
MORE THAN JUST RULES: FROM THE MOMENT POTENTIAL CLIENTS INQUIRE ABOUT SERVICES ATTORNEYS SHOULD FOLLOW THE GUIDING PRINCIPLES OF ETHICS

By Lee Kanon Alpert



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Ethics are taught in law school and are included in the State Bar's Rules of Professional Conduct. However, ethics must be understood as more than simply words in a textbook or lines within a set of rules. Attorneys must rely on the guiding principles of ethics from the moment a potential client inquires about their services.

Lawyers face subtle ethical issues daily. For example, prior to a potential client's initial interview, attorneys should check to ensure that there will not be a conflict of interest between a potential client and an existing or previous client. Unfortunately, many attorneys wait until the potential client is in the initial interview to conduct this check, and often find abruptly and inconveniently that a conflict indeed exists.

Awkward ethical positions like this can be avoided by conducting early due diligence. While not required by State Bar rules, law firms should implement systems that check and cross-check previous, current and potential clients for possible conflicts of interest.

Another ethical question arises when these checks reveal a conflict between an existing client and a potential client. State Bar rules allow attorneys to represent two clients with an existing conflict of interest as long as both sign a conflict of interest waiver. But is it ethically right to do so?

Even if both parties agree to a waiver, the answer to this ethical question is generally no. Regardless of how well written and exacting the waiver, odds are high that something will arise during the course of the matter that will place the attorney in a precarious position. If one client is unhappy with the outcome of the legal matter, the client may point to the

conflict as the reason for the disappointing results. By rolling the ethical dice and accepting the second client, attorneys run the risk of finding themselves in the midst of a breach-of-confidentially lawsuit. If there is any conflict of interest between an existing client and a potential client, attorneys should choose to refer the potential client to another attorney.

Ethics also play a role in generating a congruous and successful initial meeting with a potential client. Fortunately, here ethics and good business sense go hand in hand. When a potential client first contacts an attorney about a legal matter, the attorney is not required to provide a written agreement outlining the attorney's obligations and fees for the initial meeting. It is only after the attorney is officially retained and agrees to undertake work on behalf of the new client that the Rules of Professional Conduct require a written agreement between the parties when the fees are expected to exceed a certain amount.

Prior to the initial meeting with the potential client, the attorney should draft, for the potential client's signature, a document containing pertinent information about the client and verbiage outlining the scope and fees for the initial meeting. The document should state that the potential client understands that the initial meeting is for consultation purposes only and does not guarantee that the attorney will accept the matter. Also included should be an explanation that the fee for the consultation is based on a stated hourly rate and is payable whether or not the client decides to retain the attorney's services. This can prevent disputes about consultation costs and misunderstandings about whether the attorney accepted the

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case, as well as whether further action on the part of the attorney was expected. The document should also clearly state that it supersedes any previous oral agreement.

The attorney should have the potential client sign this document before the consultation takes place. This way the attorney has clearly defined the attorney's role. If the client later refuses to pay for the consultation services, the signed document clearly shows the client understood the arrangement. While these agreements are not legally required or mandated by the bar, ethically they should be part of every lawyer's standard business practice.

Attorneys can also find themselves walking an ethical line once representing a client. The Code of Professional Conduct makes it clear that attorneys cannot improperly coach witnesses, permit witnesses and clients to sign declarations that they know are not true, or misrepresent facts before the court. If a client asks the lawyer to proceed in a way that is ethically inappropriate, the attorney is not under obligation to do so.

The Rules of Professional Conduct outline the minimum ethical requirements of the profession. However, rather than hew to these minimum requirements, attorneys must make ethical decisions on a daily basis that allow them to stay true to the standards of their profession, their own moral beliefs, and what will allow them to sleep well at night.

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