

Alabama Rules of Professional Conduct

Advocate

Rule 3.9.

Advocate in Nonadjudicative Proceedings.

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

[Amended eff. 6-23-2008.]

Comment

In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule, therefore, may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by Rules 4.1 through 4.4.

Comparison with Former Alabama Code of Professional Responsibility

EC 7-15 stated that a lawyer “appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law.” EC 7-16 stated that “[w]hen a lawyer appears in connection with proposed legislation, he... should comply with applicable laws and legislative rules.” EC 8-5 stated that “[f]raudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a... legislative body... should never be participated in... by lawyers.” DR 7-111 requires

that a lawyer appearing on behalf of a client before a public officer, board, committee or body disclose, if requested by that body, that he is representing such a client.

Note from the reporter of decisions: The order amending Rule 1.8, the Comment to Rule 1.8, Rule 1.10(a), the Comment to Rule 1.10, Rule 1.12, Rule 1.14, the Comment to Rule 1.14, the Comment to Rule 3.2, Rule 3.6, the Comment to Rule 3.7, Rule 3.9, and Rule 4.4 is published in that volume of *Alabama Reporter* that contains Alabama cases from 983 So.2d.