



Hanging out Your Shingle without Hanging Yourself out to Dry— 10 Quick and Easy Ethics Tips for New Lawyers

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1. Don't jump the gun. If you're a law school graduate who hasn't yet passed the bar, you're not a lawyer yet, so you can't practice law.

The definition of the "practice of law" is typically broad and varies from state to state. And—since it is a matter of law, not ethics—[ABA Model Rule 5.5\(a\)](#) merely prohibits a lawyer from practicing law in a jurisdiction where it would be prohibited. This means that you must look outside the ethics rules to track down whatever statutes, case law or court rules define and regulate the practice of law in your particular jurisdiction. For a directory of unlicensed practice of law committees and related resources, visit the [ABA's Client Protection home page](#).

2. Don't refer to yourself as a "lawyer" or append "Esq." to your name until you've successfully passed the bar.

Falsely holding oneself out as a lawyer is among the activities that are generally found to constitute the unauthorized practice of law. You can generally indicate that you hold a J.D. degree—but only if it's clear from the context that you are not attempting to hold yourself out as a lawyer. For example, while listing a J.D. degree on a resume is widely accepted, use of the credential in law firm marketing materials could be problematic absent a disclaimer that you have not yet passed the bar and are thus not licensed to practice law. So refrain from ordering business cards and letterhead until the positive bar results are in—only then are you a bona fide "lawyer."

For further information on the use of titles by lawyers, read "[Tussle Over Titles—Ethics Opinions Wrangle With Terms Lawyers Use to Identify Themselves](#)," which appeared in the January 2006 edition of the ABA Journal.

3. Just because you're a licensed "lawyer" now doesn't mean you don't have to worry about unauthorized practice.

[ABA Model Rule 5.5](#) seems straightforward enough: lawyers who have passed the bar in one state are licensed to practice in that jurisdiction only. But with the advent of the Internet it's easier than ever to cross state lines—without even leaving your desk. Keep in mind that if you plan on using a web site to advertise, you may have to comply with the ethics rules of other states, particularly if it is perceived that you are providing or attempting to provide legal services there. You may wish to visit the web site of the [ABA Commission on Multijurisdictional Practice](#), which offers a trove of useful resources addressing out-of-state practice.

4. Just because you're not licensed there doesn't mean you can't run into trouble with the out-of-state ethics authorities.

Under [ABA Model Rule 8.5](#), a jurisdiction may sanction a lawyer who provides or attempts to provide legal services within that jurisdiction, whether or not the lawyer is licensed to practice there.

5. Don't assume the advertising rules are obvious or intuitive. They're not.

The advertising rules vary tremendously from state to state. Some states prohibit client testimonials, some require lawyers to register web sites, and still others require specifically worded disclaimers when sending certain types of e-mail. This is one area where you can't rely on common sense—you need to know your state rules and keep abreast of your state's ethics opinions.

CPR maintains a [web page](#) that compiles resources on ethics and advertising, including a chart that tracks the differences between state advertising and solicitation rules and the ABA Model Rules of Professional Conduct. It's a vital resource for finding out how your state advertising rules vary from the Model Rules. And while we're on the topic, make sure to bookmark the home page of the [CPR Policy Implementation Committee](#), which tracks the adoption of the Model Rules and provides useful charts that compare state variations of many Rules.

6. It is getting more and more difficult to be a jack of all trades in law, like medicine and other professions—without sacrificing competence.

General practitioners still exist, but lawyers starting out should be wary of taking on too much, too fast. Although the [official comments](#) to [ABA Model Rule 1.1](#) (Competence) specifically state that “a newly admitted lawyer can be as competent as a practitioner with long experience,” a lawyer's lack of experience in a particular area of the law is no defense to incompetent representation. Newly admitted lawyers should think twice before accepting cases in unfamiliar areas of the law. When in doubt, you should consider declining the representation or seeking the assistance of supervisory lawyers or more experienced co-counsel.

7. You can't charge a client for time spent getting up to speed on an unfamiliar topic.

[ABA Model Rule 1.1](#) indicates that a lawyer's competence is *assumed*. Thus, charging a client higher fees to account for time spent getting acquainted with basic legal principles does not comport with that Rule or the [Rule 1.5](#) requirement that fees be reasonable.

8. Just because you relied on the advice of a supervisory lawyer doesn't mean you get a get-out-of-jail-free card.

[ABA Model Rule 5.2](#) (Responsibilities of a Subordinate Lawyer) plainly states that you are not excused from your ethical duties simply because your actions were directed by someone else.

9. In addition to refraining from the prohibited conduct, if another lawyer acts or urges you to act unethically you are obliged to report the lawyer to the appropriate authority.

And yes—that includes your boss. [ABA Model Rule 8.3](#) (Reporting Professional Misconduct) compels a lawyer who knows that another lawyer or judge has committed misconduct raising a “substantial question” about honesty or fitness to report this information to the appropriate authority unless the information is otherwise protected by the confidentiality rules. See [ABA Model Rule 1.6](#) (Confidentiality of Information).

10. If you decide to refer a matter to a more experienced lawyer, you could ultimately be responsible for the competent handling of the matter.

[ABA Model Rule 1.5\(e\)](#) permits a division of fees with another lawyer as long as the division is in proportion to the services performed by each lawyer, or if each lawyer assumes joint responsibility for the representation. According to ABA Informal Ethics Op. 85-1514 (1985), a lawyer who agrees to share “joint responsibility for the representation” must make reasonable efforts to ensure that the other lawyer complies with the ethics rules on the matter for which fees

will be divided. The assumption of responsibility includes “ethical responsibility to the extent a partner would have ethical responsibility for actions of other partners in a law firm in accordance with Rule 5.1, and the same responsibility to assure adequacy of representation and adequate client communication that a partner would have for a matter handled by another partner in the firm under similar circumstances.”