

**INVESTIGATION:  
YOUR ETHICAL  
DUTY AND THE  
SKILLS YOU NEED**

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**YOU HAVE AN ETHICAL DUTY TO  
INVESTIGATE**

Mississippi Rules of Professional Conduct  
1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and **preparation** reasonably necessary for the representation.

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**PROFESSIONAL CONDUCT  
1.1 COMPETENCE**

**COMMENTS**

**Thoroughness and Preparation.** Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See [RPC 1.1\(c\)](#).

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### ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION AND DEFENSE FUNCTION

#### Standard 4- 4.1 Duty to Investigate

(a) Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

(b) Defense counsel should not seek to acquire possession of physical evidence personally or through use of an investigator where defense counsel's sole purpose is to obstruct access to such evidence.

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### ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION AND DEFENSE FUNCTION

#### Standard 4- 4.3 Relations With Prospective Witnesses

(a) Defense counsel, in representing an accused, should not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) Defense counsel should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse a witness for the reasonable expenses of attendance upon court, including transportation and loss of income, attendance for depositions pursuant to statute or court rule, or attendance for pretrial interviews, provided there is no attempt to conceal the fact of reimbursement.

(c) It is not necessary for defense counsel or defense counsel's investigator, in interviewing a prospective witness, to caution the witness concerning possible self-incrimination and the need for counsel.

(d) Defense counsel should not discourage or obstruct communication between prospective witnesses and the prosecutor. It is unprofessional conduct to advise any person other than a client, or cause such person to be advised, to decline to give to the prosecutor or defense counsel for codefendants information which such person has a right to give.

(e) Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

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### WHERE DO YOU START?

- Plan your interviews
- Review all written documents
- Decide what witnesses have significant information about the case



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### WHOM TO INTERVIEW?

- Client
- Reporter
- Witnesses mentioned in any reports
- Anyone who provided a statement about the case
- Anyone you think might have significant knowledge of your case

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### HOW DO YOU FIND WITNESSES?

- Discovery
- Client or other witnesses provide contact information
- Internet-networking sites
- Internet-search sites
- Social history records
- Telephone Books



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### HOW DO YOU FIND WITNESSES?

- Use a GPS, paper map or internet site such as googlemaps or mapquest
- Ask the client or his family for directions to the witness
- Ask neighbors for directions
- Go to the Fire station-they know where every address in town is located

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### WHERE DO YOU INTERVIEW?

- Most productive interviews are in the witness' home
- More relaxed environment
- Home environment gives investigator a sense of the witness' background



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### HOW DO YOU INTERVIEW?

- In person
- In a safe confidential setting
- Allowing plenty of time
- Assuming follow-up will be necessary
- Without an appointment

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### BE SENSITIVE TO CULTURAL BARRIERS

- Race
- Class
- Gender
- Age
- Education

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### BE SENSITIVE TO PSYCHOLOGICAL BARRIERS

- Witnesses may have their own cognitive or psychiatric impairments
- Interviews may retraumatize the witness
- Interviews are an invasion of privacy



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### BE MINDFUL OF TRAUMA

- If the witness saw or experienced a violent act, use compassion
- Be friendly and patient
- You may need to take breaks

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### WHERE DO YOU START?

- Introduce yourself and explain why you are there
- Build rapport
- Get witness's contact information
- Provide your contact information

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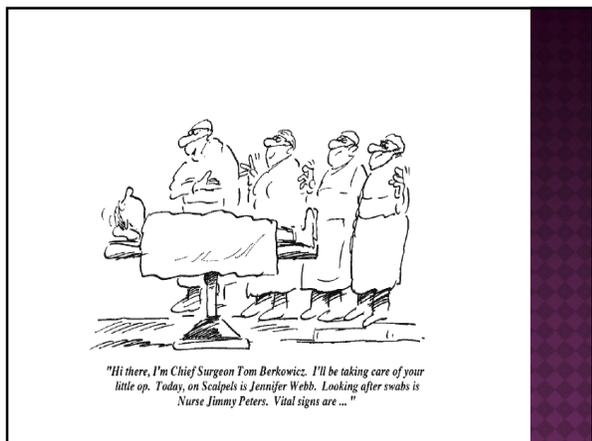
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### INTERVIEW TECHNIQUES

- Focus on building rapport
- Make a good first impression
- Be professional
- To help the witness relax, ask general friendly questions before diving into interview
- Never patronize or talk down



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### WHY IS RAPPORT IMPORTANT?

When people are relaxed, they disclose more  
When people are relaxed they often reveal their biases



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### INTERVIEW TECHNIQUES

- Use open-ended questions
- Avoid compound questions that combine two or three issues in a single question
- Use reflective listening
- Mirror the witnesses words in following up
- Avoid judgment
- Don't label
- Don't ask loaded Questions Ex. Why did you hit your child?

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### INTERVIEW TECHNIQUES

- Encourage concreteness.
- Ask for detail.
- Exactly what happened?
- Where did it happen?
- When did it happen?
- Follow up with what happened next.
- Ask for descriptions involving the senses.
- What color were the walls?
- What did the kitchen smell like?
- What did the argument sound like?

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### LISTEN!

- Listen to what the witness has to say without interruption
- Never complete the witness' statement
- Welcome silence

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### NONVERBAL BEHAVIOR

- Be aware of nonverbal behavior
- Don't rely on stereotypical views about nonverbal behavior
- Make notes about nonverbal behavior



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### RELUCTANT WITNESSES

- It is your job to get the reluctant witness to disclose what they know
- Use careful, patient and emphatic questions
- Let the witness consult with someone if they ask
- Clarify that witness can stop at any time
- Do NOT threaten, coerce or intimidate
- If the witness refuses to speak, accept it and document the situation

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### INCONSISTENCIES

- Address inconsistent statements
- Don't be adversarial
- Be friendly and direct



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### HOW TO END AN INTERVIEW

- Ask the witness if they have questions.
- Ask witness if there is anything they would like to add
- Thank witness for their time
- Ask if it would be ok if you contacted them again (make sure to have correct contact information)

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Maintain a relationship. Stay in contact with witness throughout the investigation



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