The Ethical Mistakes No Attorney Sees Coming

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Learning Objectives

- Recognize common ethical mistakes that lead to discipline despite good intentions.
- Apply ABA Model Rules to intake, communication, confidentiality, technology, and supervision problems.
- Use practical controls that reduce malpractice, grievance, and sanctions exposure.
- Evaluate emerging risks involving email, cloud systems, remote work, social media, and AI-enabled tools.
- Strengthen professionalism, client trust, and defensible law-firm processes.

Agenda

1. Why good lawyers get in trouble
2. Conflicts and intake mistakes
3. Confidentiality and technology failures
4. Communication and diligence problems
5. Supervision, vendors, and AI risk
6. Interactive hypotheticals and practical safeguards

Why Do Good Lawyers Get In Trouble?

- Time pressure encourages shortcuts
- Assumption bias makes matters seem routine
- Process failures spread responsibility, so no one escalates the issue
- Clients experience silence and confusion before filing complaints
- Technology magnifies minor judgment errors

Conflicts and Intake

Most conflict problems begin before the work begins.

Scenario: The “Quick Call” Intake

Facts

A lawyer hears substantive deal details before conflicts clearance through an initial call or consultation, does not run a conflict check yet or open a matter - and later the firm is asked (maybe through another lawyer) to take an adverse role in the same transaction.

The other lawyer runs a conflict check, and nothing comes up. The other lawyer also does not initially open a matter, but he/she send engagement letter.

Original lawyer then opens their matter and sends engagement letter.

Rules Triggered

Rule 1.18 prospective client duties

Rule 1.7 current-client conflicts

Rule 1.8 Specialty Conflict Scenarios

Rule 1.9 Former Clients

Rule 1.10 Imputation

Apply the Rules

- What information was obtained?
- Could it be significantly harmful?
- Was the intake limited by warning language?
- Did the conflicts search include affiliates and individuals (if applicable)?
- Can screening or consent resolve the issue? **Screens NEVER resolve a conflict, only consents can resolve a conflict!!

Risk Controls for Intake and Conflicts

- Use structured intake forms before substantive discussion
- Require affiliate and key-person identification
- Give prospective-client warning language early
- Document waivers, screens, notices, and final decisions
- Train lawyers not to “just take a quick call” on substance

Scenario: “We Only Did a Small Matter”

Common Blind Spot

Lawyers underestimate what they learned about a former client’s negotiation style, risk tolerance, and internal structure.

Best Practice

Compare factual, legal, and strategic overlap before deciding a new matter is not substantially related.

Advance Waivers: Useful but Not Magical

What Works

Sophisticated clients, defined adversity, and clear informed-consent language.

What Fails

Overbroad boilerplate that does not fairly describe the real future conflict.



Confidentiality and Tech

Operational mistakes create many ethics problems.

Rule 1.1 Technology Competence

- Lawyers need enough technological understanding to identify risk
- Email, cloud tools, remote access, and AI require judgment
- Competence includes asking informed questions of IT and vendors
- Common usage is not the same as ethical sufficiency

Scenario: The Wrong Attachment; Inadvertent Disclosure [Rule 4.4(b)]

Facts

A lawyer sends a redline with privileged comments and hidden metadata instead of a clean draft.

Discussion/Rule

Was this merely human error or also a foreseeable process failure involving review, scrub tools, or send controls?

Rule 4.4(b) Under Model Rule 4.4(b), a lawyer who receives a document or electronic information relating to the representation of a client and knows or reasonably should know that it was inadvertently sent must promptly notify the sender. The rule itself does not go further—it does not require you to follow the sender's instructions or forbid you from reading or using the material—but many jurisdictions layer ethics opinions on top of it.

Everyday Confidentiality Controls

- Use multi-factor authentication
- Restrict external sharing by default
- Scrub metadata before transmission
- Use secure portals for sensitive documents
- Train on phishing, recipient check, and escalation

Scenario: Remote Work Convenience Becomes Exposure

- Saving drafts on personal devices
- Using consumer cloud or messaging apps
- Discussing matters in public spaces
- Leaving visible screens exposed during travel
- Failing to apply firm-approved controls consistently

Scenario: Celebrating a Win Online

Question

Can industry insiders identify the client or matter even if the post does not name them?

Practice Rule

No public discussion of client matters without a client-approved communications path.

Rule 1.6 Confidentiality - is the core rule that requires lawyers to protect all information relating to the representation of a client, not just privileged communications.



Communication and Diligence

Clients often complain because they feel ignored or surprised.

Rule 1.4 Problems That Feel Administrative

Common Breakdown

Silence after filing, unexplained staffing changes, billing surprises, and failure to explain options.

Rule Application

Communication must be timely enough for the client to make informed decisions.

Rule 1.4 Communication - requires reasonable, timely communication with the client so the client can make informed decisions about the representation.

Scenario: The Deadline Was Calendarized — But Not Owned

- Assistant entered the date
- Associate assumed partner would review
- Partner thought an extension had been requested
- No one confirmed ownership
- Rules 1.3, 5.1, and 5.3 may all be implicated

Expectation Management Checklist

- Define scope, exclusions, staffing, and assumptions in writing
- Explain response-time norms and emergency coverage
- Document recommendations and client decisions
- Warn early about setbacks, cost changes, and uncertainty
- Close matters formally so clients know what is complete



Supervision, Vendors, and AI

Modern practice creates ethics risk through delegation and tool adoption.

Rules 5.1 and 5.3 in Daily Practice

- Supervise lawyers through training and review
- Supervise staff through clear instructions and escalation paths
- Vet vendors as extensions of the firm
- Use approved workflows rather than shadow systems
- Treat process design as part of ethical compliance

Scenario: GenAI Drafting Shortcut

Facts

A lawyer pastes unredacted client content into a public generative AI tool and forwards the output without verification.

Safer Approach

Use approved tools, minimize inputs, anonymize sensitive facts, verify output, and document internal guidance.

Human oversight is a MUST with GenAI. It is not a hit-it-and-forget-it tool! Treat like you are interacting with a law clerk or first-year associate. Do you always review their work product?

YES!

So, you should always review GenAI work products!

Post-Incident “Hot Wash” Questions – FOR ANY VIOLATION

- What happened factually?
- Which rule duties were implicated?
- What must be done now for the client and file?
- What supervision or system gap allowed it?
- What control change will reduce recurrence?

Interactive Hypotheticals

- Lateral conflict discovered after work starts
- Sensitive client text on personal phone
- Junior lawyer wants to post a deal announcement
- Missed deadline after multiple handoffs
- Generative AI used to revise contract language

10 Practical Safeguards to Implement Now

1. Matter-opening checklist with expanded party identification
2. Prospective-client intake scripts and warnings
3. Written conflict-resolution templates
4. Send-delay and metadata-scrub defaults
5. Approved-tool list for cloud, messaging, and AI
6. Supervisor sign-off for sensitive transmissions
7. Client communication cadence by matter type
8. Formal matter-closing letters
9. Quarterly ethics-tech training
10. Incident-response playbook including ethics counsel



QUESTIONS?

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