

## **CHAPTER 27-13 CONDUCT OF ATTORNEYS**

### **27-13-01. Duties of attorneys.**

Every attorney and counselor at law shall:

1. Maintain respect for courts of justice and judicial officers;
2. Counsel or maintain no claim that appears to the attorney to be unjust, nor any defense except one the attorney believes to be honestly debatable under the law;
3. Perform faithfully the attorney's responsibilities as an officer of the court and protector of individual rights;
4. Support the provision of legal services for indigent persons, public service, and public education about the law;
5. Work to make the legal system more accessible, responsive, and just;
6. Employ for purposes of maintaining the causes confided to the attorney, those means only as are consistent with truth and honor, and never seek to mislead the judge or jury by any artifice or false statement of fact or law; and
7. Never reject, from any consideration personal to the attorney, the cause of the defenseless or oppressed, or delay anyone's cause for profit or malice.

### **27-13-02. Powers of attorneys.**

An attorney and counselor at law may:

1. Execute, in the name of the attorney's client, a bond or other written instrument necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.
2. Bind the attorney's client to any agreement in respect to any proceeding within the scope of the attorney's proper duties and powers, but no evidence of any such agreement is receivable, except the statement of the attorney, the attorney's written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.
3. Receive money claimed by the attorney's client in an action or proceeding during the pendency thereof or afterwards, unless the attorney has been previously discharged by the attorney's client, and upon payment thereof, and not otherwise, may discharge the claim or acknowledge satisfaction of the judgment.

### **27-13-03. Attorney not to be surety.**

No practicing attorney and counselor at law may be a surety in any action or proceeding which may be instituted in any of the courts of this state.

### **27-13-04. Court may require proof of attorney's authority - Proceedings stayed until proof furnished.**

A court, on motion of either party and on the showing of reasonable grounds therefor, may require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by the attorney's oath or otherwise the authority under which the attorney appears and until the attorney does so may stay all proceedings by that attorney on behalf of the parties for whom that attorney assumes to appear.

### **27-13-05. Attorney's refusal to deliver client's money or property - Penalty.**

Repealed by S.L. 2001, ch. 287, § 1.

### **27-13-06. Attorney's withholding of client's money or property under alleged lien unlawful if bond furnished.**

Repealed by S.L. 2001, ch. 287, § 1.

**27-13-07. Attorney's refusal to deliver client's money or property not unlawful if attorney furnishes a bond.**

Repealed by S.L. 2001, ch. 287, § 1.

**27-13-08. Misconduct of attorney - Penalty - Treble civil damages forfeited.**

Every attorney who:

1. Is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or any party;
2. Willfully delays the attorney's client's suit with a view to the attorney's own gain; or
3. Willfully receives any money or other property for or on account of any money or debt which the attorney has not laid out or become answerable for,

is guilty of a class A misdemeanor and in addition forfeits to the party injured treble damages to be recovered in a civil action.

**27-13-09. Permitting use of or making use of attorney's name unlawful - Penalty.**

If any attorney knowingly permits any person, not the attorney's general law partner or a clerk in the attorney's office, to sue out any process or to prosecute or defend any action in the attorney's name, except as authorized by section 27-13-10, such attorney and every person who shall so use the attorney's name is guilty of a class A misdemeanor.

**27-13-10. When use of attorney's name permissible.**

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the state or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney general or state's attorney or attorney of such public officer, board, or corporation may permit any proceeding therein to be taken in that attorney's name by an attorney to be chosen by the party in interest.

**27-13-11. Partner of public prosecutor not to aid defense - Penalty.**

Every attorney who, directly or indirectly, advises in relation to, or aids or promotes the defense of, any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any state's attorney or other public prosecutor with whom such attorney is connected, directly or indirectly, as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a class A misdemeanor and in addition to the punishment prescribed therefor, that attorney forfeits that attorney's license to practice.

**27-13-12. Attorney not to aid defense when formerly interested as public prosecutor - Penalty.**

Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as state's attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to or takes any part in the defense thereof as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a class A misdemeanor and in addition to the punishment prescribed therefor, that attorney forfeits that attorney's license to practice.

**27-13-13. Public prosecutors or partners thereof may defend themselves in criminal or civil actions.**

Sections 27-13-11 and 27-13-12 do not prohibit an attorney from defending oneself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

**27-13-14. Attorney for attorney fiduciary required - Exception.**

An attorney who serves as a fiduciary of an estate, trust, or conservatorship must be represented by another attorney. The attorney who serves as fiduciary or the attorney's law firm

may not serve as attorney for the fiduciary. This section does not apply to United States bankruptcy court proceedings or to matters in which the decedent, trustor, beneficiary, or protected individual is a spouse, child, grandchild, parent, grandparent, or sibling of the attorney serving as a fiduciary.