

# **ETHICS & BEST PRACTICES OF LAW OFFICE MANAGEMENT**

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## **I. INTRODUCTION**

## **II. ETHICS OVERVIEW**

A. Supervisory Attorney Must Ensure Nonlawyer Assistants Comply With Rules (Rule 5.3).

1. Senior supervisory lawyer shall make reasonable efforts to insure that the office has procedures to ensure the nonlawyer assistant's conduct is compatible with the professional obligations of an attorney.

2. Direct supervisory attorney shall make reasonable efforts to ensure that the nonlawyer assistant's conduct is compatible with the professional obligations of an attorney.

B. A Supervisor Assumes Imputed Responsibility for Acts of Nonlawyer Assistants if (s)he:

1. Orders or ratifies a subordinate's violation, or,

2. Fails to take remedial action to avoid or mitigate the consequences of a violation.

## **III. START WITH THE BASICS**

A. Know the regulations underlying your office's function.

B. Know your software systems.

C. Review local resources.

D. Review local processes.

E. Creative ideas – Army’s Chief of Staff Award for Legal Assistance.

F. Don’t be afraid of asking questions. But try to find the answer first.

G. Don’t be afraid of change.

#### **IV. ESTABLISHING THE ATMOSPHERE**

A. First impressions count.

B. Don’t impose barriers.

C. Maintain professional, confidential appearance.

## **V. SCHEDULING APPOINTMENTS**

### **A. Who is the client?**

1. General Rule - The department you serve with (e.g. Dept of the Army) acting through its authorized officials (Rule 1.13). Rule rejects the concept that the government as a whole is the client.

2. However, each department establishes exceptions to that rule.

a. Army - Rule 1.13(g) - a lawyer has an attorney-client relationship with an individual if they are assigned to represent an individual

### **B. What scheduling methods are used?**

1. Walk-in only.

2. Next day service.

3. Two weeks out.

4. Special service days.

### **C. What information is gathered?**

## **VI. STREAMLINING THE INTAKE PROCESS**

### **A. Screening of clients**

1. Is this an eligible client?

i. Generally, servicemember (active duty or retired) or family member

ii. Others?

2. Is this an emergency?

3. Is there a conflict?

### **B. Accurate description of problem or inquiry**

C. Getting all the documents for the attorney

1. Ask the client what documents there are, where they are, and when they'll all be available so that they can be brought to the attorney
2. Encourage the client to take extra steps to be sure that the attorney has all the documents at the initial meeting.

D. Questionnaires or Information Papers?

**VII. CONFLICTS OF INTEREST (RULE 1.7, 1.8, 1.9).**

A. Representation directly adverse to existing clients.

1. Rule 1.7(a) prohibits a lawyer from representing a client if the representation of the client will be adverse to another (present) client unless:
  - a. The lawyer reasonably believes the representation will not adversely affect the other relationship, and
  - b. The client consents after consultation.
2. Rule 1.7(b) prohibits a lawyer from representing a client if the representation would be materially limited by the lawyer's responsibility to another client, a third party, or by the lawyer's own interests unless:
  - a. The lawyer reasonably believes the representation will not be adversely affected, and
  - b. The client consents after consultation.

B. Rule 1.9 prohibits a lawyer, who has formerly represented a client in a matter:

1. From representing another person in the same or substantially related matter unless the client consents after consultation, or
2. From using information to the disadvantage of the former client.

C. If a conflict develops after representation has been undertaken, the attorney must seek to withdraw.

D. Imputed Disqualification (Rule 1.10).

1. Lawyers working in the same military law office are not automatically disqualified from representing a client. A functional analysis is required (Rule 1.10. Compare ABA Model Rule 1.10.)
2. Representing multiple legal assistance parties (See AR 27-3, para 4-9).
  - a. Can provide a list of attorneys IAW AR 27-3, para 3-7h and I for referral.
  - b. Can refer to another military legal office, a USATDS attorney, or a RC JA.
  - c. When other alternatives are not feasible, as a last resort, supervising attorneys may authorize exceptions to use an attorney from a separate section of the same Army legal office. In cases where exceptions are approved, those attorneys providing LA from the same Army legal office will –obtain informed consent of both clients; make and maintain records of their consent in the clients' files; and further protect the confidential attorney-client communications by using different clerical personnel to assist.
  - d. Army policy discourages attorneys from the same legal office from providing legal assistance to both spouses in a domestic dispute.
3. Permitted Dual Representation.
  - a. Practically speaking, may represent both sides in estate planning or in preparation of bill of sale provided conflicts are resolved before undertaking representation.
  - b. Client confidences – Husband and Wife request estate counseling together.
    - (1) Must consent to joint interview.
    - (2) Recommended – sign Dual Representation letter for case file.

c. Be alert for conflicts of interest (e.g. Spouse with children of former relationship, Child of testator present for interview, step-parent adoptions).

## VIII. CONFIDENTIALITY

### A. Source of requirement (Rule 1.6).

1. General rule. A lawyer shall not reveal any information relating to the representation of a client.

a. No distinction between confidences and secrets.

b. Applies to information obtained prior to formation of attorney-client relationship.

c. The duty of confidentiality continues after the lawyer-client relationship has terminated.

d. Applies to all office personnel, including volunteers.

2. Supervisors should ensure procedures are in place to ensure confidentiality. AR 27-3, para. 4-9b(1).

a. Separate administrative and confidential files. AR 27-3, para. 5- 5c.

3. Exceptions to confidentiality.

a. A client may consent to disclosure of confidences (Rule 1.6(a)).

b. Disclosure is also authorized in order to carry out the representation.

(1) Office communications.

(2) Reading files.

(a) Supervisors are permitted to review office files to ensure adequate legal representation.

(b) Both supervisors and subordinates need to be sensitive to potential for conflicts of interest inherent in reviewing reading files.

c. Disclosure is permitted to establish a claim or defense in a controversy with a client (Rule 1.6(b)).

d. Intention to commit a crime. Army Rule 1.6(b)(1) and Navy Rule 1.6b mandates (Air Force Rule 1.6 has the same exception, but it is discretionary -- the lawyer MAY disclose) disclosure of information a lawyer reasonably believes necessary to prevent a client from committing a crime which is likely to--

(1) result in imminent death or substantial bodily harm, or

(2) significantly impair the readiness or capability of a military unit, vessel, aircraft, or weapon system.

e. There is no authority for revealing information of other potential offenses under the Rules.

f. Information regarding past crimes may not be released under any of the ethical standards.

4. Client authorizes disclosure - AR 27-3, para. 4-8a strongly suggests having authorization in writing. See also AFI 51-504, para. 1.6.2 (Information received for legal assistance will be released "only with the client's express permission. . . .")

B. Application of the rule:

1. At screening/intake
2. With phone calls, letters and other documents
4. E-mail/Internet/Fax Security Measures.
4. Duty to safeguard information.
5. "Loose lips" – dangerous in a legal office!

## 6. SRPs

### **IX. STAFF ADVICE TO CLIENTS (RULE 5.5, “UNAUTHORIZED PRACTICE OF LAW” )**

- A. What’s prohibited - legal advice.
- B. What’s allowed
  - 1. Referrals to other attorneys
  - 2. Resources available to the client
  - 3. Factual information and straightforward legal answers (i.e., “The law here in Delaware requires a 2-year separation before you can file for divorce” or “The child support guidelines here in Ohio say that a parent pays 25% of gross pay for two children.”
  - 4. Review the difference between the above and giving legal advice that’s tailored to specific factual circumstances. As a general rule, whenever the client starts to give some of his facts, that’s entering into forbidden territory, and “You’ll need to speak to a legal assistance attorney” is the proper answer.

### **X. SOPS, SCRIPTS AND CHECKLISTS**

- A. Reasons for a legal assistance SOP
  - 1. Promoting consistency in training, advice, communications.
  - 2. Provides basis for action.
- B. How to prepare one, contents
  - 1. “Developing a Legal Assistance SOP,” 112 Mil.L.Rev. 249 (1986)
  - 2. JA 271, U.S. Army JAG School [JAGCNET].
- C. Checklists and Scripts.

## **XI. ANALYZE THE WORKFLOW**

### A. File Organization

1. The basic principle at work here is a variant of Murphy's Law called *Roland's Rule*: "If you file it properly, you'll never need it but you'll be able to find it. If you don't file it, you'll need it but won't be able to find it." [see ATCH 4 on Murphy's Law]
2. "Hard copy" files
  - i. How to keep track of your file folders?
  - ii. Make a list of the most common subject areas, and organize them according to that

### B. Reading file – outgoing and incoming correspondence

### C. Staff meetings within the LAO.

### D. Backing up your files

## **XII. POSSIBLE PROGRAMS**

### A. *Pro Se* Programs.

### B. Citizenship applications

## **XIII. PREVENTIVE LAW**

### A. Preparation of handouts for clients

1. Purpose of handouts, content, general guidelines

2. Have client read the applicable pamphlet before seeing attorney – saves time
- B. Use of handouts
1. Send by e-mail to client?
  2. By mail?
  3. Use of website?
  4. Use of rack for pamphlets in waiting room.
- C. Use of articles for base newspaper
- D. Teaching preventive law classes

#### **XIV. LAWYER REFERRAL AND RESOURCES**

- A. When you don't need "lawyer" referral – other types of referrals
- B. Lawyer referral resources.
1. Internet resources
- C. Fee structures for civilian lawyers.
- D. How to go the extra mile in finding a civilian lawyer.
- E. How to "partner" with the civilian lawyer – briefs, interviews, affidavits, summaries of statements and facts.

#### **XV. TRAINING**

- A. Reasons for training
1. Competence, malpractice avoidance
  2. Professionalism
  3. R&R
- B. CLE programs

1. TDY -- JAG Schools, civilian programs
  2. Long-distance learning – correspondence courses, videotape, audiotape
- C. Use of training handouts
- D. Creating a legal assistance deskbook
- E. Creating a “Lessons Learned” guide
- F. Use of Reservists in the legal assistance office
- G. Use of civilian bar members
- H. A brief word on “getting out to meet the local bar
- I. <http://www.paralegals.org/>

## **XVI. NETWORKING**

1. Local child support enforcement office.
2. Mediation services.
3. Domestic violence program.
4. Better Business Bureau/Chamber of Commerce.
5. State/local consumer affairs offices.
6. Debt management program.
7. State bar military committee.
8. Community bar/paralegal organizations.
9. JAGCNet/service web sites.

## **XVII. WEB RESOURCES**

- A. Research [JAGCNET document on LA resources on Internet]

## **XVIII. POWERS OF ATTORNEY**

A. A power of attorney is an instrument in writing by which a person appoints another as his or her agent and grants the agent the authority to perform certain specified acts on his or her behalf.

B. Acceptance of Powers of Attorney

C. Military Powers of Attorney.

1. Basis: 10 U.S.C. 1044b.
2. Military Power of Attorney Preamble

D. Special Vs. General

1. Special Power or Attorney – An appointment to perform a specific task.
2. General Power of Attorney
  - a. Broad grant of authority
  - b. A general POA may not grant all powers.
    - (1) Dealing with DFAS
    - (2) Gifting as an issue
  - c. Army policy on general powers of attorney requires prior advice from an attorney on the nature and effect of a general power of attorney.

- E. Indemnification
- F. Duration Of The Power of Attorney
- G. Springing Powers of Attorney
- H. Durable Powers of Attorney
- I. Termination of a Power of Attorney

## **XIX. NOTARY DUTIES**

### A. Notary Sources

1. Civilian Notaries – Creatures of State Law
2. Military Notaries .
  - a. 10 U.S.C. 1044a
  - b. Implementing Service Regulations (AR 27-55, Notarial Services, 17 Nov 2003)

B. Notary Function - You act as an official, unbiased witness to the identity and signature of individuals who appear before you. Your signature is evidence that you observed the person sign the document and that you confirmed the identity of the signer before you notarized it. See: “*Notary’s Guiding Principles*” (Attached)

1. Administer Oaths
2. Notarization: The notary signature and seal (if required) indicate that the person signing the document appeared before you, the notary, produced identification or you personally knew the individual, and signed the document in your presence.

3. Certification: A process that signifies that a document is a true, and accurate copy or reproduction of the original. Generally, only a custodian of a record may issue a "Certified Copy." Consult your service rules for possible exceptions.

#### C. Notary Procedures.

1. Identify Requester: You generally have acceptable identity evidence of that individual if:

- a. Picture identification documents such as a military ID card or a state driver's license. (Note: Some states require a picture ID with a signature).
- b. You personally know the individual, or
- c. A credible witness you know affirms the identity of the individual seeking the notarization.

2. Administer oath

3. Witness signature

4. Execute Notary provision

5. Notary log/journals: Notaries must be able to confirm notary services performed many years after the service was provided. It is imperative, therefore, that you are consistent in how you provide these services.

#### D. Notary Prohibitions.

1. No Notary will perform, or be ordered or otherwise required to perform, a notarial act that the notary believes:

(a) Is for a transaction that the notary knows or suspects is illegal, false, or deceptive.

(b) Is for a person who is being coerced.

(c) Is for a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act.

(d) Impugns or compromises the notary's impartiality.

2. Notaries Will Not:

(a) Notarize unsigned documents.

(b) Execute a notarial certificate containing a statement you know is false.

(c) Perform any action with intent to deceive, such as predating or postdating a document.

(d) Authenticate the signature of an individual who did not personally appear before you at the time his or her signature was affixed to the document.

(e) Perform a notarial act when you are a party to, or directly or pecuniarily interested in, the transaction.

(f) Serve as the witness and as a notary in the same transaction. Generally, a notary may sign as one of several witness, as well as the notary, where permitted by law such as in real estate transactions in Georgia, North Carolina, and South Carolina.

(g) Solemnize marriages as part of you official notarial duties, even if authorized to do so under a State or foreign law granting notaries such authority.

(h) Provide legal advice, unless you are also an attorney.

(i) Certify public, official, registered, or court records or documents, or issue certified copies of such documents or records unless specifically authorized by service regulations. (ar 27-55 outlines when you may make certified copies of some original documents for limited military purposes, provided you determine that the copy to be certified is a full, true, and accurate transcription or reproduction of the original document, by carefully and personally comparing the copy and original or observing the copying process.)

## **XX. CONCLUSION**

## *NOTARY'S GUIDING PRINCIPLES*

1. The Notary shall, as a government officer and public servant, serve in an honest, fair, and unbiased manner.
2. The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.
3. The Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring his or her notarial act.
4. The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive, or fraudulent.
5. The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.
6. The Notary shall act as a ministerial officer and not provide unauthorized advice or services.
7. The Notary shall affix a seal on notarized documents IAW AR 27-55 and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.
8. The Notary shall record every notarial act in a notary log, a similar journal or other secure recording device and personally maintain and safeguard it as an important personal record of your notarial acts.
9. The Notary shall respect the privacy of each signer and not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an authorized official purpose.
10. The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the office