Ethics Tip: Consider the 5 C's

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When you consider ethics issues, there are five areas you must pay attention to...and each begins with the letter 'C'.

Ethics are covered by the American Bar Association's Model Rules of Professional Conduct (www.abanet.org) and also by your state's Model rules. For purposes of this article, I will refer to the ABA's Model Rules.

1. Conflicts: Model Rules 1.7-1.11 refer to conflicts of interest that attorneys may encounter. Here are some tips to avoid conflicts:Have a system in place to check conflicts. This should include both former and current clients.

Who's the client? Be sure it is clear whom the firm is representing. Is it the husband, the wife, or the husband and the wife? Is it the insurance company or the insured? The corporation or a corporate employee?

Never use information you have gathered during the representation of a client to later sue that client.Pay attention to new hires, both attorneys and support staff. If they have a conflict, the firm may avoid disqualification by obtaining waivers from opposing parties and by screening the employee from contact with the matter.

2. Confidentiality: Model Rule 1.6 refers to the duty to keep all information related to the representation of a client confidential.Never discuss client matters with anyone outside the office. This includes billing information and factual situations...even if you don't mention the client's name. 'Outside the office' includes the hallway, elevator, rest rooms, courthouse hallways, restaurants, parties and seminars.

Be careful when you're using electronics. Conversations on a cell phone have an expectation of privacy but only when the parties take steps to keep the conversation private. Keep careful watch over your laptop...if it's stolen, a wealth of data could be lost or compromised.

Emails and faxes also have an expectation of privacy but you should always have the client's permission (preferably in writing) before communicating this way. Be sure the client is available to receive the email or the fax so that the communication is not intercepted by a third party.

There are some exceptions to the confidentiality rule: to prevent the client from killing or seriously harming someone; to prevent the client from committing a crime; to bring or defend a claim against a client. In each of these situations, the attorney may disclose only information essential to the matter.

3. Cash. Model Rule 1.15 covers the duty to protect the client's property. Know your state's rules regarding this duty as it varies from state to state.The client's funds cannot be commingled with the firm's funds.The firm can't 'borrow' from the client's funds, even with the intention of repaying the money before anyone finds out.The client's money may be transferred to the firm's business account only at such time as the fees are earned.Every firm must maintain a separate trust account which is also referred as an IOLTA account. (IOLTA = Interest on Lawyer Trust Accounts)There are strict rules for reconciling the trust account and also for persons who are allowed to handle the account. Again, check your state's rules for more information.4. Competence. Model Rule 1.1 refers to the duty of the attorney to possess the legal knowledge and expertise to handle the client's issues.Have the resources and the time to handle the client's case, including properly trained staff and the necessary equipment.

Be sure to attend appropriate continuing education events.

Manage time effectively so that deadlines are met.

Assess staff workload regularly to be sure work is getting done.

Delegate work according to ability.

5. Communications. Model Rule 1.4 covers the duty to adequately and appropriately communicate with clients.Be sure clients understand that the attorney is not always available for immediate response and provide alternative personnel for the client to use to relay messages.

The so-called "Blackberry Culture' has clients expecting attorneys to be available 24/7 and to respond immediately. Explain to clients that their issues are important and that they will receive a response once the matter has been given the careful consideration it deserves.

While the attorney may delegate much client contact to paralegals, the attorney is obligated to maintain a direct relationship with the client.

Clients must be kept reasonably informed of the status of the case and provided with enough information to make decisions.

Withdrawal from a case requires special steps. The client must be informed and, in most instances, the client's file must be made available upon request.

One last rule: Model Rule 5.3 refers to the lawyer's duty with regard to nonlawyer assistants:(a) a partner, 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 the person's conduct is compatible with the professional obligations of the lawyer;

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

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:(1) the lawyer orders or, with the 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 person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Your challenge: Familiarize yourself with the ABA's Model Rules of Professional Conduct, as well as the rules that have been adopted by your state. The ABA also has Guidelines for the Utilization of Paralegal Services that can be reviewed at www.abanet.org

The attorney's ethical obligations are your obligations, too, and you should thoroughly understand the all-important 5 C's: Conflicts, Confidentiality, Cash, Competence and Communication. In the end, though, trust your instincts: if an action doesn't feel right or ethical, it probably isn't. Every state bar association maintains an ethics hot line. Call yours if you have questions.

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