

Current Ethics Challenges and Best Practices Featuring Law Firm Managing Partners and General Counsel

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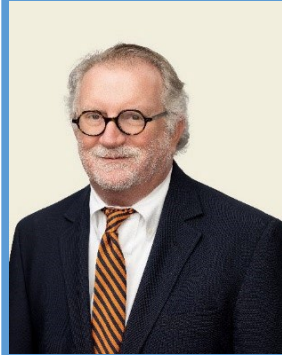
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Learning Objectives

- The AI-assisted practice of law is evolving at a breakneck speed, but the ethical rules stay the same; learn best practices from managing partners and general counsel for staying within the bounds of the disciplinary rules.
- Evaluate lateral hiring practices and how to avoid disqualifying conflicts, with an interactive ethics presentation featuring best practices and first-hand experience from managing partners and general counsel.
- Keep abreast of the latest challenges facing private practice lawyers with the Corporate Transparency Act and gain insight from managing partners and general counsel discussing ethical implications within the firm.

Rules of Professional Conduct

- [Rule 1.7](#) Conflict of Interest: Current Clients
- [Rule 1.8](#) Conflict of Interest: Current Clients: Specific Rules
- [Rule 1.9](#) Duties to Former Clients
- [Rule 1.10](#) Imputation of Conflicts of Interest: General Rule
- [Rule 1.11](#) Special Conflicts of Interest for Former and Current Government Officers and Employees
- [Rule 1.12](#) Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
- [Rule 1.13](#) Organization as Client
- [Rule 1.14](#) Client with Diminished Capacity
- [Rule 1.15](#) Safekeeping Property
- [Rule 1.16](#) Declining or Terminating Representation
- [Rule 1.17](#) Sale of Law Practice
- [Rule 1.18](#) Duties to Prospective Client

Rule 1.1 - Competence

ABA Model Rule 1.1

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

Comment 8:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with **relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Key Takeaway: To the extent that an attorney must adopt new practices or gain new technological skills in order to meet ethical duties while practicing law, the attorney must do so.

Rule 1.7 – Conflicts of Interest

- Rule 1.7(a) prohibits an attorney from representing a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is:
 - (1) Direct adversity; or
 - (2) A significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
- Rule 1.7(b) allows an attorney to represent multiple clients if the attorney reasonably believes she is able to adequately represent the interests of each individual.

“Material Limitation Conflicts”

Types of “material limitation” conflicts of interest:

- Lawyer represents multiple clients in the same matter – *i.e.*, employer and employee, or co-plaintiffs;
- Lawyer makes a material mistake in the handling of a case (lawyer now has a personal interest in not getting sued for malpractice);
- So-called “positional conflicts,” where lawyers in the same law firm argue different sides of a legal issue in unrelated matters; and
- Service of subpoena on a firm client.

“Significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.”

Rule 5.1 - Supervision

ABA Model Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the [Rules of Professional Conduct](#).
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the [Rules of Professional Conduct](#).
- (c) A lawyer shall be responsible for another lawyer's violation of the [Rules of Professional Conduct](#) if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Virginia Legal Ethics Opinion 1872 (2013) – “Additional measures may be necessary to supervise staff who are not physically present where the lawyer works.”

ABA Resolutions Regarding AI

The ABA periodically passes resolutions for guidance to lawyers and other professionals on the use of AI:

- **ABA Resolution 112:** Urges courts and lawyers to address the emerging ethical and legal issues related to the usage of AI in the practice of law (passed in August 2019).
- **ABA Resolution 700:** Urges governments to refrain from using pretrial risk assessment tools unless data supporting risk assessment is transparent, publicly disclosed, and validated to demonstrate the absence of bias (passed in February 2022).
- **ABA Resolution 604:** Urges organizations that design, develop, deploy, and use AI systems and capabilities to follow several guidelines (passed in February 2023)

AI and Ethical Rules

Rule 1.1 – Competence

Rule 1.3 – Diligence

Rule 3.3 – Candor toward the Tribunal (false statement of law)

Rule 5.1 – Responsibilities of a Partner or Supervisory Lawyer

See also, Fed. R. Civ. P. 11 (court may sanction an attorney for misrepresenting facts or making frivolous legal arguments)

Corporate Transparency Act

- Federal requirements enacted under the Corporate Transparency Act that require small businesses to report information about themselves and their beneficial owners.
- Effective on January 1, 2024.
- As a result, many companies must report information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury.

Corporate Transparency Act

Who Must Report?

- With certain limited exemptions (23 in total), the law applies to all corporations, limited liability companies, limited partnerships, and other entities registered to do business in the United States.
- This includes foreign entities that register to do business in a particular state.
- The law has a broad reach, and reporting is not limited by industry.

Departing Lawyers

ABA Formal Opinion 489:

- Ethics rules do not allow non-competition clauses in partnership, member, shareholder, or employment agreements.
- Law firm managers have ethical obligations to assure the orderly transition of client matters when lawyers notify a firm they intend to move to a new firm.
- Departing lawyers should communicate with all clients with whom the departing lawyer has had significant client contact that the lawyer intends to change firms.
- Client files belong to the client, not the law firm.

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