Soft Skills for a Hard World: Legal Edition

December 20, 2024

Applicable Ethics Rules and Comments

Resources

**ER 1.1.     Competence**

A lawyer shall provide competent representation to a client.  Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

*Comment*

**Thoroughness and Preparation**

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.  It also includes adequate preparation.  The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.  An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.  See ER 1.2(c).

**ER 2.1.     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.

*Comment*

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment.  Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront.  In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits.  However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

**ER 5.1.     Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors**

**(a)** A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these Rules of Professional Conduct.

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

**(b)** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

**(c)** A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

**ER 5.3.     Responsibilities Regarding Nonlawyers**

**(a)** A lawyer in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers engaged in activities assisting lawyers in providing legal services and those who have access to attorney-client information, is compatible with the professional obligations of the lawyer. Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling, or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and

(2) to ensure that nonlawyers assisting in the delivery of legal services or working under the supervision of a lawyer comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all lawyer client information protected by [ER 1.6](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1003576&cite=AZR42ER1.6&originatingDoc=N243B83F0087811EB8E98A8E4AB3D8003&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)).

**(b)** A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct when engaged in activities assisting lawyers in providing legal services is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm to assist the lawyer's delivery of legal services, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

**(c)** A lawyer shall be responsible for conduct of a nonlawyer 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 has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**(d)** When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

*Comment [2021 Amendment]*

[1] The rule in paragraph (d) recognizes that lawyers may provide legal services through firms that include nonlawyers as economic interest holders, owners, managers, shareholders, officers, or other nonlawyers who hold decision-making authority. Any such alternative business structure (ABS) as defined in [Rule 31](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1003575&cite=AZSCTR31&originatingDoc=N243B83F0087811EB8E98A8E4AB3D8003&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) must be licensed in accordance with ACJA § 7-209. Any lawyer who provides legal services through an unlicensed ABS is engaged in the unauthorized practice of law.

**Resources**

**Books**

Duhigg, Charles, *Supercommunicators*, 2022

Dana, Daniel, *Managing Differences*, 1997

Fisher, Ury, Patton, *Getting To Yes*, 1981, 1991

Guzman, Monica, *I Never Thought Of It That Way*, 2024

Issacs, William, *Dialogue and the Art of Thinking Together*, 1999

Senge, Peter, *The Fifth Discipline*, 1999, 2016

**Magazine Articles**

Nevada Lawyer May 2023 issue

<https://nvbar.org/nvlawyermagazine/may-2023/>

November 2024 Tip from the Bar Counsel article:

<https://nvbar.org/wp-content/uploads/NevadaLawyer_November2024_BarCounselReport.pdf> (page 5)

Yoshino & Glasglow, *How to Productively Disagree on Tough Topics*, 2023

<https://sloanreview.mit.edu/article/how-to-productively-disagree-on-tough-topics/?utm_source=newsletter&utm_medium=email&utm_content=apply%20four%20strategies&utm_campaign=11/27%20BF/CM%20-%20Top%20Leadership%20Articles>

Duarte, Nancy, *Broaden Your Influence by Adapting How You Listen*, 2022

<https://sloanreview.mit.edu/article/broaden-your-influence-by-adapting-how-you-listen>