

Is there a Disconnect Here?

What to do when your city wants to shut off someone's power as an enforcement tool

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Overview

- State Law on Disconnections
- Court Cases and Penalties
- Ethical Considerations

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State Law on Disconnections

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Statutes, PUC Rules, TDU Tariff

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Statutes

Public Utility Regulatory Act ("PURA"): Texas Utilities Code, Title 2, Subtitles A-B (Chapters 1-43)

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PUC Rules & TDU Tariff

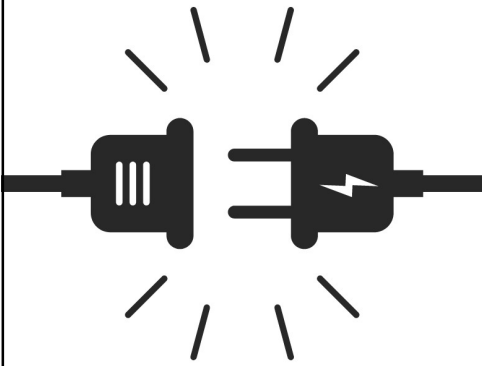
PUC Rules: 16 Texas Administrative Code Ch. 25

Transmission and Distribution Utility ("TDU") Tariff §§ 4.2.5, 5.2.5, & 5.3.7



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Who can shut off power?



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- Only an electric utility, transmission and distribution utility (TDU), municipally owned utility (MOU), or electric cooperative may perform physical disconnections of service. 16 Tex. Admin. Code § 25.483(a) (2025).
 - *See also* relevant definitions. *Id.* at § 25.5(30), (35), (42), (71), & (137) (2022)

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TDU Obligations and Limitations



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- TDU (Oncor, CenterPoint, etc.) must provide continuous and adequate electric service to all customers in its service area.
 - TDU may not discontinue service except for (1) nonpayment, (2) nonuse, or (3) similar reason in the usual course of business.
 - Discontinuance, reduction, or impairment of service must comply with PUC restrictions and conditions.

Tex. Util. Code §§ 37.051(a), 37.151, & 37.152 (West 2025)

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TDU Tariff



- TDU must file a tariff with the PUC governing its relationship with its customers. Tex. Util. Code § 32.101 (West 2025); 16 Tex. Admin. Code §§ 25.214(c) (2015) & 25.5(129) (2022); & *City of Richardson v. Oncor Elec. Delivery Co. LLC*, 539 S.W.3d 252, 257 (Tex. 2018).
- PUC Pro Forma Tariff. 16 Tex. Admin. Code § 25.214(d)
- TDU allowed to disconnect electric service:
 - If there is a hazardous condition. Tariff § 5.3.7.1 ¶ 1
 - When authorized by “Applicable Legal Authorities.” Tariff § 5.3.7.1 ¶ 2 & 1 (definitions)
 - To lessen or remove danger to life or property. Tariff § 4.2.5 ¶ 1 & 5.2.5 ¶ 1

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Examples of Disconnection Reasons (from Oncor)



- **Hazardous Condition** - a potentially hazardous ELECTRICAL condition where the City Inspector deems that power needs to be disconnected. Examples: Bare wires, unsafe electrical installation.
- **Fire Call** - a fire call condition involves immediate danger where the fire department is dispatched. Examples: Arcing, sparking, smoking.
- **Illegal Activity** - a DISTRICT COURT ORDER requires Oncor to disconnect electric service when a public safety issue is identified. Upon receipt of the COURT ORDER, Oncor will disconnect electric service per the Tariff enforced by the PUCT. Oncor cannot disconnect service just because there is undesirable activity at the location. Examples: Drug house operations.
 - In the event a LAW ENFORCEMENT AGENCY (City Police, Sheriff, DPS, FBI, etc.) is involved in an on-going emergency situation, such as a bank robbery, hostage taking, etc., then Oncor can disconnect service immediately, no court order required.

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Hazardous Condition Disconnect Letter



Date:

To: cityinspections@oncor.com

CC: **(Insert Oncor area manager email)**

Re: Hazardous condition requiring disconnect at:

Address:

Meter No.:

The City is hereby requesting that Oncor Electric Delivery Company LLC, in accordance with Section 5.3.7 of its Tariff for Retail Delivery Service, hereby disconnect electrical service at the above address and meter number for the reason that the continued delivery of electrical service creates an imminent hazardous electrical condition and that a disconnect will eliminate or mitigate that hazardous condition.

(Insert detail of hazardous condition and code violation here)

The City has taken steps to attempt to resolve this condition with the property owner and customer at this account; however, that has not remedied the condition. The City also states that the City is not aware of any customers or residents living at the address on critical medical care or of any other condition requiring the continued delivery of electrical service. The City is also not aware of any circumstances arising from the disconnection that will result in another hazardous or life-threatening condition. The City will also provide notice of this disconnect request to the affected customer.

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Court Order specifications (from Oncor)



- The court order must clearly state the following:
 1. That Oncor is being ordered to disconnect electrical service.
 2. Whether the disconnect is tied to the customer or to the premise itself (regardless of who the customer is).
 3. How long the premise should be disconnected (i.e., a certain date, until the customer moves out, etc.).

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Court Cases and Penalties

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Court Cases

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- People have a constitutionally protected right to adequate and continuous utility service, which may only be removed for cause.

Hidden Oaks Ltd. v. City of Austin, 138 F.3d 1036, 1046 (5th Cir. 1998); & *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978).

- *City of Denton v. Weems*, 456 S.W.2d 207 (Tex. Civ. App.—Fort Worth 1970)
- *Hidden Oaks Ltd. v. City of Austin*, 138 F.3d 1036 (5th Cir. 1998)
- *Levy v. City of El Paso*, 2013 WL 4677923 (W.D. Tex. 2013), *aff'd*, 577 Fed. Appx. 297 (5th Cir. 2014)



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Penalties



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- Attorney General may file an action to enjoin violations of or require compliance with PURA or PUC rules. Tex. Util. Code § 15.021 (West 2025)
 - PUC may impose administrative penalties up to \$25,000 per day for violating PURA or PUC rules. Tex. Util. Code § 15.023 (West 2025)
 - 3rd degree felony for violating PURA. Tex. Util. Code § 15.030 (West 2025)

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Ethical Considerations

Texas Disciplinary Rules of Professional Conduct

- Rule 1.02. *Scope and Objectives of Representation*
- Rule 1.05. *Confidentiality of Information*
- Rule 1.13. *Organization as a Client*
- Rule 2.01. *Advisor*
- Rule 4.01. *Truthfulness in Statements to Others*

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Rules 1.02 & 2.01 – Prohibition & Duties



- Prohibition: May not knowingly assist a client in criminal or fraudulent conduct
- Initial duties:
 - May discuss legal consequences
 - Shall make reasonable efforts: (1) to dissuade the client from committing a criminal or fraudulent conduct; and (2) to persuade the client to take corrective action regarding their criminal or fraudulent conduct
 - Shall consult with the client regarding the lawyer's limitations, if necessary
 - Shall give an honest opinion about the likely consequences
 - Shall give candid advice, including moral and ethical considerations and not just technical legal advice

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Rule 1.13 – Organizational Considerations



- Lawyer represents the entity
- Shall proceed in the best interests of the organization, even when reporting to and accepting direction from its authorized constituents
- Shall explain the client's identity as the organization, if necessary
- Shall first attempt to resolve the violation within the organization, such as:
 - (1) ask for reconsideration; (2) advise seeking a separate legal opinion; or
 - (3) refer the matter to a higher or the highest authority
- Must take reasonable remedial actions if violation might be imputed to the organization, result in substantial injury to the organization, and is related to a matter within the scope of the lawyer's representation

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Rules 1.05 & 4.01 – Disclosure



- General Rule – Lawyer shall not knowingly reveal confidential client information
- Discretionary disclosure of information:
 - *Confidential* – when necessary to comply with ethical rules or other law; when necessary to prevent the client from committing a crime; when it reasonably appears necessary to rectify the consequences of a client’s crime
 - *Unprivileged* – when necessary to carry out representation effectively
- Mandatory disclosure of confidential information:
 - When it is likely that the client will commit a crime that is likely to result in death or substantial bodily harm, and the disclosure reasonably appears necessary to prevent a crime
 - When necessary to avoid making the lawyer a party to the client’s crime

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Hypothetical



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- A building has a certificate of occupancy (“C/O”) for a banquet hall, but the tenant operates it as a night club. The tenant requires a cover charge to enter, and the number of customers regularly exceeds the maximum occupancy limit. Citizens are constantly complaining about loud music. City staff contacted the owner/landlord who is nonresponsive and has not addressed the misuse of C/O, fire code violations, and unreasonable noise with the tenant. The Fire Marshal and Building Official are getting pressure to resolve this problem fast. They tell you that because the local transmission and distribution utility (“TDU”) will not disconnect electric service, they plan to do so using an emergency shutoff device on the building.
 - What do you do?

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More Hypotheticals



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- What if City staff will not reconsider the proposed disconnection?
 - What if the relevant higher (or highest) authority will not reconsider the proposed disconnection?
 - What if City staff already shut off the electricity before talking to you?

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Questions

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Excerpts from Ethical Rules

1.02, 1.05, 1.13, 2.01, 4.01

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Rule 1.02. Scope & Objectives of Representation



(a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer **shall** abide by a client's decisions: (1) concerning the objectives and general methods of representation;

...

(c) A lawyer **shall not** assist or counsel a client to engage in conduct that the lawyer **knows** is criminal or fraudulent. A lawyer **may** discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer **shall** promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

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Rule 1.02 [continued]



(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer **shall** make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer **shall** consult with the client regarding the relevant limitations on the lawyer's conduct.

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Rule 1.02 Comments



Criminal, Fraudulent and Prohibited Transactions

7. A lawyer is **required** to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. 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 with impunity.

8. When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer **may not** reveal the client's wrongdoing, except as permitted or required by Rule 1.05. However, the lawyer also must avoid furthering the client's unlawful purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. See Rule 1.15(a)(1).

11. Paragraph (d) **requires** a lawyer in certain instances to use reasonable efforts to dissuade a client from committing a crime or fraud. If the services of the lawyer were used by the client in committing a crime or fraud, paragraph (e) **requires** the lawyer to use reasonable efforts to persuade the client to take corrective action.

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Rule 2.01. Advisor



In advising or otherwise representing a client, a lawyer **shall** exercise independent professional judgment and render candid advice.

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Rule 2.01 Comments



Scope of Advice

1. A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

2. Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as costs or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. 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.

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Rule 2.01 Comments [*continued*]



Offering Advice

5. In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

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Rule 1.13. Organization as a Client



(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer **shall** proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

(b) A lawyer representing an organization **must** take reasonable remedial actions whenever the lawyer learns or knows that:

- (1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;
- (2) the violation is likely to result in substantial injury to the organization; and
- (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

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Rule 1.13 [continued]



(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer **shall** first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

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Rule 1.13 [continued]



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(e) In dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer **shall** explain the identity of the client when it is apparent that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

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Rule 1.13 Comments



Decisions by Constituents

6. When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows, in regard to a matter within the scope of the lawyer's responsibility, that the organization is likely to be substantially injured by the action of a constituent that is in violation of law or in violation of a legal obligation to the organization. In such circumstances, the lawyer must take reasonable remedial measure. See paragraph (b). It may be reasonably necessary, for example, for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. At some point it may be useful or essential to obtain an independent legal opinion.

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Rule 1.13 Comments [continued]



Government Agency

9. The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See Preamble: Scope.

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Rule 1.05. Confidentiality of Information



(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer **shall not** knowingly:

- (1) Reveal confidential information of a client or a former client to: ...
 - (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm. ...

(c) A lawyer **may** reveal confidential information: ...

- (4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rules of Professional Conduct, or other law. ...
- (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.
- (8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used. ...

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Rule 1.05 [continued]



(d) A lawyer also **may** reveal unprivileged client information: ...

- (2) When the lawyer has reason to believe it is necessary to do so in order to:
 - (i) carry out the representation effectively; ...

(e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer **shall** reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

(f) A lawyer **shall** reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b).

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Rule 4.01. Truthfulness in Statements to Others



In the course of representing a client a lawyer **shall not knowingly:** ...

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

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Rule 1.05 Comments



Discretionary Disclosure Adverse to Client

13. Third, the lawyer may learn that a client intends prospective conduct that is criminal or fraudulent. The lawyer's knowledge of the client's purpose may enable the lawyer to prevent commission of the prospective crime or fraud. When the threatened injury is grave, the lawyer's interest in preventing the harm may be more compelling than the interest in preserving confidentiality of information. As stated in sub-paragraph (c)(7), the lawyer has professional discretion, based on reasonable appearances, to reveal both privileged and unprivileged information in order to prevent the client's commission of any criminal or fraudulent act. In some situations of this sort, disclosure is mandatory. See paragraph (e) and Comments 18-20.

14. The lawyer's exercise of discretion under paragraphs (c) and (d) involves consideration of such factors as the magnitude, proximity, and likelihood of the contemplated wrong, the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the client's conduct in question. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer believes necessary to the purpose. Although preventive action is permitted by paragraphs (c) and (d), failure to take preventive action does not violate those paragraphs. But see paragraphs (e) and (f). Because these rules do not define standards of civil liability of lawyers for professional conduct, paragraphs (c) and (d) do not create a duty on the lawyer to make any disclosure and no civil liability is intended to arise from the failure to make such disclosure.

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Rule 1.05 Comments [*continued*]



Mandatory Disclosure Adverse to Client

18. Rule 1.05(e) and (f) place upon a lawyer professional obligations in certain situations to make disclosure in order to prevent certain serious crimes by a client or to prevent involvement by the lawyer in a client's crimes or frauds. Except when death or serious bodily harm is likely to result, a lawyer's initial obligation is to attempt to dissuade the client from committing the crime or fraud or to persuade the client to take corrective action; see Rule 1.02(d) and (e).

19. Because it is very difficult for a lawyer to know when a client's criminal or fraudulent purpose actually will be carried out, the lawyer is required by paragraph (e) to act only if the lawyer has information "clearly establishing" the likelihood of such acts and consequences. If the information shows clearly that the client's contemplated crime or fraud is likely to result in death or serious injury, the lawyer must seek to avoid those lamentable results by revealing information necessary to prevent the criminal or fraudulent act. When the threatened crime or fraud is likely to have the less serious result of substantial injury to the financial interests or property of another, the lawyer is not required to reveal preventive information but may do so in conformity to paragraph (c)(7). See also paragraph (f); Rule 1.02(d) and (e); and Rule 3.03(b) and (c).

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Rule 1.05 Comments [*continued*]



Mandatory Disclosure Adverse to Client

20. Although a violation of paragraph (e) will subject a lawyer to disciplinary action, the lawyer's decisions whether or how to act should not constitute grounds for discipline unless the lawyer's conduct in the light of those decisions was unreasonable under all existing circumstances as they reasonably appeared to the lawyer. This construction necessarily follows from the fact that paragraph (e) bases the lawyer's affirmative duty to act on how the situation "reasonably appears" to the lawyer, while that imposed by paragraph (f) arises only when a lawyer "knows" that the lawyer's services have been misused by the client. See also Rule 3.03(b).

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