



THE MISSISSIPPI BAR

Your Ethical Obligations in a Time of Pandemic

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The professional world we are privileged to inhabit has changed significantly. Many of these changes are temporary and will only last the unknown duration before the “coast is clear” to return to our offices and active practices. However temporary this is (or isn’t), our ethical obligations as attorneys remain the same. We are still required to follow the fifty-seven rules set forth in the Mississippi Rules of Professional Conduct (MRPC). This article is intended to be a reminder of those obligations in this time of uncertainty.

Times of challenge are not new to attorneys in Mississippi. The profession has deftly navigated difficulty before. Just in my sixteen years as General Counsel at The Mississippi Bar, we have encountered Hurricane Katrina, a high-profile judicial bribery scandal, the BP Oil Spill, and other events that were on a smaller scale but of significance to those impacted. In each instance I have seen the profession react with courageous responsibility and a firm resolve to keep going. This time is no different. Just as each of the prior challenges were unique, the COVID-19 Pandemic has brought uncertainty that impacts our ability to serve our clients and the system of justice we have sworn to uphold.

First the Basics

Rule 1.4, MRPC, requires you to keep your clients “reasonably informed about the status of a matter and respond to reasonable requests for

information” and to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Thankfully, emails and telephone calls cannot transmit the virus. Meeting with clients in person is another matter. Keeping your clients up to date is always a good practice and can help head off issues down the road. Also, remember your clients are fearful, not just of the pandemic but of the many reasons you are representing them. Practice patience and empathy in all ways possible. Keep them informed, even if it is “bad news” or the dreaded admission of “I don’t know.”

Rule 1.3, MRPC, requires you to “act with reasonable diligence and promptness in representing a client.” Be vigilant on all your client matters. Do not assume any of your matters are stayed. Consult the orders issued by the Mississippi Supreme Court and your local judiciary to confirm what is happening with cases. Click [here](#) for current COVID-19 Court and Operations Updates.

Rule 1.6, MRPC, addresses confidentiality of client information and requires you to “not reveal information related to the representation of a client unless the client gives informed consent.” Be mindful of the conversations you are having while working remotely to ensure you do not inadvertently disclose confidential client information. Also, carefully consider the security of your computer files as well as any physical files to prevent illegal access or inadvertent disclosure of client information. Additionally, phishing scams are on the rise. Now more than ever you should take steps to protect client data, computer

systems, and your lawyer trust account accordingly.

Rule 1.15, MRPC, is titled “safekeeping property” and is generally referred to as the “trust account rule.” Among other things, **Rule 1.15** requires a lawyer to “hold clients’ and third persons’ property separate from the lawyer’s own property.” Maintain the sanctity of your lawyer trust account and keep client funds separate from your own. DO NOT borrow (i.e. “steal”) from your lawyer trust account! Click [here](#) for Lawyer Trust Account Guidelines.

None of the aforementioned rules should be new information for practicing attorneys as they are referenced frequently in almost every ethics CLE you attend. Here are two more that could come into play as we go forward.

Rule 1.14, MRPC, is titled “Client Under Disability.” This rule could apply if your client becomes ill. It states that “[w]hen a client’s ability to make adequately considered decisions in connection with the representation is impaired...the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” The rule also allows for the lawyer to “seek the appointment of a guardian or take other protective action with respect to the client.” Incorporate into your communications with your clients questions related to their health. Keep this in mind in the event they become ill and a continuance or other arrangements are needed on their case. Also, speak to them about actions they would want you to take should they later lack the needed capacity to make informed decisions.

Of course, it is not just clients that could become ill and impact the case. You could contract the virus and be unable to perform your work duties. **Rule 1.16(a)(2), MRPC**, is titled “Declining or Terminating Representation” and states a lawyer has a duty to withdraw from a case if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.” Whether you withdraw due to illness or for any other reason, remember your obligations under **Rule 1.16(d), MRPC**, to “take steps to the extent reasonably practicable to protect a client’s interest” including surrendering papers and property to which the client is entitled and refunding any unearned fees.

In closing, I offer a couple of practical tips. If you have not accessed the Planning Ahead Manual located on The Mississippi Bar website, please do. Consider taking the necessary steps to safeguard your practice and your client’s cases. Click [here](#) for the Manual and other information on Lawyer’s in Transition. There are valuable tools and approaches you can incorporate in advance should you become unable to practice due to health reasons. Likewise, I urge you to maintain your professionalism and decorum in dealing with counsel opposite and the courts. Everyone is feeling the pressure in some way, even the most secure amongst us. Practice patience and reasonableness. As a highly revered Ethics professor used to express, be accommodating just as you would like to be accommodated by others.

Please feel free to reach out to the Office of General Counsel at ogc@msbar.org or 601-948-0568.