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# **Avoiding the Top Ethical Mistakes made by Attorneys**

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## TEN COMMON PITFALLS

1. Communication failures
2. No termination letter
3. No written fee agreement
4. Going it alone
5. Trust account mishandling
6. Corporate conflicts
7. Undisclosed fee sharing
8. Ex-client investment partners
9. Improper notarizing
10. Prohibited firm names

## Disciplinary Case Statistics 2017 - 2018 (January – September)

### Supreme Court Decisions (excluding defaults and reinstatements)

2017	2018
41	32

### Years Admitted to Practice in Ohio

	2017	2018
0 – 5	0	0
6 – 10	3	1
11 – 15	11	3
16 – 20	8	9
21 – 25	8	13
26 – 30	5	2
31 – 35	2	3
36 – 40	3	0
41 – 45	1	1

### Type of Practice

	2017	2018
Solo	26	28
Small firm	5	4
Med/large firm	3	0
Judge	2	0
Other	2	2

Cont'd

### Rule Violations

<b>Prof. Cond. R.</b>	<b>2017</b>	<b>2018</b>
1.1	6	4
1.3	13	14
1.4(a) & (b)	25	25
1.4(c)	8	6
1.5(a)	4	4
1.5(d)(3)	6	1
1.15(a)	20	29
1.15(b) – (d)	9	10
1.16(d)	3	5
1.16(e)	5	4
8.1(a)	4	3
8.1(b)	5	10
8.4(b)	9	3
8.4(c)	17	12
8.4(d)	13	10
8.4(h)	9	4

### Sanctions Imposed

	<b>2017</b>	<b>2018</b>
Public Reprimand	5	2
Term Suspension Stayed	12	10
Term Suspension Partially Stayed	11	8
Term Suspension	1	2
Indefinite suspension	7	3
Disbarment	5	4
Resigned with Disciplinary Action	0	3
Pending		

## RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

### Rule 1.15(a)

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:

(1) maintain a copy of any fee agreement with each client;

(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:

(i) the name of the client;

(ii) the date, amount, and source of all funds received on behalf of such client;

Rule 1.15: Safekeeping Funds and Property – 1.15(a) cont'd

(iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;

(iv) the current balance for such client.

(3) maintain a record for each bank account that sets forth all of the following:

(i) the name of such account;

(ii) the date, amount, and client affected by each credit and debit;

(iii) the balance in the account.

(4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;

(5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule.

## RULE 1.4: COMMUNICATION

### Rule 1.4(a) & (b)

(a) A lawyer shall do all of the following:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) comply as soon as practicable with reasonable requests for information from the client;
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

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

## RULE 1.3: DILIGENCE

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

## RULE 8.4: MISCONDUCT

### Rule 8.4(c)

It is professional misconduct for a lawyer to do any of the following:

(c) engage in conduct involving dishonesty, *fraud*, deceit, or misrepresentation;

## Rule 1.15: SAFEKEEPING FUNDS AND PROPERTY

### Rule 1:15 (b) – (d)

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, confirmed in writing, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

## RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

### Rule 8.1(b)

In connection with a bar admission application or in connection with a disciplinary matter, a lawyer shall not do any of the following:

(b) in response to a demand for information from an admissions or disciplinary authority, fail to disclose a material fact or knowingly fail to respond, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

## RULE 8.4: MISCONDUCT

### Rule 8.4(d)

It is professional misconduct for a lawyer to do any of the following:

- (d) engage in conduct that is prejudicial to the administration of justice;

## RULE 1.4: COMMUNICATION

### Rule 1.4 (c)

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.

(3) The notice required by division (c) of this rule shall not apply to either of the following:

(i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;

Rule 1.4: Communication - 1.4(c) – cont'd

(ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.

NOTICE TO CLIENT

Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

\_\_\_\_\_  
Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

\_\_\_\_\_  
Client's Signature

\_\_\_\_\_  
Date

## RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

### Rule 1.16 (d)

(d) As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect a client's interest. The steps include giving due notice to the client, allowing reasonable time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Client papers and property shall be promptly delivered to the client. "Client papers and property" may include correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.

## RULE 1.1: COMPETENCE

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

## RULE 1.5: FEES AND EXPENSES

### Rule 1.5(a)

(a) A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

## RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

### Rule 1.16(e)

(e) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned, except when withdrawal is pursuant to Rule 1.17.

## RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

### Rule 8.1(a)

In connection with a bar admission application or in connection with a disciplinary matter, a lawyer shall not do any of the following:

- (a) *knowingly* make a false statement of material fact;

## RULE 8.4: MISCONDUCT

### Rule 8.4(b)

It is professional misconduct for a lawyer to do any of the following:

(b) commit an *illegal* act that reflects adversely on the lawyer's honesty or trustworthiness;

## RULE 8.4: MISCONDUCT

### Rule 8.4(h)

It is professional misconduct for a lawyer to do any of the following:

(h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

## RULE 1.5: FEES AND EXPENSES

### Rule 1.5(d)(3)

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(3) a fee denominated as “earned upon receipt,” “nonrefundable,” or in any similar terms, unless the client is simultaneously advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.