ *See Gantt, supra* note 31, at 375–77.

Finally, in sections (b)(5) and (b)(6), the rule relates to the principle of personal responsibility. These sections allow attorneys to withdraw in the case when the client fails to fulfill an obligation to the lawyer after the client has been warned and in the case when the representation “will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.”²²² In both of these instances, the rule recognizes that lawyers’ responsibility to their clients engender some responsibilities from the client in return. Scripture affirms that when individuals work, they are entitled to reasonable wages for their labor.²²³ Therefore, lawyers are biblically justified in terminating representation when the clients do not fulfill their reasonable obligations to their counsel.

M. Rule 1.17: Sale of Law Practice

Rule 1.17 outlines specific guidelines that govern how attorneys should handle the sale of their law practice.²²⁴ In providing these guidelines, the rule affirms the biblical virtue of honesty. It specifically requires the selling attorney to give written notice to each of the seller’s clients about the sale.²²⁵

The rule also relates to the biblical principle of loyalty by prohibiting the selling attorney from engaging either in the private practice of law or in the specific practice area that has been sold in the geographic area or jurisdiction where the practice was conducted.²²⁶ Through the first restriction, the rule avoids the potentiality for conflicts and the appearance that the lawyer is being disloyal to his former clients by selling the practice but continuing to practice in that geographic area. The second restriction, however, does not equally avoid these concerns because the attorney can continue to practice in other areas of law within the jurisdiction.²²⁷ As discussed in other sections of this article, Scripture affirms the virtues of loyalty and trustworthiness.²²⁸ Christian attorneys may determine that upholding these virtues leads them to follow procedures above and beyond Rule 1.17 in order to ensure they

²²² MODEL RULES OF PROF’L CONDUCT R. 1.16(b)(5)–(6) (2003).

²²³ See, e.g., *Romans* 4:4 (NIV) (“Now when a man works, his wages are not credited to him as a gift, but as an obligation.”). *But cf. Matthew* 20:1–16 (Jesus’ parable that grace applies in certain circumstances such that individuals receive more than what they deserve).

²²⁴ MODEL RULES OF PROF’L CONDUCT R. 1.17 (2003).

²²⁵ *Id.* R. 1.17(c).

²²⁶ *Id.* R. 1.17(a).

²²⁷ *Cf. ANNOTATED MODEL RULES, supra* note 208, at 281 (discussing the 2002 revision allowing attorneys to sell only a practice area and not their entire practice).

²²⁸ See, e.g., *Matthew* 6:24 (“No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon.”); see also *supra* notes 111–28 and accompanying text.

avoid a situation where selling all or some of their practice appears to breach the trust their clients have placed in them.

II. COUNSELOR

A. Rule 2.1: Advisor

Model Rule 2.1 provides general principles for attorneys in their role as advisors to their clients. It provides first that the lawyer must “exercise independent professional judgment and render candid advice.”²²⁹ In this provision, the rule affirms the biblical virtues of honesty and personal responsibility. Lawyers are not simply to tell the clients what the clients want to hear; as the comment to the rule states, “a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.”²³⁰ Part of a lawyer’s responsibility to his or her client is to be competent,²³¹ and competence necessitates that the lawyer give honest advice based on his or her professional opinion. Scripture includes many examples of wise men seeking wise counselors,²³² and lawyers thus uphold this biblical principle if they provide their clients with such counsel.

Rule 2.1 also affirms the biblical principle of integrity, most notably through the second sentence of the rule, which reads that lawyers may counsel clients not only on the law but also on “other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”²³³ The comment adds, “Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”²³⁴ Through this recognition, the rule upholds the personal integrity—or personal integration—of the lawyer by authorizing the lawyer to bring nonlegal considerations into his or her discussions with the client. Lawyers are therefore not obliged to separate artificially their professional lives from their nonlegal, and sometimes quite personal, opinions on the matter. The rule thus allows lawyers to avoid being like the Pharisees and instead to match their actions with their motives, intentions, and feelings.²³⁵

²²⁹ MODEL RULES OF PROF’L CONDUCT R. 2.1 (2003).

²³⁰ *Id.* R. 2.1 cmt. 1.

²³¹ *See id.* R. 1.1.

²³² *See, e.g.,* 1 *Chronicles* 27:32.

²³³ MODEL RULES OF PROF’L CONDUCT R. 2.1 (2003). As is discussed throughout this article, this virtue of personal integrity is reflected in other Model Rules, notably 1.2, 1.5, 1.7–1.12, 1.16, 3.3–3.5, 3.8, 3.9, 5.4, 5.7, 6.2–6.4, 7.2, 7.6, and 8.4.

²³⁴ *Id.* R. 2.1 cmt. 2.

²³⁵ For a detailed discussion of the relationship between Rule 2.1 and personal integrity, see Gantt, *supra* note 44. *See also* Higginson, *supra* note 134, at 24; *Matthew* 5:21–28, 23:27.

B. Rule 2.3: Evaluation for Use by Third Persons

Rule 2.3 allows a lawyer to evaluate a matter affecting a client for a third party if the lawyer reasonably believes that the review is compatible with the lawyer-client relationship.²³⁶ However, a lawyer must obtain informed consent from the client when he knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely.²³⁷ Unless disclosure is authorized in relation to a report, however, such evaluations are protected under Rule 1.6.²³⁸ Rule 2.3 relates to the virtues of loyalty, confidentiality, and fairness.²³⁹

One could argue that the generally permissive nature of this rule is supported in *Philippians*, “[l]et each of you look out not only for his own interests, but also for the interests of others.”²⁴⁰ In its limitations, however, Rule 2.3 recognizes the importance of a lawyer's loyalty to his client. As discussed in other sections of this article, several scriptures describe the biblical view of loyalty.²⁴¹ Jesus puts it best in *Matthew*, “[n]o one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other.”²⁴² One aspect of loyalty that is present in Scripture and related to this rule is the biblical injunction against having a “double” heart or mind. In *Psalms*, for example, the Psalmist complains, “[t]hey speak idly everyone with his neighbor; *with* flattering lips *and* a double heart they speak”;²⁴³ and Paul says that deacons should “be reverent, not double-tongued.”²⁴⁴ Similarly, *James* notes, “a double-minded man” is “unstable in all his ways,”²⁴⁵ and later exhorts, “purify your hearts, you double-minded.”²⁴⁶ Rule 2.3 aligns with these scriptural principles by regulating situations

²³⁶ MODEL RULES OF PROF'L CONDUCT R. 2.3(a) (2003). The ABA deleted Rule 2.2 in February 2002, and the Model Rules no longer contain a rule with that number. See ABA Center for Professional Responsibility, Ethics 2000 Commission Report on the Model Rules of Professional Conduct: Rule 2.2, <http://www.abanet.org/cpr/e2k/e2k-redline.html> (last visited Nov. 21, 2006).

²³⁷ *Id.* R. 2.3(a)–(b).

²³⁸ *Id.* R. 2.3(c).

²³⁹ Virtues related to Rule 1.6 would also obviously apply here. See *supra* note 93–107.

²⁴⁰ *Philippians* 2:4.

²⁴¹ Loyalty as a virtue is discussed in detail in the above section on Rules 1.7 to 1.9. See *supra* notes 111–28 and accompanying text.

²⁴² *Matthew* 6:24; see also *1 Corinthians* 4:2 (“Moreover it is required in stewards that one be found faithful.”).

²⁴³ *Psalms* 132:2; see also *1 Chronicles* 12:33.

²⁴⁴ *1 Timothy* 3:8.

²⁴⁵ *James* 1:8.

²⁴⁶ *James* 4:8.

where the lawyer would be “double-minded” by serving the third party in a way that limits his representation of his client.

Confidentiality is certainly of importance to this rule. *Proverbs* states that, “[a] talebearer reveals secrets, but he who is of a faithful spirit conceals a matter,”²⁴⁷ and that “[t]he heart of the righteous studies how to answer, but the mouth of the wicked pours forth evil.”²⁴⁸ *Deuteronomy* states: “The secret things belong to the LORD our God, but those things which are revealed belong to us and to our children forever, that we may do all the words of this law.”²⁴⁹ In any dealings with third parties, therefore, the Christian attorney must appropriately maintain the confidences of his client and keep the interests of his client paramount.²⁵⁰

C. Rule 2.4: Lawyer Serving as Third-Party Neutral

The provisions of Rule 2.4 apply when an attorney assists two or more non-clients in resolving a dispute as an arbitrator, mediator, or in another third-party capacity.²⁵¹ Unrepresented parties must be informed that the lawyer is not representing them, and they must be clear on the difference between an attorney’s role in this situation and when representing a client.²⁵² Therefore, Rule 2.4 implicates the virtues of reconciliation and trustworthiness.

The principle of reconciliation is an important theological principle in Scripture. Paul writes in *Corinthians*:

Now all things *are* of God, who has reconciled us to Himself through Jesus Christ, and has given us the ministry of reconciliation, that is, that God was in Christ reconciling the world to Himself, not imputing their trespasses to them, and has committed to us the word of reconciliation.²⁵³

Although this passage speaks specifically of how Christ reconciled God to mankind, Christian ministries have adopted this concept of reconciliation as a core principle in how Christians should address and

²⁴⁷ *Proverbs* 11:13; see also *Proverbs* 10:19 (“In the multitude of words sin is not lacking, but he who restrains his lips is wise.”), 12:23 (“A prudent man conceals knowledge, but the heart of fools proclaims foolishness.”), 13:16 (“Every prudent *man* acts with knowledge, but a fool lays open his folly.”); *Amos* 5:13 (“Therefore the prudent keep silent at that time.”).

²⁴⁸ *Proverbs* 15:28.

²⁴⁹ *Deuteronomy* 29:29.

²⁵⁰ *James* 4:8.

²⁵¹ MODEL RULES OF PROF’L CONDUCT R. 2.4(a) (2003).

²⁵² *Id.* R. 2.4(b).

²⁵³ *2 Corinthians* 5:18–19.

resolve conflict.²⁵⁴ Christians serving as third-party neutrals thus should be mindful of this principle.

The virtue of trustworthiness is evident in how Rule 2.3 instructs third-party neutrals to explain their role in the matter to unrepresented parties. As discussed in the above section on Rules 1.7 to 1.9, Scripture recognizes the importance of an individual's being faithful to another when that person puts his or her trust in the individual. For example, 1 *Corinthians* 4:2 provides, "Now it is required that those who have been given a trust must prove faithful."²⁵⁵ Trust in this sense conveys the belief that someone is actually the person—in character as well as identity—he or she purports to be.²⁵⁶

In sum, the biblical role of a third-party neutral is described in *Galatians*: "Now a mediator does not *mediate* for one *only*,"²⁵⁷ clearly indicating that the mediator must consider *both* sides in reaching an agreement. Similarly, 1 *Timothy* makes plain that "*there* is one God and one Mediator between God and men, *the* Man Christ Jesus,"²⁵⁸ suggesting that Christian third-party neutrals should attempt to emulate the Savior in their department. They should be trustworthy and faithful to their role by fairly considering the interests of both parties in seeking to bring them towards reconciliation.

III. ADVOCATE

A. Rule 3.1: Meritorious Claims and Contentions

Pursuant to Rule 3.1, no proceeding may be brought or defended, or any issue asserted or controverted unless there is a non-frivolous basis in law and fact for so-doing.²⁵⁹ The lawyer for a criminal defendant or a

²⁵⁴ For instance, the well-known Christian conciliation ministry Peacemaker Ministries references this passage in describing its distinctive approach toward conflict reconciliation. See What Makes Peacemaker Ministries Distinctive?, <http://www.peacemaker.net/site/c.aqKFLTOBIpH/b.1172255/apps/s/content.asp?ct=1245257> (last visited Nov. 9, 2006).

²⁵⁵ 1 *Corinthians* 4:2 (NIV); see also 1 *Timothy* 6:20 (encouraging Timothy to be faithful in being entrusted with the gospel); *supra* notes 94, 117–18 and accompanying text.

²⁵⁶ *Hayford's Bible Handbook* adds that Hebrew word *chasah* translated as "trust" connotes "to trust, to hope, to make someone a refuge." HAYFORD'S, *supra* note 71, at 784.

²⁵⁷ *Galatians* 3:20; see also *Galatians* 3:19 ("[A]nd it was appointed through angels by the hands of a mediator . . .").

²⁵⁸ 1 *Timothy* 2:5; see also *Hebrews* 12:24 ("Jesus [is] the Mediator of the new covenant . . .").

²⁵⁹ A frivolous action is one where the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or "if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law." MODEL RULES OF PROF'L CONDUCT R. 3.1 cmt. 2 (2003).

respondent facing incarceration, however, may require that every element of the case be established.²⁶⁰ This rule specifically embodies the virtues of honesty, reasonableness, and zeal for a worthwhile cause.

Regarding honesty, this rule appears to be closely related to the biblical proscription against being a false witness in a case, best known from the commandment that “[y]ou shall not bear false witness against your neighbor.”²⁶¹ Indeed, this concern seems to have been a continuing worry among the Israelites. *Psalms* pleads, “Do not deliver me to the will of my adversaries; [f]or false witnesses have risen against me, [a]nd such as breathe out violence,”²⁶² and *Proverbs* notes that two of the seven things the Lord hates are “[a] false witness *who* speaks lies, and one who sows discord among brethren.”²⁶³ Jesus himself notes in *Matthew* that “out of the heart proceed evil thoughts, murders, adulteries, fornications, thefts, false witness, [and] blasphemies. These are *the things* which defile a man”²⁶⁴ In fact, false witnesses were employed by the chief priests, elders, and the council to bring Christ to his death.²⁶⁵

Proverbs further notes that, “[h]e *who* speaks truth declares righteousness, [b]ut a false witness, deceit”;²⁶⁶ and *Psalms* states that the person who may stand in the Lord’s holy place is “[h]e who has clean hands and a pure heart, [w]ho has not lifted up his soul to an idol, [n]or sworn deceitfully.”²⁶⁷ *Deuteronomy* prescribes the treatment to be accorded someone who swears falsely:

If a false witness rises against any man to testify against him of wrongdoing, then both men in the controversy shall stand before the LORD, before the priests and the judges who serve in those days. And the judges shall make careful inquiry, and indeed, if the witness is a false witness, who has testified falsely against his brother, then you shall do to him as he thought to have done to his brother; so you shall put away the evil from among you.²⁶⁸

²⁶⁰ *Id.* R. 3.1.

²⁶¹ *Exodus* 20:16; *see also Deuteronomy* 5:20, 19:16–20.

²⁶² *Psalms* 27:12; *see also Proverbs* 3:30 (NIV) (“Do not accuse a man for no reason—when he has done you no harm.”).

²⁶³ *Proverbs* 6:19; *see also Proverbs* 19:5 (“A false witness will not go unpunished, and *he who* speaks lies will not escape.”), 19:28 (NIV) (“A corrupt witness mocks at justice.”), 21:28 (“A false witness shall perish”), 25:18 (NIV) (“Like a club or a sword or a sharp arrow is the man who gives false testimony against his neighbor.”).

²⁶⁴ *Matthew* 15:19–20.

²⁶⁵ *Matthew* 26:59–66; *see also Mark* 14:55–64; *Acts* 6:13. For a further discussion of false witnesses, *see infra* notes 291–309 and accompanying text (discussing Rule 3.3).

²⁶⁶ *Proverbs* 12:17; *see also Proverbs* 12:19 (“The truthful lip shall be established forever, but a lying tongue *is* but for a moment.”), 12:22 (“Lying lips *are* an abomination to the LORD, [b]ut those who deal truthfully *are* His delight.”), 15:26 (“The thoughts of the wicked *are* an abomination to the LORD, [b]ut *the words* of the pure *are* pleasant.”).

²⁶⁷ *Psalms* 24:4.

²⁶⁸ *Deuteronomy* 19:16–19.

The wise attorney should pattern himself or herself on the allegorical description of wisdom in the Bible.

Listen, for I will speak of excellent things,
 And from the opening of my lips *will* come right things;
 For my mouth will speak truth;
 Wickedness *is* an abomination to my lips.
 All the words of my mouth *are* with righteousness;
 Nothing crooked or perverse *is* in them.
 They *are* all plain to him who understands,
 And right to those who find knowledge.²⁶⁹

Similarly, wherever possible, the Christian attorney should attempt to follow Paul's advice: "[W]hatever things are true, whatever things are noble, whatever things are just, whatever things are pure, whatever things are lovely, whatever things are of good report, if there is any virtue and if there is anything praiseworthy—meditate on these things."²⁷⁰ Contrast this with the lot of the deceitful man whose tongue devises mischief: "You love evil more than good, [l]ying rather than speaking righteousness. . . . You love all devouring words, [y]ou deceitful tongue. God shall likewise destroy you forever; [h]e shall take you away, and pluck you out of *your* dwelling place, [a]nd uproot you from the land of the living."²⁷¹

The Christian attorney should echo the biblical plea: "take not the word of truth utterly out of my mouth, [f]or I have hoped in Your ordinances."²⁷² *Proverbs* says that, "[r]ighteous lips *are* the delight of kings, [a]nd they love him who speaks *what is* right."²⁷³ Similarly, as individuals are called to "[p]rovid[e] . . . for honest things, not only in the sight of the Lord, but also in the sight of men,"²⁷⁴ every man should "'speak truth with his neighbor,' for we are members of one another."²⁷⁵ To abide by the numerous biblical precepts on honesty, the Christian attorney should thus stick strictly to the truth and should not attempt to deceive others with nonmeritorious claims.

Regarding the other related virtues of reasonableness and zeal for a worthwhile cause, Scripture goes beyond Rule 3.1 in encouraging Christian attorneys to balance those virtues by not stirring up unnecessary strife and by avoiding litigation when possible.²⁷⁶ In

²⁶⁹ *Proverbs* 8:6–9.

²⁷⁰ *Philippians* 4:8.

²⁷¹ *Psalms* 52:3–5.

²⁷² *Psalms* 119:43; see also Beggs, *supra* note 1, at 841 (noting that "*Proverbs* condemns any form of dishonesty").

²⁷³ *Proverbs* 16:13.

²⁷⁴ *2 Corinthians* 8:21 (KJV).

²⁷⁵ *Ephesians* 4:25.

²⁷⁶ David Hoffman, who published the United States' first text on legal ethics, "condemn[ed] nuisance litigation as a form of extortion." Gordon J. Beggs, *Laboring Under*

Proverbs, Solomon instructs “What you have seen with your eyes do not bring hastily to court, for what will you do in the end if your neighbor puts you to shame?”²⁷⁷ Similarly, Jesus instructs his followers in *Matthew*, “Settle matters quickly with your adversary who is taking you to court. Do it while still with him on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison.”²⁷⁸

B. Rule 3.2: *Expediting Litigation*

According to Model Rule 3.2, “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”²⁷⁹ This rule incorporates the virtues of diligence, preparedness, and readiness.

The Christian attorney should attempt to emulate God as depicted in *Psalms* 22: “[D]o not be far from Me . . . hasten to help Me!”²⁸⁰ God has “commanded *us* to keep [His] precepts diligently.”²⁸¹ Clearly a similar attitude toward legal practice is required not only because it is the lawyer’s livelihood and calling,²⁸² but also because the expediting of a just cause is surely pleasing to God.²⁸³

Unlike the king’s dilatory wedding guests,²⁸⁴ but like the ten wise virgins of Jesus’ parable, the Christian attorney should always be prepared and ready to proceed, for we “know neither the day nor the

the Sun: An Old Testament Perspective on the Legal Profession, 28 PAC. L.J. 257, 264 (1996) (citing DAVID HOFFMAN, A COURSE OF LEGAL STUDY ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY (1836), reprinted in AMERICAN LAW: THE FORMATIVE YEARS 754 (Arno Press 1972)).

²⁷⁷ *Proverbs* 25:7–8 (NIV); see also *Proverbs* 6:16–19 (stating that “one who sows discord among brethren” is an “abomination” to the Lord). Unfortunately, the current public perception of attorneys in America does not live up to this standard. According to one study, “Americans say that lawyers are greedy, manipulative, and corrupt” and complain that they “misrepresent their qualifications, overpromise” and “are not upfront about their fees.” *Public Perceptions of Lawyers*, supra note 165.

²⁷⁸ *Matthew* 5:25 (NIV).

²⁷⁹ MODEL RULES OF PROF’L CONDUCT R. 3.2 (2003).

²⁸⁰ *Psalms* 22:19.

²⁸¹ *Psalms* 119:4.

²⁸² See *Proverbs* 10:4 (“He who has a slack hand becomes poor, [b]ut the hand of the diligent makes rich.”), 12:24 (“The hand of the diligent will rule, [b]ut the lazy *man* will be put to forced labor.”), 13:4 (“The soul of a lazy *man* desires, and *has* nothing; [b]ut the soul of the diligent shall be made rich.”), 22:29 (“Do you see a man *who* excels in his work? He will stand before kings; [h]e will not stand before unknown *men*.”), 27:23 (“Be diligent to know the state of your flocks, [a]nd attend to your herds.”).

²⁸³ See *Proverbs* 15:23 (“A man has joy by the answer of his mouth, [a]nd a word spoken in due season, how good it is!”).

²⁸⁴ *Matthew* 22:2–8.

hour in which the Son of Man is coming.”²⁸⁵ Paul tells Titus that believers should “be subject to rulers and authorities, to obey, to be ready for every good work.”²⁸⁶ Diligence will be rewarded:

For God *is* not unjust to forget your work and labor of love which you have shown toward His name, *in that* you have ministered to the saints, and do minister. And we desire that each one of you show the same diligence to the full assurance of hope until the end²⁸⁷

Delay and hesitation, on the other hand, are to be avoided. Jesus states in *Luke* that “[n]o one, having put his hand to the plow, and looking back, is fit for the kingdom of God.”²⁸⁸ Similarly, many verses in *Proverbs* contrast diligence and the sluggard.²⁸⁹ The Christian attorney thus should make sure that he or she does not unnecessarily hold back the course of litigation, but rather works to ensure prompt operation of the legal process.²⁹⁰

C. Rule 3.3: Candor Toward the Tribunal

Model Rule 3.3 prohibits an attorney from knowingly making a false statement of fact or law to a tribunal, failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer,²⁹¹ failing to disclose legal authority in the jurisdiction which is directly adverse to his client and not disclosed by opposing counsel, or offering false evidence.²⁹² A lawyer who represents a client in an adjudicative proceeding and who has knowledge of criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.²⁹³ These duties continue to the close of a proceeding and may mandate disclosure of information otherwise protected by Rule 1.6.²⁹⁴ In an *ex parte* proceeding, a lawyer shall inform the court of all material facts enabling

²⁸⁵ *Matthew* 25:13; *see also Matthew* 24:44 (“Therefore you also be ready, for the Son of Man is coming at an hour you do not expect.”), 25:1–14.

²⁸⁶ *Titus* 3:1.

²⁸⁷ *Hebrews* 6:10–11.

²⁸⁸ *Luke* 9:62; *see also Hebrews* 6:12.

²⁸⁹ *See supra* note 21; *Proverbs* 12:24.

²⁹⁰ As noted in the section on 3.1, Jesus instructs his followers to settle matters quickly before going to court. *Matthew* 5:25. A corollary to this principle would be to continue the process of reaching a quick resolution even after the formal litigation process has begun.

²⁹¹ At least one Christian legal scholar has commented that the Model Rules attempt a distinction between candor and honesty that is not supported by Scripture. *See Beggs, supra* note 1, at 841–43 (noting that, unlike Rule 3.3, “*Proverbs* leaves no room for deception”).

²⁹² MODEL RULES OF PROF’L CONDUCT R. 3.3(a)(1)–(4) (2003).

²⁹³ *Id.* R. 3.3(b).

²⁹⁴ *Id.* R. 3.3(b)–(c).

it to make an informed decision, whether or not these are adverse.²⁹⁵ Virtues involved in this rule include honesty, personal responsibility, fairness, integrity, and zeal for a worthwhile cause.

Biblical repugnance for false witnesses has already been discussed under Rule 3.1.²⁹⁶ As that discussion confirms, Christian attorneys should deal with the tribunal as if they were giving an “account to Him who is ready to judge the living and the dead.”²⁹⁷ Like a good servant of the Lord, it should be said of the Christian attorney that, “[t]he law of truth was in his mouth, [a]nd injustice was not found on his lips. He walked with Me in peace and equity, [a]nd turned many away from iniquity.”²⁹⁸

The passages on false witnesses are uniquely relevant to Rule 3.3 in that Rule 3.3(a)(3) concerns the controversial situation of how lawyers should respond when they know their client has testified perjurally.²⁹⁹ Some jurisdictions allow attorneys to permit their clients to testify perjurally as long as the clients testify narratively and without guidance by the lawyer’s questioning.³⁰⁰ The comment to Rule 3.3 allows attorneys in those jurisdictions to adopt such an approach but directs attorneys in other jurisdictions to take “reasonable remedial measures.”³⁰¹ The comment adds that withdrawal may sometimes be sufficient, but it reasons that because the attorney should “undo the effect of the false evidence,” the attorney may also need to disclose the perjury to the tribunal.³⁰²

Directing attorneys to remedy and “undo” false testimony is consonant with biblical principles because, as discussed above, the Bible does not approve of false witnesses. Moreover, Scripture counsels against an attorney being associated with a false witness, for “[t]he righteous hate what is false.”³⁰³

²⁹⁵ *Id.* R. 3.3(d).

²⁹⁶ *See supra* notes 261–75 and accompanying text.

²⁹⁷ 1 *Peter* 4:5; *see also* Beggs, *supra* note 276, at 266 (asserting that ethicist David Hoffman “also insists that counsel forego the ever-present temptation to misstate or misquote authority, tactics which he regards at best ‘as feeble devices of an impoverished mind’ and at worst ‘as pregnant evidences of a disregard for truth, which justly subjects them to be closely watched in more important matters’”).

²⁹⁸ *Malachi* 2:6.

²⁹⁹ MODEL RULES OF PROF’L CONDUCT R. 3.3(a)(3) (2003).

³⁰⁰ *See* CRYSTAL, *supra* note 44, at 118. This approach is often referred to as the “narrative” approach. *Id.*

³⁰¹ MODEL RULES OF PROF’L CONDUCT R. 3.3. cmt. 1 (2003).

³⁰² *Id.* R. 3.3 cmt. 10.

³⁰³ *Proverbs* 13:5 (NIV); *see also Proverbs* 21:28 (NIV) (“A false witness will perish, and whoever listens to him will be destroyed forever.”). The narrative approach thus does not appear consonant with Scripture because, in that approach, the attorney does not

However, in its direction for candor, Rule 3.3 draws a distinction that is not present in the biblical precepts. The rule, as noted, prohibits an attorney from knowingly making a false statement of material fact or law, but it allows an attorney to withhold material information from the tribunal under many circumstances.³⁰⁴ As scholar Gordon Beggs has observed:

“Candor” [under the Model Rules] . . . requires an honest answer to a specific inquiry, but permits the withholding of unfavorable information not specifically requested by an opponent. The underlying assumption is that the adversary system affords the parties an impartial tribunal, whose responsibility it is to determine the truth of the matter. Under these rules, the practice of discovery, negotiation, alternative dispute resolution, and trial has evolved into an exercise in gamesmanship in which reputable attorneys divulge adverse information only where it is impossible to interpret an adversary’s inquiry in a way which does not require disclosure.³⁰⁵

This view of “candor” contrasts with the scriptural view of honesty, as interpreted by Beggs and others. For instance, Beggs asserts that “Proverbs leaves no room for deception,”³⁰⁶ and ethicist Jerry White reasons that Scripture requires “complete honesty” and that deception and silence can be just as dishonest as outright lying.³⁰⁷

As noted in the discussion on Rule 1.6 (“Confidentiality”), a small number of biblical passages imply that deception is acceptable in the narrow circumstance of when it is necessary to prevent innocent human

clearly disassociate himself from the false testimony and instead allows it to be presented without any remedial measure by the attorney.

³⁰⁴ For instance, an attorney must disclose such material facts when necessary to correct a false statement of fact or law the lawyer previously made to the tribunal. MODEL RULES OF PROF’L CONDUCT R. 3.3(a)(1) (2003). Similarly, a lawyer may, in certain circumstances, be required to disclose material facts when necessary to prevent another person from engaging in criminal or fraudulent conduct related to the proceeding. *Id.* R. 3.3(b).

³⁰⁵ Beggs, *supra* note 1, at 842. Such a view of candor presupposes a properly functioning adversary system, but much of the modern practice of law takes place outside the formal adversary process. *See id.* at 833 (observing that “contemporary practice centers on the office and board room and not on the courts”). Beggs contrasts this modern position with the position taken by nineteenth century legal ethicists David Hoffman and George Sharswood. Both men advised attorneys against concealing material information only to surprise their opponents at later times. *See id.* (citing HOFFMAN, *supra* note 271, at 764; MEMORIAL TO GEORGE SHARSWOOD, PROFESSIONAL ETHICS 73–74 (5th ed. 1993)). Moreover, at the extreme end, such gamesmanship is sanctionable. *See, e.g.*, Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 858 P.2d 1054, 1080, 1084 (Wash. 1993) (sanctioning party for “evasive and misleading responses” to discovery requests).

³⁰⁶ Beggs, *supra* note 1, at 843.

³⁰⁷ WHITE, *supra* note 82. Beggs does not outline what constitutes deception. White defines *deceive* as “to cause to accept as true or valid what is false or invalid.” *Id.* at 53 (citing WEBSTER’S NEW COLLEGIATE DICTIONARY 290 (Henry Bosley Woolf ed., 1981) [hereinafter WEBSTER’S]). He adds that the term means “to delude, mislead, or beguile.” *Id.*

life from being taken.³⁰⁸ Except in this situation, Scripture contains unequivocal proscriptions against dishonesty, including deception. In addition to the passages referenced above, *Proverbs 24:28* provides, “Do not . . . use your lips to deceive.”³⁰⁹ Christian attorneys cannot avoid this proscription by pointing to conventional mores of lawyering for “the LORD condemns a crafty man.”³¹⁰ In addition, they should not resort to such gamesmanship because their opponents do so; the golden rule remains applicable and Christian attorneys may be surprised at how maintaining high ethical standards can set the tone for relations with opponents such that those opponents uphold the same standards as well.³¹¹

D. Rule 3.4: Fairness to Opposing Party and Counsel

Rule 3.4 requires fairness to opposing parties and counsel. The rule specifically provides that a lawyer may not unlawfully obstruct another party’s access to evidence, alter, destroy or conceal a document or other material of potential evidentiary value, or counsel or assist another person in committing such an act.³¹² He may not falsify evidence, counsel, or assist a witness in testifying falsely, or offer an illegal inducement to a witness.³¹³ A lawyer may not knowingly disobey a court obligation, except for a refusal based on the assertion that no valid obligation exists,³¹⁴ nor may he make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legal discovery request by an opposing party.³¹⁵ In trial, an attorney may not allude to irrelevant or unsupported matters, assert personal knowledge of facts unless testifying as a witness, or state a personal opinion as to justness, credibility, culpability, guilt, or innocence.³¹⁶ An attorney finally should not ask a person other than a client to refrain from giving relevant information to another party unless the person is a relative, employee, or agent of a client and the lawyer believes the person’s interests will not be adversely affected by refusing to give such information.³¹⁷

³⁰⁸ See *supra* notes 102–06 and accompanying text.

³⁰⁹ *Proverbs 24:28* (NIV).

³¹⁰ *Proverbs 12:2* (NIV).

³¹¹ See JOSEPH ALLEGRETTI, *THE LAWYER’S CALLING* 99 (1996) (encouraging lawyers to consider the golden rule in how they conduct their litigation practices). The golden rule is contained in Jesus’ discussion on the greatest commandment. See *Matthew 22:39* (“You shall love your neighbor as yourself.”).

³¹² MODEL RULES OF PROF’L CONDUCT R. 3.4(a) (2003).

³¹³ *Id.* R. 3.4(b).

³¹⁴ *Id.* R. 3.4(c).

³¹⁵ *Id.* R. 3.4(d).

³¹⁶ *Id.* R. 3.4(e).

³¹⁷ *Id.* R. 3.4(f).

In Rule 3.4, the biblical virtue of fairness is obviously involved. Scripture instructs believers to treat others fairly. For instance, *Proverbs* provides in its prologue that one of the goals of its teachings is to enable the reader to acquire a “disciplined and prudent life, doing what is right and just and *fair*.”³¹⁸

In the rule, the virtues of honesty, integrity, and personal responsibility also play a role. Biblical injunctions against false witnesses have already been discussed under Rules 3.1 and 3.3,³¹⁹ but the Christian attorney is called to do more than avoid this pit. *Micah* notes that God requires believers, “to do justly, [t]o love mercy, [a]nd to walk humbly with your God.”³²⁰ Doing justice involves treating the opposing counsel fairly.³²¹ The Bible also is clear that protecting procedural rights is vital to upholding substantive justice.³²² Christian attorneys therefore maintain their personal integrity and responsibility when they recognize that they advance justice by adhering to proper procedure in their dealings with the opposing party and counsel.

E. Rule 3.5: Impartiality and Decorum of the Tribunal

Rule 3.5 states that a lawyer shall not seek to illegally influence a judge, juror, prospective juror, or other official,³²³ and shall not “communicate *ex parte* with such a person during the proceeding unless

³¹⁸ *Proverbs* 1:3 (NIV) (emphasis added). The King James Version and New King James Version translate the word “fair” at the end of verse 3 as “equity.”

³¹⁹ See *supra* notes 261–75 and accompanying text.

³²⁰ *Micah* 6:8; see also *Deuteronomy* 10:12–13 (“And now, Israel, what does the LORD your God require of you, but to fear the LORD your God, to walk in all His ways and to love Him, to serve the LORD your God with all your heart and with all your soul, and to keep the commandments of the LORD and His statutes which I command you today for your good?”).

³²¹ On the interrelationship between justice and fairness, it is noteworthy that *Nave’s Topical Bible* does not list passages associated with the topic of fairness, but instead directs its readers to see “justice.” Crosswalk.com, <http://bible.crosswalk.com/Concordances/NavesTopicalBible/ntb.cgi?number=T1712> (last visited Nov. 4, 2006). This cross-referencing is understandable because fairness seems to relate to treating like people and situations alike whereas justice appears to be a broader concept. For a practical discussion on the different attributes of biblical justice, see Dan Van Ness, *Characteristics of Biblical Justice*, in *WHAT DOES THE LORD REQUIRE OF YOU?* 23–35 (Lynn R. Buzzard ed., 1997).

³²² See, e.g., *Deuteronomy* 17:6 (containing a requirement that two or three witnesses must testify against an individual for that person to be put to death), 19:15 (containing a requirement that two witnesses must testify against an individual in order for that individual to be convicted of a crime); see also Michael P. Schutt, *What’s a Nice Christian Like You Doing in a Profession Like This?*, 11 *REGENT U. L. REV.* 137, 140–42 (1998–1999) (discussing how the Bible affirms the importance of procedural safeguards in the pursuit of justice). Even at the trial of Jesus, which contained many procedural irregularities, see *infra* note 348, the Sanhedrin did take the testimony of two witnesses in compliance with Jewish law. See MOUNCE, *supra* note 66, at 247.

³²³ MODEL RULES OF PROF’L CONDUCT R. 3.5(a) (2003).

authorized to do so by law or court order.”³²⁴ A lawyer shall not communicate with a juror or prospective juror after the jury has been discharged when prohibited by law or court order, when the juror has made known to the lawyer a desire not to communicate, or when the communication involves misrepresentation, coercion, duress or harassment.³²⁵ Furthermore, a lawyer shall not engage in conduct intended to disrupt a tribunal.³²⁶ Virtues involved in this rule include integrity, fairness, honesty, and justice.

The Bible contains numerous passages that underscore that bribery should not be resorted to in a cause of action. *Exodus*, for example, notes: You shall not follow a multitude in doing evil, nor shall you testify in a dispute so as to turn aside after a multitude in order to pervert justice.

....

. . . You shall not pervert the justice due to your needy brother in his dispute. . . . [Y]ou shall not take a bribe, for a bribe blinds the clear-sighted and subverts the cause of the just.³²⁷

Similarly, *Deuteronomy* contains the exhortation, “You shall not pervert justice due the stranger or the fatherless”³²⁸

Gary Haugen, founder of the International Justice Mission, defines injustice as “abuse of power.”³²⁹ Christian attorneys who seek to improperly influence a judicial official are encouraging those officials to abuse the power with which the judicial system has entrusted them. Lawyers who commit such misconduct are also abusing their power as officers of the court.³³⁰ Moreover, a central component to biblical justice is due process,³³¹ and due process requires decision-makers to be impartial.³³² Improperly influencing judicial officials is therefore more

³²⁴ *Id.* R. 3.5(b).

³²⁵ *Id.* R. 3.5(c).

³²⁶ *Id.* R. 3.5(d).

³²⁷ *Exodus* 23:2, :6, :8 (NASB); see also *Deuteronomy* 16:19 (“You shall not pervert justice; you shall not show partiality, nor take a bribe, for a bribe blinds the eyes of the wise and twists the words of the righteous.”); 1 *Samuel* 8:3 (demonstrating Samuel’s sons accepting bribes). For other scriptures against bribery, see *Deuteronomy* 10:17, 2 *Chronicles* 19:7, *Psalms* 26:10, *Proverbs* 17:23 (NIV), *Ecclesiastes* 7:7 (NIV), and *Isaiah* 5:23. Scripture strongly condemns bribery because it fosters injustice and discrimination.

³²⁸ *Deuteronomy* 24:17.

³²⁹ GARY A. HAUGEN, GOOD NEWS ABOUT INJUSTICE: A WITNESS OF COURAGE IN A HURTING WORLD 72 (1999) (defining injustice further as occurring “when power is misused to take from others what God has given them, namely, their life, dignity, liberty, or the fruits of their love and labor”).

³³⁰ Cf. MODEL RULES OF PROF’L CONDUCT pmbL para. 1 (2003) (describing lawyers as “officer(s) of the legal system”).

³³¹ See *supra* note 322 and accompanying text.

³³² HILL, *supra* note 35, at 36 (adding that “[i]mpartiality forbids decision-makers from having preexisting biases or from reaping personal gain from their decisions”).

than about bribery; it is about corruption and injustice.³³³ Scripture is clear that the righteous should hate injustice,³³⁴ and Christian attorneys should therefore avoid any activity that promotes injustice.

F. Rule 3.6: Trial Publicity

Rule 3.6 provides direction on how lawyers should deal with trial publicity. An attorney involved with the investigation or litigation of a matter should not make an extrajudicial statement if he should know that it will be disseminated publicly and is substantially likely to “materially prejudic[e]” a related adjudicative proceeding.³³⁵ He may, however, “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.”³³⁶ This rule applies to all lawyers, whether in firms or government agencies, that are involved in an investigation or litigation.³³⁷ The major biblical virtues underlying this rule are self-control and fairness.³³⁸

Rule 3.6 is first related to the unbridled use of the tongue mentioned in *Proverbs*. The wise man is urged to “[p]ut away from you a deceitful mouth, [a]nd put perverse lips far from you[,]”³³⁹ and is warned that “[w]ise *people* store up knowledge, [b]ut the mouth of the foolish *is* near destruction.”³⁴⁰ Similarly, *James* and other books of the Bible discuss the danger of an unbridled tongue.³⁴¹

Rule 3.6 is also connected with fairness. In this connection, the rule is designed to protect an individual’s right to a fair trial.³⁴² As noted

³³³ Judge John Noonan, in his seminal book on bribery, reasons that Christians’ responsibility to seek to imitate God lies at the root of the biblical prohibition of bribery. See JOHN T. NOONAN, BRIBES 705 (1984) (discussing how *Deuteronomy* 10:17 explains that God shows no partiality and takes no bribes).

³³⁴ See *Proverbs* 13:5 (NIV).

³³⁵ MODEL RULES OF PROF’L CONDUCT R. 3.6(a) (2003).

³³⁶ *Id.* R. 3.6(c).

³³⁷ *Id.* R. 3.6(d).

³³⁸ Tact is a virtue that is tangentially related to self-control. Tact is defined as “a keen sense of what to do or say in order to maintain good relations with others or avoid offense.” Merriam-Webster OnLine, <http://www.m-w.com/dictionary/tact> (last visited Nov. 9, 2006).

³³⁹ *Proverbs* 4:24.

³⁴⁰ *Proverbs* 10:14. *Proverbs* frequently characterizes the fool as a babbler. See *Proverbs* 10:6, :8, :13, :18–19, :31–32.

³⁴¹ See *James* 1:26, 3:1–12. Knowing when to speak and when to keep silent is a prominent wisdom theme in Scripture. See *Job* 38:2, 42:1–6; *Proverbs* 10:14, 11:12–13, 12:23, 13:3, 17:28, 18:2, :6–8; *Ecclesiastes* 3:7.

³⁴² MODEL RULES OF PROF’L CONDUCT R. 3.6 cmt. 1 (2003) (observing that “[p]reserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where a trial by jury is involved”).

above, central to biblical notions of fairness and justice is the impartiality of any respective decision-maker.³⁴³ Attorneys who misuse the media to make prejudicial public statements, therefore, not only infringe upon biblical principles of self-control in speech, but also broader principles of fairness.

G. Rule 3.7: Lawyer as Witness

Model Rule 3.7 states that an attorney should not be an advocate at a trial where he may be called as a necessary witness unless his “testimony relates to an uncontested issue” or to the value of his legal services, or where “disqualification . . . would work substantial hardship on the client.”³⁴⁴ He may be an advocate if another attorney in his firm is likely to be called as a witness except where precluded by Rule 1.7 or 1.9.³⁴⁵ Justice and loyalty are underlying virtues to this rule.

The rule fosters justice by attempting to avoid uncertainties the trier of fact may face in discerning whether statements made by an advocate-witness are to be “taken as proof or as an analysis of the proof.”³⁴⁶ Justice demands that proper evidence be presented to the trier of fact, and Scripture contains several instances of individuals who were improperly incriminated by the use of fragmentary or erroneous information.³⁴⁷ In fact, Jesus himself was wrongly accused based on improper evidence, rendering his trial “illegal.”³⁴⁸ In order to promote justice, the Christian lawyer should, whenever possible, restrict him or herself to the advocate role, with the prime duty being to represent the client with integrity.

³⁴³ HILL, *supra* note 35, at 36.

³⁴⁴ MODEL RULES OF PROF'L CONDUCT R. 3.7(a)(1)–(3) (2003).

³⁴⁵ *Id.* R. 3.7(b).

³⁴⁶ *Id.* R. 3.7 cmt. 2; *see also* Ronald D. Rotunda, *Learning the Law of Lawyering*, 136 U. PA. L. REV. 1761, 1766–67 (1988) (noting that, unlike other rules, 3.7 is routinely enforced by the courts because a violation contaminates the truth-finding process by confusing the fact-finder).

³⁴⁷ HILL, *supra* note 35, at 37 (citing the examples of Jesus, Stephen, and Paul).

³⁴⁸ HAYFORD'S, *supra* note 71, at 287. The trial before the Sanhedrin is recounted in *Matthew* 26:59–68, and it contained numerous procedural irregularities. First, Jesus was convicted based on the testimony of two witnesses who claimed that Jesus said he was able to destroy the temple and rebuild it in three days. This testimony was misleading in that (1) Jesus “never said . . . he would destroy the temple, only that [it] would be destroyed,” *see Matthew* 24:1–2, and (2) Jesus was referring to “his body” when he spoke of the “temple.” MOUNCE, *supra* note 66, at 247. Second, the trial was flawed in that the high priest demanded that Jesus answer whether he was the Son of God, but Jewish law prohibited requiring a person to incriminate himself. *Id.* Other irregularities include that Jesus was tried at night, not in the proper location, during the Passover season, without a day's delay before the verdict, and without separate examination of the two witnesses. *Id.* at 250.

This focus on the advocate role relates to loyalty.³⁴⁹ Except in extraordinary cases, the attorney should avoid being placed in a position where he or she may undermine the client's case. Such a position would compromise the loyalty and trust the client has placed in the lawyer. As noted above in the discussion of Rules 1.7 to 1.9, a lawyer who betrays a trust placed in him by one client to serve other interests commits a form of disloyalty that can be virtuous only in the narrowest of circumstances,³⁵⁰ for Scripture points to the importance of an individual's being faithful to another when that person puts his or her trust in the individual.³⁵¹

H. Rule 3.8: Special Responsibilities of a Prosecutor

Prosecutors have several responsibilities under Rule 3.8. A prosecutor shall not prosecute "a charge that the prosecutor knows is not supported by probable cause,"³⁵² and shall "make reasonable efforts to [see] that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given [a] reasonable opportunity to obtain counsel."³⁵³ The prosecutor may "not seek to obtain from an unrepresented accused a waiver of important pretrial rights,"³⁵⁴ and must make timely disclosure of all information that tends to negate guilt or mitigate the offense.³⁵⁵ He or she may not subpoena a lawyer in a "criminal proceeding to present evidence about a past or present client" under most circumstances.³⁵⁶ Finally, he or she should

refrain from making [most] extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and [should] exercise reasonable care to prevent [those] associated with the prosecutor in a criminal case from making . . . statement[s] that the prosecutor would be prohibited from making under Rule 3.6 or [Rule 3.8].³⁵⁷

Respect for others, fairness, integrity, and justice are virtues that are applicable to this rule.

³⁴⁹ The virtue of loyalty is also discussed extensively in the section on Rules 1.7 to 1.9. Perhaps the seminal verse on loyalty is *Matthew* 6:24, which states: "No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other." *See also Luke* 16:13.

³⁵⁰ *See supra* notes 102–06 and accompanying text (discussing passages in which condoned deception was limited to instances where it was needed to save innocent human life).

³⁵¹ *See, e.g., 1 Corinthians* 4:2.

³⁵² MODEL RULES OF PROF'L CONDUCT R. 3.8(a) (2003).

³⁵³ *Id.* R. 3.8(b).

³⁵⁴ *Id.* R. 3.8(c).

³⁵⁵ *Id.* R. 3.8(d).

³⁵⁶ *Id.* R. 3.8(e)(1)–(3).

³⁵⁷ *Id.* R. 3.8(f).

Proverbs calls for the integrity a Christian prosecutor should seek to display, noting that “[t]he integrity of the upright will guide them, [b]ut the perversity of the unfaithful will destroy them,”³⁵⁸ and “[t]he righteous *man* walks in his integrity.”³⁵⁹ As an officer of the court, it is the prosecutor’s duty to “[d]efend the poor and fatherless; [d]o justice to the afflicted and needy; [d]eliver the poor and needy; [and f]ree them from the hand of the wicked.”³⁶⁰

This express obligation of prosecutors to do justice is included in the comment to Rule 3.8, but the Model Rules do not contain a similar obligation for attorneys generally.³⁶¹ In fact, it is a “well-accepted” proposition among legal ethicists that prosecutors have broader ethical obligations than do attorneys generally. These broader obligations imply more than adherence to certain procedural standards, like the giving of exculpatory material to defense counsel.³⁶² Rather, they imply an obligation to work toward ensuring that prosecutions end in just results.³⁶³

As noted, Scripture supports the importance of procedural due process as a way of ensuring that the state does not overstep its authority in punishing those under its jurisdiction.³⁶⁴ However, Scripture does not single out prosecutors for special obligations toward justice; passages like those above which call individuals to “do justice” are universal in application and therefore apply generally to all attorneys.³⁶⁵ Christian attorneys, whether prosecutors, defense counsel, or otherwise, should heed the biblical instructions for justice. Moreover, as the commentary on prosecutors provides, such an obligation to achieve justice requires more than adherence to procedural standards, and therefore, Christian attorneys should recognize that they share some

³⁵⁸ *Proverbs* 11:3.

³⁵⁹ *Proverbs* 20:7.

³⁶⁰ *Psalms* 82:3–4.

³⁶¹ See MODEL RULES OF PROF’L CONDUCT R. 3.8 cmt. 1 (2003) (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”).

³⁶² See *Brady v. Maryland*, 373 U.S. 83, 87–88 (1963); *CRYSTAL*, *supra* note 44, at 179–80.

³⁶³ See *CRYSTAL*, *supra* note 44, at 178; see also *Berger v. United States*, 295 U.S. 78, 88 (1935) (reasoning that a federal prosecutor’s interest in criminal prosecution is “not that it shall win a case, but that justice shall be done”); AM. BAR ASS’N, ABA STANDARDS FOR THE PROSECUTION FUNCTION § 3-1.2(c) (1992) (“The duty of the prosecutor is to seek justice, not merely convict.”).

³⁶⁴ See *supra* note 322; see also *supra* notes 331–34 and accompanying text.

³⁶⁵ For instance, the directive in *Micah* 6:8 “to do justly, [t]o love mercy, [a]nd to walk humbly with your God,” has been used by theologians, political leaders, and others to encapsulate fundamental keys to spiritual maturity for all believers. See GEORGE GRANT, *THE MICAH MANDATE: BALANCING THE CHRISTIAN LIFE* 8–10 (1999). In fact, Scripture links doing justice with being righteous generally. *Id.* at 13–14; see also *Job* 29:14 (“I put on righteousness, and it clothed me; [m]y justice *was* like a robe and a turban.”).

responsibility in ensuring that their legal work ends in “just” results.³⁶⁶ They cannot hide behind their representative role to overlook these broader concerns for justice.

I. Rule 3.9: Advocate in Nonadjudicative Proceedings

Rule 3.9 provides that an attorney representing a client in a nonadjudicative proceeding before a legislative body or administrative agency shall note that his appearance is in a representative capacity and shall adhere to Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.³⁶⁷ Honesty and integrity are the major underlying virtues for this provision.³⁶⁸

This rule promotes honesty by ensuring the attorney is forthright about his representative role, and such forthrightness comports with Scripture because the Bible maintains that silence can amount to immoral deception.³⁶⁹ In requiring this disclosure, the rule encourages the attorney to remain true to his representative role, and such role faithfulness comports with biblical notions of integrity.³⁷⁰

Other than these virtues, this rule expands the arena in which the Christian attorney is expected to operate ethically, rather than requiring any special biblically-sanctioned behavior. The scripture verses applicable in Rules 3.3, 3.4, and 3.5 will thus tend to apply here as well.

IV. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

A. Rule 4.1: Truthfulness in Statements to Others

The Model Rules require that a lawyer stick to the truth in his or her representation of a client. Rule 4.1 specifically provides that no false statement of material fact or law can be made to a third person,³⁷¹ nor may a lawyer fail to disclose a material fact if this is necessary to avoid a

³⁶⁶ Joseph Allegretti underscores that biblical justice is more than about fair procedures; it also includes an ethic of caring and love for the parties involved in a dispute. See ALLEGRETTI, *supra* note 311, at 105–08 (reasoning that biblical justice “entails a concern *both* for procedures and outcomes”). Allegretti contends that pursuing such justice thus requires that lawyers not focus solely on advancing their clients’ rights but that they consider the other parties involved and the broader moral issues at stake. *Id.* at 106–07; see also *supra* note 321 and accompanying text.

³⁶⁷ MODEL RULES OF PROF’L CONDUCT R. 3.9 (2003).

³⁶⁸ Through the other operative rules, virtues such as personal responsibility, truthfulness, fairness, and justice also apply.

³⁶⁹ See WHITE, *supra* note 82, at 57–58 (discussing biblical arguments for why silence can amount to sin).

³⁷⁰ See Gantt, *supra* note 44 (discussing how biblical notions of integrity eschew role differentiation in which lawyers define themselves differently based on different roles they assume).

³⁷¹ MODEL RULES OF PROF’L CONDUCT R. 4.1(a) (2003).

client's criminal or fraudulent action and is not prohibited by Rule 1.6.³⁷² Here, the Model Rules draw on the virtues of honesty and fairness.

Honesty has been a theme throughout several of the rules already discussed, such as Rules 3.1 and 3.3.³⁷³ This theme remains central here; the virtue of honesty incorporates verbal truthfulness, which is particularly at issue in this rule. Rule 4.1, however, introduces a new aspect to this virtue. Whereas the rules above focus largely on the lawyer's duty of honesty to the court or to his clients, Rule 4.1 addresses the lawyer's duty as it pertains to statements to others.

Through this focus, biblical notions of one's responsibility to his neighbor are particularly relevant. For instance, one of the Ten Commandments states: "You shall not bear false witness *against your neighbor*."³⁷⁴ Similarly, as individuals are called to "[p]rovid[e] . . . for honest things, not only in the sight of the Lord, but also in the sight of men,"³⁷⁵ every person should "put[] away lying . . . [and] speak truth *with his neighbor*, for we are members one of another."³⁷⁶ The Psalmist says that the person who may dwell in the Lord's sanctuary is "[h]e who walks uprightly, [a]nd works righteousness, [a]nd speaks the truth in his heart; [h]e who does not backbite with his tongue, [n]or does evil *to his neighbor*, [n]or does he take up a reproach *against his friend*."³⁷⁷

Scripture thus makes plain that the lawyer's duty of truthfulness and honesty is not based on a limited obligation founded on the authority of the tribunal. Rather, in keeping with the golden rule and the virtue of fairness, biblical notions of honesty apply to all "neighbors." "Neighbors," moreover, is not a narrow class of individuals, for Jesus extended the Old Testament notion of "neighbor" to include strangers and thus all mankind.³⁷⁸

Throughout the Bible, passages underscore the value of truthful representation.³⁷⁹ God puts Cain under a curse when he answers Him falsely concerning the whereabouts of Abel.³⁸⁰ Joseph keeps several of his brothers in prison "that your words may be tested to see whether there is

³⁷² *Id.* R. 4.1(b).

³⁷³ *See supra* notes 261–75, 296–310 and accompanying text.

³⁷⁴ *Exodus* 20:16 (emphasis added); *see also Exodus* 23:1 ("You shall not circulate a false report."), :7 ("Keep yourself far from a false matter . . ."); *Leviticus* 19:11 ("You shall not . . . deal falsely, nor lie to one another.").

³⁷⁵ *2 Corinthians* 8:21 (KJV).

³⁷⁶ *Ephesians* 4:25 (emphasis added).

³⁷⁷ *Psalms* 15:2–3 (emphasis added); *see also Psalms* 51:6.

³⁷⁸ HAYFORD'S, *supra* note 71, at 712 (referencing the parable of the Good Samaritan in *Luke* 10:25–37).

³⁷⁹ *See Beggs, supra* note 1, at 841 (asserting that "[n]o matter what the financial stakes, Proverbs counsels honest behavior that will preserve the blessing of a good reputation: '[T]o be esteemed is better than silver or gold.'" (quoting *Proverbs* 22:1 (NIV)).

³⁸⁰ *Genesis* 4:9–10, :12.

any truth in you,”³⁸¹ and King Ahab berates the prophet Micaiah, “How many times shall I make you swear that you tell me nothing but the truth in the name of the LORD?”³⁸² God has Jeremiah search Jerusalem: “If you can find a man, [i]f there is *anyone* who executes judgment, [w]ho seeks the truth, [a]nd I will pardon her.”³⁸³ He later complains to him: “Everyone will deceive his neighbor, [a]nd will not speak the truth; [t]hey have taught their tongue to speak lies; [t]hey weary themselves to commit iniquity.”³⁸⁴ Similarly, God uses Amos to castigate those “who turn justice to wormwood, and lay righteousness to rest in the earth They hate the one who rebukes in the gate, [a]nd they abhor the one who speaks uprightly.”³⁸⁵ Furthermore, God tells Zechariah and the people of Israel, “These are the things you shall do: Speak each man the truth to his neighbor; [g]ive judgment in your gates for truth, justice, and peace”³⁸⁶

In the New Testament, the apostle Paul rails against those “who suppress the truth in unrighteousness,”³⁸⁷ and tells the Corinthians, “we can do nothing against the truth, but for the truth.”³⁸⁸ The Ephesians are similarly exhorted: “Therefore, putting away lying, ‘[l]et each one of you speak truth with his neighbor,’ for we are members of one another.”³⁸⁹ These biblical examples demonstrate that honesty is more than a proverbial platitude; rather, figures throughout biblical history have stressed the importance of honesty in their dealings with others.

By requiring attorneys to be truthful in their communications with others, Rule 4.1 thus agrees with biblical principles of honesty. The rule does so without condition based on the lawyer’s motives for the misrepresentation. The rule and a majority of courts interpreting the ethical standards do not make any distinction based on whether the attorney was pursuing legitimate ends.³⁹⁰ The inquiry is based on

³⁸¹ *Genesis* 42:16.

³⁸² *1 Kings* 22:16; *see also* *2 Chronicles* 18:15.

³⁸³ *Jeremiah* 5:1.

³⁸⁴ *Jeremiah* 9:5; *see also* *Jeremiah* 9:3 (“And *like* their bow they have bent their tongues *for* lies. They are not valiant for the truth on the earth.”).

³⁸⁵ *Amos* 5:7, :10.

³⁸⁶ *Zechariah* 8:16.

³⁸⁷ *Romans* 1:18. Another version renders this phrase as “who suppress the truth by their wickedness.” *Id.* (NIV).

³⁸⁸ *2 Corinthians* 13:8.

³⁸⁹ *Ephesians* 4:25. The Bible contains isolated examples of condoned dishonesty and deception. In *Joshua* 2, Rahab lies to the king of Jericho; in *Exodus* 1:15–20, the Hebrew midwives lie to Pharaoh; and in *1 Samuel* 16:1–2, Samuel is not completely candid about David’s anointing. *See supra* notes 102–06 and accompanying text.

³⁹⁰ Christopher J. Shine, Note, *Deception and Lawyers: Away from a Dogmatic Principle and Toward a Moral Understanding of Deception*, 64 NOTRE DAME L. REV. 722, 739 (1989) (citing *In re Malone*, 480 N.Y.S.2d 603, 606 (App. Div. 1984)).

whether the attorney intended to make the misrepresentation prohibited by the rules; mitigating circumstances reduce punishment, but they do not affect culpability.³⁹¹

In reaching these conclusions, the courts have flatly rejected attorneys' arguments that the "end justifies the means" in attempting to excuse their dishonesty.³⁹² Scripture similarly rejects such arguments. For example, in two instances, Abraham misleads others about his wife's identity in order to protect his life, but his deception leads to tragedy in one case and near tragedy in the other.³⁹³ Scripture soundly rejects pragmatism as a source for truth and instead establishes absolute principles that guide believers in all situations.³⁹⁴

Despite this similarity between the rule and Scripture, Rule 4.1 contrasts with biblical precepts in two important respects. First, like Rule 3.3, the rule does not require complete honesty and limits the attorneys' obligation only to statements of "material" fact or law.³⁹⁵ The comment to Rule 4.1 adds, "Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact."³⁹⁶ The rule thus permits lying and deception in negotiation as long as they are part of a "generally accepted convention."

Legal ethicists have disagreed over whether negotiation inherently requires attorneys to engage in some level of misrepresentation.³⁹⁷

³⁹¹ *Id.*; see also *In re Friedman*, 392 N.E.2d 1333, 1335 (Ill. 1979) (holding that attorney violated ethical rule even though he engaged in deception in an attempt to disclose bribery); *Malone*, 480 N.Y.S.2d at 606 (holding that attorney violated ethical standards even though he instructed officer to testify falsely in order to protect the officer from physical harm).

³⁹² *Friedman*, 392 N.E.2d at 1335; *Malone*, 480 N.Y.S.2d at 606.

³⁹³ See *Genesis* 12:10–20, 20:1–18; see also Reid, *supra* note 102.

³⁹⁴ See, e.g., 1 *Corinthians* 1:18–2:16 (showing how Paul contrasts the wisdom of the world with true wisdom, which comes from God). For a bibliography on how Christian truth contrasts with a secular pragmatism, see Daniel B. Wallace, *The Church in Crisis: A Postmodern Reader*, BIBLE.ORG, http://www.bible.org/page.asp?page_id=1544 (last visited Nov. 4, 2006).

³⁹⁵ MODEL RULES OF PROF'L CONDUCT R. 4.1(a)–(b) (2003).

³⁹⁶ *Id.* R. 4.1 cmt. 2 (adding that "[e]stimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud"); see also CRYSTAL, *supra* note 44, at 387–89 (discussing other examples of "accepted conventions" where misrepresentations do not amount to statements of material fact).

³⁹⁷ See CRYSTAL, *supra* note 44, at 386–87 (discussing ethicists on both sides). For instance, compare James J. White, *Machiavelli and the Bar: Ethical Limitations on Lying in Negotiations*, 1980 AM. B. FOUND. RES. J. 926, 927–28 (1980) ("The critical difference between those who are successful negotiators and those who are not lies in this capacity both to mislead and not to be misled."), with Reed E. Loder, *Moral Truthseeking and the Virtuous Negotiator*, 8 GEO. J. LEGAL ETHICS 45, 99 (1994–1995) ("A lawyer is both a better

Scripture, however, clearly discourages misrepresentation, for as noted above, the Bible is replete with passages disapproving of lying and deception.³⁹⁸ Christian scholars have therefore reasoned that the Bible requires total honesty and that lying is never justified.³⁹⁹

Second, Rule 4.1 contrasts with Scripture regarding lawyers' obligations to make corrective disclosures. Rule 4.1(b) provides that lawyers only have a duty to disclose information when the fact is "material" and when "disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6 [Confidentiality of Information]."⁴⁰⁰ In addition to the "material" requirement discussed above, lawyers thus only have a duty to disclose in limited circumstances.

Legal ethicist Nathan Crystal has argued that, despite the seemingly limited scope of Rule 4.1, attorneys have a duty of disclosure in several types of cases where nondisclosure is equivalent to a misrepresentation.⁴⁰¹ Even if one were to adopt this interpretation, the ethical standards do not rise to the biblical standards. As noted above, Scripture provides that silence alone can be deceptive in certain situations and Scripture forbids deception.⁴⁰² Christian attorneys therefore should not rely on the limited obligation in 4.1(b) and should question whether their silence amounts to deception; if so, their conduct is not biblical.

B. Rule 4.2: Communication with Person Represented by Counsel

Model Rule 4.2 states that in his representation of a client, a lawyer should not speak about the subject with someone he knows to be represented by another lawyer in the matter unless he "has the consent of the other [attorney] or is authorized to do so by law or a court

person and negotiator for reconceiving negotiation as a collaborative process of moral truth-seeking.").

³⁹⁸ See *supra* notes 261–75, 373–89 and accompanying text.

³⁹⁹ WHITE, *supra* note 82; Loder, *supra* note 397 (reasoning that lying is never justified). *But cf. supra* notes 102–06 and accompanying text (discussing examples of condoned dishonesty).

⁴⁰⁰ MODEL RULES OF PROF'L CONDUCT R. 4.1(a)–(b) (2003).

⁴⁰¹ Nathan M. Crystal, *The Lawyer's Duty to Disclose Material Facts in Contract or Settlement Negotiations*, 87 KY. L.J. 1055, 1077–82 (1998-1999) (outlining four situations where attorneys have a duty to disclose: (1) to correct previous representations the attorney made that are now false or were false when made; (2) to correct mistakes about the contents of a writing; (3) when the attorney has a fiduciary duty to the opposing party to disclose information; and (4) when failure to disclose breaches standards of good faith and fair dealing).

⁴⁰² See WHITE, *supra* note 82; see also *supra* note 307.

order.⁴⁰³ Honesty, trustworthiness, and fairness are virtues relevant to this rule.

As noted, Scripture condemns deceit and not just outright lying.⁴⁰⁴ Attorneys who communicate with represented persons may engage in deceptive conduct in order to advantage their clients,⁴⁰⁵ even if they do not actually make any false statements. Lawyers in such cases are therefore violating biblical principles of honesty and trustworthiness by using their role to mislead the other party to reveal confidential information. Such deception also violates principles of fairness in that the unethical conduct interferes with the integrity of the represented person's attorney-client relationship.⁴⁰⁶ Scripture thus supports the rule's prophylactic prohibition banning communication without the other lawyer's consent.

C. Rule 4.3: Dealing with Unrepresented Person

According to Model Rule 4.3, an attorney with a client should not "state or imply that [he] is disinterested" to a person unrepresented by counsel, and he should "make reasonable efforts to correct [such a person's] misunderstanding" of the lawyer's role.⁴⁰⁷ These requirements implicate the virtues of honesty and trustworthiness in a way that is similar to how those virtues apply to Rule 4.2.⁴⁰⁸ For instance, the rule relates to trustworthiness in ensuring the attorney does not deceive the unrepresented person into trusting him based on a misunderstanding of his role.

What is unique about this rule is that it singles out unrepresented persons for special treatment in a way that resembles the special treatment accorded widows, orphans, and strangers in the Bible, none of

⁴⁰³ MODEL RULES OF PROF'L CONDUCT R. 4.2 (2003).

⁴⁰⁴ See, e.g., *Psalms* 101:7 ("He who works deceit shall not dwell within my house; [h]e who tells lies shall not continue in my presence."); see also *supra* notes 261–75, 373–89 and accompanying text.

⁴⁰⁵ See MODEL RULES OF PROF'L CONDUCT R. 4.2 cmt. 1 (2003) (reasoning that the rule is designed, among other things, to prevent possible "overreaching" by lawyers who contact represented parties).

⁴⁰⁶ CRYSTAL, *supra* note 44, at 350 (citing Carl A. Pierce, *Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part I)*, 70 TENN. L. REV. 121, 140–47 (2002)). The concern against overreaching by attorneys is so strong that attorneys are not allowed to contact represented persons even when those persons' attorneys are not conveying settlement offers to them. See ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 92-362 (1992). This prohibition appears biblically justified because the offeror-party's attorneys have other recourses to ensure that principles of justice are upheld. See *id.* (discussing such alternatives).

⁴⁰⁷ MODEL RULES OF PROF'L CONDUCT R. 4.3 (2003).

⁴⁰⁸ Specifically, the rule contains certain requirements to ensure the unrepresented person has an accurate, true understanding of the lawyer's role. See *id.* R. 4.3 cmt. 1.

whom could count on the normal system of family support. In *Deuteronomy*, the Lord is described as the one who “administers justice for the fatherless and the widow, and loves the stranger.”⁴⁰⁹ Later in the book, one of the curses pronounced on Mount Ebal was: “Cursed *is* the one who perverts the justice due the stranger, the fatherless, and widow. And all the people shall say, Amen!”⁴¹⁰

Scripture contains numerous passages chastising those who abuse their power to oppress the powerless.⁴¹¹ Christian attorneys thus should not abuse their power as attorneys to take advantage of unrepresented parties. Upright treatment and fair dealing with such individuals, while continuing to represent the legitimate interests of one’s client, should be required of all Christian attorneys.

D. Rule 4.4: Respect for Rights of Third Persons

In his representation of a client, according to Model Rule 4.4, an attorney should not “embarrass, delay, or burden a third person [without good reason] or use methods of obtaining evidence that violate [that person’s] legal rights.”⁴¹² An attorney “who receives a document relating to the representation of [his] client [who] knows . . . that the document was inadvertently sent shall promptly notify the sender.”⁴¹³ Civility and respect for others are the key virtues involved with Rule 4.4.⁴¹⁴

One excellent exemplification of this rule may be found in Christ’s admonition in *Mark* concerning the second great commandment, “[y]ou shall love your neighbor as yourself.”⁴¹⁵ *Psalms* similarly notes that “[t]hrough the LORD *is* on high, [y]et He regards the lowly.”⁴¹⁶ These passages underscore that Christian attorneys have no excuse to treat a third party in a non-Christian way. Moreover, the passages encourage

⁴⁰⁹ *Deuteronomy* 10:18.

⁴¹⁰ *Deuteronomy* 27:19; see also *Psalms* 94:6 (“They slay the widow and the stranger, [a]nd murder the fatherless.”); *Isaiah* 1:23 (“They do not defend the fatherless, [n]or does the cause of the widow come before them.”).

⁴¹¹ Here, the rule relates to the virtue of fairness as a secondary consideration. See, e.g., *Ecclesiastes* 4:1 (“Then I returned and considered all the oppression that is done under the sun: And look! The tears of the oppressed, [b]ut they have no comforter—[o]n the side of their oppressors *there is* power, [b]ut they have no comforter.”); see also HAUGEN, *supra* note 329, at 72–74 (describing examples from the Bible and other sources which support his definition of injustice as the “abuse of power”).

⁴¹² MODEL RULES OF PROF’L CONDUCT R. 4.4(a) (2003).

⁴¹³ *Id.* R. 4.4(b).

⁴¹⁴ The virtues of fairness and reasonableness also apply.

⁴¹⁵ *Mark* 12:31; see Gantt, *supra* note 1 (arguing further the applicability of the biblical standard found in *Matthew* 5:43–44 (“You have heard that it was said, ‘You shall love your neighbors and hate your enemy.’ But I say to you, love your enemies, bless those who curse you, do good to those who hate you, and pray for those who spitefully use you and persecute you . . .”).

⁴¹⁶ *Psalms* 138:6.

Christian attorneys to go beyond the civility and respect for others embodied in this rule; they are challenged to love their opponents.

V. LAW FIRMS AND ASSOCIATIONS

A. Rule 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

Rules 5.1 and 5.3 are considered together because they both address lawyers' ethical responsibilities when supervising others. According to Rule 5.1, a partner in a law firm, and an attorney who possesses comparable managerial authority in a law firm, shall make efforts to ensure that the firm has measures in place giving reasonable assurance that all lawyers in the firm conform to the Model Rules.⁴¹⁷ A lawyer having supervisory authority over another shall make reasonable efforts to ensure that his subordinate conforms to the Rules,⁴¹⁸ and a lawyer shall be responsible for another lawyer's violation if he orders or ratifies the conduct, or as a partner, or supervisory lawyer, fails to take reasonable remedial action when he knows of the conduct and its consequences could be avoided or mitigated.⁴¹⁹

Rule 5.3 contains similar provisions as applied to supervising nonlawyers. First, the rule provides that, when dealing with nonlawyers employed, retained by, or associated with lawyers, a partner in the firm, and an attorney who possesses comparable managerial authority in the firm, shall make reasonably sure that measures are in place giving reasonable assurance that the nonlawyer's conduct is compatible with a lawyer's professional obligations.⁴²⁰ The rule also provides that the lawyer with direct supervisory authority shall make sure that the nonlawyer's conduct is indeed compatible.⁴²¹ Finally, the rule states that a lawyer will be held responsible for a nonlawyer's conduct that violates a rule if he orders or ratifies the conduct, or if he knows of the conduct at a time when its consequences could be avoided or mitigated, but does not take reasonable remedial action.⁴²²

For both Rule 5.1 and Rule 5.3, the twin virtues of personal responsibility and accountability play a role. The biblical relationship patterned in these rules is one of stewardship. Lax partners or lax supervisory lawyers could be likened to the rich man's unjust steward in *Luke 16*, who is ordered to "[g]ive an account of [his] stewardship, for

⁴¹⁷ MODEL RULES OF PROF'L CONDUCT R. 5.1 (a) (2003).

⁴¹⁸ *Id.*, R. 5.1(b).

⁴¹⁹ *Id.* R. 5.1(c)(1)–(2).

⁴²⁰ *Id.* R. 5.3(a).

⁴²¹ *Id.* R. 5.3(b).

⁴²² *Id.* R. 5.3 (c)(1)–(2).

[he] can no longer be steward.”⁴²³ Christ speaks of “that faithful and wise steward, whom his master will make ruler over his household,”⁴²⁴ and *Titus* notes that a bishop, as the steward of God, “must be blameless.”⁴²⁵ Similarly, Paul says, “it is required in stewards that one be found faithful.”⁴²⁶ *Romans* states that “each of us shall give account of himself to God”;⁴²⁷ and *1 Peter* notes, “[t]hey will give an account to Him who is ready to judge the living and the dead.”⁴²⁸

In addition to the stewardship model, one could argue that the provisions in these rules are similar to biblical provisions on the master’s relationship with his servant. First, Scripture instructs masters to treat their servants fairly.⁴²⁹ Second, Scripture addresses masters’ responsibility for the actions of their servants. In *Exodus*, for example, the commandment to keep the Sabbath holy reads: “[B]ut the seventh day is the Sabbath of the LORD your God. In it you shall do no work: you, nor your son, nor your daughter, nor your male servant, nor your female servant, nor your cattle, nor your stranger who is within your gates.”⁴³⁰ Just as the Hebrew patriarch was supposed to oversee compliance with this law, so the Christian attorney is responsible for the behavior of his or her employees or associates.

Not only wealth, but position is a gift of God, and the recipient will be held accountable for his or her conduct. Partners and supervisory lawyers should be mindful of Jesus’ statement in *Luke*, “For everyone to whom much is given, from him much will be required; and to whom much has been committed, of him they will ask the more.”⁴³¹ The partner and supervisory lawyer is akin to the teacher discussed in *James* 3. There, James holds the teachers to a higher standard because they exert influence over trusting students, a relationship that makes the students vulnerable to serious error.⁴³² These biblical principles supplement the

⁴²³ *Luke* 16:2.

⁴²⁴ *Luke* 12:42.

⁴²⁵ *Titus* 1:7.

⁴²⁶ *1 Corinthians* 4:2.

⁴²⁷ *Romans* 14:12; see also *Hebrews* 4:13 (NIV) (“Nothing in creation is hidden from God’s sight. Everything is uncovered and laid bare before the eyes of him to whom we must give account.”).

⁴²⁸ *1 Peter* 4:5.

⁴²⁹ See *Ephesians* 6:9; *Colossians* 4:1.

⁴³⁰ *Exodus* 20:10.

⁴³¹ *Luke* 12:48. Biblical conceptions of integrity support this principle of accountability such that Christians who are in authority over others are to be accountable for the actions of those they supervise. See Higginson, *supra* note 134, at 21–22; see also *infra* note 438 and accompanying text.

⁴³² See *James* 3:1. Furthermore, because masters can expect their Christian servants to work willingly, servants can expect their Christian masters to act like Christ. See generally *Ephesians* 6:9; *Colossians* 4:1.

provisions in Rules 5.1 and 5.3 and place upon Christian partners and supervisory lawyers special responsibilities to ensure that those whom they supervise conduct themselves ethically.

B. Rule 5.2: Responsibilities of a Subordinate Lawyer

Model Rule 5.2 provides that a lawyer is bound by the Model Rules even when acting at the direction of another person,⁴³³ but that a subordinate lawyer does not violate the Rules when acting in accordance with a supervisory attorney's "reasonable resolution" of a question of professional responsibility.⁴³⁴ Like with Rules 5.1 and 5.3, accountability and responsibility are the virtues involved here.

Although partners may have forgotten the days of their youth, associates will probably identify with Paul's advice in *Ephesians*:

Bondservants, be obedient to those who are your masters according to the flesh, with fear and trembling, in sincerity of heart, as to Christ; not with eyeservice, as men-pleasers, but as bondservants of Christ, doing the will of God from the heart, with goodwill doing service, as to the Lord, and not to men, knowing that whatever good anyone does, he will receive the same from the Lord, whether he is a slave or free.

And you, masters, do the same things to them, giving up threatening, knowing that your own Master also is in heaven, and there is no partiality with Him.⁴³⁵

Christians are encouraged to obey the *legitimate* dictates of civil authority,⁴³⁶ which could be likened to the reasonable instructions of their legal superiors. Just as Christians have the implicit duty to resist ungodly dictates from superiors, so attorneys must judge whether the resolution of a question of professional responsibility by a supervisory attorney is "reasonable."

In asking subordinate attorneys to make this judgment, Rule 5.2 underscores its primary principle that attorneys are responsible for their own misconduct—that it is not an acceptable excuse to say that one was merely acting pursuant to the direction of others. In this provision, the rule relates to the biblical principle of personal responsibility. Scripture

⁴³³ MODEL RULES OF PROF'L CONDUCT R. 5.2(a) (2003).

⁴³⁴ *Id.* R. 5.2(b). Some critics have stated that this rule provides insufficient motivation for subordinate lawyers to contemplate difficult ethical issues. See Carol M. Rice, *The Superior Orders Defense in Legal Ethics: Sending the Wrong Message to Young Lawyers*, 32 WAKE FOREST L. REV. 887, 889 (1997) (noting that "[b]ecause the senior lawyer takes the responsibility for any misjudgment, the junior lawyer has little incentive to even consider tough ethical issues, let alone raise them").

⁴³⁵ *Ephesians* 6:5–9; see also *Romans* 13:1–7 (demonstrating Paul's exhortation to submit to earthly authorities).

⁴³⁶ On the limits of when disobeying authority is acceptable, see *Daniel* 1:3–14, 6 (civil disobedience of Daniel) and 3 (civil disobedience of Shadrach, Meshach, and Abednego). See also *supra* note 39 and accompanying text (discussing the limits of civil disobedience).

discusses in several passages how one's righteousness is not based on one's ancestry or on one's associations with others; salvation is individually determined.⁴³⁷ Similarly, Christian ethicist Richard Higginson reasons that one layer of integrity is personal responsibility and accountability. He asserts that individuals who act with integrity face problems not by hiding from them or placing the blame on others; rather, they receive constructive criticism and appropriately share the responsibility for the problem.⁴³⁸ Rule 5.2 thus appears in line with biblical principles by resting, in most cases, responsibility for the unethical conduct on those who take part in it, even if they are acting pursuant to another's direction.

C. Rule 5.4: Professional Independence of a Lawyer
Rule 5.7: Responsibilities Regarding Law-Related Services

Rules 5.4 and 5.7 are considered together because they both regulate lawyers who are involved with business activities ancillary to the practice of law. Rule 5.4 proscribes business associations with nonlawyers where legal services are provided.⁴³⁹ It specifically provides that, except under limited circumstances, “[an attorney] or law firm should not share legal fees with a nonlawyer.”⁴⁴⁰ “A lawyer shall not form a partnership with a nonlawyer if any of the [partnership’s activities include] the practice of law”;⁴⁴¹ shall not “permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate [his] professional judgment”;⁴⁴² and “shall not practice [as part] of a professional corporation . . . authorized to practice law . . . if: (1) a nonlawyer owns any interest therein . . . , . . . is a corporate officer or director . . . , . . . or has the right to direct or control [the lawyer’s] professional judgment.”⁴⁴³ Honesty, integrity, and loyalty are the virtues implicated in this rule.

Rule 5.7 subjects lawyers involved in providing law-related services to the same standards that apply to the practice of law.⁴⁴⁴ Examples of

⁴³⁷ See, e.g., *Ezekiel* 18:20 (“The soul who sins shall die. The son shall not bear the guilt of the father, nor the father bear the guilt of the son. The righteousness of the righteous shall be upon himself, and the wickedness of the wicked shall be upon himself.”). For examples when individuals in the Bible attempted to shift the responsibility for wrongdoing to another, see *Genesis* 3:12–13 (Adam); 3:13 (Eve); 16:2, :5 (Sarah); 25:29–34, 27:23 (Esau); *Exodus* 32:22–24 (Aaron); 1 *Samuel* 15:20–21 (Saul); and *Matthew* 27:24 (Pontius Pilate).

⁴³⁸ Higginson, *supra* note 134, at 21–22.

⁴³⁹ MODEL RULES OF PROF’L CONDUCT R. 5.4 (2003).

⁴⁴⁰ *Id.* R. 5.4(a)(1)–(4).

⁴⁴¹ *Id.* R. 5.4(b).

⁴⁴² *Id.* R. 5.4(c).

⁴⁴³ *Id.* R. 5.4(d)(1)–(3).

⁴⁴⁴ *Id.* R. 5.7(a).

law-related services include tax preparation; accounting; trust services; real estate counseling; title insurance; financial planning; legislative lobbying; psychological counseling; social work; economic analysis; and patent, medical or environmental consulting.⁴⁴⁵ Even when law-related and legal services are distinct from each other, such as through different entities or separate support staff, the Model Rules are applicable to the lawyer unless the recipient of the law-related services is reasonably assured that legal services are not being provided and that the protections afforded to the recipient of legal services do not apply.⁴⁴⁶ Examples of safeguards normally available in a lawyer-client relationship include the protection of client confidences and the prohibition against representing conflicting interests.⁴⁴⁷ When the full protection of the Model Rules is not applicable to the provision of law-related services, other principles of law, such as the law of principal and agent, govern the legal duties owed to the recipient of the services.⁴⁴⁸ Honesty and integrity are virtues relevant to this rule.

Biblical passages relating to believers' relations with unbelievers are analogous to these rules. First, the Bible prohibits Christians from being "unequally yoked."⁴⁴⁹ Even though this prohibition is generally referred to in the context of marriage, it should also be considered in certain business situations, notably where significant control over one's actions would be willingly yielded to an unbeliever through a partnership or association. Scripture certainly does not tell Christians to have no association with unbelievers,⁴⁵⁰ but Christians are prohibited from being affiliated with them to the degree that they significantly influence the direction and outcome of believers' moral decisions.

Second, although it is more of a stretch, in *some ways* these rules can be likened to the many biblical prohibitions against Hebrews mixing with idol-worshippers. Joshua, for example, exhorted the Israelites:

Therefore be very courageous to keep and to do all that is written in the Book of the Law of Moses, lest you turn aside from it to the right hand or to the left, *and* lest you go among these nations, these who remain among you. You shall not make mention of the name of their gods, nor cause *anyone* to swear *by them*; you shall not serve them nor bow down to them, but you shall hold fast to the LORD your God, as you have done to this day.⁴⁵¹

⁴⁴⁵ *Id.* R. 5.7 cmt. 9.

⁴⁴⁶ *Id.* R. 5.7 cmt. 3.

⁴⁴⁷ *Id.* R. 5.7 cmt. 2.

⁴⁴⁸ *Id.* R. 5.7 cmt. 11.

⁴⁴⁹ 2 *Corinthians* 6:14.

⁴⁵⁰ *See Mark* 2:15–17; 1 *Corinthians* 5:9–10.

⁴⁵¹ *Joshua* 23:6–8.

Just as the Jews had a different belief system and code of conduct than others in the land, so attorneys are called to follow a code of professional responsibility that does not necessarily apply to nonlawyers or to nonlegal activities.⁴⁵² Attorneys who submit to nonlawyers therefore run the risk of compromising their independence and integrity as lawyers and their honesty and loyalty to their clients. Similarly, attorneys who provide law-related services potentially compromise their integrity and honesty unless they either provide Model Rule protections to the recipients of those services or provide those services in settings where the recipients know those protections do not apply.

*D. Rule 5.5: Unauthorized Practice of Law;
Multijurisdictional Practice of Law*

Generally, Rule 5.5 provides that a lawyer may practice law only in jurisdictions in which he or she is authorized to practice.⁴⁵³ The purpose of the rule is to protect the public from the rendering of legal services by unqualified persons.⁴⁵⁴ The rule is broadly divided into two parts. The first two subsections proscribe the practice of law in jurisdictions in which the lawyer is not authorized.⁴⁵⁵ The latter two subsections outline permissible modes of multijurisdictional practice.⁴⁵⁶ The purpose of these subsections is to enable licensed lawyers to practice law on a limited basis in other jurisdictions where they are not otherwise permitted to practice.

The rule identifies four circumstances in which a lawyer in good standing in the licensing jurisdiction may provide legal services on a temporary basis in another jurisdiction in ways that would not create an unreasonable risk to clients, the public, or the courts.⁴⁵⁷ Legal services

⁴⁵² Lawyers can be professionally disciplined for nonlegal activities as those activities relate to their fitness to practice law. *See* MODEL RULES OF PROF'L CONDUCT R. 8.4 cmt. 2 (2003). Nonlegal activities generally, however, are not subject to the Model Rules.

⁴⁵³ *Id.* R. 5.5 cmt. 1.

⁴⁵⁴ *Id.* R. 5.5 cmt. 2. The rule does not prohibit a lawyer from employing paraprofessionals and delegating functions to them, so long as the lawyer supervises the work and remains responsible for it. *Id.*

⁴⁵⁵ *Id.* R. 5.5(a)–(b).

⁴⁵⁶ *Id.* R. 5.5(c)–(d).

⁴⁵⁷ *Id.* R. 5.5 cmt. 5. The legal services may be provided on a temporary basis where they: (1) are undertaken in association with a lawyer admitted in the jurisdiction and who actively participates in the matter; (2) are related to a proceeding before a tribunal in the jurisdiction if the lawyer or a person the lawyer is assisting is authorized by law or order to appear in such proceeding; (3) are related to an alternative dispute resolution proceeding in a jurisdiction, if the services are related to the lawyer's practice in a jurisdiction in which the lawyer is admitted and are not services for which the forum requires pro hac vice admission; or (4) are not otherwise provided for and are related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. *Id.* R. 5.5(c)(1)–(4).

that are “temporary” may be provided “on a recurring basis, or for an extended period of time,” as when the representation involves “a single lengthy negotiation or litigation.”⁴⁵⁸

Rule 5.5 also permits a lawyer licensed in one jurisdiction to practice law on either a temporary or continuous basis in another jurisdiction where the legal services are provided solely for the lawyer’s employer or its affiliates,⁴⁵⁹ or as authorized by federal or other law.⁴⁶⁰ The lawyer’s ability to represent the employer beyond the jurisdiction of licensing generally serves the employer’s interests and does not create an unreasonable risk to the employer or others.⁴⁶¹ Under some circumstances, a lawyer may have to inform the client that the lawyer is not licensed to practice law in the temporary jurisdiction. For example, such notice may be necessitated when the representation requires knowledge of the law of the temporary jurisdiction.⁴⁶²

A lawyer who practices law in a temporary jurisdiction is subject to the disciplinary authority of that jurisdiction.⁴⁶³ A lawyer may be subject to the disciplinary authority of both the temporary jurisdiction and the licensing jurisdiction for the same misconduct.⁴⁶⁴ Biblical virtues related to Rule 5.5 include honesty, competence, and submission to authorities. Each of these virtues is needed to comply fully with this rule.

Honesty enables a lawyer not to participate in the unauthorized practice of law, and to comply with the multijurisdictional rules. In *Genesis* 43:12, Jacob finds silver in his sacks and orders his brother to return it to whomever mistakenly placed it there.⁴⁶⁵ Scripture instructs people to deal with each other honestly.⁴⁶⁶ According to *Proverbs* 16:11, “Honest scales and balances are from the LORD”⁴⁶⁷ Another verse says that the Lord detests lying lips but delights in people who are truthful.⁴⁶⁸ Rule 5.5(b)(2) aligns with Scripture because it calls on lawyers to be honest in how they represent their authority to practice law.

Competency concerns a lawyer’s ability to remain in compliance with rules regulating the admission to the practice of law and all the

⁴⁵⁸ *Id.* R. 5.5 cmt. 6.

⁴⁵⁹ *Id.* R. 5.5(d)(1). This subsection applies to in-house corporate lawyers, government lawyers, and others employed to render legal services to the employer.

⁴⁶⁰ *Id.* R. 5.5(d)(2).

⁴⁶¹ *Id.* R. 5.5 cmt. 16.

⁴⁶² *Id.* R. 5.5 cmt. 20.

⁴⁶³ *Id.* R. 5.5 cmt. 19.

⁴⁶⁴ *See id.* R. 8.5.

⁴⁶⁵ *Genesis* 43:12.

⁴⁶⁶ *See supra* notes 261–75, 373–89 and accompanying text.

⁴⁶⁷ *Proverbs* 16:11 (NIV).

⁴⁶⁸ *Proverbs* 12:22.

rules of professional responsibility. Rule 5.5 seeks to uphold competency by limiting lawyers' ability to practice law in jurisdictions where they have not been formally adjudged competent by being admitted to practice. The Bible urges believers to go beyond mere competency and to strive for excellence.⁴⁶⁹ It is contrary to the idea of excellence and preparedness for an attorney to neglect taking the appropriate steps to ensure he has the requisite ability to represent a client. In providing the best representation for a client, an excellent lawyer will comply with the rules governing the ability to practice law in various jurisdictions.

Rule 5.5 also invokes the biblical virtue of submission to authorities. Scripture admonishes believers to submit themselves to God.⁴⁷⁰ Christians are also directed to submit to authority. Jesus himself submitted to His Father by going along with the authorities' plan to crucify him. Jesus is the model of submission. He humbled himself and was obedient to his Father's will even to death.⁴⁷¹ 1 *Peter* 2:13 instructs that because Christ suffered as an example, believers should follow in his steps by submitting to authority.⁴⁷²

Scripture says that everyone must submit to governing authority and that those who rebel against authority rebel against what God has instituted and will bring judgment on themselves.⁴⁷³ As such, attorneys have a duty to follow state ethics rules and to submit to the governing ethics board of their state. Lawyers should submit to authority, not only because of possible punishment, but also for the sake of conscience.⁴⁷⁴ In doing so, lawyers are held accountable for their actions, and thus are given a greater incentive to be honest and fair in their dealings.

E. Rule 5.6: Restrictions on Right to Practice

Rule 5.6 limits restrictions imposed on a lawyer's right to practice. The rule generally seeks to prevent law firms from imposing post-departure limitations on a lawyer's freedom to practice law.⁴⁷⁵ The rationale is two-fold. First, members of the public should have the right to select lawyers of their choosing, and covenants that restrict a lawyer's right to practice law diminish the pool of legal talent available. Second, lawyers should have the freedom to practice their profession without

⁴⁶⁹ See *supra* notes 21–30 and accompanying text (discussing the relationship between competency and biblical excellence).

⁴⁷⁰ *James* 4:7.

⁴⁷¹ *Philippians* 2:8.

⁴⁷² 1 *Peter* 2:13.

⁴⁷³ Compare *Romans* 13:1–5 with 1 *Peter* 2:13–14; see also *infra* note 625 (discussing other biblical passages related to submission to authorities).

⁴⁷⁴ See *Romans* 13:5.

⁴⁷⁵ MODEL RULES OF PROF'L CONDUCT R. 5.6 (2003).

undue restraint.⁴⁷⁶ Ironically, the rule protects the lawyer's freedom to practice law by limiting the lawyer's freedom to lose it by contract. The freedom to practice law and to earn one's livelihood is a valuable commodity to be treasured.

Not surprisingly, the biblical virtue most closely associated with this rule is freedom. The theme of freedom is prominent in Scripture. The exodus of the Israelites from bondage in Egypt to eventual freedom in the Promised Land is one of the best-known narratives in Scripture.⁴⁷⁷ Their liberation was for the purpose of serving God and obeying his laws.⁴⁷⁸

John makes an explicit reference to freedom. The book records that Jesus told the Jews who believed in him, "If you hold to my teaching, you are really my disciples. Then you will know the truth, and *the truth will set you free*."⁴⁷⁹ In *Romans* Paul writes that Christians are freed from the power of sin and death through faith and the transforming power of the Holy Spirit.⁴⁸⁰ These verses contrast the political or external concept of freedom with the spiritual work of salvation.⁴⁸¹ The Spirit of the Lord brings freedom.⁴⁸² Paul makes clear that this freedom is not a license to do whatever a believer wants; rather, it leads to moral transformation.⁴⁸³

It is clear that the scriptural alternative to bondage is not freedom in some abstract sense, but freedom to serve God. By contrast, the liberation of the lawyer from the bondage of a covenant not to compete contemplates an economic freedom to prosper in the practice of law.

VI. PUBLIC SERVICE

A. Rule 6.1: Voluntary Pro Bono Publico Service

Rule 6.1 provides an aspirational standard of fifty (50) hours of pro bono legal services per year.⁴⁸⁴ A substantial majority of the lawyer's

⁴⁷⁶ ANNOTATED MODEL RULES, *supra* note 208, at 491. An exception is provided for the sale of a law practice pursuant to Rule 1.17. MODEL RULES OF PROF'L CONDUCT R. 5.6 cmt. 3 (2003).

⁴⁷⁷ *See generally Exodus*.

⁴⁷⁸ *See, e.g., Exodus* 19:4–5. The subsequent history of the Israelites was one of repeated disobedience to God. *See, e.g., Joshua* 7:1–21; *Judges* 2:7–23, 3:5–11, 6:1–16.

⁴⁷⁹ *John* 8:31–32 (NIV) (emphasis added).

⁴⁸⁰ *See Romans* 8:2 ("For the law of the Spirit of life in Christ Jesus has made me free from the law of sin and death.").

⁴⁸¹ EVANGELICAL DICTIONARY OF BIBLICAL THEOLOGY 271 (Walter A. Elwell ed., 1996) (defining *freedom*).

⁴⁸² *See 2 Corinthians* 3:17.

⁴⁸³ *See 2 Corinthians* 3:18; *see also* EVANGELICAL DICTIONARY, *supra* note 481, at 272.

⁴⁸⁴ MODEL RULES OF PROF'L CONDUCT R. 6.1 (2003). The rule states that "[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year." *Id.*

time, according to the rule, should be spent serving the needy or organizations that serve the needy.⁴⁸⁵ The rule reflects the virtues of justice for the poor, compassion, respect for others, servanthood, and intercession.

Proverbs 21:13 warns against closing one's "ears to the cry of the poor."⁴⁸⁶ In fact, *Proverbs* expressly encourages believers to represent the poor and needy: "Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy."⁴⁸⁷ In emphasizing lawyers' responsibility to serve the needy, as opposed to not-for-profit enterprises more generally, the rule thus parallels biblical instructions for believers generally.

Indeed, compassion and justice for the poor earn praise in Scripture as noteworthy virtues.⁴⁸⁸ Jesus' familiar words continue to echo today concerning compassion for those in need: "[F]or I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was a stranger and you took Me in; I was naked and you clothed Me; I was sick and you visited Me; I was in prison and you came to Me."⁴⁸⁹ It is clear that a Christian lawyer who renders assistance to the needy ministers vicariously to the Lord.

Besides these virtues, the Bible also calls individuals to serve out of respect for others and to intercede on their behalf. Respect for the basic dignity of human individuals comes from the value attributed to them because they are created in the image of God.⁴⁹⁰ Christians are, for example, never to "exploit the poor" because of the respective worth of every human being and the position in which the poor find themselves.⁴⁹¹

⁴⁸⁵ *Id.* According to the rule, "[i]n 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." *Id.* R. 6.1(a)(1). Alternatively, the rule calls for legal services "without fee or expectation of fee" to organizations focusing on the poor. *Id.* R. 6.1(a)(2).

⁴⁸⁶ *Proverbs* 21:13.

⁴⁸⁷ *Proverbs* 31:8–9 (NIV).

⁴⁸⁸ *See, e.g., Acts* 9:36 ("At Joppa there was a certain disciple named Tabitha, which is translated Dorcas. This woman was full of good works and charitable deeds which she did.").

⁴⁸⁹ *Matthew* 25:35–36.

⁴⁹⁰ *See Genesis* 1:26 ("Then God said, 'Let Us make man in Our image, according to Our likeness; let them have dominion over the fish of the sea, over the birds of the air, and over the cattle, over all the earth and over every creeping thing that creeps on the earth.'").

⁴⁹¹ *Proverbs* 22:22–23 ("Do not rob the poor because he is poor, [n]or oppress the afflicted at the gate; for the LORD will plead their cause, [a]nd plunder the soul of those who plunder them."). Another version states: "Rob not the poor, because he is poor: neither oppress the afflicted in the gate: For the LORD will plead their cause, and spoil the soul of those that spoiled them." *Id.* (KJV).

The Scriptures consider any type of disregard for the poor as “contempt” against God Himself.⁴⁹²

Intercession is another virtue inherent in this rule. The lawyer is to be the voice of those who cannot speak for themselves.⁴⁹³ The fact that such a rule exists in the legal system is testimony to the value our society places on defending the needs of those who cannot speak for themselves. Attorneys as a group have something unique to offer society by the role they have been given. Specifically, the role of advocate gives lawyers a unique advantage to address the needs of the disadvantaged, thus giving such individuals an equal footing with those in society who are more fortunate.⁴⁹⁴

Servanthood is exhibited in rendering service to the community. For example, Rule 6.1 looks favorably on providing legal services pro bono or at a “substantially reduced fee” to organizations “seeking to secure or protect civil rights, civil liberties or public rights.”⁴⁹⁵ Lawyers are asked to aspire to see their communities improved and, because of the unique abilities of lawyers, they are to give from their abilities to serve the community. A blind man once extended his cup of alms to Paul and Peter in order to receive a donation. Although poor also, they gave of what they had to offer in order to benefit a member of the Jewish community.⁴⁹⁶ This is precisely the type of spirit that the model rule encompasses, and such spirit is of great value to society.

A noteworthy distinction becomes apparent when considering this rule in contrast with the Bible. The standard of the rule is aspirational, while the biblical standard gives a clear directive to care for the poor and intercede on their behalf.⁴⁹⁷ A lawyer cannot be forced to serve others, despite the “should” language in the Model Rules.⁴⁹⁸ An example of this reality is the case of *De Lisio v. Alaska Supreme Court*, where the Alaska Supreme Court held that forcing a lawyer to represent an indigent without just compensation was a violation of the lawyer’s due process

⁴⁹² *Proverbs* 14:31 (“He who oppresses the poor reproaches his Maker, [b]ut he who honors Him has mercy on the needy.”).

⁴⁹³ *Proverbs* 31:8–9 (“Open your mouth for the speechless, [i]n the cause of all who are appointed to die. Open your mouth, judge righteously, [a]nd plead the cause of the poor and needy.”).

⁴⁹⁴ *Cf.* Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1455 (2004) (“That oaths and statutes continually have required, or at least urged, service to the poor underscores society’s long held view that lawyers are essential to the administration of justice.”).

⁴⁹⁵ MODEL RULES OF PROF’L CONDUCT R. 6.1(b)(1) (2003).

⁴⁹⁶ *See Acts* 3:6 (“Then Peter said, ‘Silver and gold I do not have, but what I do have I give you: In the name of Jesus Christ of Nazareth, rise up and walk.’”).

⁴⁹⁷ *See, e.g., Proverbs* 29:7 (“The righteous considers the cause of the poor, [b]ut the wicked does not understand such knowledge.”).

⁴⁹⁸ *See, e.g., De Lisio v. Ala. Supreme Court*, 740 P.2d 437 (1987).

rights.⁴⁹⁹ Likewise, the believer cannot be forced to comply with the biblical mandate. However, failing to comply disappoints the divine expectation and the Bible also warns that “[i]f a man shuts his ears to the cry of the poor, he too will cry out and not be answered.”⁵⁰⁰ Moreover, one should wonder why any human made in God’s image should be given less access to, at least in theory, justice? Indeed, the rich are not more human than the poor. The God of the Bible would agree.⁵⁰¹

B. Rule 6.2: Accepting Appointments

Rule 6.2 provides that as an officer of the court, a lawyer must ordinarily accept an appointment by a tribunal to represent a client. However, a lawyer may seek to avoid an appointment only for “good cause.”⁵⁰² The rule acknowledges the possibility of a moral dilemma arising between the undesirable nature of the client or the matter and the expectations of the lawyer. The rule concedes that a lawyer is ordinarily “not obliged to accept a client whose character or cause the lawyer” considers “repugnant.”⁵⁰³ This concession would seem on its face to run contrary to the expectation in Rule 6.1 that lawyers will provide *pro bono publico* service.⁵⁰⁴ However, Comment 1 to Rule 6.2 underscores that a lawyer fulfills this *pro bono* “responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients.”⁵⁰⁵ Moreover, this expectation in Rule 6.1 is affirmed by the fact that the

⁴⁹⁹ *Id.* at 442.

⁵⁰⁰ *Proverbs* 21:13 (NIV). Moreover, although the Bible teaches that individuals are saved by faith and not works, *see, e.g., Romans* 3:21–28, it also teaches that good works demonstrate true faith. *See, e.g., Matthew* 7:19–20 (“[B]y their fruits you will know them.”); *James* 2:26 (“For as the body without the spirit is dead, so faith without works is dead also.”).

⁵⁰¹ GRUDEM, *supra* note 87, at 450 (“Every single human being . . . still has the *status* of being in God’s image and therefore must be treated with the dignity and respect that is due to God’s image-bearer.”).

⁵⁰² MODEL RULES OF PROF’L CONDUCT R. 6.2(a)–(c) (2003). Examples given of “good cause” include a likelihood of violating the Model Rules, an unreasonable financial burden on the lawyer, or the cause being “so repugnant to the lawyer” that a likely impairment to the relationship exists so as to affect “the lawyer’s ability to represent the client.” *Id.*

⁵⁰³ *Id.* R. 6.2 cmt. 1 (“An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.”).

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*; *see also* ANNOTATED MODEL RULES, *supra* note 208, at 514 (“Rule 6.2 does not actually create an obligation to accept a court appointment. Rather, it presupposes the obligation.”).

“good cause” exception in Rule 6.2 is construed narrowly, especially when the lawyer claims good cause due to his aversion to the case.⁵⁰⁶

The rule offers further guidance in dealing with an undesirable appointment. Good cause exists for declining an appointment of a client whose cause is unpopular if the lawyer is not competent in the matter,⁵⁰⁷ or if undertaking the representation would result in a conflict of interest,⁵⁰⁸ or “if acceptance [of the appointment] would be unreasonably burdensome.”⁵⁰⁹ The rule requires the lawyer to work for the appointed client as though the lawyer was being paid by the client.⁵¹⁰

Rule 6.2 encompasses a variety of biblical virtues. These include personal responsibility, servanthood, integrity, and respect for others. Personal responsibility is highlighted in the Pauline epistle to the Corinthians, where Paul “required” stewards to “be found faithful.”⁵¹¹ Paul intimates that his reward is greater for performing a duty against his own will.⁵¹²

The rule also reflects the virtues of servanthood and integrity. In his letter to the Ephesians, Paul challenges Christians to do their service in good will “as to the Lord, and not to men.”⁵¹³ Even when an attorney finds the character of a client to be “repugnant,” this verse challenges the lawyer to view his service as an offering to God. As noted above in earlier sections of this article, the virtue of integrity requires “personal integration,” in which individuals exhibit personal consistency.⁵¹⁴ The Scriptures reinforce this idea when they challenge Christians to live by what they preach. For example, the Bible praises those who are obedient to the ordinances of God.⁵¹⁵ The rule thus reflects this virtue by

⁵⁰⁶ ANNOTATED MODEL RULES, *supra* note 208, at 515–16 (discussing cases and rule history addressing the good cause standard under Rule 6.2).

⁵⁰⁷ MODEL RULES OF PROF'L CONDUCT R. 6.2 cmt. 2 (2003).

⁵⁰⁸ *Id.* (noting that a conflict of interest exists “when 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”).

⁵⁰⁹ *Id.* For example, when it would impose an unjust financial sacrifice. *Id.*

⁵¹⁰ *Id.* R. 6.2 cmt. 3.

⁵¹¹ 1 *Corinthians* 4:2.

⁵¹² In the same epistle Paul states: “For if I do this willingly, I have a reward; but if against my will, I have been entrusted with a stewardship.” 1 *Corinthians* 9:17. Another translation states: “For if I do this voluntarily, I have a reward; but if against my will, I have a stewardship entrusted to me.” *Id.* (NASB).

⁵¹³ *Ephesians* 6:7.

⁵¹⁴ See *supra* notes 132–34 and accompanying text; see also WEBSTER’S, *supra* note 307, at 595 (defining *integrity* as “firm adherence to a code of esp[ecially] moral or artistic values”).

⁵¹⁵ *Romans* 2:13 (“For not the hearers of the law are just in the sight of God, but the doers of the law will be justified . . .”).

encouraging attorneys to turn their concern for the poor into action by accepting the appointment of needy clients.

Lastly, the Bible promotes the virtue of respect for others. One of the laudable attributes of the American legal system is its concern for those who cannot defend themselves. The Scriptures teach that the righteous show concern for the poor. In fact, God promises to “deliver” those who are concerned for the poor.⁵¹⁶

The importance of accepting appointed representation is emphasized in *Reese v. Owens-Corning Fiberglass Corp.*⁵¹⁷ In that case, Mr. Rockey was appointed by a U.S. Magistrate to represent an individual in a case involving employment law. Rockey, after speaking with the client, requested removal from the case because he had no experience in employment law and was a sole practitioner. The court determined that with “adequate preparation and tutelage” the lawyer should be able to achieve adequate competency, and it appointed an experienced “mentor” to assist him.⁵¹⁸ Mr. Rockey also alleged that he would suffer financial hardship should he be forced to represent the defendant. The court found that Rockey did not adequately show that he would suffer financial hardship under the rule because he was not required to use his own funds to represent the client. The court stated that “Mr. Rockey has either forgotten or simply disregards his professional obligations to the court and the public not to attempt to avoid court appointments to represent indigent persons.”⁵¹⁹ Nevertheless, the court removed him as counsel out of concern for the interests of the plaintiff and the judicial system, but not before directing his attention to the importance of Rule 6.2 and admonishing him to “seriously consider whether he should file civil cases in this court in the future.”⁵²⁰

This case represents the legal system’s preference to give proper representation to everyone. Rule 6.2 does not exist as a way out for lawyers and should be used only in extraordinary circumstances. The Model Rules and Scripture agree, at least in principle, that individuals are not to prefer the wealthy over the poor and downtrodden.

⁵¹⁶ *Psalms* 41:1 (“Blessed is he who considers the poor; [t]he LORD will deliver him in time of trouble.”).

⁵¹⁷ 962 F. Supp. 1418 (D. Kan. 1997).

⁵¹⁸ *Id.* at 1419.

⁵¹⁹ *Id.* at 1420.

⁵²⁰ *Id.*

C. Rule 6.3: Membership in Legal Services Organizations

Rule 6.4: Law Reform Activities Affecting Client Interests

Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs

These three rules are part of the “public service” group of ethics rules and are considered together because they regulate lawyers’ involvement in different law-related public service programs. According to the Preamble to the Model Rules, “a lawyer should strive to . . . exemplify the legal profession’s ideals of public service.”⁵²¹ Lawyers who represent clients through “legal services organizations”⁵²² often encounter conflicts of interest. These rules attempt to avoid or minimize these conflicts in such a way as to allow and encourage participation in legal services organizations.⁵²³

Rule 6.3 provides that “[a] lawyer may serve as a director, officer or member of a legal services organization . . . notwithstanding that the organization serves persons having interests adverse to a client of the lawyer.”⁵²⁴ In order to avoid such conflicts, the rule instructs the lawyer to refrain from participating in any decision or action of the organization that would violate Rule 1.7 (“Conflict of Interest: Current Clients”) or “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.”⁵²⁵ Only the organization’s staff lawyers actually represent clients; board members do not. Legal services clients do not confer with or confide in board members.⁵²⁶ Although these characteristics protect board members from some conflicting activity, the rule includes its requirements to ensure all conflicts are avoided by effectively screening lawyer board members from certain aspects of the organization’s decision-making process.⁵²⁷

Rule 6.4 allows a lawyer to “serve as a director, officer or member of [a law reform] organization . . . notwithstanding that the reform may affect the interests of a client of the lawyer.”⁵²⁸ When the lawyer participates in a decision that may benefit the interests of a client, the lawyer’s only obligation is to disclose that fact.⁵²⁹ “A lawyer is . . .

⁵²¹ MODEL RULES OF PROF’L CONDUCT pmb1. para.7 (2003).

⁵²² The Model Rules do not define this term.

⁵²³ In fact, the comment to Rule 6.3 encourages such participation directly: “Lawyers should be encouraged to support and participate in legal service organizations.” MODEL RULES OF PROF’L CONDUCT R. 6.3 cmt. 1 (2003).

⁵²⁴ *Id.* R. 6.3.

⁵²⁵ *Id.*

⁵²⁶ See 2 HAZARD & HODES, *supra* note 150, § 52.2, at 52-4.

⁵²⁷ See generally Esther F. Lardent, *Positional Conflicts in the Pro Bono Context: Ethical Considerations and Market Forces*, 67 FORDHAM L. REV. 2279 (1999).

⁵²⁸ MODEL RULES OF PROF’L CONDUCT R. 6.4 (2003).

⁵²⁹ *Id.* The client need not be identified. *Id.*

obligated to protect the integrity of the program by making an appropriate disclosure [to] the organization when the lawyer knows [that] a private client might be materially benefited.”⁵³⁰

Thus, Rule 6.3 provides the remedy of nonparticipation in a decision, whereas Rule 6.4 allows disclosure to cure a Rule 1.7 conflict. By minimizing or eliminating such conflicts in relatively simple ways, these legal services organizations are encouraged and promoted.

Rule 6.5 provides guidelines regulating lawyers’ involvement with legal services programs. The ABA adopted this rule in 2002 out of a concern that the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs providing short-term limited legal services.⁵³¹

By encouraging lawyers’ involvement in these public service activities, these three rules imply the biblical virtues of respect for others, justice for the poor, and servanthood. Scripture teaches individuals to respect others and to reach out to those in need. Christians are to consider others better than themselves. The apostle Paul told the church in Rome to “[b]e kindly affectionate to one another with brotherly love, in honor giving preference to one another.”⁵³² Again, Paul in his letter to the church at Philippi said to “[l]et nothing be done through selfish ambition or conceit, but in lowliness of mind let each esteem others better than himself.”⁵³³ Furthermore, 1 *Peter* 2:17 says to “Honor all people. . . . Fear God. Honor the king.”⁵³⁴ Christians are to serve one another as unto God. If all lawyers practiced this virtue, then clients would likely never want for a judicially-appointed lawyer.

As observed in the preceding sections on Rules 6.1 and 6.2, the Bible has a lot to say about assuring justice to the poor.⁵³⁵ Individuals are not to pervert justice, or to favor the wealthy over the poor.⁵³⁶ The psalmist,

⁵³⁰ *Id.* R. 6.4 cmt. 1.

⁵³¹ See ABA Center for Professional Responsibility, Reporter’s Explanation of Changes: Model Rule 6.5, <http://www.abanet.org/cpr/e2k/e2k-rule65rem.html>. These programs are under the auspices of a nonprofit organization or a court-annexed program, for example, a “legal-advice hotline or pro se clinic, the purpose of which is to provide short-term limited legal assistance to persons of limited means who otherwise would go unrepresented.” *Id.*

⁵³² *Romans* 12:10. Another version states: “Be devoted to one another in brotherly love. Honor one another above yourselves.” *Id.* (NIV).

⁵³³ *Philippians* 2:3. Another version states: “Do nothing out of selfish ambition or vain conceit, but in humility consider others better than yourselves.” *Id.* (NIV).

⁵³⁴ 1 *Peter* 2:17. Another version states: “Show proper respect to everyone: . . . fear God, honor the king.” *Id.* (NIV).

⁵³⁵ See *Exodus* 23:6 (“You shall not pervert the judgment of your poor in his dispute.”). Another version states: “Do not deny justice to your poor people in their lawsuits.” *Id.* (NIV).

⁵³⁶ See *Leviticus* 19:15 (“You shall do no injustice in judgment. You shall not be partial to the poor, nor honor the person of the mighty. In righteousness you shall judge

David, said that “the LORD secures justice for the poor and upholds the cause of the needy.”⁵³⁷ And *Proverbs* states that “[t]he righteous considers the cause of the poor, [b]ut the wicked does not understand *such* knowledge.”⁵³⁸ Lawyers are in a position either to deny justice to the needy or to be the Lord’s instruments in achieving justice for the poor in court. Scripture condemns those who would deprive the poor of justice in the courts.⁵³⁹ In sum, lawyers are servants of the justice system and those it serves. *Ephesians* tells servants to “[s]erve wholeheartedly, as if you were serving the Lord, not men.”⁵⁴⁰

VII. INFORMATION ABOUT LEGAL SERVICES

A. Rule 7.1: Communication Concerning a Lawyer’s Services

Rule 7.2: Advertising

Rule 7.3: Direct Contact with Prospective Clients

Rule 7.4: Communication of Fields of Practice and Specialization

Rule 7.5: Firm Names and Letterheads

Model Rules 7.1 to 7.5 deal with dissemination of information about a lawyer’s services. Rule 7.1 regulates communications made by lawyers about themselves or their services, and requires that they be truthful.⁵⁴¹ Rule 7.2 regulates lawyer advertising through various media and prohibits rewarding others for recommending the lawyer’s services.⁵⁴² Rule 7.3 circumscribes the parameters on direct contact with prospective clients.⁵⁴³ Communications regarding specialization and fields of practice

your neighbor.”). Another version states: “Do not pervert justice; do not show partiality to the poor or favoritism to the great, but judge your neighbor fairly.” *Id.* (NIV).

⁵³⁷ *Psalms* 140:12 (NIV).

⁵³⁸ *Proverbs* 29:7. Another version states: “The righteous care about justice for the poor, but the wicked have no such concern.” *Id.* (NIV).

⁵³⁹ *See Amos* 5:12 (NIV) (“For I know how many are your offenses and how great your sins. You oppress the righteous and take bribes and you deprive the poor of justice in the courts.”).

⁵⁴⁰ *Ephesians* 6:7 (NIV).

⁵⁴¹ MODEL RULES OF PROF’L CONDUCT R. 7.1 cmt 1 (2003). Interestingly, the word *truthful* appears nowhere in the Model Rules except in two comments to this rule. Statements about a lawyer’s services must be “truthful,” *id.* R. 7.1 cmt. 1, and “truthful” statements that are misleading are prohibited. *Id.* R. 7.1 cmt. 2. The word *truthfulness* appears only in the title of Rule 4.1 (“Truthfulness in Statements to Others”). And the word *truth* appears only in a comment to Rule 3.3 (“Candor Toward the Tribunal”), in reference to “the truth-finding process.” *Id.* R. 3.3 cmt. 11. This comment says that the adversary system is designed to implement the truth-finding process. *Id.*; *see also* Peter J. Henning, *Lawyers, Truth, and Honesty in Representing Clients*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 209 (2006) (discussing the dichotomy between the truth-seeking goal of the judicial system and the lawyer’s obligation to hide the truth under the protection of the attorney-client privilege and the confidentiality rule).

⁵⁴² MODEL RULES OF PROF’L CONDUCT R. 7.2 (2003).

⁵⁴³ *Id.* R. 7.3.

are regulated by Rule 7.4,⁵⁴⁴ while firm names and letterheads are governed by Rule 7.5.⁵⁴⁵ These five rules are viewed generally as regulating advertising, though they are broader in scope. The virtues requisite for compliance with these rules include honesty and integrity.

As noted above in the section on Rule 4.1 (“Truthfulness in Statements to Others”), maintaining verbal truthfulness is central to upholding the virtue of honesty. The legal community values such truthfulness, as evidenced by these five rules, the U.S. Constitution, and case law.⁵⁴⁶ Rule 7.1 is representative of the four rules that immediately follow it, and it will be discussed herein as a proxy for those rules. Rule 7.1 addresses all types of communications about a lawyer’s services and requires that they be truthful.⁵⁴⁷ Although the rule applies to all communications concerning a lawyer’s services, violations seem to occur most frequently in the context of advertising.⁵⁴⁸ Communication made by the lawyer about himself or his services that is “false or misleading” is a violation of the rule.⁵⁴⁹ The rule also prohibits statements that are truthful but misleading.⁵⁵⁰ Examples include reports about a lawyer’s achievements on behalf of former clients that would lead a reasonable person to expect the same or similar results,⁵⁵¹ and “an unsubstantiated comparison of [a] lawyer’s services . . . with the services . . . of other lawyers [that] . . . would lead a reasonable person to conclude that the comparison can be substantiated.”⁵⁵²

As discussed in other sections of this article, honesty is a key biblical virtue.⁵⁵³ One of the Ten Commandments requires truthfulness

⁵⁴⁴ *Id.* R. 7.4.

⁵⁴⁵ *Id.* R. 7.5.

⁵⁴⁶ *E.g., In re R.M.J.*, 455 U.S. 191 (1982) (holding that false or misleading advertising may be regulated). The First Amendment protects commercial speech, which includes advertising. In *Bates v. State Bar of Ariz.*, the Court extended the commercial speech protection to apply to advertising by lawyers. 425 U.S. 748, 841 (1976). In *Central Hudson Gas & Electric Corp. v. Public Service Commission*, the Supreme Court concluded that all commercial speech receives some First Amendment protection except speech that is misleading or speech that encourages illegal activity. 447 U.S. 557, 564–66 (1980).

⁵⁴⁷ MODEL RULES OF PROF’L CONDUCT R. 7.1 (2003); *see supra* note 541.

⁵⁴⁸ ANNOTATED MODEL RULES, *supra* note 208, at 530.

⁵⁴⁹ MODEL RULES OF PROF’L CONDUCT R. 7.1 (2003).

⁵⁵⁰ *Id.* R. 7.1 cmt. 2.

⁵⁵¹ *Id.* R. 7.1 cmt. 3.

⁵⁵² *Id.* (adding that these violations may be cured by appropriate disclaimer or qualifying language). For a biblical example of a true but misleading statement, *see supra* note 102.

⁵⁵³ *But cf. supra* notes 102–06, 389 and accompanying text (discussing specific cases in which dishonesty was condoned in Scripture in order to protect innocent human life).

about one's neighbor.⁵⁵⁴ Scripture also admonishes its readers to be truthful and honest in their dealings with others.⁵⁵⁵

For failure to comply with the truthfulness standard in the Model Rules, sanctions imposed against lawyers are often relatively mild.⁵⁵⁶ Violation of the biblical standard for truthfulness can be far more severe. One of King Solomon's proverbs warns that being untruthful may allow a man to profit for a while, but that in the end "his mouth will be filled with gravel."⁵⁵⁷ The author of the book of *Acts* tells the story of a couple, Ananias and Sapphira, who sought to mislead the local church by factual misrepresentation and omission of a material fact.⁵⁵⁸ The church members had decided to sell their possessions and give the proceeds to the church leaders to be distributed to the members according to need. Ananias and Sapphira sold their possessions but withheld some of the proceeds and surrendered only a portion to be distributed. They misrepresented the amount given by failing to divulge the full proceeds received from the sale. They were considered to have lied to God rather than man and were struck dead on the spot.⁵⁵⁹ These examples highlight the stark contrast between the Model Rules and Scripture in the penalty for violating mandates for truthfulness.

These rules implicate integrity in that honesty and truthfulness are properly viewed as components to integrity.⁵⁶⁰ Integrity is also relevant in how the rules encourage lawyers to treat others with respect. In

⁵⁵⁴ *Exodus* 20:16 ("You shall not bear false witness against your neighbor.").

⁵⁵⁵ See, e.g., *Leviticus* 19:35 (NIV) ("Do not use dishonest standards when measuring length, weight or quantity."); *Deuteronomy* 25:15–16 (NIV) ("You must have accurate and honest weights and measures, so that you may live long in the land the LORD your God is giving you. For the LORD your God detests anyone who does these things, anyone who deals dishonestly.").

⁵⁵⁶ See, e.g., *In re Lutheran Bhd. Variable Ins. Prods. Co. Sales Practices Litig.*, No. 99-MD-1309, 2004 U.S. Dist. LEXIS 7789 (D. Minn. 2004) (holding that for "misconduct of a serious nature" the offending lawyer was required to submit to the court a list of recipients of and respondents to the offending advertisement, pay reasonable attorney's fees, prepare and disseminate a retraction to the recipients of the offending advertisement, at his own cost, and was prohibited from representing any person who responded to the offending advertisement); *In re Huelskamp*, 740 N.E.2d 846 (Ind. 2000) (sanctioning attorney with a public reprimand in holding that attorney's statement in advertising literature referring to his Marine Corps service and experience as assistant professor at university was deceptive and misleading where such statement could be interpreted to exaggerate attorney's legal experiences, in that reasonable person might have believed incorrectly that attorney was currently a Marine Corps lawyer or a law professor).

⁵⁵⁷ *Proverbs* 20:17 ("Bread gained by deceit is sweet to a man, [b]ut afterward his mouth will be filled with gravel.").

⁵⁵⁸ *Acts* 5:1–11.

⁵⁵⁹ *Id.* (noting in verse five that Ananias did not lie "to men but to God" and in verse nine that Sapphira "test[ed] the Spirit of the Lord").

⁵⁶⁰ See Higginson, *supra* note 134, at 20–23 (describing five layers of integrity, with the first one being high moral standards, like "honesty").

particular, Rule 7.3 generally prohibits direct solicitation of prospective clients because of the potential for abuse.⁵⁶¹ A lawyer is in a position to take unfair advantage of a potential client at a time when that person may be overwhelmed by circumstances giving rise to the need for representation.

The Bible requires its adherents to look to the “interests of others.”⁵⁶² There remains something about human dignity that compels people not to take advantage of each other and to help each other when the other is down. The Bible also states, “[t]herefore, whatever you want men to do to you, do also to them, for this is the Law and the Prophets.”⁵⁶³ The golden rule requires that people treat each other in the same way they would like to be treated. Rule 7.3 thus affirms these principles by prohibiting lawyers from soliciting business in situations when the “interests of the other,” here the potential client, would not be served.

B. Rule 7.6: Political Contributions to Obtain Legal Engagements or Appointments by Judges

This rule states that a lawyer or law firm may not accept legal work from the government or an appointment by a judge if a political contribution was made or solicited for the purpose of obtaining such work or appointment.⁵⁶⁴ When political contributions are made by lawyers for the purpose of obtaining legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the award is made on the basis of competence and merit. In such instances, the integrity of the profession is undermined.⁵⁶⁵ This practice, known as “pay-to-play,” was publicized

⁵⁶¹ MODEL RULES OF PROF'L CONDUCT R. 7.4 cmt. 1.

The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

Id.

⁵⁶² *Philippians* 2:4 (“Let each of you look out not only for his own interests, but also for the interests of others.”).

⁵⁶³ *Matthew* 7:12.

⁵⁶⁴ MODEL RULES OF PROF'L CONDUCT R. 7.6 (2003). Examples of appointments a judge may make include special master, referee, commissioner, receiver, guardian, or other similar position. *Id.* R. 7.6 cmt. 3.

⁵⁶⁵ *Id.* R. 7.6 cmt. 1.

and denounced in a *Columbia Business Law Review* article in 1999.⁵⁶⁶ Rule 7.6 was enacted shortly thereafter to address the problem.

The virtues associated with this rule include integrity and purity because lawyers uphold these virtues in their practice when they resist the temptation to buy business through political contributions. *Proverbs* 11:3 illustrates the biblical value placed on integrity: “The integrity of the upright will guide them, [b]ut the perversity of the unfaithful will destroy them.”⁵⁶⁷ The Scriptures also challenge individuals to purity. Jesus in the Sermon on the Mount calls his followers to remain “pure in heart, [f]or they shall see God.”⁵⁶⁸ The apostle Paul similarly mandates in his first letter to Timothy, “[K]eep yourself pure.”⁵⁶⁹

Both integrity and purity are illustrated in the biblical account of Joseph and Potiphar’s wife.⁵⁷⁰ Because Joseph was a man of integrity, he remained pure in the face of sexual temptation. As a result, God caused Joseph to succeed in spite of difficult circumstances.⁵⁷¹

VIII. MAINTAINING THE INTEGRITY OF THE PROFESSION

A. Rule 8.1: Bar Admission and Disciplinary Matters

Rule 8.1 requires that a lawyer be truthful on bar applications and in disciplinary matters. If an applicant makes any “false statements of material fact” or “fails to disclose” necessary facts in connection with his or her bar admission or in connection with any disciplinary procedure, the applicant may run afoul of Rule 8.1.⁵⁷² This rule principally relates to the virtue of honesty.

The legal community seeks to demonstrate that it values truthfulness by punishing attorneys through suspension or disbarment for lying on the bar application. In *People v. Mattox*, an attorney who was disbarred from the practice of law in Kentucky for a misdemeanor charge later applied for and passed the Colorado bar exam.⁵⁷³ In her bar application, she failed to disclose her prior discipline in Kentucky. As a

⁵⁶⁶ Jon B. Jordan, *The Regulation of “Pay-To-Play” and the Influence of Political Contributions in the Municipal Securities Industry*, 1999 COLUM. BUS. L. REV. 489, 492 (1999).

⁵⁶⁷ *Proverbs* 11:3; see also *Proverbs* 10:9 (“He who walks with integrity walks securely, [b]ut he who perverts his ways will become known.”).

⁵⁶⁸ *Matthew* 5:8.

⁵⁶⁹ 1 *Timothy* 5:22.

⁵⁷⁰ *Genesis* 39:1–23 (recounting how Joseph resisted the advances of his master’s wife and then was imprisoned after she falsely accused him of trying to sleep with her).

⁵⁷¹ *Genesis* 39:21–23 (noting how Joseph obtained the “favor” of the prison keeper such that he “committed to Joseph’s hand all the prisoners who were in the prison” and that “whatever [Joseph] did, the LORD made it prosper”).

⁵⁷² MODEL RULES OF PROF’L CONDUCT R. 8.1 (2003).

⁵⁷³ 862 P.2d 276, 276 (Colo. 1993).

result, the Colorado Supreme Court suspended the attorney from the practice of law for one year.⁵⁷⁴ Similarly, in *Florida Bar v. Webster* an attorney was disbarred from the practice of law because he knowingly failed to disclose past disciplinary action taken against him in Florida when he was applying for admission to other states' bars.⁵⁷⁵

The account of Simon Peter's denial of Jesus illustrates the value of truthfulness.⁵⁷⁶ Even though Peter was a follower of Jesus and spoke of his dedication to Him, Peter still lied three times when asked whether he was with Jesus before Jesus was arrested. Peter was fearful of what would happen to him if he told the truth, just like applicants who have something they are fearful of reporting on a bar application. Peter's denial shows that the consequences of lying may be significant.⁵⁷⁷

B. Rule 8.2: Judicial and Legal Officials

Lawyers are occasionally called on to evaluate the professional or personal fitness of persons being considered for judgeships or for public legal offices. Public legal offices include the office of the attorney general, the prosecuting attorneys, and the public defenders. The administration of justice is improved when lawyers express honest and candid opinions on such matters. Conversely, false statements by lawyers can unfairly undermine public confidence in the administration of justice.⁵⁷⁸ Rule 8.2 emphasizes the need for truthfulness in such statements in order to improve the administration of justice.

False criticism of judicial and legal officials is prohibited because of the need to maintain justice within the legal system. Lawyers sometimes pay a high price for tarnishing the reputation of judges and legal officials. In *In re Palmisano*, a lawyer was disbarred after repeatedly making false statements about judges before whom he had appeared.⁵⁷⁹ The court accurately observed that "disbarment is costly for an attorney, but permitting an incompetent or otherwise inappropriate person to practice law is costly for clients and the administration of justice."⁵⁸⁰

Truthfulness and justice thus are virtues inherent in this rule. The Bible teaches that Jesus was without sin.⁵⁸¹ When Pilate asked Jesus if

⁵⁷⁴ *Id.* at 277.

⁵⁷⁵ 662 So. 2d 1238, 1239 (Fla. 1995). Webster was disbarred from the Florida Bar and the District of Columbia Bar for his misconduct. *Id.* at 1240–41.

⁵⁷⁶ *Matthew* 26:69–75.

⁵⁷⁷ *See Matthew* 26:75. Peter denied knowing Jesus, the one who died for him so he could have eternal life. When he realized what he had done, Peter wept bitterly. *Id.*

⁵⁷⁸ MODEL RULES OF PROF'L CONDUCT R. 8.2(a) (2003).

⁵⁷⁹ 70 F.3d 483, 487–88 (7th Cir. 1995).

⁵⁸⁰ *Id.* at 486.

⁵⁸¹ *See, e.g., 2 Corinthians* 5:21 (stating that Jesus "knew no sin"); *Hebrews* 4:15 (stating that Jesus "was in all points tempted as we are, yet without sin"); *1 Peter* 2:22

he was the King of the Jews, Jesus responded truthfully in the affirmative,⁵⁸² knowing the consequences.⁵⁸³ Jesus was executed shortly thereafter.⁵⁸⁴ The importance of justice is reflected in *Micah* 6:8, which summarizes the qualities that matter to God.⁵⁸⁵ The importance of justice is also emphasized when Moses chose godly men who were above reproach to sit as judges in order to better assure justice for the people.⁵⁸⁶ Chapter 13 of the book of *Romans* underscores how God uses judges and public officials to advance justice.⁵⁸⁷ Christian lawyers therefore advance justice when they promote an honest dialogue about such officials.

C. Rule 8.3: Reporting Professional Misconduct

Lawyers are required to report the professional misconduct of other attorneys⁵⁸⁸ and of judges.⁵⁸⁹ “Self-regulation of the legal profession requires that” lawyers report misconduct in order to initiate a disciplinary investigation “when they know of a violation of the Rules of

(stating that Jesus “committed no sin”); *see also* GRUDEM, *supra* note 87, at 535–36 (discussing biblical teaching on the sinlessness of Christ).

⁵⁸² *Matthew* 27:11 (NASB) (“Now Jesus stood before the governor, and the governor questioned Him, saying, ‘Are You the King of the Jews?’ And Jesus said to him, ‘It is as you say.’”).

⁵⁸³ The Sanhedrin accused Jesus of sedition in claiming to be a king, knowing such a charge would be more effective with Pilate than a charge of blasphemy. SPIRIT-FILLED LIFE BIBLE 1460 n.27:11 (1991).

⁵⁸⁴ *Matthew* 27:37 (“And they put up over His head the accusation written against Him: THIS IS JESUS THE KING OF THE JEWS.”).

⁵⁸⁵ *See Micah* 6:8 (“He has shown you, O man, what is good; [a]nd what does the LORD require of you [b]ut to do justly, [t]o love mercy, [a]nd to walk humbly with your God?”), (NASB) (“He has told you, O man, what is good; and what does the LORD require of you but *to do justice*, to love kindness, and to walk humbly with your God?”) (emphasis added).

⁵⁸⁶ *Exodus* 18:17–24. Verses 21 and 22 specifically read: “[Y]ou shall select from all the people able men, such as fear God, men of truth, hating covetousness; and place such over them to be rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens. And let them judge the people at all times.” *Exodus* 18:21–22.

⁵⁸⁷ *Romans* 13:1–7. Verses 1 and 2 specifically read: “Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God. Therefore whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves.” *Romans* 13:1–2.

⁵⁸⁸ MODEL RULES OF PROF’L CONDUCT R. 8.3(a) (2003). Subsection (a) provides that “[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.” *Id.*

⁵⁸⁹ *Id.* R. 8.3(b).

Professional Conduct.”⁵⁹⁰ Rule 8.3 provides for certain exceptions. The rule “does not require disclosure of information otherwise protected by Rule 1.6,”⁵⁹¹ “or information gained by a lawyer or judge while participating in an approved lawyers assistance program.”⁵⁹²

Not every violation is reportable. The violation must raise a “substantial” question as to the offender’s honesty, trustworthiness, or fitness as a lawyer.⁵⁹³ The term “substantial” refers to the seriousness of the offense and not the quantum of evidence.⁵⁹⁴ A lawyer retained to represent a lawyer whose professional conduct is in question is not required to report misconduct and is governed by the rules applicable to the client-lawyer relationship.⁵⁹⁵

This rule highlights the virtues of personal responsibility and boldness. Personal responsibility and boldness are required to “rat” on one’s colleagues by reporting professional misconduct when doing so may be unpopular. The apostle Paul had made many converts and close personal friendships in the churches he had visited on his several journeys, but in his later epistles to these churches he was willing to hold these people accountable for the wrongs they were committing. Paul’s letter to the church in Corinth is an example of responsibility and boldness in pointing out such misconduct.⁵⁹⁶ The ultimate good is achieved when the offender is repentant and restored.⁵⁹⁷

⁵⁹⁰ *Id.* R. 8.3 cmt. 1 (“An apparently isolated violation may indicate a pattern that only an investigation can uncover.”). This situation is especially true when the victim is unlikely to discover the violation. *Id.*

⁵⁹¹ *Id.* R. 8.3(c). A comment adds that “a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client’s interests.” *Id.* R. 8.3 cmt. 2.

⁵⁹² *Id.* R. 8.3(c).

⁵⁹³ *Id.*

⁵⁹⁴ *Id.* R. 8.3 cmt. 3.

⁵⁹⁵ *Id.* R. 8.3 cmt. 4.

⁵⁹⁶ 1 *Corinthians* 4:14–21.

I do not write these things to shame you, but as my beloved children I warn you. For though you might have ten thousand instructors in Christ, yet you do not have many fathers; for in Christ Jesus I have begotten you through the gospel. Therefore I urge you, imitate me. For this reason I have sent Timothy to you, who is my beloved and faithful son in the Lord, who will remind you of my ways in Christ, as I teach everywhere in every church.

Now some are puffed up, as though I were not coming to you. But I will come to you shortly, if the Lord wills, and I will know, not the word of those who are puffed up, but the power. For the kingdom of God is not in word but in power. What do you want? Shall I come to you with a rod, or in love and a spirit of gentleness?

Id.

⁵⁹⁷ 2 *Corinthians* 7:8–9.

For even if I made you sorry with my letter, I do not regret it; though I did regret it. For I perceive that the same epistle made you sorry, though only for a

Boldness is further illustrated in *Ephesians* 5:11.⁵⁹⁸ There the apostle Paul exhorts his converts to refuse to participate in wrongful conduct, and to expose it. Likewise, a lawyer has a duty to refrain from participating in wrongful conduct,⁵⁹⁹ and to expose such conduct of which he has knowledge.

On the issue of exposing misconduct to those in authority, it is instructive to consider Jesus' discussion in *Matthew* 18 of how Christians should handle misconduct within the church.⁶⁰⁰ Jesus states that the wronged party may properly expose the guilty person's actions "to the church" if that person does not repent after private confrontation.⁶⁰¹ Although this church discipline process does not provide a direct analog to how professional discipline should take place,⁶⁰² it does support the notion that public exposure of another's misconduct is appropriate in certain circumstances. Two purposes of church discipline are to keep the misconduct from spreading to others and to honor Christ by protecting the purity of the church.⁶⁰³ Similarly, lawyers maintain the integrity of the profession by exposing professional misconduct. Public surveys have found that Americans believe lawyers do a poor job policing themselves, so attorneys should take this reporting obligation seriously.⁶⁰⁴

Rule 8.3 also relates to the virtue of honesty. As noted in other sections of this article, Christian ethicists maintain that silence can amount to dishonesty.⁶⁰⁵ As David Gill contends:

Refusing to speak to or about someone can be an insult or a harmful, irresponsible act. On some occasions we must overcome our fear or laziness and raise our voices for the truth and for our neighbor. To

while. Now I rejoice, not that you were made sorry, but that your sorrow led to repentance. For you were made sorry in a godly manner, that you might suffer loss from us in nothing.

Id.

⁵⁹⁸ *Ephesians* 5:11 ("And have no fellowship with the unfruitful works of darkness, but rather expose them.").

⁵⁹⁹ MODEL RULES OF PROF'L CONDUCT R. 8.4 (2003).

⁶⁰⁰ *Matthew* 18:15–20. For an excellent discussion of biblical passages and principles related to the church-discipline process, see GRUDEM, *supra* note 87, at 894–900.

⁶⁰¹ *Matthew* 18:17.

⁶⁰² For instance, *Matthew* 18:15 instructs the wronged party first to confront the guilty one, but the professional discipline process does not speak to whether the wronged party, which may be a client, should confront the guilty attorney.

⁶⁰³ GRUDEM, *supra* note 87, at 895.

⁶⁰⁴ See *Public Perceptions of Lawyers*, *supra* note 165.

⁶⁰⁵ See *supra* notes 291, 369 and accompanying text; see also *Ezekiel* 33:6 (NIV) ("But if the watchman sees the sword coming and does not blow the trumpet to warn the people and the sword comes and takes the life of one of them, that man will be taken away because of his sin, but I will hold the watchman accountable for his blood.").

stand by quietly and allow a miscarriage of justice or an innocent person to be slandered is to be guilty.⁶⁰⁶

Christian attorneys thus must consider whether they are violating biblical standards of honesty when they fail to report serious misconduct of which they are aware.

D. Rule 8.4: Misconduct

Rule 8.4 discusses the various ways a lawyer may commit professional misconduct.⁶⁰⁷ The types of included offenses are those involving professional character, as such character relates to the practice of law.⁶⁰⁸ Traditionally excluded are offenses involving “moral turpitude.”⁶⁰⁹ By contrast, the Bible draws no such distinction. One who is guilty of one sin is guilty of all.⁶¹⁰ Attorneys thus cannot claim that

⁶⁰⁶ DAVID W. GILL, *DOING RIGHT: PRACTICING ETHICAL PRINCIPLES* 294 (2004). Gill adds that Christians are not required to speak up in all situations, but he refrains from providing specific parameters on when silence is acceptable. *Id.* at 294–95.

⁶⁰⁷ MODEL RULES OF PROF'L CONDUCT R. 8.4 (2003). The rule states:

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.

Id.

⁶⁰⁸ *Id.* R. 8.4 cmt. 2. These include offenses involving “violence, dishonesty, breach of trust, or serious interference with the administration of justice.” *Id.* Examples of illegal conduct that reflect adversely on fitness to practice law include fraud and willful failure to file an income tax return. *Id.*

⁶⁰⁹ *Id.* Comment 2 to the rule highlights this distinction:

Many kinds of illegal conduct reflect adversely on fitness to practice law . . . However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law.

Id.

⁶¹⁰ *James* 2:10 (“For whoever shall keep the whole law, and yet stumble in one point, he is guilty of all.”). The entire law as revealed in the Scriptures is an expression of God's will so that breaking any part of the law is synonymous with breaking the law as a whole. To commit an isolated offense is to rebel against God Himself. *SPIRIT-FILLED LIFE BIBLE*, *supra* note 583, at 1897 n.2:10-13. One who keeps the entire law but fails in one part is as guilty and in need of a savior as one who is a frequent transgressor.

their professional actions are consistent with biblical principles simply because they are professionally ethical. The Model Rules, in fact, recognize that they do not cover all improper conduct for which an attorney can be “personally answerable.”⁶¹¹

Negligent or incompetent representation may constitute professional misconduct that is prejudicial to the administration of justice in violation of Rule 8.4.⁶¹² Conversely, competent representation is important to the proper administration of justice. According to the Model Rules, competence is developed through the lawyer’s own efforts toward self-improvement. The comments to Rule 1.1 (“Competence”), for instance, identify that lawyers can achieve and maintain competence through “preparation and study.”⁶¹³ For the believer, competence comes from God.⁶¹⁴ Christian attorneys therefore should recognize that maintaining competence in their practice depends not only on their efforts but also on grace and provision from God.⁶¹⁵

Multiple biblical virtues are expressed in this rule, including integrity, honesty, trustworthiness, truthfulness, and personal responsibility. Personal responsibility is particularly noteworthy. *Romans* 13 describes the responsibility a person has not only to God but also to governing authorities.⁶¹⁶ Lawyers and Christians both have a clear obligation to obey the governing authorities. The lawyer is accountable to his state’s disciplinary authority; the Christian is accountable to God.⁶¹⁷ Lawyers have a responsibility to the justice system; Christians have a responsibility to their community and the

⁶¹¹ MODEL RULES OF PROF’L CONDUCT R. 8.4 cmt. 2 (2003).

⁶¹² See, e.g., *People v. Crist*, 948 P.2d 1020 (Colo. 1997) (finding misconduct when a lawyer abandoned his law practice, leaving some sixty pending cases).

⁶¹³ MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 1 (2003); see also *id.* R. 1.1 cmts. 4, 6; *supra* notes 11–15 and accompanying text (discussing Model Rule 1.1 in detail).

⁶¹⁴ 2 *Corinthians* 3:5 (NIV) (“Not that we are competent in ourselves to claim anything for ourselves, but our competence comes from God.”).

⁶¹⁵ Compare *Philippians* 4:13 (“I can do all things through Christ who strengthens me.”), with *John* 15:5 (“I am the vine, you are the branches. He who abides in Me, and I in him, bears much fruit; for without Me you can do nothing.”).

⁶¹⁶ *Romans* 13:1–5.

Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God. Therefore whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves. For rulers are not a terror to good works, but to evil. Do you want to be unafraid of the authority? Do what is good, and you will have praise from the same. For he is God’s minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain; for he is God’s minister, an avenger to execute wrath on him who practices evil. Therefore you must be subject, not only because of wrath but also for conscience’ sake.

Id.

⁶¹⁷ See *Romans* 14:12 (“So then each of us shall give account of himself to God.”).

world.⁶¹⁸ Christian lawyers thus face responsibility and accountability under both systems.

The lawyer is accountable for his misdeeds if he is caught. By contrast, the believer knows that he is accountable to his omniscient and omnipresent God for any misconduct, whether observed by people or not.⁶¹⁹ The author of *Hebrews* says that “[n]othing in all creation is hidden from God’s sight. Everything is uncovered and laid bare before the eyes of him to whom we must give account.”⁶²⁰

E. Rule 8.5: Disciplinary Authority; Choice of Law

Rule 8.5 discusses which jurisdiction controls when a lawyer is subject to discipline.⁶²¹ A lawyer is subject to discipline in the jurisdiction in which he is admitted to practice and in jurisdictions where he “provides or offers to provide any legal services.”⁶²² A lawyer therefore may be subject to discipline in multiple jurisdictions that impose different obligations.⁶²³ The second part of this rule attempts to resolve any conflicts that may arise if a lawyer is subject to discipline in more than one jurisdiction.⁶²⁴

As lawyers may be subject to more than one set of ethical rules which impose different obligations, Christians are responsible to dual authorities with differing rules,⁶²⁵ governmental and Godly. Rule 8.5(b) determines that which set of rules controls depends on the factors of whether the conduct was connected with a matter pending before a

⁶¹⁸ See *Matthew* 5:13–14 (“You are the salt of the earth; but if the salt loses its flavor, how shall it be seasoned? It is then good for nothing but to be thrown out and trampled underfoot by men. You are the light of the world. A city that is set on a hill cannot be hidden.”).

⁶¹⁹ *Hebrews* 4:13.

⁶²⁰ *Id.* (NIV).

⁶²¹ MODEL RULES OF PROF’L CONDUCT R. 8.5(a) (2003).

⁶²² *Id.* R. 8.5 cmt. 1.

⁶²³ *Id.* R. 8.5 cmt. 2.

⁶²⁴ *Id.* R. 8.5(b).

⁶²⁵ See *Romans* 13:1–3 (regarding submission to governmental authority); see also *Matthew* 22:20–22 (“And He said to them, ‘Whose image and inscription is this?’ They said to Him, ‘Caesar’s.’ And He said to them, ‘Render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s.’ When they had heard these words, they marveled, and left Him and went their way.”); 1 *Timothy* 2:1–2 (“Therefore I exhort first of all that supplications, prayers, intercessions, and giving of thanks be made for all men, for kings and all who are in authority, that we may lead a quiet and peaceable life in all godliness and reverence”); *Titus* 3:1 (“Remind them to be subject to rulers and authorities, to obey, to be ready for every good work”); 1 *Peter* 2:13–17 (“Therefore submit yourselves to every ordinance of man for the Lord’s sake, whether to the king as supreme, or to governors, as to those who are sent by him for the punishment of evildoers and for the praise of those who do good. For this is the will of God, that by doing good you may put to silence the ignorance of foolish men—as free, yet not using liberty as a cloak for vice, but as bondservants of God. Honor all people. Love the brotherhood. Fear God. Honor the king.”).

tribunal, where the conduct took place, and where the predominant effect of the conduct was.⁶²⁶ For the Christian believer, God's standards control and take precedence over governmental standards. Therefore, although *Romans* 13 underscores that Christians must obey governmental standards, other biblical passages illustrate how that obedience ends when those standards violate God's principles.⁶²⁷

IX. CONCLUSION

Despite the foundation of legal ethics in biblical principles of morality,⁶²⁸ the modern encapsulation of legal ethics, the ABA Model Rules of Professional Conduct, rarely uses terms like *morality*, *conscience*, or *truth*. The Rules recognize that fundamental principles of morality affect ethical decisions, but they avoid detailed discussion of such principles, implying that they are beyond the scope of the Rules.⁶²⁹ Such a sterile recitation of legal ethics leaves many attorneys hanging in their search for guidance as to how to fill in the ethical gaps the Rules fail to resolve.

In Paul's second letter to Timothy, he writes, "All Scripture *is* given by inspiration of God, and *is* profitable for doctrine, for reproof, for correction, for instruction in righteousness, that the man of God may be complete, thoroughly equipped for every good work."⁶³⁰ Biblical virtues are a natural place to turn to add depth to the relatively shallow ethical provisions included in the Model Rules. Indeed, for Christians, the Bible takes precedence over the Rules in defining the parameters of ethics and morality.⁶³¹ This article thus has sought to connect these two principal

⁶²⁶ MODEL RULES OF PROF'L CONDUCT R. 8.5(b) (2003).

⁶²⁷ See JAMES R. EDWARDS, *ROMANS* 306 (1992) ("[N]either Paul nor the NT teaches that when a government forsakes its God-ordained function of honoring good and punishing evil that a Christian is obligated to serve it."); EVERETT F. HARRISON, *ROMANS* 136–37 (1995) ("A circumstance may arise in which [the believer] must choose between obeying God and obeying men (Act[s] 5:29). But even then he must be submissive to the extent that, if his Christian convictions do not permit his compliance, he will accept the consequences of his refusal."); KAISER ET AL., *supra* note 39, at 577 ("If . . . the authority of the state runs counter to this divine intent, then that authority should not be understood as God-given."). *Acts* 5:28–29 recounts the instance when Peter and the other apostles taught in the temple courts in violation of orders from the Sanhedrin. When the apostles were arrested, they asserted, "We must obey God rather than men!" *Acts* 5:29 (NIV). For other scriptures that address limitations on individuals' responsibility to follow governmental standards, see, for example, *Daniel* 3 and 8 and *Acts* 17:5–7. See also *supra* note 39 and accompanying text.

⁶²⁸ See *supra* notes 1, 73 and accompanying text.

⁶²⁹ See MODEL RULES OF PROF'L CONDUCT Scope para. 16 (2003) ("The Rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.").

⁶³⁰ *2 Timothy* 3:16–17.

⁶³¹ See *supra* note 39 and accompanying text.

sources of legal ethics today in a way that guides the modern attorney, Christian or not, in his or her search for greater insight into the contours of legal ethics. This article is not intended to be exhaustive in its scope, but its goal is to promote an informed understanding of both the Rules and Scripture. With such understanding, modern attorneys will hopefully be equipped to recapture the importance of moral truth to the practice of law.

This paper discusses the tensions between moral obligations, ethical rules and legal requirements contained within the American Bar Association Model Rules of Professional Conduct by reviewing the history and evolution of the Model Rules and the conflicting societal purposes served by the Rules regarding client protection, attorney regulation, jurisprudential philosophy and social justice. Equally important is a discussion of the parallel development of attorney discipline. Keywords: Law; Ethics; Morality; Professional Responsibility; Model Code; ABA Canons; Model Rules.

1. American Bar Assoc C. The Model Rules of Professional Conduct Provide Guidance Regarding the Preservation of Sixth Amendment Rights. Similar to the interplay between emerging case law and the Fair Trial and Free Press Standards, the Model Rules have cyclically evolved along with the Fair Trial and Free Press Standards.⁷³ Iowa is among the many states that has adopted the Model Rules into its statutory framework.⁷⁴ Two of the rules have particular applicability to the issue of prosecutor and police participation in true-crime reality shows: Model Rules 3.6 and 3.8.

1. Model Rule of Professional Conduct 3.6: *Tri* The ABA Model Rules of Professional Conduct, created by the American Bar Association (ABA), are a set of rules that prescribe baseline standards of legal ethics and professional responsibility for lawyers in the United States. They were promulgated by the ABA House of Delegates upon the recommendation of the Kutak Commission in 1983. The rules are merely recommendations, or models, (hence the name "Model Rules") and are not themselves binding. However, having a common set of Model Rules facilitates a common discourse on legal ethics, and simplifies professional responsibility training