Ethical Rules Relevant to Prosecutors

1. Code of Criminal Procedure

Section 45.201

It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

2. Texas Disciplinary Rules of Professional Conduct

1.04 Fees (Effective March 1, 2005)

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonablebelief that the fee is reasonable.

Rule 1.06 Conflict of Interest: General Rule

(a) A lawyer shall not represent opposing parties to the same litigation.

(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

(1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyers firm;

or

(2) reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person or by the lawyers or law firm's own interests.

(c) A lawyer may represent a client in the circumstances described in (b) if:

(1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

Rule 1.09 Conflict of Interest: Former Client

(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

(1) in which such other person questions the validity of the lawyer's services or work product for the former client;

(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or

(3) if it is the same or a substantially related matter.

Rule 1.12 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.

Rule 3.02 Minimizing the Burdens and Delays of Litigation

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Rule 3.03 Candor Toward the Tribunal

(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(5) offer or use evidence that the lawyer knows to be false.

Rule 3.04 Fairness in Adjudicatory Proceedings

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act.

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for his loss of time in attending or testifying;

(3) a reasonable fee for the professional services of an expert witness.

(c) except as stated in paragraph (d), in representing a client before a tribunal:

(1) habitually violate an established rule of procedure or of evidence;

(2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;

(3) state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused, except that a lawyer may argue on his analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein;

(4) ask any question intended to degrade a witness or other person except where the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or

(5) engage in conduct intended to disrupt the proceedings.

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.

(e) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.05 Maintaining Impartiality of Tribunal

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

(2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;

(3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(c) For purposes of this rule:

(1) Matter has the meanings ascribed by it in Rule 1.10(f) of these Rules;

(2) A matter is pending before a particular tribunal either when that entity has been selected to determine the matter or when it is reasonably foreseeable that that entity will be so selected.

Rule 3.06 Maintaining Integrity of Jury System

(a) A lawyer shall not:

(1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or

(2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the

venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

(g) As used in this Rule, the terms matter and pending have the meanings specified in Rule 3.05(c).

Rule 3.09 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;

(b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial or post-trial rights;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Comment:

Source and Scope of Obligations

1. A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. This responsibility carries with it a number of specific obligations. Among these is to see that no person is threatened with or subjected to the rigors of a criminal prosecution without good cause. See paragraph (a). In addition a prosecutor should not initiate or exploit any violation of a suspect's right to counsel, nor should he initiate or encourage efforts to obtain waivers of important pre-trial, trial, or post-trial rights from unrepresented persons. See paragraphs (b) and (c). In addition, a prosecutor is obliged to see that the defendant is accorded procedural justice, that the defendant's guilt is decided upon the basis of sufficient evidence, and that any sentence imposed is based on all unprivileged information known to the prosecutor. See paragraph (d). Finally, a prosecutor is obliged by this rule to take reasonable measures to see that persons employed or controlled by him refrain from making extrajudicial statements that are prejudicial to the accused. See paragraph (e) and Rule 3.07. See also Rule 3.03(a)(3), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.04.

2. Paragraph (a) does not apply to situations where the prosecutor is using a grand jury to determine whether any crime has been committed, nor does it prevent a prosecutor from presenting a matter to a grand jury even though he has some doubt as to what charge, if any, the grand jury may decide is appropriate, as long as he believes that the grand jury could reasonably conclude that some charge is proper. A prosecutor's obligations under that paragraph are satisfied by the return of a true bill by a grand jury, unless the prosecutor believes that material inculpatory information presented to the grand jury was false.

3. Paragraph (b) does not forbid the lawful questioning of any person who has knowingly, intelligently and voluntarily waived the rights to counsel and to silence, nor does it forbid such questioning of any unrepresented person who has not stated that he wishes to retain a lawyer and who is not entitled to appointed counsel. See also Rule 4.03.

4. Paragraph (c) does not apply to any person who has knowingly, intelligently and voluntarily waived the rights referred to therein in open court, nor does it apply to any person appearing pro se with the approval

of the tribunal. Finally, that paragraph does not forbid a prosecutor from advising an unrepresented accused who has not stated he wishes to retain a lawyer and who is not entitled to appointed counsel and who has indicated in open court that he wishes to plead guilty to charges against him of his pre-trial, trial and post-trial rights, provided that the advice given is accurate; that it is undertaken with the knowledge and approval of the court; and that such a practice is not otherwise prohibited by law or applicable rules of practice or procedure.

5. The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

6. Sub-paragraph (e) does not subject a prosecutor to discipline for failing to take measures to prevent investigators, law enforcement personnel or other persons assisting or associated with the prosecutor, but not in his employ or under his control, from making extrajudicial statements that the prosecutor would be prohibited from making under Rule 3.07. To the extent feasible, however, the prosecutor should make reasonable efforts to discourage such persons frommaking statements of that kind.

Rule 4.02 Communication with One Represented by Counsel

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(c) For the purpose of this rule, organization or entity of government includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.

(d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.

Rule 4.03 Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 5.01 Responsibilities of a Partner or Supervisory Lawyer

A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:

(a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or

(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

Rule 5.02 Responsibilities of a Supervised Lawyer

A lawyer is bound by these rules notwithstanding that the lawyer acted under the supervision of another person, except that a supervised lawyer does not violate these rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional conduct.

Rule 5.03 Responsibilities Regarding Nonlawyer Assistants

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the persons conduct is compatible with the professional obligations of the lawyer; and

(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if:

(1) the lawyer orders, encourages, or permits the conduct involved; or

(2) the lawyer:

(i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and

(ii) with knowledge of such misconduct by the non-lawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that persons misconduct.

Rule 8.03 Reporting Professional Misconduct

(a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyers honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

(b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges fitness for office shall inform the appropriate authority.

(c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyers report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).

(d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information:

(1) by Rule 1.05 or

(2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

Rule 8.04 Misconduct

(a) A lawyer shall not:

(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(7) violate any disciplinary or disability order or judgment;

(8) fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;

(9) engage in conduct that constitutes barratry as defined by the law of this state;

(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;

(11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyers right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in subsection (a)(2) of this Rule, serious crime means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of

money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

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Section 45.201

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1.04 Fees (Effective March 1, 2005)

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(2) reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person or by the lawyers or law firm's own interests.
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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.

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(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;
(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(5) offer or use evidence that the lawyer knows to be false.

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(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
(1) expenses reasonably incurred by a witness in attending or testifying;
(2) reasonable compensation to a witness for his loss of time in attending or testifying;
(3) a reasonable fee for the professional services of an expert witness.
(c) except as stated in paragraph (d), in representing a client before a tribunal:
(1) habitually violate an established rule of procedure or of evidence;
(2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
(3) state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused, except that a lawyer may argue on his analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein;
(4) ask any question intended to degrade a witness or other person except where the

lawyer reasonably believes that the question will lead to relevant and admissible evidence; or
(5) engage in conduct intended to disrupt the proceedings.
(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.
(e) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1) the person is a relative or an employee or other agent of a client; and
(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.05 Maintaining Impartiality of Tribunal
A lawyer shall not:
(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;
(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter other than:
(1) in the course of official proceedings in the cause;
(2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;
(3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.
(c) For purposes of this rule:
(1) Matter has the meanings ascribed by it in Rule l.l0(f) of these Rules;
(2) A matter is pending before a particular tribunal either when that entity has been selected to determine the matter or when it is reasonably foreseeable that that entity will be so selected.

Rule 3.06 Maintaining Integrity of Jury System
(a) A lawyer shall not:
(l) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or
(2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.
(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.
(c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.
(e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
(f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.
(g) As used in this Rule, the terms matter and pending have the meanings specified in Rule 3.05(c).

Rule 3.09 Special Responsibilities of a Prosecutor
The prosecutor in a criminal case shall:
(a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;
(b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial or post-trial rights;
(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Comment:
Source and Scope of Obligations
1. A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. This responsibility carries with it a number of specific obligations. Among these is to see that no person is threatened with or subjected to the rigors of a criminal prosecution without good cause. See paragraph (a). In addition a prosecutor should not initiate or exploit any violation of a suspect’s right to counsel, nor should he initiate or encourage efforts to obtain waivers of important pre-trial, trial, or post-trial rights from unrepresented persons. See paragraphs (b) and (c). In addition, a prosecutor is obliged to see that the defendant is accorded procedural justice, that the defendant’s guilt is decided upon the basis of sufficient evidence, and that any sentence imposed is based on all unprivileged information known to the prosecutor. See paragraph (d). Finally, a prosecutor is obliged by this rule to take reasonable measures to see that persons employed or controlled by him refrain from making extrajudicial statements that are prejudicial to the accused. See paragraph (e) and Rule 3.07. See also Rule 3.03(a)(3),

governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.04.
2. Paragraph (a) does not apply to situations where the prosecutor is using a grand jury to determine whether any crime has been committed, nor does it prevent a prosecutor from presenting a matter to a grand jury even though he has some doubt as to what charge, if any, the grand jury may decide is appropriate, as long as he believes that the grand jury could reasonably conclude that some charge is proper. A prosecutor's obligations under that paragraph are satisfied by the return of a true bill by a grand jury, unless the prosecutor believes that material inculpatory information presented to the grand jury was false.
3. Paragraph (b) does not forbid the lawful questioning of any person who has knowingly, intelligently and voluntarily waived the rights to counsel and to silence, nor does it forbid such questioning of any unrepresented person who has not stated that he wishes to retain a lawyer and who is not entitled to appointed counsel. See also Rule 4.03.
4. Paragraph (c) does not apply to any person who has knowingly, intelligently and voluntarily waived the rights referred to therein in open court, nor does it apply to any person appearing pro se with the approval of the tribunal. Finally, that paragraph does not forbid a prosecutor from advising an unrepresented accused who has not stated he wishes to retain a lawyer and who is not entitled to appointed counsel and who has indicated in open court that he wishes to plead guilty to charges against him of his pre-trial, trial and post-trial rights, provided that the advice given is accurate; that it is undertaken with the knowledge and approval of the court; and that such a practice is not otherwise prohibited by law or applicable rules of practice or procedure.
5. The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.
6. Sub-paragraph (e) does not subject a prosecutor to discipline for failing to take measures to prevent investigators, law enforcement personnel or other persons assisting or associated with the prosecutor, but not in his employ or under his control, from making extrajudicial statements that the prosecutor would be prohibited from making under Rule 3.07. To the extent feasible, however, the prosecutor should make reasonable efforts to discourage such persons frommaking statements of that kind.

Rule 4.02 Communication with One Represented by Counsel
(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
(b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another

lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
(c) For the purpose of this rule, organization or entity of government includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.
(d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.

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In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 5.01 Responsibilities of a Partner or Supervisory Lawyer
A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:
(a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or
(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

Rule 5.02 Responsibilities of a Supervised Lawyer
A lawyer is bound by these rules notwithstanding that the lawyer acted under the supervision of another person, except that a supervised lawyer does not violate these rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional conduct.

Rule 5.03 Responsibilities Regarding Nonlawyer Assistants
With respect to a non-lawyer employed or retained by or associated with a lawyer:
(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the persons conduct is compatible with the professional obligations of the lawyer; and
(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if:
(1) the lawyer orders, encourages, or permits the conduct involved; or
(2) the lawyer:

(i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and
(ii) with knowledge of such misconduct by the non-lawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that persons misconduct.

Rule 8.03 Reporting Professional Misconduct
(a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyers honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.
(b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges fitness for office shall inform the appropriate authority.
(c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyers report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).
(d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information:
(1) by Rule 1.05 or
(2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

Rule 8.04 Misconduct
(a) A lawyer shall not:
(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;
(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(4) engage in conduct constituting obstruction of justice;
(5) state or imply an ability to influence improperly a government agency or official;
(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
(7) violate any disciplinary or disability order or judgment;
(8) fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other

legal ground for failure to do so;
(9) engage in conduct that constitutes barratry as defined by the law of this state;
(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;
(11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where a lawyers right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or
(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.
(b) As used in subsection (a)(2) of this Rule, serious crime means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

From the American Bar Association Section of State and Local Governments

http://www.abanet.org/statelocal/lawnews/Summer05/Prosecutor.html

In the Matter of the Prosecutor's Ethics

By Meredith Ladd

Meredith Ladd is an associate in the Richardson, Texas, office of Brown & Hofmeister.

Hi, my name is Meredith Ladd. I am representing the city and the state against you. What this means is that I am not your attorney. Since I am not your attorney, you have the right not to say anything to me and you can set the case filed against you for trial. You have been charged with . . . ."

Many government attorneys will recognize a spiel much like this from their past or current service as a prosecutor. As one of my duties for the firm where I am an associate, I serve as a municipal court prosecutor for several small- to mid-size cities. For many citizens this is the only time they may encounter members of their local government or attend court. In my role as a municipal prosecutor, my responsibilities include ensuring that "justice is done"[1] and acting as the city's liaison to the citizens whom the city serves. This "frontline" role can create an ethical challenge for all city attorneys.[2]

Ethical Rules

The American Bar Association Model Rules of Professional Conduct provide guidance for government attorneys facing such a dual role. An attorney dealing with an unrepresented person shall not give the appearance that the lawyer is disinterested nor shall he give legal advice to the unrepresented person, other than advice to secure counsel.[3] Comment 2 to Model Rules of Professional Conduct Rule 4.3 provides additional guidance for an attorney dealing with an unrepresented person in an adverse proceeding; a lawyer is not prohibited from settling a dispute or negotiating, if the lawyer has explained that he represents an adverse party.

Special rules of conduct apply to a prosecutor, which demonstrates the problem of dealing with pro se defendants. A prosecutor shall not seek to obtain waivers of important pretrial rights from an unrepresented accused person.[4] This ethical obligation coupled with the court's standard practice of granting latitude to pro se defendants[5] can make effective representation of the client, the governmental entity, cumbersome, and highlights the heightened responsibilities of a prosecutor. The Model Rules are, in effect, making the prosecutor refrain from utilizing strategies to further the governmental client's interests. Instead of using the rules of procedure to the prosecutor's advantage, the prosecutor must avoid such strategic planning and "aid" the pro se defendant through the pretrial process. Caution must be taken in ever crossing the line or ensuring that one is following the ethical guidelines and providing what may be viewed as legal guidance to a pro se defendant.

Job Functions

A city attorney serving as a prosecutor may also face the dilemma of having gathered additional knowledge from nonprosecutorial duties. During negotiations of development plans, requests for variances to a board of adjustment or simply providing assistance to a citizen calling for information may lead to knowledge of important facts to a potential accused person's defense. For example, a citizen calls complaining of a code violation and the citizen is connected with the city attorney's office and the prosecutor handles the call. The citizen wants the law explained and, upon hearing the basis for the law, admits the offense. However, the citizen tells the prosecutor that she feels that she is being singled out and that everyone is committing the same violation. As a citizen, this unrepresented person called the prosecutor seeking legal clarification; however, she has now made potentially damaging statements in the event she is cited for a code violation. As a prosecutor, the attorney must ensure disclosure of his role as

the representative of the state in a criminal proceeding against the citizen under the Model Rules of Professional Conduct.

Immunity

Beyond the ethical complications inherent in such a dual role, private attorneys serving as city attorneys are not guaranteed immunity from possible liability. In The Development Group, L.L.C. v. Franklin Township Board of Supervisors, the court ruled that private persons who work in concert with state actors to deprive a person of constitutionally protected rights are acting under color of state law for the purpose of a § 1983 violation.[6] The attorney in The Development Group was a partner in a firm appointed as the town solicitor, his actions were deemed to "be attributed to the State" due to his function within the state system, and the terms of his employment did not remove him from potential liability.[7] It is important to note that prosecutors are "absolutely immune from liability in 'initiating a prosecution and presenting the State's case.'"[8] However, any actions not deemed by a court to consist of initiating and presenting the state's case, such as acting as an advocate for a pro se defendant, are not protected by absolute immunity.[9]

In contrast, the Second Circuit recently ruled that city attorneys are absolutely immune from liability when acting in their official capacity in defense of civil suits.[10] The court stated that even attorneys engaged in "questionable or harmful conduct during the course of [the] representation . . . is irrelevant. The immunity attaches to [a government attorney's] function, not to the manner in which he performed it."[11] This opinion recognizes a city attorney's role as an advocate of the governmental entity and removes state action from such a role. However, faced with ethical rules holding prosecutors to a higher duty than advocacy of a client, a prosecutor should not rely on this opinion to act in contravention of the jurisdiction's version of the Model Rule 3.8.

Conclusion

It is every attorney's duty to provide quality representation to his client. A prosecutor has the additional responsibility of acting within specialized ethical guidelines that appear to be in conflict with his duty to his client. A prosecutor must balance his ethical obligations with his duty to his client, and carry those obligations into all parts of his practice to ensure that he complies with the rules and avoids potential violations.

Endnotes

[1] Comment 1 to Rule 3.8 of the ABA Model Rules of Professional Conduct states that prosecutors carry the "responsibility of a minister of justice and not simply that of an advocate." Similarly, in Texas, Art. 2.01 of the Code of Criminal Procedure requires that prosecutors seek not to convict, but to see that justice is done.

[2] However, this article will only address the problems related to the dual roles of a prosecutor.

[3] MODEL RULES OF PROF'L CONDUCT R. 4.3 (2004).

[4] MODEL RULES OF PROF'L CONDUCT R. 3.8(c) (2004).

[5] *See* Henderson v. Fisher, 631 F.2d 1115, 1117 (3d Cir. 1980) (citing Haines v. Kerner, 404 U.S. 519 (1972) (allegations of pro se complaint are held to less stringent standards than pleadings drafted by lawyers)).

[6] *See* 2004 WL 2812049, at *22 (E.D. Pa) (citing Dennis v. Sparks, 449 U.S. 24, 27–28 (1980) (holding that private parties conspiring with judge were acting under color of state law even though judge was immune)).

[7] See 2004 WL 2812049, at *22 (citing West v. Atkins, 487 U.S. 42, 55–56 (1998) (reversing circuit court's decision affirming summary judgment in favor of physician in inmate's civil rights action under § 1983)).

[8]*Henderson*, 631 F.2d at 1120 (quoting Imbler v. Pachtman, 424 U.S. 409, 430–31 (1975)).

[9] *See Henderson*, 631 F.2d at 1120 (citing Forsyth v. Kleindienst, 599 F.2d 1203, 1211–16 (3d Cir. 1979) (prosecutorial act that does not fall within presenting the state's case is protected from § 1983 liability by qualified, not absolute, immunity.))

[10]See Zybryski v. Bd. of Trustees of the N.Y. Fire Dep't Pension Fund, 2004 WL 2238503, at *6 (S.D.N.Y.) (citing Spear v. Town of W. Hartford, 954 F.2d 63, 66 (2d Cir. 1992); Barrett v. United States, 798 F.2d 565, 572–73 (2d Cir. 1986)).

[11]*Zybryski*, 2004 WL 2238503, at *6 (quoting *Barrett*, 798 F.2d at 573).

From the Texas State Bar Juvenile Section

http://www.juvenilelaw.org/Articles/2003/ProsecutorEthics.pdf

ETHICS FROM A PROSECUTOR'S POINT OF VIEW

Prosecution Ethics

"It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done." Texas Code of Criminal Procedure, Art. 2.01
Although all attorneys are covered under the Texas Disciplinary Rules of Professional Conduct, only ONE group of attorneys are singled out for disciplinary rules specific to that group: prosecuting attorneys. As pointed out in Comment 1 to Rule 3.09, "A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. This responsibility carries with it a number of specific obligations."

Rule 3.09 of the Texas Disciplinary Rules of Professional Conduct is entitled "SPECIAL RESPONSIBILITIES OF A PROSECUTOR" and requires that a prosecutor "shall" (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause; (b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel; (c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pretrial, trial, or post-trial rights; (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and (e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07. …

Ethical Problems Confronted by Prosecutors

Here is a "top ten" list of disciplinary rule situations that are raised with respect to prosecutors. Usually either the prosecutor has been accused of violating the rule, or the prosecutor finds him/herself ina situation where they wonder if their conduct would constitute a violation:

(1) Suppression of exculpatory evidence. See Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct; Brady v. Maryland, 373 U.S. 73 (1963). Note that "mitigating" evidence must be disclosed as well. The evidence need not establish innocence to be "exculpatory".

(2) Improper statement to the press. See Rule 3.07. This includes public criticism of judges controlled by Rule 8.02. Prosecutors enjoy "prosecutorial immunity" for statements made in the courtroom (Marrero v. City of Hialeah 625 F.2d 499(5th Cir. 1980) cert. denied 450 U. S. 913 (1981)), but only "qualified immunity" for other public statements within the scope of their duties (see Marrero (supra); Wyse v. Dept. of Public Safety, 733 S.W. 2d (Tex.App.-Waco 1986, writ ref. N.R.E.).There is NO immunity for statements not within the scope of duties, and none for incorrect out-of-court statements motivated by bad faith or malice. (see Wyse supra.)

(3) Ex parte communication with the trial court. Rule 3.05(b);and Canons 3(A)(5) and 8(K), Code of Judicial Conduct.

(4) Prosecuting or threatening to prosecute a case unsupported by probable cause. Rule 3.09(a).

(5) Knowing use of false evidence. Rule 3.03(5)

(6) Communications with a party represented by counsel concerning the subject of that representation. Rule 4.02(a). In juvenile court, "parents, spouses, guardians, and guardians ad litem" are parties under the definition in F.C. 51.02(10).

(7) False statements of material fact. Rules 3.03 (concerning statements made to the court) and 4.01(a) (statements made to anyone else).

(8) Threats of criminal prosecution or grievance proceeding intended to discourage a person's service as a witness. Rule 4.04.

(9) Comments made to harass, or "embarrass" or influence the future jury service of a juror who has made the "wrong" decision. Rule 3.06(d).

(10) Being so eager to "win" or so angry because you didn't, that you allow your judgment to fail and you lose sight of "seeing that justice is done" and done properly.

From the TMCEC "Recorder"

http://www.tmcec.com/tmcec/public/files/File/The%20Recorder/2006/NL_0806_1.pdf

Ethics of CDL Masking

by John Vasquez, Municipal Judge, Austin

Effective September 1, 2003, holders of a Commercial Driver's License (CDL) are no longer eligible for deferral of moving violations by completion of a Driver's Safety Course (DSC) or deferred disposition.
Ineligibility for deferral of traffic offenses could be devastating to the holder of a CDL. In 1999, Congress created a new federal agency to improve commercial vehicle safety, the Federal Motor Carrier Administration (FMCSA). In authorizing the creation of the FMCSA, Congress found that the rate, number and severity of crashes involving commercial motor carriers was not acceptable.[1] The FMCSA tightens laws controlling the drivers of commercial motor vehicles. One provision of the MCSA prohibits the states from masking or deferring traffic violations of CDL holders. The Congressional Record clearly expresses Congress' intent to require every state to maintain a complete driving record of all traffic violations, including non-commercial vehicle violations committed by CDL holders. To enforce this requirement and other new mandates, Congress authorized the FMCSA to withhold motor carrier assistance program funds from non-complying states.

Effective September 1, 2002, the U.S. Department of Transportation issued new rules prohibiting states from masking convictions of CDL holders:

§384.226 Prohibition on masking convictions. The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed in another State.

In Texas, CDL holders became ineligible for mandatory DSC and the deferral of traffic violations on
September 1, 2003. Consequently, municipal and justice court judges must now deal with CDL holders who wish to continue their employment and support their families. Most likely, their only option is to take the traffic violations to trial.

In some cases, judges are being asked to permit the circumvention of Texas law. Some of the more common ways to mask traffic charges against CDL holders include:
1. Changing the charge from a moving violation to a non-moving violation;
2. Permitting the defendant to pay a Failure to Appear charge then dismissing the traffic violation; and
3. Dismissal of the traffic charge upon the defendant making a contribution equal to the fine amount to the jurisdiction.

Notably, the Legislature has now changed the law to prevent CDL holders from temporarily dropping their CDL license in order to qualify for a deferred disposition. Effective September 1, 2005, the status of the driver at the time of the issuance of the citation determines whether the driver can qualify for mandatory DSC or deferred disposition.

Judges may be asked to grant leniency to a CDL holder. You must be careful in these circumstances not to approve the circumvention of Texas law. If you are asked to mask a traffic violation charged against a CDL holder, consider your ethical obligation. What might be the consequences of masking a violation?

The Commercial Driver's License

A working knowledge of CDLs and the regulation of CDL holders is essential to understanding the court's role in a much larger federal landscape. The purpose of the Commercial Motor Vehicle Act of 1986 was to improve traffic safety by removing unsafe and unqualified commercial drivers from the road. The licensing guidelines and standards issued by the U.S. Department of Transportation were adopted by all the states by April 1992. When the FMCSA of 1999 passed the rules governing CDL holders, state laws were tightened substantially.

In accordance with federal regulations and federal law, Texas law now establishes three classes of CDLs:
(a) The department may issue a Class A, Class B or Class C commercial driver's license.
(b) Class A covers a combination of vehicles with a gross combination weight rating of 26,001 pounds or more, if the gross vehicle weight rating of the towed vehicle or vehicles exceeds 10,000 pounds.
(c) Class B covers: (1) a single vehicle with a gross vehicle weight rating of 26,001 pounds or more;
(2) a single vehicle with a gross vehicle weight rating of 26,001 pounds or more towing a vehicle with a gross vehicle weight rating of 10,000 pounds or less; and
(3) a vehicle designed to transport 24 passengers or more, including the driver.
(d) Class C covers a single vehicle or combination of vehicles not described by Subsection (b) or (c)
that is: (1) designed to transport 16-23 passengers, including the driver; or
(2) used in the transportation of hazardous materials that require the vehicle to be placarded under 49 C.F.R. Part 172, Subpart F.
(e) The holder of a commercial driver's license may drive any vehicle in the class for which the license is issued and lesser classes of vehicles except a motorcycle or moped. The holder may drive a motorcycle only if authorization to drive a motorcycle is shown on the commercial driver's license and the requirements for issuance of a motorcycle license have been met.[5]

As required by the FMCSA, Texas law also requires that CDL holders who drive certain types of loads obtain special endorsements:

(a) The department may issue a commercial driver's license with endorsements: (1) authorizing the driving of a vehicle transporting hazardous materials, subject to the requirements of Title 49 C.F.R. Part 1572; (2) authorizing the towing of a double or triple trailer or a trailer over a specified weight; (3) authorizing the driving of a vehicle carrying passengers; (4) authorizing the driving of a tank vehicle; (5) representing a combination of hazardous materials and tank vehicle endorsements; or (6) authorizing the driving of a school bus, as defined by Section 541.201.

(b) The holder of a commercial driver's license may not drive a vehicle that requires an endorsement unless the proper endorsement appears on the license.

(c) A person commits an offense if the person violates Subsection(b). An offense under this section is a Class C misdemeanor.

Depending on the type of violations, CDL holders can be disqualified from driving commercial motor vehicles for periods of 60 days, 120 days, one year, three years, and life. Texas Transportation Code §522.081. A CDL holder who has as few as two convictions for “serious traffic violations” can be suspended from driving commercial motor vehicles. Texas law defines “serious traffic violations” as: (A) a conviction arising from the driving of a motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for: (i) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit; (ii) reckless driving, as defined by state or local law; (iii) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident; (iv) improper or erratic traffic lane change; (v) following the vehicle ahead too closely; or (vi) a violation of Sections 522.011 or 522.042; or (B) a violation of Section 522.015.[7] CDL holders are also ineligible for dismissal of traffic offenses upon completion of a drivers safety course. Tex. Code of Crim. Proc. Art. 45.0511(s). Similarly, CDL holders are ineligible for suspension collisions than other vehicles. Of 6,328,000 motor vehicle crashes, 6.9% involved large trucks and buses. Of 38,252 fatal vehicle collisions, 4,289 (11.2%) involved large trucks and buses. Therefore, large trucks and buses were almost twice as likely to be involved in a collision. Similarly, large trucks and buses were almost three times more likely to be involved in a fatal accident.