

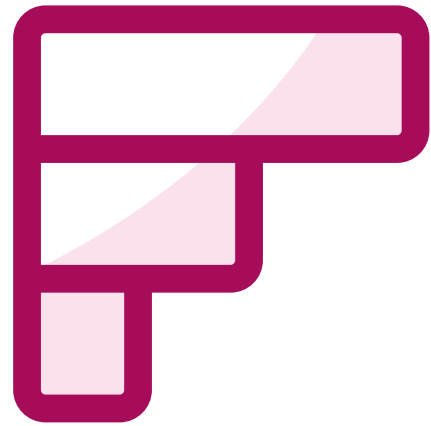
PERFORMANCE & PRACTICE: EVALUATING LAW OFFICE MANAGEMENT

MISSYE SCOTT

GENERAL COUNSEL



THE MISSISSIPPI BAR



What topic interests you most:

GENERAL OVERSIGHT



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Does each staff member have clearly defined duties and responsibilities?



Has each staff member received formal training on each of their duties and responsibilities?



Do staff members receive specific training targeted at our ethical and professional responsibilities?



Do you conduct additional formal refresher training for staff on a routine basis?



Does each staff member have a clearly defined supervisor who is responsible for reviewing their work



**Do you have a regular employee
review/evaluation process?**



Do you have an actual, written office policy manual that lays out office policies and procedures?



Do you have formal HR policies in place for employee discipline and/or disputes?



Do you have a succession plan in place to deal with the incapacitation or death of any attorney?



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Ethics & Discipline

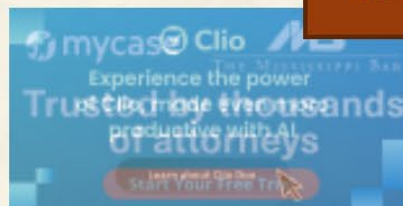
Inside the Bar

UPCOMING CLE CALENDAR

- Fastcase Legal Research
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- Membership Status & Enrollment Fees
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MISSISSIPPI
Access to Justice
COMMUNITY
JUSTICE for ALL



Pro Bono Resources

Legal Terms & Procedures



CLE Calendar

For Attorneys

News

Mississippi Bar Launches Partnership with Smokeball... [+]

MB Town Hall Meetings 2025... [+]

more news →

Upcoming Events

Apr. 16 - Fair Labor Standards Act... [+]

Apr. 25 - Bridge the Gap New Lawyer Program... [+]



Rule 5.1

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure the firm has in effect measures giving reasonable assurances that all lawyers in the firm conform to the rules of professional conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyers conforms to the rules of professional conduct.





Rule 5.3

With respect to a non-lawyer employed or retained or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the rules of professional conduct.
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the rules of professional conduct.



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CASELOADS



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Does each case have a specific attorney assigned as the responsible attorney?



If not, are there policies in place that dictate which attorney is responsible for what tasks?



Do each case have a specific support staff member assigned as the responsible support person?



If not, are there policies in place that dictate which staff member is responsible for what tasks?



Do you conduct a regular review of the size of each attorney's caseload to prevent overburdening?



Do you have a policy in place for reducing an attorney's caseload should it become too large or burdensome?

Rule 1.1

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



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Rule 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client



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INTAKE



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**Are incoming calls inquiring about services
logged or documented in some way?**



Do potential clients fill out an intake sheet with biographical information, names of involved parties and relevant details regarding their case?



Are all initial consultations performed by an attorney?



Do you send turndown letters or emails to clients that do not retain the firm after their consultation?



Are those who engage in initial consultations, including those who do not retain the firm, added to your conflict checking system?



Do you maintain records of initial consultations, including those that do not result in the potential client retaining the firm?



Rule 1.7

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:
- 1) the representation will not adversely affect the relationship with the other client; and
 - 1) each client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the adverse representation and the advantages and risks involved.





Rule 1.9

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) represent another in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
- (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.



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Rule 1.10

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.4.



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CONFLICTS OF INTEREST



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Do you have a formal conflicts checking system?



Does your conflict system check against the names of current clients, past clients, opposing parties and major/essential witnesses?



Do you ask potential clients for other names that they or adverse parties may have used?



Do you run a formal conflicts check prior to the initial consultation?



Do you document that the conflict check was run and who ran it?



If a potential conflict is discovered, does a supervisory attorney review the situation to determine with the representation can proceed?



If it is determined the representation can proceed despite the potential conflict do you explain the potential conflict to the client in writing and obtain a signed waiver?

Comment Rule 1.7

Consultation and Consent. In some cases a client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.



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Do you accept representation of multiple people/parties in a single matter?



Rule 1.7

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

- (1) the representation will not be adversely affected; and
- (2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.



Comment Rule 1.7

Conflicts in Litigation. . . . Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met.



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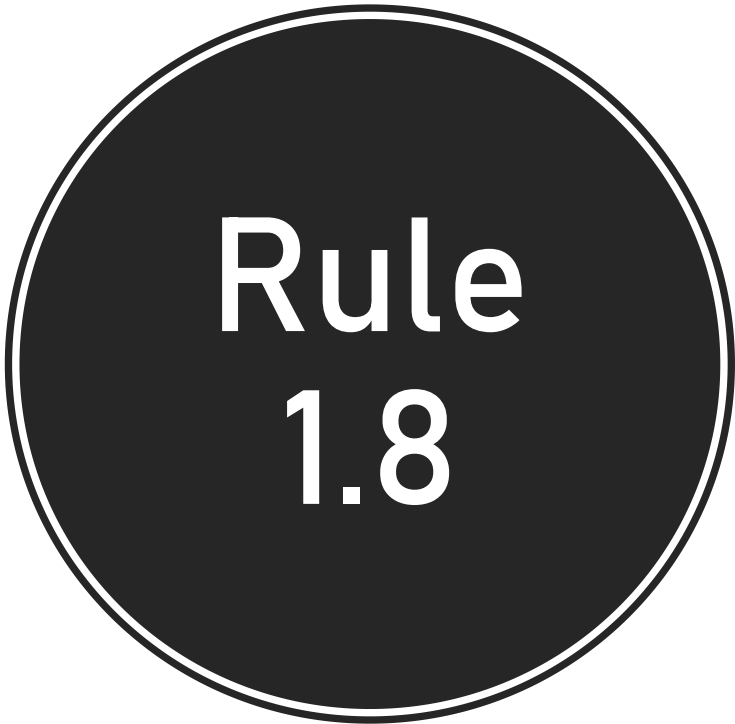
If so, do you advise them in writing of the potential conflict and how confidentiality will be handled?



Do you allow online case/contact submissions through your website?



If so, do you limit the amount of case information a potential client can send via your submission form?



Rule 1.8

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.



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FEE AGREEMENTS



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Do all clients sign a written fee agreement upon retention?

Rule 1.5

(a) A lawyer's fee shall be reasonable.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.



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Do you provide a copy of the signed fee agreement to the client and retain a copy for your records?



Is the scope of the representation clearly defined with sufficient specificity?



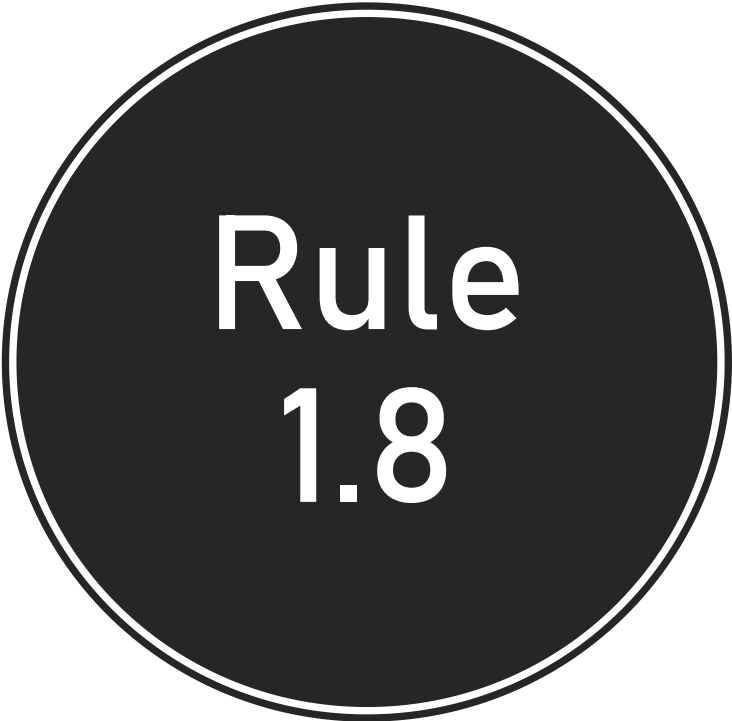
Are common areas of representation that are not covered by the agreement (appeals, post conviction relief, etc.) clearly indicated as not included in the agreement?



Does your fee agreement correctly and specifically define who the actual client is?



If you accept third-payor funds, does your agreement make clear they are not the client, cannot direct the representation, how confidentiality and any refunds will be handled?



Rule 1.8

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6.



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If you charge an hourly fee, do you require the client pay an advance deposit?



If so, is that money deposited directly in the firm's IOLTA Trust Account?



On hourly agreements, do you submit regular billing statements to keep the client apprised of the cost of their matter?



Are billing statements reviewed by a supervisory attorney for accuracy and reasonableness prior to being sent out?



On flat fee agreements do you charge a tiered fee (such as an additional fee for trial)?



If so, is the trigger for earning that tiered fee specific enough to avoid disputes over whether it is due and/or earned?



If any of your fees are called earned upon receipt or non-refundable, do you also advise the client in writing that they may discharge the firm at any time and may be entitled to a refund of all or part of the fee?

Rule 1.16

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.



Ethics Opinion 250

The potential ethical dilemma arises when an attorney enters into a "special retainer" arrangement whereby an advance fee payment is required, some and/or all of which is categorized as a "non-refundable retainer". An analysis of M.R.P.C. Rule 1.5(a) does not per se prohibit "non-refundable retainers" provided the retainer is reasonable. However, should a client discharge the lawyer or the lawyer withdraws from representation, M.R.P.C. Rule 1.16(d) requires an attorney to refund "any advance payment that has not been earned" which would include any "unreasonable portion" of a "non-refundable retainer". As advised in Opinion No. 219, the fee arrangement should be in writing and the written agreement should contain a provision which specifically states what part of the initial fee is non-refundable.



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CLIENT EXPECTATION MANAGEMENT



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Do you have criteria developed for when to decline the representation of a problematic potential client?



**Do you address communication expectations
with new clients?**

Rule 1.4(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.



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Are clients clearly aware at retention of the cost expectations of their representation (replenishing advance deposits, expert witness expenses, etc.)?

Rule 1.4(b)

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



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FILE CREATION & CASE MANAGEMENT



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Is there a standard process that dictates who opens a new client file and how it should be set up?



Are routine expected deadlines (like statutes of limitations) automatically calendared when the file is open?



Are files organized in a standardized manner so that specific documents can easily be located?



Do you use or have you evaluated whether you should use digital case management software?

Bar Member Discounts



Clio®



mycase



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Ethics Opinion 263

The Committee is of the opinion that lawyers may use a cloud-based electronic data storage system to store client confidential information, but lawyers must undertake reasonable precautions in using those cloud-based systems.

...

These “reasonable precautions” include:

- acquiring a general understanding of how the cloud technology works;
- reviewing the “terms of service” to which the lawyer submits when using a specific cloud-based provider just as the lawyer should do when choosing and supervising other types of service providers;
- learning what protections already exist within the technology for data security;
- determining whether additional steps, including but not limited to the encryption of client confidential information, should be taken before submitting that client information to a cloud-based system;
- remaining alert as to whether a particular cloud-based provider is known to be deficient in its data security measures or is or has been unusually vulnerable to “hacking” of stored information; and
- training for lawyers and staff regarding appropriate protections and considerations.



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Do you copy or move emails from email accounts into the client file itself to maintain a complete unified file?



Is there a policy in place that dictates how mail is receive, handled, by whom, and how it is added to the file?



Is there a policy that dictates who should calendar new dates on the firm's calendaring system?



Do you use a calendar tickling system to warn of deadlines in advance of their arrival?



Do you conduct a regular review (at least once a month) of all active matters to ensure no activity is necessary?



Do you conduct a regular review of all inactive matters (at least every other month) to determine if representation needs to be terminated or advance fees refunded?



Do you policies and procedures in place to provide for the timely return of client files upon demand?

COMMUNICATION POLICIES



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Do you have a policy that mandates all clients calls must be returned within a set period of time (like 48 hours)?



Do you have a policy that mandates all written client communications must be responded to within a set period of time (like 7 days)?



Do you contemporaneously copy clients on all received or sent documents?



Do you separately notify clients of all hearing dates and/or deadlines other than simply copying them on the documents that establish the dates?



Do you log or document all client communications?



Do you log or document important or major client decisions, such as authorization of settlements/pleas?



Are emails and letters marked "confidential" or "privileged?"



Do you text message with clients?



If so, do you have a process in place to preserve and store those text messages in your client files?

CONFIDENTIALITY



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Do you have a formal confidentiality policy that is provided to all employees and vendors?



Is your office layout adequate for clients to discuss to confidential issues without being overheard by other clients or the public?



Are confidential materials (including printers) kept in a location not openly accessible to visiting clients or members of the public?



Is your office adequately secure from a security standpoint (locks, alarms, limited access)?



Are computer systems, including mobile devices, adequately password protected?



Do you regularly updated ant-virus software and have an effective network firewall?



If there is a breach of office security or computer systems do you have policies in place for notifying clients their information may have been compromised?



If you share office staff with other attorneys, law firms or businesses, has the shared staff been formally trained on confidentiality requirements?



If you share office space with other attorneys, law firms or businesses, is the office signage sufficiently clear to indicate separate entities?

Rule 1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted paragraph (b).



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**Rule 1.6
Comment**

A lawyer shall must act competently to safeguard information related to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation.



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TERMINATION OF REPRESENTATION



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**Do you formally notify clients when
representation has ended?**



If so, do you have a form or template letter that is sent out at the end of all matters?



If a client wishes to terminate the firm's representation do you formally withdraw from representation with the court?



Do you have a system in place to identify new post-matter documents or pleadings that come in and to have them appropriately acted upon?

Questions?

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