

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

### ALEC's Corporate Board —in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → Model Legislation → Civil Justice

### The Honesty in Lawyering Act

Title \_\_ of the [ ] Code is amended by adding Chapter \_\_\_ to read as follows:

#### CHAPTER \_\_. ATTORNEY MISCONDUCT

**SECTION 1. SHORT TITLE.** - This chapter may be cited as the "Honesty in Lawyering Act"

#### SECTION 2. FINDINGS AND PURPOSES.

(A) **FINDINGS.** - The legislature finds that -

(1) State courts have held that Legislatures have constitutional authority to enact legislation affecting business or entrepreneurial aspects of the practice of law, as well as attorney misconduct that is against the public interest;<sup>[1]</sup>

(2) The severity and number of high-profile episodes of unlawful or deceitful attorney practices nationally have exposed specific laws and rules, regulating either attorney business practices or misconduct against the public interest, that may not assure the public that such misconduct will be timely exposed or that the laws and rules will be adequately enforced in [the State]; and

(3) Legislating specific measures to guard against such attorney misconduct is essential for protecting consumers and the public interest.

(B) **PURPOSES.** - The purposes of this Act are:

(1) To establish needed and greater protection for average consumers of legal services against unlawful or deceitful practices of attorneys; and

(2) To provide transparency requirements and more checks and balances to expose, curb, and rectify attorney misconduct that violates the public interest.

#### SECTION 3. SUBSTANTIVE PROVISIONS.

(A) **Attorney Disclosures and Requirements Related to Business Dealings With Clients and the Public.** An Attorney admitted to the [state bar association] or otherwise permitted to practice law in [State] shall be required to comply with the following standards in his or her relations with any client, potential client, or other member of the public:

(1) The Attorney shall affirm in writing in any Agreement to provide legal services that the Attorney, and/or those with whom he is in partnership or are otherwise employed by or affiliated with the Attorney's entity of legal practice, possesses the ability, time, and resources to provide those legal services adequately and competently.<sup>[2]</sup>

(2) The Attorney shall fully disclose in any Agreement to provide legal services any agreement or intent for an Outside Counsel, defined as an attorney not in partnership with or employed by the Attorney's entity of legal practice, to provide any of the legal services pursuant to the Agreement.<sup>[3]</sup> The disclosure shall include the scope and reasonably anticipated costs associated with engaging such Outside Counsel. The Attorney must amend the Agreement and receive the client's written consent to engage an Outside Counsel should the agreement or intent to engage the Outside Counsel arise after the Agreement is effectuated.

(3) In any Contingent Fee Agreement, defined as any agreement to provide legal services where the Attorney's fee is contingent, in whole or in part, upon a judgment being rendered in favor of or a settlement being obtained for a client and is either a fixed amount or an amount to be determined by a specified formula, including, but not limited to, a percentage of any judgment rendered in favor of or settlement obtained for the client,<sup>[4]</sup>

(a) the Attorney shall fully disclose all fees and costs reasonably anticipated to be incurred to provide the legal services, and provide an

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

explanation of how the contingent fee will be calculated and the manner in which costs will be handled, both while the matter is pending and at resolution.<sup>[5]</sup> The attorney shall also disclose the reasonably anticipated number of hours each attorney is likely to spend to provide said legal services.

(b) the Attorney shall provide a client with three (3) business days to review and cancel the Agreement, and the Attorney shall conspicuously disclose in the Agreement this right to cancel.<sup>[6]</sup>

(c) the Attorney shall not acquire from a client absolute authority to control major decisions in the matter.

(d) the Attorney, during representation, shall have a duty to communicate timely and adequately so that a client is properly informed about his or her matter when the client inquires.<sup>[7]</sup> The Attorney shall also provide clients in a reasonable time with copies of any complaint, any answer or reply, and any other pleading or document served or received in the matter that materially impacts the client's interests in the matter. The Attorney shall notify the client in a reasonable time of any settlement offer, dispositive motion, court ruling and other material development affecting the client's principal interests.

(e) the Attorney, if he or she becomes entitled to compensation or reimbursement of costs under that Contingent Fee Agreement, shall provide the client (or the lead plaintiff(s) and the court in a public filing where the Attorney represents a class) with a signed closing statement at the time of or prior to the receipt of such compensation or costs and a complete accounting of all financial transactions related to the provision of legal services,<sup>[8]</sup> including –

(i) the amount of the contingent fee, including any division of the contingent fee with any Outside Counsel;

(ii) the number of hours each attorney spent providing the legal services;

(iii) the resulting fee per hour, determined by dividing the total contingent fee in (i) by the total number of attorney hours in (ii);

(iv) an itemized accounting of all costs; and

(v) any other information the attorney considers appropriate.

(4) The requirements of Section 3(A)(3) do not apply where the client is a nongovernmental entity deemed to be a knowledgeable consumer of legal services, which is defined for the purpose of this provision as a sole proprietorship, or other business entity that (i) employs or otherwise retains a legal officer whose responsibilities include review of an Agreement for legal services; (ii) employs at least thirty (30) employees during the calendar year for at least 1,250 hours of employment per employee,<sup>[9]</sup> or (iii) signs a written waiver, as a separate instrument from the Agreement for legal services, of these requirements that expressly states each requirement being waived. An Attorney who relies in good faith on the client's representation that its business meets the requirements of Section 3(A)(4)(i) and (ii) of this Section shall not be liable for any violation of Section 3(A)(3).

(5) Where an Attorney maintains a fiduciary or escrow account(s) for receiving or holding funds on behalf of a client(s) and the collective deposits in the account(s) from matters in which the attorney was retained under Contingent Fee Agreements exceed \$1,000,000 during a calendar year, the Attorney shall sign and file with the [State bar association] a certification from an Outside Financial Expert, as defined below, that the account(s) has been maintained in accordance with all applicable laws and regulations. For the purposes of this subsection, an Outside Financial Expert shall be a person not in partnership with or employed by the Attorney's entity of legal practice who, through education and experience as a licensed public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer, possesses a comprehensive understanding of generally accepted accounting principles and financial statements, and experience with internal accounting controls and audit committee functions.<sup>[10]</sup>

(6) The Attorney shall be subject to the requirements, enforcements and remedies of the [State consumer protection statute] for any advertisement, public statement, or communication to a potential client.<sup>[11]</sup>

**(B) Attorney Disclosures to Protect the Public Interest Against Attorney Misconduct in the Courts.** In accordance with the obligation that an attorney has under [State statute]<sup>[12]</sup> to not engage in any deceit or collusion with respect to, or consent to any deceit or collusion with intent to deceive, the court, a judge or any party, the Attorney shall initially, and timely thereafter as warranted, certify to the court in a disclosure statement<sup>[13]</sup> served on the parties in the matter the following:

(1) the existence of any financial, familial, or material personal relationship the Attorney or the party the Attorney is representing has with any judge, juror, witness, mediator, magistrate or other person who is in a position to

directly and materially impact the matter.<sup>[14]</sup> This requirement shall not include any campaign contribution that has been reported or is reportable pursuant to [state judicial election code].

(2) the existence of any financial relationship that the Attorney, the party the Attorney is representing, or the Attorney's entity of legal practice has with a trustee, vendor, or other person receiving funds for products or services directly related to the prosecution or resolution of the matter.

(3) that all factual information contained in a claim, pleading, motion, brief, or other written material or written statement prepared or signed by the Attorney and submitted to the court or served on a party in the matter is not false based on the Attorney's reasonable belief and is not inconsistent with any other claim made against any person or entity for the same injury.<sup>[15]</sup>

Any disclosure by the Attorney pursuant to section (3)(B) of this Act shall include disclosures for all attorneys who have provided legal services in the matter to the party.

#### **SECTION 4. ENFORCEMENT**

The provisions of this Act shall be in addition to and not in lieu of any other available remedies or penalties, including any ethics rules applicable to attorneys that provide additional protections for legal consumers. An Attorney who fails to comply with the provisions of this Act shall be subject to court sanctions, disciplinary action by the state bar association or other such professional organization(s) through existing procedures, and civil liability in an action brought by a party alleging injury from failure to comply with this Act. **A party alleging injury from failure to comply with this Act shall elect as between the civil liability relief granted by this Section and the remedy granted by Section 3(A)(6) of this Act, and shall not be entitled to recovery under both this Section and Section 3(A)(6) of this Act.**

#### **SECTION 5. RULE OF CONSTRUCTION**

Should there be any direct conflict between a requirement under this Act and an existing requirement under [the state's Judicial Code] or [the state's Bar Association's ethical rules] at the time the Act is enacted so that the requirements cannot be reconciled or consistently stand together, the existing requirement of [the state's Judicial Code] or [the state's Bar Association's ethical rules] shall preempt the requirement in this Act.

#### **SECTION 6. SEVERABILITY.**

The provisions of this Act are severable. If any portion of this Act is declared unconstitutional or the application of any part of this Act to any person or circumstance is held invalid or preempted under Section 4, the remaining portions of the Act and their applicability to any person or circumstance shall remain valid and enforceable.

#### **SECTION 7. EFFECTIVE DATE.**

This Act shall take effect on its date of enactment and shall only apply to agreements entered into and to alleged violations occurring after the effective date.

*Adopted by the Civil Justice Task Force  
May 2, 2009.*

*Approved by the American Legislative Exchange Council's Board of Directors  
June 6, 2009.*

<sup>[1]</sup> See, e.g., Haynes v. Yale-New Haven Hosp., 699 A.2d 964, 972 (Conn. 1997); Forti v. New York State Ethics Comm'n, 555 N.Y.S.2d 235, 243 (N.Y. 1990); Short v. Demopolis, 691 P.2d 163 (Wash. 1984); Cowern v. Nelson, 290 N.W. 795, 797 (Minn. 1940); Clark v. Austin, 101 S.W.2d 977, 984 (Mo. 1937); Rhode Island Bar Ass'n v. Automobile Service Ass'n, 179 A. 139, 143 (R.I. 1935)

<sup>[2]</sup> See AAJ Code of Conduct and Professionalism Rule 9 ("Accept only cases and legal matters for which the attorney or cocounsel possesses the requisite knowledge, skill, time, and resources to prosecute diligently and competently."); Model Rules of Prof'l Conduct Rule 1.1.

<sup>[3]</sup> See AAJ Code of Conduct and Professionalism Rules 10 ("Disclose to clients the intention to refer their case to another attorney or to engage the services of another attorney to represent their interests").

<sup>[4]</sup> See Ohio Rev. Code Ann. §4705.15 (providing a description of a contingency fee agreement and a basis for legislation requiring certain disclosures in connection with such agreements).

<sup>[5]</sup> See AAJ Code of Conduct and Professionalism Rules 7 ("Disclose and explain the fee to be charged to the client and how it is calculated; the handling of costs while the case is pending and on resolution; and, if contingent upon recovery, memorialize the fee clearly in a written fee agreement"); Model Rules of Prof'l Conduct Rule 1.5.

<sup>[6]</sup> See, e.g., Ind. Code § 32-32-3-7 (right to cancel time-share real property sales contract within 72 hours).

<sup>[7]</sup> See AAJ Code of Conduct and Professionalism Rule 11 ("Communicate promptly, frankly, and fully with clients when they inquire about their cases and at other times as appropriate to keep them informed about the progress and status of their

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cases”); Model Rules of Prof’l Conduct Rules 1.3, 1.4.

[8] These general requirements already are ALEC policy; they were adopted as part of the ALEC Model “Legal Consumer’s Bill of Rights Act.” Similar concepts are found in other areas of law. See, e.g., D.C. Code § 42-3651.08 (final accounting for tenant receivership of real property); D.C. Code § 44-1002.08 (final accounting for nursing home receivership); H.R. 6049, Sec. 311, 110<sup>th</sup> Cong. (2008) (Renewable Energy and Job Creation Act of 2008).

[9] The purpose of this provision is to provide a safeguard for unsophisticated consumers of legal services. This provision is, therefore, unnecessary, and could prove overly burdensome, for larger businesses and other more experienced consumers of legal services. See, e.g., 29 U.S.C. § 2611(2) (Family Medical Leave Act eligible employer provisions); 26 U.S.C. § 5000(b)(2) (tax coverage of eligible group health plan).

[10] See, e.g., 15 U.S.C. § 7265 (disclosure of audit committee financial expert provision of Sarbanes-Oxley Act of 2002).

[11] See AAJ Code of Conduct and Professionalism Rule 3 (“Engage only in advertising that fully complies with the rules of the jurisdictions in which the member is admitted or where the advertising is placed, and not engage in any form of false, misleading, or deceptive advertising.”); Model Rules of Prof’l Conduct Rule 7.2.

[12] See, e.g., N.Y. Jud. Law § 487 (“An attorney or counselor who: 1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party... Is guilty of a misdemeanor, and in addition to the punishment prescribed therefore by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.”). Statutes substantially similar to New York’s law have been enacted in numerous other states. See Cal Bus. & Prof. Code § 6128; Ind. Code § 33-43-1-8; Iowa Code § 602.10113; Minn. Stat. § 481.071; Mont. Code Ann. § 37-61-406; Neb. Rev. Stat. § 7-106; N.M. Stat. § 36-2-17; N.D. Cent. Code § 27-13-08; S.D. Codified Laws § 16-19-34; Okla. Stat. tit. 21 § 575; Wyo. Stat. Ann. § 33-5-114.

[13] See, e.g., Colo. Rev. Stat. § 26-6-301 (state legislative contribution disclosure).

[14] See Model Rules of Prof’l Conduct Rule 1.10.

[15] See AAJ Code of Conduct and Professionalism Rule 2 (“Not prosecute or counsel any action, or assert any claim or defense, which is false, frivolous or wholly insubstantial”); Model Rules of Prof’l Conduct Rule 3.3.

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECExposed.org](http://www.ALECExposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.

Center for Media and  
Democracy's quick summary:

This bill imposes new standards of behavior on attorneys. Section 3(a)(3), in particular, would make class action lawsuits more burdensome for attorneys. While legislatures have some authority to regulate the practice of law, rules for attorney conduct and ethics are usually set by the state Supreme Court.