



Understanding the ABA Model Rules of Professional Conduct- Part 1



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A Practical Guide for Paralegals

FOUNDATION

What Are the Model Rules?

Adopted by the American Bar Association in August 1983, the Model Rules of Professional Conduct serve as the ethical foundation governing lawyer behavior across the United States. By 2009, all 50 states and the District of Columbia had adopted these rules as their state standards for legal professionals.

The Model Rules define how lawyers must conduct themselves as advocates and negotiators. As advocates, lawyers zealously assert their clients' positions within the adversary system. As negotiators, they seek results that advantage their clients while maintaining honest dealings with others.

Key Fact

While the Model Rules directly apply only to attorneys, Rule 5.3 makes lawyers liable for their paralegals' actions. This means your conduct can expose the attorney you work for to professional liability.



Why Paralegals Must Know the Rules

Although the Model Rules technically apply only to attorneys, understanding them is critical for your role as a paralegal or paralegal. Your daily work directly impacts attorney compliance with these ethical standards.

Professional Responsibility

You are an extension of the attorney's practice. Your actions and decisions reflect on the lawyer's ethical standing and can create liability under Rule 5.3.

Risk Prevention

Understanding these rules helps you identify potential ethical issues before they become problems, protecting both you and the attorneys you support.

Career Excellence

Knowledge of professional conduct rules distinguishes exceptional paralegals from merely competent ones, enhancing your value to any legal team.

COMMUNICATION

Model Rule 1.4: The Communication Requirement

Rule 1.4 establishes clear communication standards between attorneys and clients. As a paralegal, you often serve as the communication bridge, making your understanding of this rule essential.

01

Prompt Information Sharing

Attorneys must promptly inform clients of any matter requiring informed consent and keep clients reasonably updated on case developments.

02

Strategic Consultation

Lawyers must reasonably consult with clients about how to achieve their legal objectives and discuss available options.

03

Responsive Communication

Attorneys must promptly comply with reasonable client requests for information about their cases.

04

Ethical Boundaries Discussion

Lawyers must explain legal and ethical limits on their conduct when representing the client.

05

Informed Decision-Making

Attorneys must explain matters sufficiently to permit clients to make informed decisions about their representation.

Rule 1.4 in Action: The Flounder v. Wormer Case

The Scenario

Client Flounder tells Attorney Otter he'll accept any settlement amount (even \$1) with a public apology, or \$6,000 minimum without an apology. Without consulting Flounder again, Otter approaches opposing counsel and offers to settle for \$8,000.

While \$8,000 falls within Flounder's acceptable range and gives Otter negotiating room, this approach violates Rule 1.4. Comment 3 to the Rule requires attorneys to consult clients before taking action when circumstances permit.

The Lesson

Flounder might have preferred starting with an apology offer before moving to straight monetary negotiations. The attorney had time to consult before opening negotiations and should have discussed strategy with the client first.

 **Paralegal Takeaway:** When you're scheduling settlement discussions or preparing negotiation materials, build in time for attorney-client consultations about strategy. Your scheduling decisions directly impact Rule 1.4 compliance.

When Immediate Consultation Isn't Required

Rule 1.4 recognizes that not every decision requires prior client consultation. Comment 3 indicates that the duty to consult depends on the circumstances.

Attorney Otter calls opposing counsel Meyer to discuss settlement progress. Meyer says: "I've got 5 minutes for you. After that, if we haven't struck a deal we won't be able to negotiate until I return from my trip next week."

Must Otter put Meyer on hold to consult with client Flounder? The Model Rules are practical here. While signaling a paralegal to call Flounder on another line would be ideal, Otter may make a decision without first consulting the client given the time pressure. However, Flounder must be notified promptly about what Otter decided and did during this call.

This practical flexibility recognizes the realities of legal practice while maintaining the requirement for prompt notification after decisions are made.

Communication Failures: The Case of Mr. Mop

Initial Representation

Georgia attorney Mr. Mop takes Christine's personal injury case following her car accident. Christine assumes the case is progressing normally.

1

False Reassurance

Over a year after the accident, Mop finally contacts Christine saying "the case is still pending and I'm taking care of everything. Don't you worry now, y'hear?"

3

Disciplinary Action

Mop violated Rule 1.4 and faced disbarment for his conduct. See *In re Broom*, 276 Ga. 114 (2003).

5

2

Unanswered Calls

With no updates from Mop, Christine phones his office requesting information. Several more calls go unanswered over an extended period.

4

The Truth Revealed

Christine later discovers that Mop had dismissed her case without her authorization and without notifying her of the dismissal.

How Paralegals Can Cause Rule 1.4 Violations

Consider paralegal Francine, who works in Mr. Mop's small practice. A new phone system is installed, but Francine never properly learns to operate it. Client messages left on the backup line don't make it into the system. Client Christine calls several times on Sundays, leaving messages requesting case updates.

Additionally, Christine mails a letter requesting an update. Unfortunately, it arrives on the day Francine breaks up with her fiancé, and the letter gets misplaced in the "dead files" room. Because nothing significant has happened on Christine's case for 90 days, Mr. Mop hasn't contacted her.

The Violation

Mop violated Rule 1.4(a)(4), which requires prompt compliance with reasonable information requests.

The Root Cause

The primary failure was Mop's improper supervision under Rule 5.3. Francine's mistakes created the conditions for the violation.

The Lesson

Systems failures and personal issues can create professional liability. Ensure you understand office systems and have backup procedures.

ADVICE

Model Rule 2.1: The Attorney as Advisor

"In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."

Rule 2.1 requires more than just legal analysis. Attorneys must provide comprehensive advice that considers the full context of a client's situation, including practical, financial, and ethical implications.

In negotiations, lawyers aren't simply conveying legal information—they're assisting clients in arms-length transactions with serious ramifications. This requires candid, complete advice even when that advice may be unwelcome.

Beyond Legal Advice: Fred's Settlement Decision

Plaintiff Fred asks Attorney Andy about settling his lawsuit for \$10,000. Andy responds simply: "That would be perfectly permissible by law."

Is that sufficient? Fred wasn't just asking whether settlement is legally allowed. He wanted advice about whether it's a *good idea*—the benefits and drawbacks of settling versus proceeding to trial.

Here's the crucial context: Fred's suit claims over \$1 million in damages. Andy believes a jury will likely award over \$100,000, meaning Fred would walk away with more than \$50,000 even after costs and Andy's contingency fee. Rule 2.1 requires Andy to point this out before Fred offers a \$10,000 settlement. The attorney must provide his honest assessment of the case's value and settlement implications.

This example is straightforward because full disclosure maximizes Andy's fee. But what about when candid advice works against the attorney's financial interest?

Giving Unwelcome Advice: Jackie's Case



The Situation

Jackie wants to sue his former municipal employer for discrimination, claiming he was fired from his bus driver job for being overweight. Attorney Andy refuses to take it on contingency. Jackie offers to pay out of pocket—he has substantial savings. Jackie is convinced he'll win, but Andy is certain Jackie won't recover monetary damages.



The Obligation

Comment 1 to Rule 2.1 is clear: "A client is entitled to straightforward advice expressing the lawyer's honest assessment... and should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client." Andy cannot simply accept the fee without telling Jackie his realistic assessment.



The Resolution

Once properly advised, if Jackie still wants to press forward, Andy may certainly take the case. The requirement is honest assessment, not forcing the client to follow the attorney's recommendation. Informed client choice remains paramount.

Rule 2.1 and Unrealistic Client Expectations

In settlement negotiations, attorneys often face the difficult situation of advising clients to accept offers the clients are disinclined to accept. Rule 2.1 doesn't permit lawyers to force clients into settlements or issue ultimatums like "accept this offer or I'll drop you."

However, when a client's expectations are significantly misaligned with reality, Rule 2.1 requires the attorney to provide candid advice about likely outcomes. This includes discussing the practical costs of litigation, realistic damage assessments, and probability of success at trial.

- ❏ **Beyond Legal Technicalities:** Comment 2 emphasizes that "advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant." Attorneys must address relevant moral, ethical, and practical considerations, not just pure legal analysis.

Rule 8.4 and Truthfulness in Negotiations

Model Rule 8.4 prohibits attorneys from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." This catch-all provision significantly impacts negotiation strategy. Consider these three scenarios involving Attorney Henry and Attorney Jamie representing personal injury plaintiffs:

Scenario 1: Permissible Statement

Attorney Henry tells opposing counsel: "My client is in a lot of pain and might have serious, permanent injuries." The plaintiff hasn't yet seen a doctor. This is permissible—Henry hasn't lied about facts but has given his opinion about potential outcomes.

Scenario 2: Clear Violation

Attorney Jamie makes the same statement, but his client has told him she's no longer in pain and her doctor said she'll fully recover within two weeks. This blatantly violates Rule 8.4—Jamie has lied about the current factual situation.

Scenario 3: Truthful Alternative

Jamie could say: "My client went to her doctor last week, and when I last saw her she was in great pain. I really hope this isn't something permanently disabling. Do you have a settlement offer?" This carefully selects truthful facts without committing fraud.

Balancing Zealous Advocacy with Ethical Limits

The Attorney's Dual Role

Lawyers must zealously advocate for clients while staying within ethical boundaries. This creates natural tension in negotiations where strategic advantage often seems to favor withholding information.

An attorney cannot commit fraud to reach client goals, but can strategically choose which facts to present during settlement negotiations. Formal discovery is different—attorneys cannot withhold certain documents during that process.

If a client asks an attorney to make statements that would violate Rule 8.4, the attorney must refuse and explain why. However, the attorney can advise the client about what is permissible to say and help craft communication strategies that advance the client's interests within ethical boundaries.

The Illinois Supreme Court articulated this principle clearly in *Horwitz v. Holabird & Root*, 212 Ill. 2d 1 (2004): "Attorneys cannot blindly follow their clients' directions, even if those directions are particular and express, if doing so would require them to violate their ethical obligations."

Key Takeaways for Paralegals

1

You're Part of the Team

The Model Rules may apply directly to attorneys, but Rule 5.3 makes your conduct matter. Your actions can create liability for the lawyers you support.

2

Communication is Critical

Master your office's communication systems. Ensure client calls and correspondence receive prompt attention. Rule 1.4 violations often stem from system failures and poor follow-up.

3

Schedule for Success

When coordinating negotiations or settlement discussions, build in time for attorney-client consultations. Your scheduling decisions impact Rule 1.4 compliance.

4

Document Everything

Maintain clear records of client communications, attorney advice, and case developments. Good documentation supports ethical practice and protects everyone.

5

Know the Boundaries

Understanding rules like 2.1 and 8.4 helps you recognize when attorney conduct might raise ethical concerns. You're often the first line of defense against potential violations.

6

State Variations Matter

Remember that states may have adopted modified versions of the Model Rules. Familiarize yourself with your jurisdiction's specific requirements.