

Ethical Obligations During Covid

Social Services Attorneys Virtual Conference Part III
December 17, 2020

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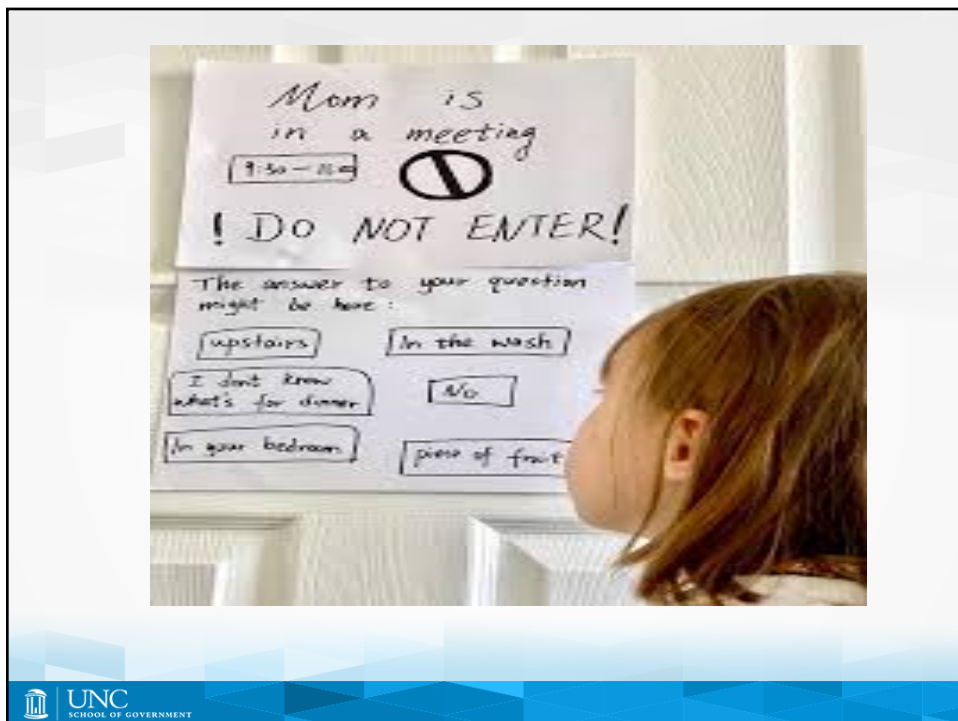


Does this look familiar?

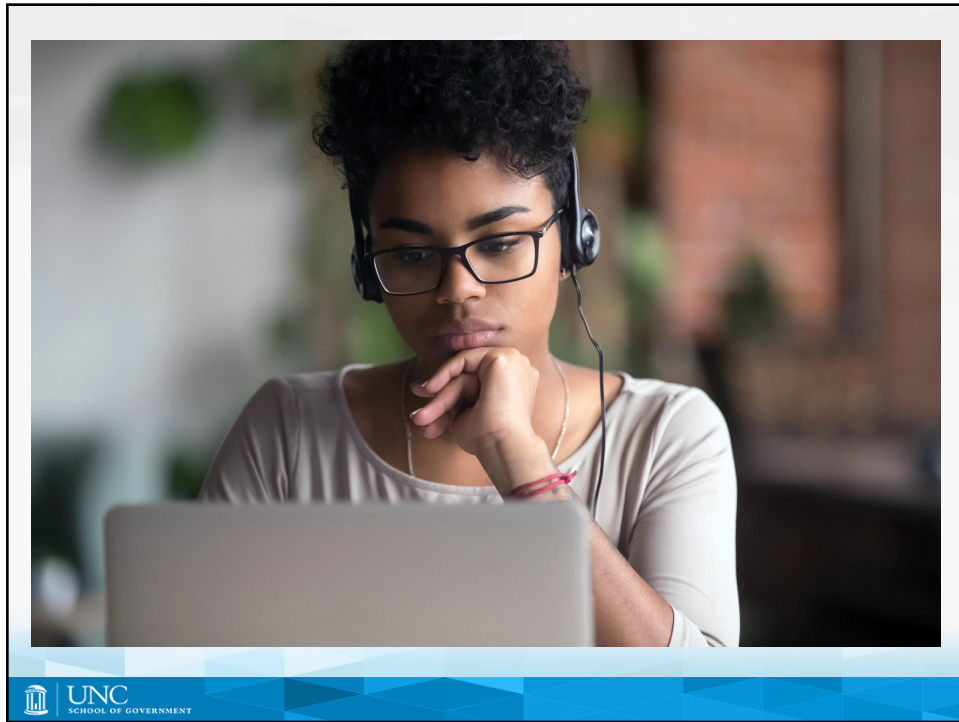
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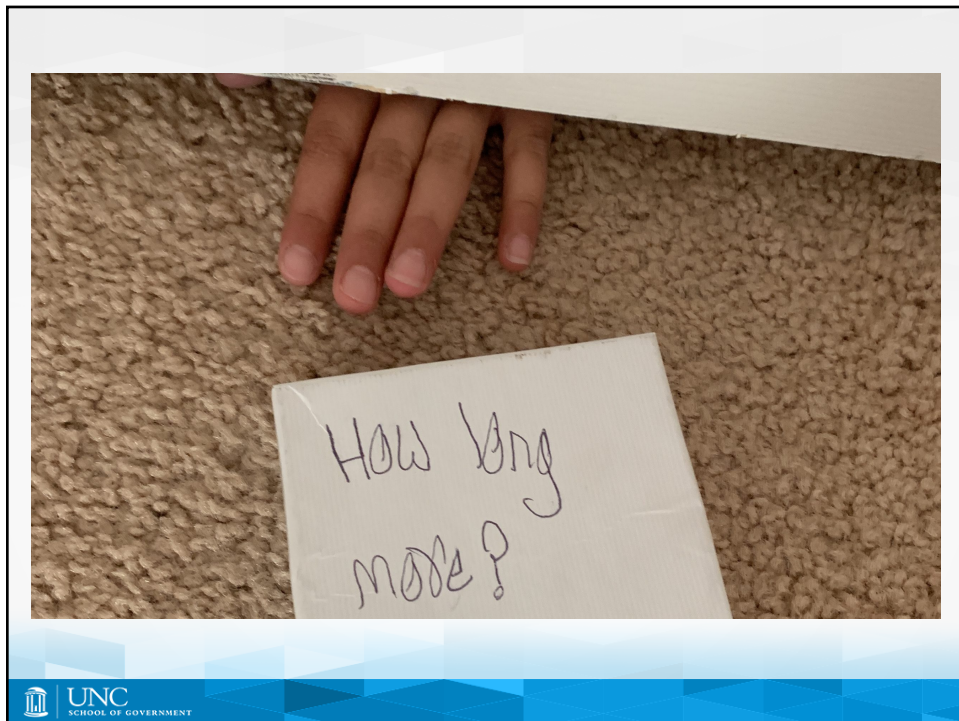
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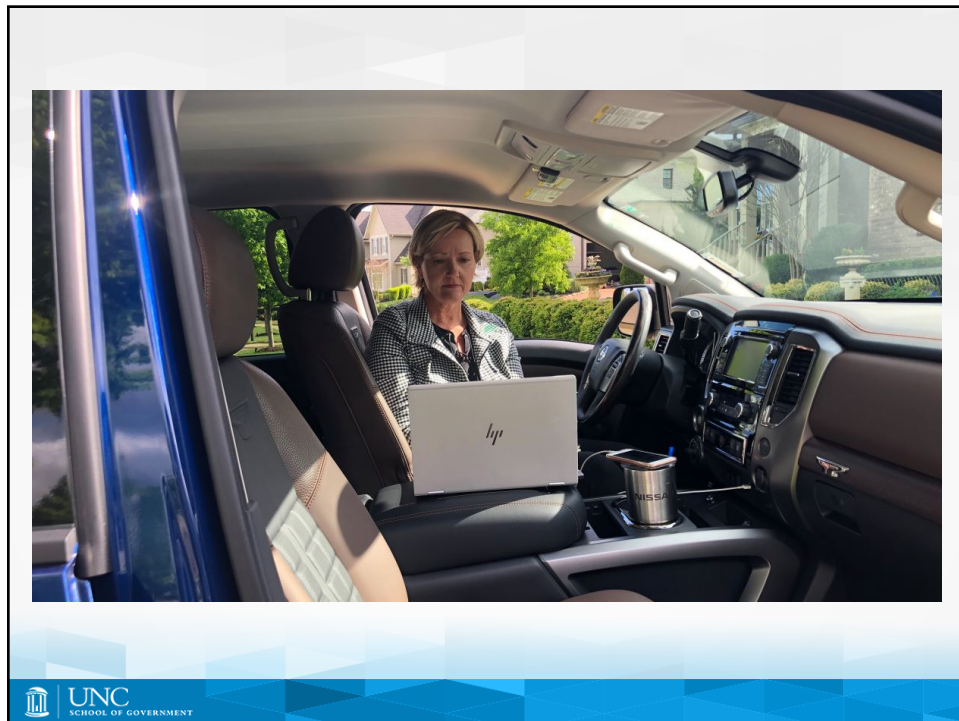
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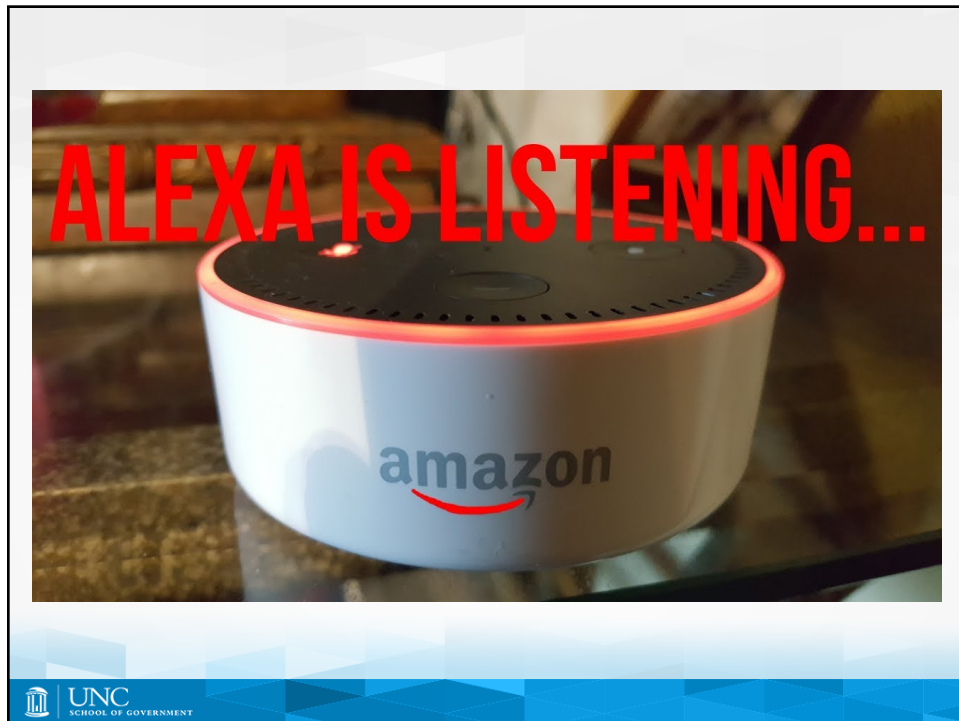
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If not you,
is it
someone
you work
with?

- Fellow attorney
- Legal assistant
- Social Worker or Director
- Witness
- Opposing counsel

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Attorneys under your supervision

RULE 5.1 RESPONSIBILITIES OF PRINCIPALS, MANAGERS, AND SUPERVISORY LAWYERS

(a) A principal in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority, shall make reasonable efforts to ensure that the firm or the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

Legal Assistants, Admin. Staff, etc.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a principal, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or organization shall make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and



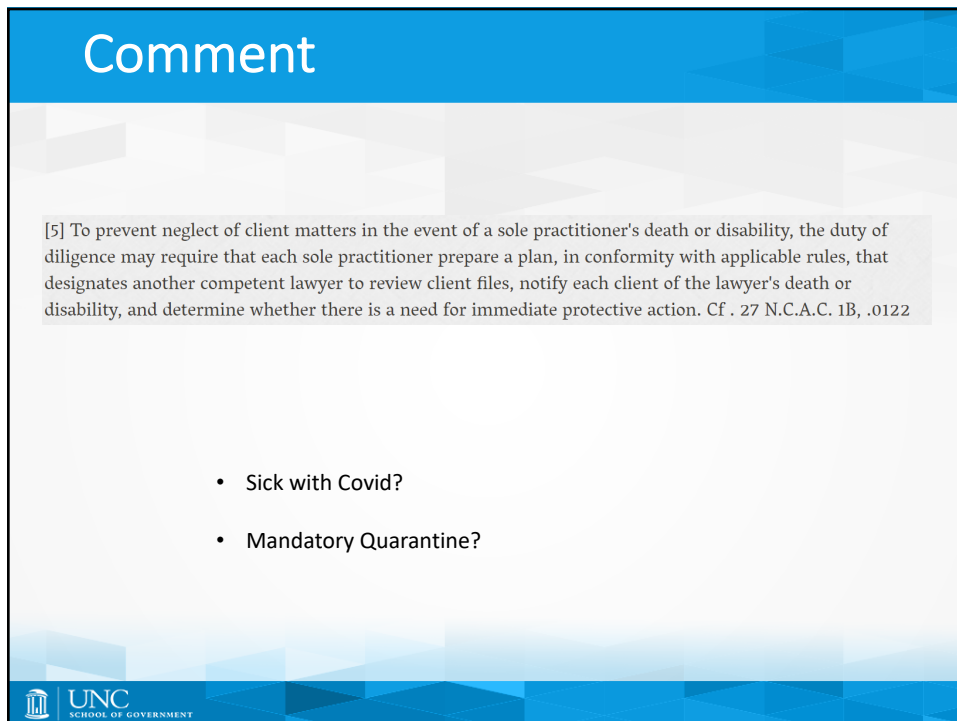
A slide with a blue header and footer. The main content area has a light gray background with a geometric pattern. The title "RULE 1.3 DILIGENCE" is in green. The text "A lawyer shall act with reasonable diligence and promptness in representing a client." is in black. The UNC School of Government logo is in the bottom left corner.

RULE 1.3 DILIGENCE

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

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A slide with a blue header and footer. The main content area has a light gray background with a geometric pattern. The title "Comment" is in white. The text "[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf . 27 N.C.A.C. 1B, .0122" is in black. The UNC School of Government logo is in the bottom left corner.

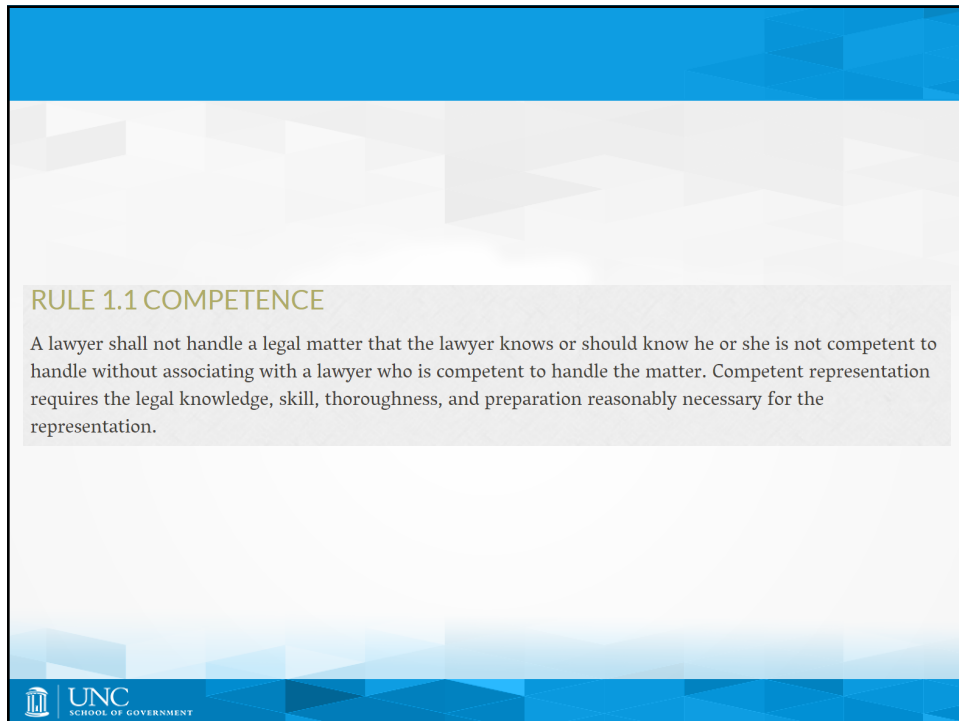
Comment

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- Sick with Covid?
- Mandatory Quarantine?


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RULE 1.1 COMPETENCE

A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

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Comment

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

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What Does That Entail in Covid?

- Chief Justice Orders
- Executive Orders from Governor
- Local Orders
- Use of technology
- Guidance on Substantive Law

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, as defined in Rule 1.0(f), 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

Comment

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should address with the client **how** the lawyer and the client will communicate, and should respond to or acknowledge client communications in a reasonable and timely manner.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comments

[19] Paragraph (c) requires a lawyer to act competently to safeguard information acquired during the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information acquired during the professional relationship with a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's

[20] When transmitting a communication that includes information acquired during the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however,



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Zealous Advocacy During a Pandemic

2011 Formal Ethics Opinion 6

"...while the duty of confidentiality applies to lawyers who choose to use technology to communicate, "this obligation does not require that a lawyer use only infallibly secure methods of communication." RPC 215. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information..."



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