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## How To Remain Ethical in a World of Shadows

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How does a lawyer remain ethical in a world of shadows? What would a lawyer have to do to always be ethical? Could there be a single thing that, if done by a lawyer, would forever after ensure that lawyer would be ethical?

What about being competent. Surely, if a lawyer was always competent, then a lawyer would always be ethical. But looking at Rule 1.1 Competence, one sees it defines competence as, “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Nothing about ethics in there. And if competence was all that was required to be ethical, why did the drafters of the rules go on to include fifty-three other rules?

If there is not any single thing a lawyer can do to be always ethical, could there be a manageable list of things?

What if a lawyer thoroughly understands that information obtained during the course of a representation is confidential under Rule 1.6-Confidentiality, including publicly known or available information and such things as the client’s incorrect address, as the lawyer in *In re Goebel*, 703 N.E.2d 1045 (Ind. 1998), discovered.

Is a lawyer always and forever ethical if he assiduously complies with Rule 1.2-Scope of the Representation and explains to every client not only what the lawyer is doing on behalf of the client, but what the lawyer is not doing as well, as suggested in *Keef v. Widuch*, 747 N.E.2d 992 (Ill.App. 1 Dist. 2001) where the court stated, “If a workers’ compensation attorney fails to advise a client about the possibility of third-party actions, the client is not informed about the limited scope of the attorney’s representation.”

If a lawyer tells every client: 1) when the relationship is over; and, 2) that the lawyer is no longer protecting the client’s interests, so the client will not continue to rely on the lawyer, even when the client has picked his file and hired another attorney, as the client did in *Brown v. Silvern*, 45 P.3d 749 (Colo.App. 2001), has the lawyer satisfied his obligations under Rule 1.3-Diligence to clarify doubt about whether a client-lawyer relationship still exists?

Will a lawyer always remain ethical if the lawyer understands that a subsequent change to the nature or rate of his fee after the initial fee is agreed to is a business transaction with the client, and he must comply with the requirements of Rule 1.8(a) to provide the client a reasonable opportunity to seek the advice of independent counsel before agreeing to the changes, as the lawyer in *In re Hefron*, 771 N.E.2d 1157, (Ind. 2002), did not understand?

Can a lawyer push back the shadows by following ABA Formal Opinions, such as last year's opinion 03-431, which stated that a lawyer who concludes that another lawyer's mental condition is impairing that lawyer's representation of clients may have to report the situation to appropriate professional authorities, even if the affected lawyer practices in a different firm and denies the problem?

Maybe a list is not going to be too manageable.

If there is no one thing a lawyer can do to be always ethical, and no manageable list of things, from that do we conclude that it is impossible to remain ethical in a world of shadows?

Let us hope not.

The first step to remaining ethical is to make a commitment to do so. There must be an ethos in the firm that ethics are important. But, apart from being ethical for the sake of being ethical, where's the profit? Why should ethics be important? I submit it is because by being ethical, by practicing by the rules, so to speak, you will make more money, have better clients, and enjoy the practice of law more.

So, how to do it in your firm.

First, have an "ethics expert." There should be a lawyer in your firm who is responsible for staying abreast of developments in the rules and case law. Of course, lawyers today have more than enough to do, so why would any lawyer take on these additional responsibilities? Because, if the firm truly believes ethics are important, then the firm will make it worth the while of a lawyer to take on the role of "ethics expert."

Second, the lawyer must have access to the resources to become an "ethics expert." This may mean first and most importantly, the time to do it. The firm may have to make an accommodation in allocating personnel and responsibilities to help permit the "ethics expert" to fit research and review of appropriate materials into his or her schedule.

Another important resource is information. Start locally. The expert must gain an easy familiarity with the state's Rules of Professional Conduct and their Comments.

The expert should know how the state's Rules of Professional Conduct are being interpreted. For that, a review of the state's ethics advisory opinions is necessary. These can be found in Missouri at [www.mobar.org](http://www.mobar.org) and in Indiana at [www.inbar.org](http://www.inbar.org). Kansas does not currently publish its informal ethics opinions.

The firm's expert should volunteer to write articles for bar magazines and newsletters on particular ethics issues affecting the firm's practice, or just general ethics issues of interest to the expert. For one thing, it can be good advertising for the firm. For another thing, nothing helps understanding an issue like writing an article on it.

Then, the expert should broaden his or her horizons. Not everything that can go wrong under the Rules happens in your state. To understand more broadly how the Rules may be applied in a variety of circumstances, the firm's expert must know how courts and disciplinary authorities in other states are interpreting them. Learn from the mistakes of lawyers in other jurisdictions. For this, reporting services such as the ABA/BNA Lawyers' Manual on Professional Conduct are indispensable.

Finally, the expert must know where to go to get the answers to a particular, discreet ethics issue or problem that arises at the firm. In Missouri, Sara Rittman serves at the Legal Ethics Counsel and can be reached at 573-638-2263. The Kansas Disciplinary Administrator's Office phone number is 785-296-2486. In Indiana the Indiana State Bar Association's Legal Ethics Advisory Committee issues written opinions and the Advisory Opinion Panel of the Indianapolis Bar Association's Professional Responsibility Panel provides "confidential, expedient answers on your prospective ethical conduct questions." Call them at 317-888-1121.

In Missouri, Kansas and Indiana, there is in place a lawyer's assistance program to help lawyers dealing with issues ranging from impairments such as alcoholism or drug abuse, to aging issues or depression. They can be contacted at:

**Missouri Lawyers Assistance Program**

1-800-688-7859

[www.mobar.org](http://www.mobar.org) (MOLAP site accessed under "Practice Resources" heading)

**Kansas Lawyers Assistance Program**

(913) 573-2476 [www.kalap.com](http://www.kalap.com)

**Indiana Judges and Lawyers Assistance Program**

(317) 833-0370 (888) 428-JLAP (toll free)

**Indianapolis Bar Association's Lawyers Assistance Program**

(317) 638-3333

Finally, The Bar Plan Mutual Insurance Company has a Director of Risk Management to tap for assistance and information. Contact me at 1-800-843-2277, extension 103.