

Young Lawyers: Avoid Falling into Ethical Holes

By Lyndsey A. Tadlock

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Young lawyers face new and unfamiliar pressures—meeting billing requirements, establishing a good reputation with other attorneys within the firm, and building relationships with clients. The ethical rules of law are sometimes sidelined by these everyday stresses. Even worse, seemingly conspicuous and straightforward ethical rules can be overlooked, ultimately damaging their ability to retain clients or build a solid reputation at a firm.

A review of ethical rules provides young lawyers with a comprehensive structure to practicing law. These rules can help guide them in developing their own practice or increased reliability in a firm, as well as building relationships with clients. This article provides a brief overview of a few ethical pitfalls for young lawyers and what strategies to avoid falling into these career-hampering holes.

Confidentiality

After years spent with their noses buried deep in law school treatises, young lawyers enter law firms and encounter their clients' real-life problems and disputes. To their delight, some of these clients are famous, and their stories are scandalous—perfect fodder for the next cocktail hour or dinner conversation.

But lawyers owe their clients a broad duty of confidentiality, encompassing all aspects of the representation. Model

Rule 1.6(a) states that a “lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent” or is permitted in certain rare situations. Model Rules of Prof'l Conduct R. 1.6(a). Permitted disclosures include where disclosure is necessary to prevent death or serious bodily harm, to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury, and other situations that do *not* include telling peers an interesting story. Model Rules of Prof'l Conduct R. 1.6(b). The importance of this ethical rule is detailed in the comment on Rule 1.6, which describes confidentiality as the “hallmark of the client-lawyer relationship” because the “client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.” Model Rules of Prof'l Conduct R. 1.6 cmt.

While using notable names or sharing juicy details seems like a good way to promote a young lawyer's practice to his or her peers or other prospective clients, this violates the client's confidentiality. If the client discovers this disclosure, at a minimum, they are likely to find this offensive and might even discontinue the representation. Any use of client information requires the client's informed consent, and until that is obtained, their

information—and any salacious stories—must be kept confidential.

File Early

Among the most basic ethical obligations is the requirement that a lawyer provide competent representation to a client. Model Rules of Prof'l Conduct R. 1.1. Often, the competent representation of a client will involve several lawyers, with senior attorneys taking a supervisory role and young lawyers taking primary responsibility for initially drafting documents that will be filed with the court. Later, the young lawyer will handle the timely filing of that document, but he or she often faces the prospect of last-minute edits and changes to his or her briefs and other deadline-based documents. Missing a deadline could subject a lawyer and their client to adverse consequences, including having the entire document struck by the court or sanctions that compromise the lawyer's ethical obligation to competently represent the client.

There are ways, however to avoid last-minute frenzy and maintain the ethical obligation of competent representation, which include:

Recalculate the deadline to file the document. Too often, young lawyers rely upon a law firm's docketing department or a computer program to calculate when a document is due. Human error and glitches may result in mistakes and blown deadlines. Double-check the applicable rules regarding the deadline to file, and then calculate (and recalculate) the deadline.

Start early. Young lawyers should draft documents at the earliest possible time and create deadlines for review, including a deadline for internal review

and a deadline to send the document to the client for review.

Communicate. Young lawyers should communicate with supervising attorneys regarding who will be possible declarants or affiants for the documents, and then confirm with those individuals at the earliest opportunity that they will be able to sign the necessary documents on a specific date.

File early. Filing the document the day before the deadline will avoid any unforeseen disasters that could delay or prevent filing, such as power outages, traffic, and miscalculations of the due date.

Communicate Effectively with the Client

Effective communication with the client is a crucial aspect of success as an attorney, and young lawyers are not exempt from this rule. Model Rules of Prof'l Conduct R. 1.4. Supervising attorneys usually handle status updates to the client, but a young lawyer should note the manner in which the client is updated—the level of detail in the updates, the frequency, and the method of communication. If the supervising attorney is unavailable for some reason, the young lawyer might be tasked with providing this update or being the point of contact for a client. Model Rule 1.4 requires attorneys to regularly maintain contact with the client and provide updates on the status of the litigation. Model Rules of Prof'l Conduct R. 1.4(a)(3).

Keeping the client informed also decreases the prospect of the client's surprise at reviewing a bill. While certain litigation tactics such as discovery motions are necessary to the resolution of the dispute, they can also seem unnecessary and too expensive for

a client. Communicating with the clients to inform them of the nature of the discovery dispute and why the motion practice was necessary will prime the client for the eventual bill.

Run Conflict Checks Early and Often

There are a few ethical missteps that young lawyers can avoid by running a conflict check. First, the opportunity to reel in that first client often starts with a young lawyer asking what the dispute involves in order to determine if he or she has the capability to take on the representation. Finding out too much too soon, however, can result in taking on ethical obligations with a prospective client that could cause a conflict with a current client. The young lawyer should only obtain the general nature of the prospective engagement, the names of the parties involved, and then run a conflict check. The opposing party could be a client of the young lawyer's law firm.

Young lawyers should also take care to properly spell the name of the parties and identify the entity type for the conflict check. Failing to correctly identify the opposing parties can result in a conflict check that appears clear, but later is found to be unclear, requiring the young lawyer's firm to withdraw from the representation.

Second, conflict checks are not applicable only to prospective clients. Third parties to the litigation, such as third parties that will be served with a subpoena, should also be checked for conflicts. Other attorneys in the young lawyer's firm would not be pleased if their clients called, demanding an explanation for why they received a subpoena from their own law firm. ABA Formal Ethics Opinion 92-367 holds that these activities are "adverse" for conflict of interest

purposes. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 92-367 (1992). Running a conflict check can identify conflicts of interest, and avoid upsetting both the client and attorneys at the young lawyer's firm.

Use Caution with Social Networking

There are several areas in the cyber world that can expose young lawyers to ethical risks. While they might want to post news of a recent trial victory or a particularly challenging motion to a blog or Facebook, detailing too much information can improperly expose confidential information about a client.

With the young lawyer's newfound knowledge, it also might be tempting to post answers to questions posed by the general public on legal blogs. But this could expose the young lawyer to unintentionally taking on an attorney-client relationship. If the young lawyer feels compelled to post, at a minimum, he or she should include various disclaimers. Even so, the determination of whether there is an attorney-client relationship is based on the reasonable belief of the client, not the attorney.

Take Responsibility

Mistakes happen. But one of the worst mistakes a young lawyer can make is to hide a mistake or blame others rather than admitting the mistake and taking responsibility. The ethical obligation to competently represent a client can still be maintained if a young lawyer properly assesses mistakes and then takes proper steps to rectify them.

Anything that crosses a young lawyer's desk—an email, a pleading, or a direct assignment—should first be assessed for calendaring or response deadlines. Before it leaves the desk, material

should be subject to a careful review for errors. Even if careful review does not avoid a mistake, the associate should acknowledge any error. Some mistakes are easily rectified, whereas others tend to snowball if there is no accountability. A young lawyer is not often tasked with the ultimate responsibility of the outcome of a matter, but failing to alert a supervising attorney to an issue can make a bad situation worse. *Immediately inform a supervising attorney of a mistake.*

Next, when a young lawyer apprises his or her supervising attorney of a mistake, rather than blaming someone (“My secretary didn’t calendar this!”), he or she should present a solution to the supervising attorney. (“The deadline expired, but we can obtain relief from this expired deadline by . . . [drafting a motion to the court, for example]”). This allows the young lawyer to redeem himself or herself by not dumping an issue into the supervising attorney’s lap,

but instead providing a solution that will rectify the problem.

With many ethical obligations to learn, young lawyers might feel overwhelmed by the rules imposed upon them. But young lawyers are not expected to navigate these ethical waters without assistance. The Model Rules envision that young lawyers look to supervising attorneys for guidance on difficult issues. Moreover, young lawyers should embrace the ethical rules of practice as a framework that guards the attorney-client relationship. While the rules are imposed to protect clients, they can guide a young lawyer’s development of the relationship with his or her clients. Many of these provisions are found in other industries, and like in other industries, with practice, these ethical rules become more and more routine and less likely to trip up the young lawyer.



Lyndsey A. Tadlock
714.427.7529
ltadlock@swlaw.com

Lyndsey Tadlock concentrates her practice on business litigation, real estate litigation, franchise litigation and intellectual property litigation in state and federal courts. She represents clients in matters involving breach of contract, business competition torts, real estate, private construction projects, franchises and various intellectual property litigation matters, including trademark, trade dress, trade secret and patent claims.

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