

Summary for Lecture 5

Understanding the ABA Model Rules of Professional Conduct - Part 1

 by Roger Batchelor

The American Bar Association's Model Rules of Professional Conduct stand as the cornerstone of legal ethics in the United States. Adopted in August 1983, these comprehensive guidelines establish the ethical framework that governs attorney behavior across all aspects of legal practice. Their significance cannot be overstated: as of 2009, all 50 states plus the District of Columbia have incorporated the Model Rules into their state rules of professional conduct, creating a nearly universal standard for legal professionals nationwide.

For paralegals, understanding these rules is essential despite the fact that they formally apply only to attorneys. The practical reality of legal practice means that the actions of legal assistants directly impact the ethical standing of their supervising attorneys. Under Model Rule 5.3, attorneys bear responsibility for their paralegals' conduct, creating a crucial link between your daily work and the ethical obligations of the lawyers you support. When a paralegal violates a Model Rule, the supervising attorney faces potential liability, making it imperative that you understand these ethical boundaries as thoroughly as any attorney.

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The Advocate's Dual Role in Legal Practice



As Advocate

The Preamble to the Model Rules articulates a fundamental principle: "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." This language captures the essence of advocacy—representing clients with vigor and dedication while operating within established legal and ethical boundaries. Zealous advocacy does not mean abandoning ethical constraints; rather, it means pursuing client objectives with maximum effort within the framework of professional rules.



As Negotiator

The rules also define the attorney's role as negotiator: seeking "a result advantageous to the client but consistent with requirements of honest dealings with others." This balance between client advocacy and ethical conduct becomes particularly critical during settlement negotiations, where the temptation to misrepresent facts or circumstances may arise. Understanding this dual responsibility helps paralegals support attorneys in maintaining ethical standards while pursuing favorable client outcomes.

It is crucial to recognize that while the Model Rules provide a strong foundation, they are not universally identical across jurisdictions. Some states have adopted amended versions that may differ in significant ways from the ABA's original language. As a paralegal, you should familiarize yourself with your specific state's version of the rules to ensure complete compliance in your daily work.

Model Rule 1.4: The Communication Imperative

Model Rule 1.4 establishes comprehensive communication obligations that fundamentally shape the attorney-client relationship. This rule requires attorneys to maintain ongoing, meaningful dialogue with clients throughout the representation. The requirements are specific and demanding: lawyers must promptly inform clients of any matter requiring informed consent, keep clients reasonably informed about case status, respond promptly to reasonable requests for information, consult with clients about the means of achieving their objectives, and explain matters to the extent necessary for clients to make informed decisions.

Prompt Information

Attorneys must immediately notify clients when their informed consent is required and generally keep them reasonably informed of case developments

Consultation Requirement

Lawyers must reasonably consult with clients about strategies and methods for achieving their goals

Responsive Communication

Prompt compliance with reasonable client requests for information is mandatory, not optional

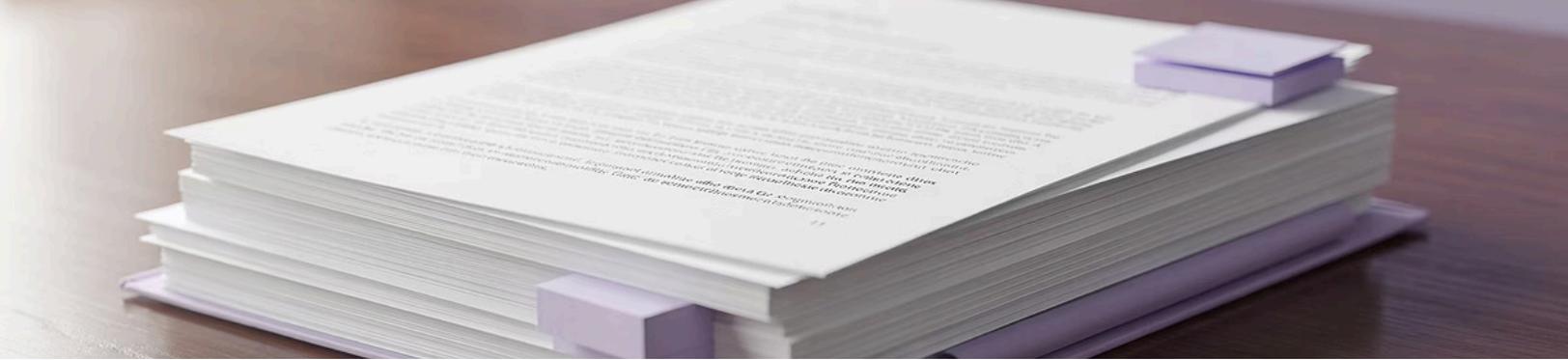
Ethical Guidance

Attorneys must discuss legal and ethical limits on their conduct with clients

Informed Decision-Making

Explanations must be sufficiently detailed to permit clients to make informed choices about their representation

For paralegals, Rule 1.4 has direct practical implications. You often serve as the primary point of contact between the law office and clients. Whether answering phone calls, responding to emails, or managing correspondence, your communication practices directly affect the attorney's compliance with this rule. Missed messages, delayed responses, or failure to relay information can constitute violations attributable to the supervising attorney.



Communication in Negotiation Context

The communication requirements of Rule 1.4 take on heightened significance in the context of settlement negotiations. Consider a scenario where a plaintiff, Flounder, retains attorney Otter to pursue a slander case against defendant Wormer. Flounder explicitly states his settlement parameters: he will accept any amount, even one dollar, if accompanied by a public apology, or absent an apology, he requires at least \$6,000. Attorney Otter then approaches opposing counsel and offers to settle for \$8,000 without further consultation.

While this approach might seem strategically sound—opening with a figure within the client's acceptable range while leaving room for negotiation—it actually violates Rule 1.4. Comment 3 to the rule emphasizes that the duty to consult depends on circumstances, particularly whether time permits consultation. Here, where Otter certainly has time to discuss strategy before opening negotiations, he should have consulted with Flounder about the best approach to achieve his goals. Perhaps Flounder would have preferred starting by offering to settle for an apology and a nominal amount, moving to monetary-only discussions only if that approach failed.

- ❑ However, the rules recognize practical realities. If opposing counsel unexpectedly demands an immediate decision during a phone call, threatening to withdraw from negotiations for a week if no agreement is reached, the attorney may exercise discretion to respond without prior client consultation. The key distinction is that while the attorney can make tactical decisions in time-sensitive situations, the client must be promptly informed afterward about what transpired and what decisions were made.

Real-World Consequences of Communication Failures

The case of *In re Broom*, 276 Ga. 114 (2003), illustrates the severe consequences of violating Rule 1.4's communication requirements. Attorney Mop specialized in personal injury cases in Georgia and represented Christine following her car accident. As time passed, Christine reasonably assumed her case was progressing through the legal system. However, when she attempted to obtain updates by calling Mop's office, her calls went unanswered repeatedly. After more than a year of silence, Mop finally contacted Christine with reassurances that he was "taking care of everything."

The reality was dramatically different. Mop had dismissed Christine's case without her authorization and without notifying her of the dismissal. This egregious violation of Rule 1.4, among other ethical breaches, resulted in Mop's disbarment. The case demonstrates that the communication requirement is not merely aspirational—it carries real enforcement consequences. Attorneys cannot simply reassure clients with vague platitudes while failing to provide substantive updates about case status or significant developments.



Paralegal Responsibility in Communication Systems

Consider an extended scenario involving attorney Mop and his paralegal Francine. The office installs a new phone system in February 1997, which Francine never properly learns to operate. Due to her unfamiliarity with the system, messages left on the backup line fail to enter the voicemail system. Client Christine, given only the backup number and able to call only on Sundays due to her work schedule, leaves multiple messages requesting case updates that never reach anyone in the office.

Compounding the problem, Christine mails a letter requesting information about her case. Unfortunately, this letter arrives on the day Francine experiences a personal crisis—her breakup with her fiancé—and much of that day's correspondence is misplaced in the dead files room. Meanwhile, Attorney Mop assumes everything is fine because nothing significant has occurred on Christine's case in 90 days, so he sees no need to proactively contact her.

Primary Violation: Inadequate Supervision

Mop's main failure involves violating Model Rule 5.3 by improperly supervising his paralegal staff and failing to establish adequate office systems

Communication System Failure

While Francine's technical mistakes don't directly violate Rule 1.4(a)(1), they create the conditions for violation by preventing client contact

Information Request Violation

The failure to respond to Christine's reasonable requests for information constitutes a clear violation of Rule 1.4(a)(4)

This scenario demonstrates how paralegal actions, even when unintentional, can expose attorneys to ethical violations. Attorneys must establish proper training protocols, supervision systems, and backup procedures. Paralegals must take initiative in learning office systems thoroughly and developing procedures to prevent communication breakdowns, understanding that their administrative competence directly impacts attorney ethics compliance.



Model Rule 2.1: The Duty to Provide Candid Advice

Model Rule 2.1 requires attorneys to "exercise independent professional judgment and render candid advice" when representing clients. This obligation extends beyond merely providing technically correct legal information to encompass broader considerations including moral, economic, social, and political factors relevant to the client's situation. In the negotiation context, this rule takes on particular significance because attorneys are not simply offering legal opinions—they are guiding clients through arms-length transactions with serious financial and personal ramifications.



Scenario 1: Settlement Advice

Consider a scenario where plaintiff Fred asks attorney Andy about settling his case for \$10,000. If Andy responds merely by confirming that such a settlement is legally permissible, he has provided accurate information but has failed to fulfill his duties under Rule 2.1. Fred's question implicitly seeks more than legal permission—he wants advice about whether such a settlement serves his interests well. When Andy believes the jury will likely award damages exceeding \$100,000, resulting in Fred receiving more than \$50,000 after costs and fees, Andy must provide this candid assessment even though it complicates the settlement decision.



Scenario 2: Conflict of Interest

The rule becomes more challenging when the attorney's financial interests conflict with providing candid advice. In a subsequent case, Fred refers Jackie to Andy for a discrimination claim against Jackie's former municipal employer. Jackie wants to sue for being fired as a bus driver allegedly due to his weight. When Andy refuses contingency representation, Jackie offers to pay hourly from his substantial savings. Jackie believes he has a strong case, but Andy is confident Jackie will not recover monetary damages. Comment 1 to Rule 2.1 explicitly addresses this situation: attorneys must provide straightforward advice expressing honest assessment and should not be deterred by the prospect that the advice will be unpalatable to the client or contrary to the attorney's financial interests.

Candid Advice in Settlement Negotiations

Rule 2.1 creates particularly difficult situations when attorneys must advise clients to accept settlements or courses of action that clients are disinclined to pursue. The rule does not authorize attorneys to force clients into agreements or issue ultimatums like "accept this offer or I'll drop you as a client." However, when a client's expectations about case outcomes diverge significantly from reality, Rule 2.1 mandates that the attorney provide corrective guidance through candid advice.

Comment 2 to Rule 2.1 expands the scope of required advice beyond purely technical legal analysis: "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. Purely technical legal advice, therefore, can sometimes be inadequate." The comment explicitly authorizes—indeed requires—attorneys to "refer to relevant moral and ethical considerations in giving advice."



Financial Considerations

Attorneys must discuss realistic financial outcomes, litigation costs, and the economic impact of various settlement options on the client's overall situation



Personal Impact

The effects of legal decisions on family members, business relationships, and personal reputation must be candidly addressed



Time Investment

Clients deserve honest assessments of how long various legal strategies will take and the personal burden of prolonged litigation



Emotional Toll

The psychological and emotional costs of continuing litigation versus accepting settlement must be frankly discussed

This comprehensive approach to advice-giving recognizes that legal decisions occur within broader life contexts. Paralegals supporting settlement negotiations should be aware that attorneys must consider and discuss these multifaceted factors with clients, not just the strict legal merits of various options.

Limits on Following Client Instructions

A critical principle emerging from Rule 2.1 is that attorneys cannot blindly follow client directions when doing so would violate ethical obligations. The Illinois Supreme Court articulated this principle powerfully 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." The court emphasized that Rule 2.1 mandates attorneys exercise independent professional judgment, noting that ethical rules protect the attorney-client relationship, maintain public confidence in the legal profession, and ensure judicial proceeding integrity.

This principle intersects significantly with Model Rule 8.4's prohibition against attorney conduct "involving dishonesty, fraud, deceit or misrepresentation." Consider three variations of attorney conduct during personal injury settlement negotiations. In the first scenario, attorney Henry tells opposing counsel that "my client is in a lot of pain and might have serious, permanent injuries" when the plaintiff has not yet seen a doctor. This statement represents Henry's opinion and speculation rather than factual misrepresentation, remaining within Rule 8.4's boundaries.

In the second scenario, attorney Jamie makes the identical statement, but Jamie knows the plaintiff is no longer in pain and her doctor has confirmed she will fully recover within two weeks. This constitutes blatant misrepresentation of known facts, clearly violating Rule 8.4. However, Jamie can reformulate his approach: "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 for us?" This version presents factually accurate information—the client did visit the doctor last week, and Jamie did observe her in great pain at their last meeting—while omitting the favorable recent developments.

Zealous Advocacy Within Ethical Bounds

Jamie's reformulated approach demonstrates a crucial principle: attorneys must advocate zealously for clients but cannot commit fraud in pursuing client goals. During informal settlement negotiations (as distinct from formal discovery where document production is mandatory), attorneys may strategically select which facts to present. If a client insists the attorney make misrepresentations, the attorney must refuse and explain what statements are ethically permissible, fulfilling both the advocacy role and the ethical counselor role required by Rules 2.1 and 8.4.

Paralegal Role

Paralegals must understand these ethical boundaries to appropriately support attorneys in negotiation preparation. You may be asked to draft correspondence, prepare talking points, or organize factual information for settlement discussions. Recognizing the line between advocacy and misrepresentation helps you provide effective support while maintaining ethical standards.

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Practical Guidance for Paralegals

Understanding the Model Rules of Professional Conduct empowers paralegals to support ethical legal practice effectively. While these rules formally apply to attorneys, your daily work directly impacts compliance. Under Rule 5.3, attorneys bear responsibility for their legal assistants' actions, creating shared accountability for ethical conduct. This reality makes your knowledge of these rules not merely academic but practically essential to protecting both your supervising attorney and the clients you serve.

Master Communication Systems

Take initiative to thoroughly learn all office communication systems, establish backup procedures, and ensure client messages reach appropriate recipients promptly

Maintain Detailed Records

Document all client communications, track information requests, and create systems ensuring timely responses to fulfill Rule 1.4 requirements

Recognize Ethical Issues

Develop the ability to identify situations raising ethical concerns and bring them to attorney attention before problems escalate

Know Your State Rules

Familiarize yourself with your jurisdiction's specific version of the Model Rules, as states may have adopted variations affecting daily practice

Support Candid Advice

Understand that attorneys must sometimes deliver difficult advice to clients and support this process through careful case analysis and preparation

Maintain Ethical Boundaries

Never participate in misrepresentation or fraud, recognizing that such conduct exposes your supervising attorney to disciplinary action and liability

Your role as a paralegal extends beyond technical legal skills to encompass ethical awareness and judgment. By understanding how Rules 1.4, 2.1, 5.3, and 8.4 shape attorney obligations in negotiation contexts, you become a more valuable member of the legal team. These rules exist not to constrain effective advocacy but to ensure that zealous representation of client interests occurs within a framework of honesty, transparency, and professional integrity. Your commitment to understanding and supporting compliance with these ethical standards ultimately serves the interests of clients, attorneys, and the broader legal system.