

# ETHICAL ISSUES AND THE PRACTICE OF LAW



## NATIONAL EXPANSION

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**Today, just about every profession, trade, and general workplace seem to proudly claim a Code of Ethics. From electricians' unions to roofers' associations, all academic institutions, and indeed all of corporate America, an emphasis on ethics can be found everywhere, and members, associates, faculty, and employees are expected to abide by the same.**

Yet, when it comes to ethics and practicing lawyers, the public stands ready to scrutinize that relationship more closely than any other. We will examine what is expected of lawyers on a national scale, and, where ethical deficiencies are most likely to arise.

## 'Principles and Values'

Legal ethics are generally described as principles and values, which, along with rules of conduct and laws, regulate the legal profession. At a minimum, they provide guidance as to proper conduct, but well beyond that, they establish working standards, the violation of which can result in sanctions, including the loss of one's license to practice law. Every state Supreme Court reserves unto itself the authority to not only license lawyers practicing within its jurisdiction, but also to oversee and regulate the profession and, when necessary, impose disciplinary measures.

## What is Typically Covered?

Although the term 'ethics' can refer to different practices in varying professions, in the practice of law, there are certain categories of conduct that are typically overseen by Rules of Professional Conduct, most notably: the lawyer-client relationship and the duties owed by the lawyer to his or her client, conflicts of interest, confidentiality, client funds held in trust, fee arrangements, a lawyer's duties to other lawyers, and advertising and promoting legal services.

From all of these broad categories, over a three-year period, ethics experts derived a 'Top Ten' listing of where lawyers fell short in their

ethical obligations, based on a review of misconduct cases where lawyers were sanctioned. The areas of greatest ethics shortcomings were:

- Duties Owed to Opposing or Third Parties
- Criminal Conduct
- Conflicts of Interest
- Attorney Fees
- Malpractice
- Solicitation of Business
- Client Confidences & Privilege
- Misconduct Involving Dishonesty
- Trust Accounts
- Neglect & Lack of Communication

Client Neglect, in particular, is on the rise due to the problem of lawyers taking on more work than they can handle. This is especially true among solo practitioners and very small firms. Although their intentions may be sincere in wanting to help a client resolve a legal problem, by stretching themselves too thin, the opposite occurs and the client ends up suffering from sub-par representation or in the worst scenario, becomes the victim of unintended malpractice with serious consequences for their case and rights. Therefore, it is very important that lawyers monitor their caseload and develop a mechanism to gauge when the task load has become too stressful to be efficient.

## Can't Plead: 'Techno-dolt'

A newer area of ethics that

## Executive Summary

### > The Issue

What sort of ethics issues present themselves to lawyers on a national scale?

### > The Gravamen

The practice of law is highly regulated by the Supreme Court of each state which promulgates Rules of Professional Conduct.

### > The Path Forward

There are numerous pitfalls where a lawyer can –even innocently– misstep in the area of legal ethics, and therefore keeping abreast of changes and sanctions rulings is critical.

attorneys are falling prey to is the area of technology. While the ABA's Model Rule 1.1 has always required that an attorney has a general duty to keep abreast of changes in the law and the practice of law, ten years ago, the ABA added a comment that "a lawyer should remain aware of technology ... as part of a lawyer's general ethical duty to remain competent in a digital age," and also that "a lawyer's general ethical duty to remain competent in a digital age" includes "understanding relevant technology's benefits and risks." Technology was further recognized as an integral element of the contemporary practice of law. As of May, 2022, 39 states have adopted the same or similar language into their own Rules of Professional Conduct.

In a case involving serious discovery misconduct, an attorney in *James v. National Financial, LLC*, attempted to defend his technological incompetence by telling the court, "I have to confess to this court, I am not computer literate. I have not found presence in the cybernetic revolution. I need a secretary to help me turn on the computer." The court rejected that explanation, noting that "professed technological incompetence is not an excuse for discovery misconduct," citing the amendments to Comment 8 of Rule 1.1 in Delaware and Pennsylvania. The court further admonished that "deliberate ignorance of technology is inexcusable ... and if a lawyer cannot master the technology suitable for that lawyer's practice,

the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical concerns."

In sum, we live in a litigious world, one where it is not just the lawyers who bring claims but also clients and state bar overseers. Therefore, a lawyer must be fully cognizant of the ethics rules even in casual contact with a person in a social setting as well as once a client is retained. A sufficient and competent support staff can be of tremendous value in helping to protect a lawyer from himself or herself.

**“A MAN WHO CARES NOTHING FOR AN ETHICAL RULE WHICH IS BELIEVED AND PRACTICED BY HIS NEIGHBORS, IS LIKELY NEVERTHELESS TO CARE A GOOD DEAL TO AVOID BEING MADE TO PAY MONEY, AND WILL WANT TO KEEP OUT OF JAIL IF HE CAN.”**

- 'THE PATH OF THE LAW',  
OLIVER WENDELL HOLMES

## Action

- 1 Staying Current:** A practitioner must know the Rules of Professional Conduct that apply in every jurisdiction where he or she practices law.
- 2 Know the Top Ten:** While it may not be practicable to monitor the broad range of recent ethics rulings, an attorney should, at a minimum, be aware of where the focus lies in the current practice environment.
- 3 Practice Overload:** Because a major cause of ethics misconduct arises from simply taking on too much work allowing the inevitable to slip through the cracks, an attorney must make a realistic assessment of what he or she can take on—and faithfully complete—before saying 'yes' to the new client.
- 4 Learn It or Hire It:** Being technologically savvy—at least enough to handle discovery properly—is now officially a Rule of Professional Conduct. If you can't learn it, hire a consultant who can protect you from your own technology deficiencies.

## Further Reading

1. <https://www.jdsupra.com/legalnews/technology-competence-for-lawyers-4784027/>
2. <https://highswartz.com/legal-insights/lawyer-ethical-issues/>
3. <https://journals.sagepub.com/doi/full/10.1177/2322005819893279>
4. <https://www.cosmolex.com/resource-center/running-a-law-office/common-ethics-violations-lawyers/>
5. <https://www.business-ethics-pledge.org/what-are-the-most-common-attorney-ethics-violations/>
6. <https://www.lexology.com/library/detail.aspx?g=5d4e260f-edda-4e89-9b95-e64e0b9a57a6>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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