

Empathy & Ethics in Communicating with Clients

Melanie Crenshaw, Assistant Professor

UNC School of Government

mcrenshaw@sog.unc.edu

Agenda

- A Lawyer's Responsibilities
- The Role of Ethics and Empathy in Law
- Active Listening
- Client-Centered Communication
- Breaking Up is Hard to Do
- Final Tips & Takeaways

A Lawyer's Responsibilities

"Clients teach us and test us."—Bryan Stevenson

NC Rules of Professional Conduct

Preamble: A Lawyer's Responsibilities

[2] As a representative of clients, a lawyer performs various functions. As **advisor**, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As **advocate**, a lawyer zealously asserts the client's position under the rules of the adversary system. As **negotiator**, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As **evaluator**, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. ... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.

[9] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. Personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

[13] Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel with courtesy and respect. The legal dispute of the client must never become the lawyer's personal dispute with opposing counsel. A lawyer,

moreover, should provide zealous but honorable representation without resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves behave with dignity. A lawyer's word to another lawyer should be the lawyer's bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster civility among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties.

Ethics Opinion Notes

- [2008 Formal Ethics Opinion \(FEO\) 2](#)-A lawyer may assist pro se litigants consistent with the Preamble without disclosing his participation unless required by law or court order.

The Coffee Talk

1. Don't drink coffee with your client.
 2. Drink coffee with your colleagues.
 3. Drink coffee alone.
 4. Drink wine with your loved ones.
- Attorney Roger W. Smith

The Role of Ethics & Empathy in Law

"Nobody cares how much you know until they know how much you care." –attributed to Theodore Roosevelt

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent, professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law, but also to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Ethics Opinion Notes

- [2011 FEO 4](#)-participation in an exclusive reciprocal referral agreement with a service provider, such as a title insurance agency, impairs the lawyer's ability to provide independent, professional judgment
- [2022 FEO 2](#)-before agreeing to a limited representation of a defendant who has qualified as indigent, attorney has duty to review the law and render objective, candid, and thorough advice to defendant about whether such representation will impact defendant's continued ability to qualify as indigent

Ethics & Empathy¹

Ethics = framework for how attorneys *should act*

Empathy = insight into how attorneys *should feel and respond*

Empathy v. Sympathy²

Empathy=connection with client's experience, relate to feelings, ability to put yourself in their shoes and try to understand their feelings, possible reward client feels heard

Sympathy=relief for not sharing client's experience, pity the client, possible risk client feels unheard

Why choose empathy?³

1. *Build trust and rapport.* When lawyers create a safe space for the client to share, the client will cooperate more, which will likely result in better outcomes.
2. *Foster open communication.* The goal of communication should be to understand—the lawyer must understand the client's situation and needs and the client must understand how the law applies in their case. Open communication requires the lawyer to avoid or explain legal jargon. The benefits of open communication are increased client satisfaction and collaboration.
3. *Strengthen advocacy.* The lawyer's ability to empathize with the client and with the audience for the case, be it judge, jury, or both, makes the lawyer a better advocate. The lawyer is able to present the case in a compelling manner and increase the chances of a favorable outcome.
4. *Satisfy client's needs and wants.* Satisfaction of the client's needs and wants begins with knowing what they are. This information will inform the decision-making process and influence strategy.
5. *Improve lawyers' public image.* Every lawyer at one time or another has had to endure a bad lawyer joke. While the jokes may get a laugh, they are a sign of a more pervasive negative attitude about the role of lawyers in society. Learning the law is the key to a lawyer's preparation to represent clients, after all, competence is part of professional responsibility, too. But once the client enters the room, understanding, empathy, and compassion become equally important. The know-how, sometimes referred to as hard skills, and emotional intelligence, sometimes referred to as soft skills, are equally important to successfully represent clients.

¹ FRANCIS POMMETT, THE ROLE OF ETHICS AND EMPATHY IN LAW: BUILDING TRUST AND LASTING CLIENT RELATIONSHIPS (2024) <https://www.francispommet.com/the-role-of-ethics-and-empathy-in-law-building-trust-and-lasting-client-relationships/>.

² CATHERINE LOVERING, EMPATHY AND EMOTIONAL CONNECTIVITY IN THE LEGAL INDUSTRY (2024) <https://www.martindale-avvo.com/blog/empathy-and-emotional-connectivity-in-the-legal-industry/>.

³ Id., PETER SEAR, PH.D., EMPATHY FOR LEGAL PROFESSIONALS (2023) <https://www.psychologytoday.com/us/blog/empathic-minds/202312/empathy-for-legal-professionals>.

Empathy-Detracting Behaviors⁴

- Saying and doing nothing
- Failing to accurately respond
- Using cliches
- Distorting the client's words
- Ignoring the client's feelings
- Feigning understanding
- Parroting client's words
- Allowing client to ramble
- Seeming overeager
- Using legal jargon
- Being longwinded
- Being defensive

Risks of Empathy

- The reason lawyers don't drink coffee with their clients is that they must be able to step back from the client's situation and examine it with a critical eye. If the lawyer becomes too emotionally involved with the client and their circumstances, the lawyer may lose perspective and begin to treat the case as personal to them rather than to the client.
- When lawyers become too close to the client's situation, it may impact how zealously the lawyer represents the client. The lawyer may think that they know best and make unilateral decisions about settlement, for example, that should be made by the client.
- While research shows that lawyers are exposed to a high level of secondary trauma, the trauma still belongs to the client. While the lawyer may be able to put themselves in the client's shoes, the lawyer can never completely know the client's experiences. There is a danger in the lawyer assuming they can understand a client's experiences that again may cause the lawyer to make decisions about how to proceed with the case that are detrimental to the client, or perhaps even contrary to the client's wishes.
- A 2016 study of almost 13,000 working attorneys revealed high rates of alcohol abuse, depression, and anxiety.⁵ On a subscale focused on the quantity and frequency of alcohol use, roughly 36% of the lawyer sample screened positive while only 15% of physicians and surgeons screened positive.⁶ This prevalence of alcohol use and potential misuse is likely related in part to the high levels of depression, anxiety, and stress among attorneys.⁷ Mental health and substance use disorders are related to compassion fatigue from vicarious or secondary trauma. Studies comparing legal professionals' secondary trauma responses to those of social workers or psychologists found that they were

⁴ GERDY, KRISTIN B., "THE HEART OF LAWYERING: CLIENTS, EMPATHY, AND COMPASSION" (2013). VOL. 3: RELIGIOUS CONVICTION. 24.https://digitalcommons.law.byu.edu/life_law_vol3/24.

⁵ Patrick R. Krill, JD, LL.M.; Ryan Johnson, MA; & Linda Albert, MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addiction Medicine, January/February 2016, at 46.

⁶ Id.

⁷ Id.

consistently higher for attorneys.⁸ Compassion fatigue has many symptoms, and unlike burnout which results in the lawyer's professional dissatisfaction, it impacts the lawyer's own mental health.⁹ Symptoms of compassion fatigue include overwhelm, intrusive thoughts and dreams, pessimism, paranoia, isolation, self-medication or addiction, and reduced productivity. Lawyers who are repeatedly exposed to their client's trauma must guard against compassion fatigue by focusing on their own wellbeing.

- Burnout occurs when a lawyer experiences a high workload but few rewards. The result is physical and emotional stress. The characteristics of burnout include fatigue, anxiety, depression, irritability, cynicism, poor job performance, and attrition.¹⁰ Whether a lawyer is experiencing compassion fatigue, burnout, or both, it is important to recognize the symptoms and get help.

Staying HUMAN in an AI World¹¹

Human judgment is primary: AI supports but cannot replace professional reasoning

Understand the model: Know its limits, training data, assumptions, and blind spots

Monitor performance: Watch for drift, error, and unintended consequences

Accountability stays human: Liability does not transfer to the algorithm

Narrative matters: The person's story is not optional—it is central

Active Listening

“Most people do not listen with the intent to understand; they listen with the intent to reply.”—Stephen R. Covey, author of The Seven Habits of Highly Effective People

Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) (limited scope of representation) and (d) (criminal or fraudulent conduct), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

Ethics Opinion Notes

⁸ Id.

⁹ AMERICAN BAR ASSOCIATION, *COMPASSION FATIGUE*, https://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue/.

¹⁰ Andrew P. Levin, MD, Scott Greisber, MA, *Vicarious Trauma in Attorneys*, 24 Pace L. Rev. (2003-2004).

¹¹ Brendan D. Kelly, *Human in the loop: Balancing artificial intelligence, clinical judgment, and legal responsibility*, International Journal of Law and Psychiatry, July-August 2026. [Human in the loop: Balancing artificial intelligence, clinical judgment, and legal responsibility - ScienceDirect](#).

- [RPC 145](#)-employment agreement cannot divest client of exclusive authority to settle a case
- [RPC 208](#)-avoid offensive trial tactics and treat others with courtesy
- [RPC 212](#)-may contact opposing lawyer who failed to answer on time
- [RPC 223](#)-client's disappearance constitutes a constructive discharge
- [98 FEO 2](#)-may explain effect of service of process but not advise to evade it
- [2003 FEO 16](#)-appointed counsel must seek to withdraw if client disappears without communicating objectives for the representation
- [2014 FEO 5](#)-legal ramification of posting on social media and removal of posts must comply with rules on preservation or spoliation of evidence

Three Aspects of Active Listening¹²

Cognitive: The listener pays attention to, comprehends, and integrates all the information that they are receiving from the other person. It may be explicit, the actual words being said, or implicit, nonverbal cues, facial expressions, etc. In essence, the listener is reading the speaker's body language as well as hearing the words and incorporating this information into the listener's responses.

Emotional: The listener must be able to regulate their own emotional reactions during the conversation. This involves remaining calm and compassionate and refraining from expressing emotions like annoyance or boredom.

Behavioral: The listener uses verbal and nonverbal communication to convey interest in and comprehension of what the speaker is saying. The listener may use encouraging words to keep the speaker sharing or may use nonverbal cues such as a head nod.

9 Helpful Tips¹³

- Repeat the last few words back.
- Don't "put it in your own words" unless you need to.
- Offer nonverbal cues that you're listening.
- Pay attention to nonverbal cues.
- Ask more questions than you think you need to.
- Minimize distractions.
- Acknowledge shortcomings.
- Don't rehearse your response while the other person is talking.
- Monitor your emotions.

¹² ROBIN ABRAHAMS AND BORIS GROYSBERG, HOW TO BECOME A BETTER LISTENER, HARVARD BUSINESS REVIEW, (2021) [How to Become a Better Listener](#).

¹³ Id.



“Have compassion for yourself you can’t scream at your own brain like a drill sergeant and whip that raw grey matter into shape.”—Robin Abrahams, Harvard Business School

AI-Generated Image

Client-Centered Communication

“You never really understand a person until you consider things from his point of view...until you climb into his skin and walk around in it.” –Atticus Finch *To Kill a Mockingbird*

Rule 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent (the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances), 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) promptly comply with reasonable requests for information; and
- (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 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.

Ethics Opinion Notes

- [99 FEO 12](#)-when one attorney appears for another, the attorney making an appearance is representing the client and such representation requires client's consent where the attorneys are not in any existing partnership
- [2015 FEO 4](#)-a lawyer's professional responsibilities when she discovers that she made an error that may adversely impact the client's case
- [2021 FEO 5](#)-law firm has obligation to inform clients of a lawyer's departure from the firm and an ongoing obligation to maintain the lawyer's law firm email account, including monitoring the account and setting up an automatic response that provides contact information for the departing lawyer and/or an alternative contact at law firm for inquiries
- [2024 FEO 1](#)-use of an AI tool for substantive tasks is akin to outsourcing legal work to a nonlawyer or third-party resource or service and requires client's advanced informed consent
- [2025 FEO 1](#)-obligations related to notice when a lawyer leaves a firm

2 Levels of Conversations¹⁴

Official=words

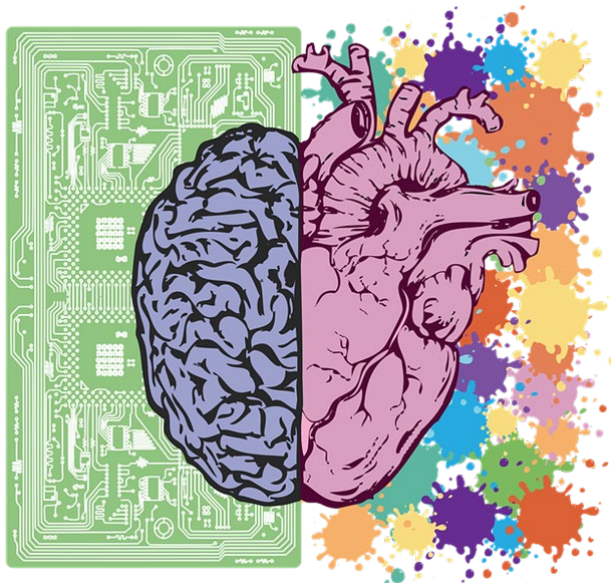
Actual=ebb and flow of emotions that get transmitted

Client-Centered Lawyering¹⁵

Collaborative decision-making requires carefully listening to the client's interests and goals and considering them as part of the desired outcomes.

Transparency is necessary to inform the client about the options and choices available to the client as well as the risks and benefits of choosing a particular course while emphasizing client's choice in the matter.

Emotional intelligence is the ability to perceive, use, understand, and manage emotions.



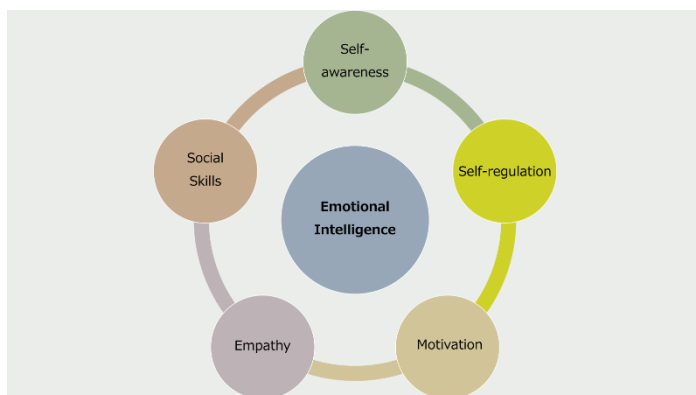
Or Put Another Way Emotional Intelligence Is...

- Perceiving and understanding client's emotions
- Social competence
- Context-informed listening
- Empathy
- Recognizing and regulating one's own emotions

¹⁴ David Brooks, *The Essential Skills of Being Human*, N.Y. Times, October 22, 2023, at SR6.

¹⁵ Heather Heavin & Michaela Keet, *Client-Centered Communication: How Effective Lawyering Requires Emotional Intelligence, Active Listening, and Client Choice*, 22 Cardozo J. Conflict Resol. 199 (2021).

Emotional Intelligence



1. **Self-awareness**-The lawyer understands how their emotions affect their own behaviors and identifies their strengths and weaknesses.
2. **Self-regulation**-The lawyer identifies triggers and keeps emotions in check, pausing to reflect before acting.
3. **Motivation**-A lawyer who is motivated is more likely to be optimistic and resilient and to look for ways to improve themselves.
4. **Empathy**-Lawyers can use empathy to assure clients that they are being heard, and their needs and interests are being addressed. Clients are the key source for the information that the lawyer will need to represent them, so building rapport is essential as is effective management of client relationships. When clients trust their lawyer, they are more likely to disclose their concerns, which in turn helps the lawyer be more effective.
5. **Social Skills**-To effectively represent clients, lawyers need to be able to communicate and to listen. The lawyer should not dominate the conversation with the client but allow space for the client to reveal information. Using active listening skills, the lawyer can spot the issues and learn what is important to the client.

Breaking Up Is Hard To Do

“I’m sorry. I can’t. Don’t Hate Me—”—Berger’s Post-It Breakup

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Ethics Opinion Notes

- [RPC 14](#)-A part-time county attorney may not serve as guardian ad litem if official duties include advising Department of Social Services.

Potential Conflicts

- Resolve as early as possible
- Formation of Attorney-Client Relationship
- Conflicted out of representation

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of law or the Rules of Professional Conduct;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client; or
- (2) the client knowingly and freely assents to the termination of the representation; or
- (3) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or
- (4) the client insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or with which the lawyer has a fundamental disagreement; or
- (5) the client has used the lawyer's services to perpetrate a crime or fraud; or
- (6) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; or
- (7) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

- (8) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or
- (9) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

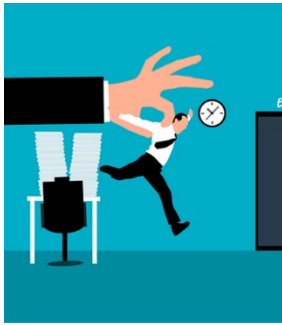
Ethics Opinion Notes

- [RPC 157](#)-appointment of a guardian for a client lawyer believes to be incompetent ([GS 7B-602\(c\)](#) & [\(d\)](#) also address appointment of guardian ad litem for a parent who is incompetent)
- [RPC 223](#)-client's disappearance constitutes a constructive discharge requiring withdrawal
- [2007 FEO 8](#)-charging for filing and presenting a motion to withdraw if approved by court when ruling on a petition for legal fees from court-appointed lawyer
- [2013 FEO 8](#)-the responsibilities of partners and supervisory lawyers at a firm when another firm lawyer has a mental impairment

General Rules of Practice for the Superior and District Courts, Rule 16

Withdrawal of Appearance

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court. (See *Smith v. Bryant*, 264 N.C. 208. See also Rule 43 of Rules of the N.C. State Bar, Volume 4A of General Statutes of North Carolina, page 278, entitled "Withdrawal from employment as attorney or counsel.")



Case Law Says

1. Justifiable cause,
2. Reasonable notice to client, and
3. Permission of the court.

Smith v. Bryant, 264 N.C. 208 (1965).



It's about
balance.

Final Tips and Takeaways

“If it doesn’t matter in five years, it doesn’t matter.” –Cher

Remember This

- Don’t drink coffee with your clients.
 - **Have empathy but maintain perspective.**
- Drink coffee with your colleagues.
 - **Accept help from people you trust.**
- Drink coffee alone.
 - **Take care of yourself.**
- Drink wine with your loved ones.
 - **Maintain those relationships that sustain you.**