

Ethics: Three Rules for Public Defenders

1. “Treat Your Client Like You Would Want To Be Treated”

Establish and Maintain an Attorney-Client Relationship

- See new jail client within 24 hours of receiving appointment
- Keep in regular contact to inform Client about case (Rule 1.4)
(personal contact recommended for important developments;
telephone calls or letters (if Client reads well) acceptable for other
matters)
- Client’s decision: how to plead, whether to testify, whether to waive jury
(Rule 1.2(a)(1))
- Building a good A-C relationship takes time but it is a good investment since
Client will be more likely to follow your advice
- See Rule 1.2 for scope and attorney’s authority in A-C relationship

Treat Client with Respect

- Do Not “bad mouth” or demean Client to prosecutors, court officials, jailers,
or others “outside your office”
- Even when Client is hostile or disrespectful to you (many people truly believe
PD’s are not real lawyers or are “lesser” lawyers)
- Special efforts should be taken to inform and respect mentally ill Clients
(Rule 1.14)

Never “Judge” your Client

- APD’s role is an advocate not judge or moralist
- it interferes in attorney-client relationship
- it is a waste of time

2. “Be Honest” (this is the only rule that is applicable to both ADA’s and APD’s)

The personal credibility of an APD is his or her most powerful tool

- it takes time to build (through personal contacts)
- it will serve all Clients
- if attacked, it must be aggressively defended

Honesty toward the Court (Rule 3.3)

- Lawyer must not “knowing” present evidence he or she “knows” to be false
(See 3.3(a)(3) and Comments notes 5-9)
- Do not make false statements of law or fact to judge or jury
- It is perfectly acceptable to be an advocate, present favorable evidence, and
“argue” Client’s position
- There is a difference between lying and making a “weak” argument
- Do not lie to ADA but you do not have to tell them everything
(Rule 4.1 and Comment note 1)

Fairness toward Opposing Counsel and the Judicial System (Rules 3.4 and 3.5)

- Do not cheat in trial (see Rule 3.4 for the details)
- Do not try to demean or corrupt the Judicial System (see Rule 3.5 for details)
- KNOW Rules 3.4 and 3.5: watch prosecutors and judges for violations
(Thorough knowledge of Rules may stem these common violations)

Two Reasons to Follow the Honesty and Fairness Rules:

- Someone has to uphold the law and the public trust
- an APD will be sanctioned and disciplined for violations

Honesty does NOT mean revealing Client's secrets

- Never reveal "privileged attorney-client communications"
- Non-disclosure also covers "confidential information" (i.e., information acquired during the professional relationship) Rule 1.6
- Absent a court order, Rule 1.6 always allows the response "I cannot tell you..."

3. "Work Hard FOR Your Client"

APD's MUST Work Hard

- Hard work is the only thing that can attempt to "level the playing field"
- A lawyer must be diligent and zealously represent his or her Client (Rule 1.3)
- The duty to use the law to "the fullest benefit to the Client's cause"
(Rule 3.1, Note 1)
- In order to pursue a matter, all you need is a good faith basis that includes
"a good faith argument for a ...modification or reversal of existing law"
(Rule 3.1)

It is All About the Client

- APD cannot have a "lawyer's ego" (it is NOT about "you")
- Always ask colleagues or other lawyers for opinions or help
- Never base decisions on personal motives
- Client's interest is primary (over offending judges or bureaucratic office rules)

Miscellaneous "Must Know" Rules

3.8 Special Rules for Prosecutors

3.6 Publicity

1.7 Conflicts of Interest

4.2 Contact with Represented Parties

8.4 Outlines types of "professional misconduct"

Selected Excerpts from the Rules of Professional Conduct

<u>Page</u>	<u>Rule</u>	<u>Title</u>
1	1.2	Scope of Representation and Allocation of Authority
3	1.3	Diligence
4	1.4	Communication
7	1.6	Confidentiality of Information
10	1.7	Conflict of Interest: Current Clients
19	1.14	Client with Diminished Capacity
22	3.1	Meritorious...Contentions (Good Faith Basis)
23	3.3	Candor toward the Tribunal
29	3.4	Fairness to Opposing Counsel
33	3.5	Impartiality and Decorum of the Tribunal
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41	3.8	Special Responsibilities of a Prosecutor
44	4.1	Truthfulness to Others
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