

Ethics for Elder Law Attorneys
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This guide is intended to assist practitioners who may be new to the Elder Law field. It is in no way a substitute for the Florida Rules of Professional Conduct. The guide lists some of the more common ethical issues we may face but the list is not by any means the entire set of rules attorneys must know and follow.

Who is your Client?

The answer to this question may not be as easy as it looks. The Client is the person to whom the attorney owes the duty of competence, loyalty, and confidentiality. In Elder Law, it is very common to have family members make the initial call to your office and even schedule the consultation. Family members, or others, may come to the consultation and may take a very active role during the consultation. It is very important to make sure you identify who the Client is and that you try as much as possible to direct your communication to the Client.

For example, the daughter of an elderly woman may contact you because she is concerned her mother is declining and she wants to make sure her mother has all the necessary documents in place for her protection. The daughter has heard horror stories about guardianships and doctors not talking to family members without proper documentation. The daughter brings mom to your office along with a completed intake that your office sent her when she contacted your office to schedule the consultation. The daughter seems very dedicated and concerned about her mother.

Regardless of how nice or honest the daughter may look, it is imperative that you talk to mom, alone, to find out if she has the capacity to make her own decisions. Sometimes through simple conversation you can determine whether the Client knows where she is and why she is there. The purpose of the documents should be explained to the Client. It may be easier to explain your plan and your documents to the daughter because daughter may understand it faster than mom. However, it is important to always make sure you spend the time explaining your plan, documents, etc. to the actual client. Once you identify the Client and you ascertain the Client's wishes, you can incorporate daughter into the meeting and the plan, assuming of course mom has authorized you to do so. We, as elder law attorneys, need to remember that many clients rely heavily on family members or others to assist them in many areas of their lives. Family involvement is important and should not be denied to the elderly client as long as we follow the ethical duties we owe to our Clients.

Confidentiality

One of the obligations at the core of our profession is that of confidentiality. Attorneys have a duty to keep information and communications between the attorney and their client confidential. Once again, in Elder Law many clients will want to heavily involve family members in all areas of planning and representation. However, others will not. We deal with very sensitive information, including medical and financial information. Make sure you do not disclose confidential information without your client's express consent. If the Client wants to heavily involve others in the representation, consider having the client sign a written authorization allowing you to communicate with those individuals.

Technology

We all email. We all see errant posts on listservs and emails that were mistakenly sent to third parties. Technology is a great tool for attorneys but it is imperative that

attorneys know the benefits and risks associated with technology. For example, if you do send an email to an unintended recipient, you must do your best to recover the information sent. If you suspect sensitive client information has been compromised you must notify the client immediately. This can happen if your network is hacked, etc. Think twice before accessing sensitive client information or sending an email when you are on a public network, like Starbucks, for example. Email is not a very secure way to send sensitive client information such as social security numbers. Consider email encryption services to better protect client data.

Social Media

Social networking sites, such as LinkedIn, Facebook, YouTube, Twitter, etc. are excellent tools for attorneys to market their practice, but you must do so responsibly. If a page on a networking site is used and focuses only for social purposes and not to market your practice or your services, that page is not subject to the lawyer advertising rules. Think of this as your personal Facebook page with friends and family as "friends."

However, pages on social networking sites that are used to promote the lawyer or the lawyer's practice are subject to the lawyer advertising rules set forth in Florida Rules of Professional Conduct 4-7.11 through 4-7.18 and 4-7.21. An example of this could be a Facebook page you created for your firm. These pages must comply with the above regulations, which include prohibitions against misleading information, predicting or guaranteeing outcomes for a client, etc.

You are responsible for the content you post on your pages. You are not responsible for content a third party posts on your page unless you prompted that third party to post to get around the advertising rules. If a third party posts information that violates the advertising rules on your page, remove it as soon as possible. If you have no control or access over the site where the information was posted, ask the third party to remove the post.

Conclusion

Perhaps the most important advice for newer practitioners is to put ego or insecurity aside and seek help when you need to. Law school teaches us to spot issues and then present an answer. In real life, situations are rarely black and white. It is important to realize that sometimes you may not know what the appropriate course of action is. In those situations, it is imperative to ask for help and know where to ask for help. Thankfully, the Academy of Florida Elder Law Attorneys (AFELA) is great when it comes to mentoring and helping other practitioners. The listserv is a great tool that links practitioners throughout the State. Additionally, The Florida Bar has a program called Lawyers Advising Lawyers, formerly (SCOPE.) This program allows newer attorneys to speak with experienced attorneys for guidance. This is the website:

Lawyers Advising Lawyers
<http://www.floridabar.org/lawyersadvisinglawyers>

The Florida Bar also operates an Ethics Hotline, which attorneys can call and get guidance with ethical dilemmas. The phone number is:

Florida Bar Ethics Hotline
800-235-8619

Other Resources are:

Aspirational Standards for the Practice of Elder Law – NAELA

https://www.naela.org/App_Themes/Public/PDF/Media/AspirationalStandards.pdf

Florida Rules of Professional Conduct

[https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/OA266C6138C4A15685256B29004BD617/\\$FILE/RRTFB%20CHAPTER%204.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/OA266C6138C4A15685256B29004BD617/$FILE/RRTFB%20CHAPTER%204.pdf?OpenElement)