



Ethical Issues For New Lawyers Starting Out And Old Lawyers Starting Over

BY:

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OFFICE ORGANIZATION AND ADMINISTRATION

- Observe Basic Common-Sense Principles
- Resist The Urge To Buy The Latest And Greatest
- Keep Overhead Low

ORGANIZATION

- Acquire Good Organizational Skills
- Or Hire A Good Secretary Who Has Them
- Acquire (or Create) and Follow Good Systems
 - Improves Efficiency
 - Reduces Risk of Missed Deadlines
 - Improves Communication With Clients
 - Enhances Your Personal & Professional Reputation
 - Reduces Risks of Malpractice Claims
 - Reduces Risks of Ethics Violations

LACK OF ORGANIZATION

- May Lead To:
 - Fewer Clients
 - Less Fees
 - Loss of Clients
 - Damage to Professional Reputation
 - Malpractice Claims
 - Ethics Complaint from State Bar

TOP 6 ETHICS COMPLAINTS

1. Lack of Diligence (Rule 1.3)
2. Failure to Communicate (Rule 1.4)
3. Misconduct (Rule 8.4)
4. Failure to Respond (Rule 8.1(b))
5. Competence (Rule 1.1)
6. Safekeeping Property (Rule 1.15)

ETHICS COMPLAINTS:

1. Lack of Diligence (Rule 1.3)

- Failure to communicate
- Scope of representation
- Procrastination
- Poor office management
- No case tracking
- No conflicts checks system

ETHICS COMPLAINTS:

1. Lack of Diligence (Rule 1.3)

- No follow up
- No system
- Heavy workload
- Depression/Addiction
- Almost Always Leads To Rule 1.4 Violation
- A note about Competence-Rule 1.1

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Engagement
- Basis or rate of fees and expenses
- Scope of representation
- Case Status
 - Return phone calls
 - Be honest

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Informed Decisions
 - Engagement
 - Identify client
 - Identify matter
 - Identify who will be working on the matter
 - Scope and duration of representation
 - Full disclosure, cooperation and confidentiality
 - Basis and rate of fee, costs and expenses, billing, payment terms

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Informed Decisions
 - Engagement
 - What fee covers and what it does not
 - Circumstances that will allow termination by lawyer
 - Client's right to terminate
 - Client file retention policy
 - Results not guaranteed
 - Instructions to client to sign and return copy

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Informed Decisions
 - Turn-down or Disengagement (Rule 1.16(d))
 - Statement of nonrepresentation
 - Basis of decision where permissible and appropriate
 - Statement of matters in which the firm represents the client and those in which the firm does not
 - Or that the firm does not represent the person in any matter, whichever is applicable
 - Disclaimer of any duty or responsibility to monitor changes in the circumstances and law affecting the matter

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Informed Decisions
 - Turn-down or Disengagement (Rule 1.16(d))
 - Statement encouraging the person to engage another lawyer for a second opinion
 - Notice of any known deadlines or possible expiration of any statute of limitations
 - Proof of receipt is advisable

ETHICS COMPLAINTS:

2. Failure to Communicate (Rule 1.4)

- Other information reasonably necessary to allow the client to make informed decisions regarding the representation

ETHICS COMPLAINTS:

3. Misconduct (Rule 8.4)

- Violation of any Alabama Rule of Professional Conduct
- Criminal Conduct
- Moral Turpitude
- Fraud, Deceit, Dishonesty, Misrepresentation
- Conduct Prejudicial to the Administration of Justice
- Influence Peddling
- Assist judicial officer in violating Canons of Judicial Ethics

ETHICS COMPLAINTS:

3. Misconduct (Rule 8.4)

- Incidences of Personal Immorality
 - Violence
 - Breach of fiduciary duty
 - Addiction
- Pattern of minor or insignificant infractions
- Abuse of public office

ETHICS COMPLAINTS:

4. Failure to Respond (Rule 8.1(b))

- Knowingly make a false statement of material fact; or
- Fail to disclose a fact necessary to correct a known misapprehension; or
- Knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority

ETHICS COMPLAINTS:

5. Competence (Rule 1.1)

- A Lawyer Shall Provide Competent Representation to a Client
- Competence Representation Requires the Legal Knowledge, Skill, Thoroughness, and Preparation Reasonably Necessary to Accomplish the Representation
- Lawyer & Client May Agree to Limit the Scope of Representation
 - Do This In Writing!

ETHICS COMPLAINTS:

5. Competence (Rule 1.1)

- Must Maintain Competence Through Continuing Study and Education
- Avoid Practicing “Door Law”

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Mandatory IOLTA
 - Nominal, Short Term and Not Practicable
 - Required Annual Certification to Bar That All IOLTA Eligible Funds are Held in an IOLTA Account, or That the Lawyer is Exempt

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Money and Property
 - Any Property of Client or Third Party Delivered to Lawyer
 - Client Files
 - Documents
 - Photos
 - Physical Evidence
 - Videotapes and Audiotapes, etc.

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- No Co-mingling of Client's and Lawyer's Property or Funds

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Trust Account Designation
 - "Trust Account"
 - "Fiduciary Account" or
 - "Escrow Account"
- Applies To:
 - Trust Account
 - Checks
 - Deposit Slips
- Ownership at Receipt: Who Owns the Funds?

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Non-Trust (Business) Account Designation
 - “Business Account”
 - “Professional Account”
 - “Office Account”
 - “General Account”
 - “Payroll Account”
 - “Regular Account”
- Ownership at Receipt: Who Owns the Funds?

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Other Requirements For Trust Accounts
 - Complete Records
 - Prompt Notification
 - Prompt Delivery
 - Prompt Accounting
 - Disputed Funds
 - Prompt Resolution

ETHICS COMPLAINTS:

6. Safekeeping Property (Rule 1.15)

- Other Requirements For Trust Accounts
 - Uncollected Funds
 - Automatic Overdraft Notification Agreement
 - No Trust Account Notice
 - No Interest
 - Interest to ALF or ACJF

OTHER NEW LAWYER RESOURCES

- Alabama State Bar, Law Office Management and Practice, Laura Callaway (www.alabar.org)
- ASB Member Benefits (http://www.alabar.org/members/member_benefits.cfm)
- Young Lawyer's Section, Alabama State Bar
- New Associate's Survival Guide, Young Lawyer's Division, North Carolina Bar Association (www.ncbar.org)

OTHER NEW LAWYER RESOURCES

- ABA Solo, Small Firm and General Practice Division
(www.americanbar.org/groups/gpsolo.html)
- New Lawyer Survival Guide, The Missouri Bar, www.mobar.org

Any Questions?

Where's the
bathroom?

