

NATIONAL ASSOCIATION OF BOND LAWYERS

NABL U PRESENTS - THE ESSENTIALS

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HOW TO SUCCEED IN A POST PANDEMIC WORLD

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Summary

The COVID-19 pandemic changed the way we practice as public finance practitioners and workplaces are still figuring out the new “new normal.” Law firms, both large and small, are significantly reducing their office sizes and numbers and “work from home” for all types of companies is proving to not be just a fad. This panel will take an in-depth look at some of the ways to succeed in light of this cultural and operational change. Some things are different, some things are the same but done differently, and some things will never change....

I. WHERE IS THE LEGAL INDUSTRY NOW?

The COVID-19 pandemic (the “Pandemic”) triggered an urgent need for employers across all industries, including the legal services industry, to immediately transition their entire workplaces to a remote environment. Although some municipal finance practitioners have practiced remotely, at least in part, for many years, the Pandemic forced the re-imagination of how bond lawyers successfully practice, including remote working on a daily basis, participating in virtual meetings with co-workers and clients, facilitating virtual public meetings and hearings, and facilitating closings. For many bond lawyers, this type of work environment has gone from temporary to permanent as law firms across the county reduce their office square footage. *Regardless of where your “office” might be, lawyers are bound by their ethical obligations and must protect their clients’ interests on an ongoing basis. Furthermore, the rules of professional responsibility apply to every aspect of the bond lawyer’s practice, even when such lawyer is engaging in his or her practice remotely.*

II. WHAT DO THE MODEL RULES TELL US?

- A. Model Rule 1.1 – Duty of 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.
- B. Comment 8 to Model Rule 1.1: 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 relevant technology....
 - a. According to The ABA Cybersecurity Handbook (2017), “[i]f a lawyer is not competent to decide whether use of a particular technology (e.g., cloud storage, public Wi-Fi) allows reasonable measures to protect client confidentiality, the ethics rules require that the lawyer must get help, even if that means hiring an expert information technology consultant to advise the lawyer.”
 - b. The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility Formal Opinion 2020-300 (April 10, 2020) states “the duty of technological competence requires attorneys to not only understand the risks and benefits of technology as it relates to the specifics of their practices...also requires attorneys to understand the general risks and benefits of technology, including the electronic transmission of confidential and sensitive data, and cybersecurity, and to take reasonable precautions to comply with this duty.” The Opinion also states that in some instances, attorneys will need to consult with staff or outside entities in order to obtain the appropriate guidance.
- C. Model Rule 1.3 – Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.

- D. Model Rule 1.5 – Fees: A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- E. Model Rule 1.6 – Confidentiality of Information: (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or access to, information relating to the representation of a client.
- a. Comment 18 to Model Rule 1.6: Paragraph (c) requires a lawyer to act competently to safeguard information relating to 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 relating to the representation of 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 efforts include, but are not limited to, [1] the sensitivity of the information, [2] the likelihood of disclosure if additional safeguards are not employed, [3] the cost of employing additional safeguards, [4] the difficulty of implementing the safeguards, and [5] the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forego security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client’s information in order to comply with other laws, such as state and federal laws that govern data privacy or that pose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules.... (Emphasis and numbers supplied.)
- b. The lawyer’s duty does not change with a public entity as a client, even in light of open records and sunshine laws. Two recent ABA Opinions are helpful. First, ABA Formal Opinion 479 (Dec. 15, 2017), unequivocally states that Rule 1.6 provides no exception for information that is “generally known” or “contained in a public record.” See ABA Formal Opinion 479 (December 15, 2017). Second, ABA Formal Opinion 480 (March 6, 2018) reinforces that a lawyer’s confidentiality obligation always applies, even where a lawyer is communicating electronically (including when blogging). See ABA Formal Opinion 480 (March 6, 2018).
- F. Model Rule 4.2 – Communication with Person Represented by Counsel: In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

- G. Model Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer. 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.
- H. Model Rule 5.2: Responsibilities of a Subordinate Lawyer. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- I. Model Rule 5.3: Responsibilities Regarding Nonlawyer Assistance. Requires a lawyer to make sure assisting nonlawyers, including vendors, cooperate in complying with the rules.
 - a. [Formal Opinion 477R \(May 11, 2017; revised on May 22, 2017\)](#) of the ABA Standing Committee on Ethics and Professional Responsibility, ABA, sets forth the steps that the supervising lawyers in a firm should take, which extend to remote supervision:
 - b. In the context of electronic communications, lawyers must establish policies and procedures, and periodically train employees, subordinates and others assisting in the delivery of legal services, in the use of reasonably secure methods of electronic communications with clients. Lawyers also must instruct and supervise on reasonable measures for access to and storage of those communications. Once processes are established, supervising lawyers must follow up to ensure these policies are being implemented and partners and lawyers with comparable managerial authority must periodically reassess and update these policies. This is no difference than the other obligations for supervision of office practices and procedures to protect client information.
- J. Model Rule 6.1 – Voluntary Pro Bono Publico Service: Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.
- K. Model Rule 8.4 – Maintaining the Integrity of the Profession: It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

III. THE NEW NORMAL? REMOTE PRACTICE OF LAW

- A. Specific Technological Matters. “At the intersection of a lawyer’s competence obligation to keep ‘abreast of knowledge of the benefits and risks associated with relevant technology,’ and confidentiality obligation to make ‘reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client,’ lawyers must exercise reasonable efforts when using technology in communicating about client matters.” See [ABA Formal Opinion 477R \(May 11, 2017; Revised May 22, 2017\)](#).

- a. Electronic Communications, Including Telephone Calls, Text Messages, E-mail and Video Conferencing.
 - b. Use of Personal Devices.
 - c. Electronic File Storage and Cloud Computing/Storage.
- B. Preparedness to Work from Home. “Lawyers working from home may be required to bring paper files and other client-related documents into their homes or other remote locations. In these instances, they should make reasonable efforts to ensure that household residents or visitors do not have access to these items. This can be accomplished by maintaining the documents in a location where unauthorized persons are denied access, whether through the direction of a lawyer or otherwise.” See [Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility Formal Opinion 2020-300 \(April 10, 2020\)](#). Furthermore, “. . . attorneys should dedicate a private area where they can communicate privately with clients, and take reasonable precautions to assure that others are not present and cannot listen to the conversation.” *Id.*
- C. Home Office. Presence and Use of Smart Devices - Such devices “may listen to conversations and record them. Companies such as Google and Amazon maintain those recordings on servers and hire people to review the recordings. Although the identity of the speakers is not disclosed to these reviewers, they might hear sufficient details to be able to connect a voice to a specific person.” - PA Bar Ethics Cmte. Formal Op. 2020-300

IV. E-MAIL COMMUNICATION

- A. Also called “electronic communication” in recent ABA amendments. Note that “electronic communication” likely includes a variety of tools other than e-mail.
- B. How to write a good email
- C. What NOT to say in an email
- D. Email tidiness – responding/filing/organizing
- E. ABA Formal Opinion 477: “The use of unencrypted routine email generally remains an accepted method of lawyer-client communication . . . [but] particularly strong protective measures, like encryption, are warranted in some circumstances.” For example: closing memoranda with bank account or routing information.

V. SOCIAL MEDIA

- A. Many firms encourage establishing a presence online (particularly through LinkedIn). Understand both how to do that - and what not to do.

- B. Understand implications of using other platforms as well – even if “personal” – Facebook, Instagram, TikTok....

VI. MOBILE TECHNOLOGY AND PHONES

- A. Usage of Public WiFi has been called the single most dangerous security risk facing the mobile workforce.
- B. Since anyone can access Public WiFi, hackers can situate themselves between your computer and your connection point and monitor all activity (a “Man in the Middle” hack).
- C. Other risks include snooping and sniffing software, malicious or fake hotspots, or malware distribution.
- D. Possible solutions to safeguard information:
 - a. Disable file sharing on your computer
 - b. Only visit websites using HTTPS protocol (the secure version of HTTP)
 - c. Log out of accounts when done using them
 - d. Turn off WiFi when not in use
 - e. Use a VPN to access work files or sensitive data
 - f. Set up a mobile hotspot using your smartphone
- E. Mobile Phones
 - a. For most part, use cell service, not WiFi (unless a trusted WiFi)
 - b. Need sophisticated PIN
- F. Mobile Device Management
- G. Best practices outside of office
 - a. Conversations about client matters (on the phone or otherwise)
 - b. Working on your computer on the train or plane – who can see your screen?

VII. VIDEOCONFERENCING

- A. Be on camera if you can unless no one else is.
- B. Do not:

- a. Chat to people thinking you are only chatting to one person
- b. Share the wrong screen
- c. Share your screen if you have E-mail notifications where you can read a part of the E-mail
- d. Take a second call not on mute
- e. Make comments not on mute
- f. Make a bathroom trip!
- g. Not dress all the way
- h. Have welcome room entrants
- i. HAVE A VISIBLE LACK OF INTEREST

VIII. RECORDS RETENTION

- A. Understand your firm's policy and if a client has a particular requirement.
- B. Documents –
 - a. Naming
 - b. Storing
- C. Emails
- D. Texts
- E. Share Sites - An extranet, as distinguished from an intranet service, is a tool used for collaboration between your firm and third parties. It permits information and file sharing, rapid communication and more efficient client representation.

IX. THE PRACTICAL PRACTICE OF LAW POST PANDEMIC – WHAT HAS CHANGED AND WHAT HAS NOT

- A. A benefit is that you can get work from anywhere – if you work at a national/global firm you can now easily work with partners from all over the nation (or even the world). Also be sure to let partners know if you have taken the UBE and if there are opportunities for you in other jurisdictions that you can easily get barred.
- B. What is the value of coming into the office?
 - a. People used to train “at the elbow” - there is a lot of knowledge that gets passed on by the “conversations in the office.”
 - b. Taking calls together
 - a. Reviewing Documents and comments in person
 - c. Things that used to be very clear and obvious (be in the office, dress a certain way, communicate in a certain way) are now significantly less clear

- making it harder when you are new and trying to figure out how to survive/thrive in the firm and what to do
- d. There is value in seeing people outside of your practice group. It is challenging to embrace firm culture when solely remote.
- e. Firms can often “see” who is there through key cards or otherwise
- C. When should you come into the office?
 - a. What are your firm’s requirements?
 - b. Does your practice group/office/partner have scheduled days in?
 - c. Do you have a designated office? If so, are there a minimum number of days you need to be in the office per week? Do you office share?
 - d. Are there firm-wide or practice group social, professional, client, or training events that you should attend in person?
- D. Creating opportunities to discuss work with partners when not in office
 - a. Follow up with email/skype/phone calls – do not worry about being annoying! Spending the extra time will help establish the
 - b. Scheduled meetings – daily / weekly. E.g. ask for scheduled “office hours” with subject matter experts (tax lawyers, conduit group, governmental group).
- E. The Assignment Process
 - a. Things to Ask When Beginning an Assignment
 - i. Model documents?
 - ii. Due dates?
 - iii. Priorities?
 - iv. Who to contact if you have questions? Who else is on the team and what are their responsibilities?
 - v. What are you responsible for? A discrete task or reviewing all of the documents – or somewhere in between?
 - b. Things to Be Careful For When Drafting: Attention to detail
 - i. Client name

- ii. Name of Bond Issue
 - iii. Closing Date
 - iv. Bond Amount, Yield, Pricing
 - v. Maturity Dates
 - vi. Redemption Provisions
- F. Things to do when you get a document back that has been revised
 - a. Blackline to the version that you sent to a partner to see the changes that are made – and review the blackline before you send it (also – be sure to run spell check!)
 - b. Ask any questions about the changes that were made.
 - c. If you missed something in particular that you should not forget, add it to a check list to make sure you catch that item in the future.
- G. Organization – figure out what works best for you
 - a. Open task tracking
 - i. Bullet Journaling
 - ii. Spreadsheets – Etsy has templates for cheap
 - iii. Kanban Board
 - b. Note Taking Organization and Keeping Methods
 - i. Remarkable/IPad/Other electronic devices
 - ii. One Note
 - iii. Notebooks – One or many
 - iv. Binders for keeping notes

X. BILLING TIME

- A. Billing practices vary significantly from firm to firm and client to client. Knowing your firm's and client's billing rules is critical to learning how to bill. Certain clients have items they will not pay for and for which you cannot bill (intra-office conferences; lawyer travel time; time spent doing administrative tasks) and some have special billing requirements for how time is entered. You need to know what you can and cannot bill for so you can avoid both spending excessive time on work

that clients will not pay for and entering time for unbillable tasks. For many people, good billing takes time and practice.

B. Billing “don’ts” - Two of the Model Rules (1.5 and 8.4) come into play when discussing the two billing prohibitions of:

- a. Double billing - which is the simultaneous billing of two clients for work performed in the same block of time.
- b. Marking up time - which is charging more time for a matter or task than it actually takes to accomplish the same.

C. Billing DOs:

- a. Bill for all of your billable work.
 - i. In the first few years of practice, you should expect that some of your time will be written down (reduced) or written off entirely. However, unless someone told you otherwise, bill all the time you spend on a task, even if you know some of it will be marked down. At most firms, you will still get credit toward your billable hour goal for all the time you enter, even if not all of that time is billed to the client.
 - ii. Partners expect that projects will take new lawyers longer, and many lawyer tasks take longer than you expect, even for seasoned attorneys.
 - iii. Accurate time helps budget for the next deal as well. If you feel you are taking too long at a task, speak with the relevant assigning attorney.
- b. Understand how a law firm budgets - including fixed fee and other billing considerations.
- c. Understand how clients are billed.
- d. Enter time daily – even if your firm doesn’t require it (and many do), this is the best way to ensure that you accurately capture all of the billable work you perform. You’ll forget about emails you sent, phone calls you took, and other “small ticket” items that add up over a month. This hurts the firm and your progress toward your billable-hour goal.
 - i. Find a way of doing this that suits you.
 - 1. Daily Planner or log book
 - 2. Spreadsheet
 - 3. Email yourself for tasks completed in a chart daily
 - 4. Enter your time as you go.

- e. Break down your entries - Break down what you do into discrete entries so that the client can see the value of the time spent. “Review Documents” for 5 hours is much less palatable to a client than an entry that breaks down which documents you reviewed to give some scope to that entry.

Consider using the following words as part of your time entries:

Advise	Examine	Prepare
Analyze	Formulate	Prioritize
Appear	Gather	Question
Argue	Generate	Read
Attend	Identify	Receive instructions
Brief	Inform	Regarding
Compare	Inquire into	Relate
Conference with	Instruct	Report to
Contrast	Interview	Request
Correspondence to/from	Investigate	Revise
Create	Legal research	Scrutinize
Debrief	Meet with	Select
Depose	Memoranda	Strategize
Dictate	Memorandum	Study
Direct	Negotiate	Survey
Draft	Obtain	Telephone conference with
Edit	Organize	Work on/with
Evaluate	Plan	Write

Do not use the following words by themselves:

Attention	Receive	Lawyer	Reorganize
Call	Research	Clean	Review
Confer	Room	Conference	Schedule
Set	Consider	Coordinate	Telephone
Depositions To/From	Depository Up	Discuss	Visit
File	Work	Letter	Meet
Phone	Review emails		

- D. 1950 billable hours can be firm standard in Big Law. This equates to 162.5 billable hours a month or about 8.125 billable hours a day if you only work 5 days a week (and take a 2 week vacation).
- E. Be realistic about how many hours you can bill in a day. Not everything lawyers do is billable; an 11-hour day at the office might only yield eight billable hours. And that is OK!

XI. BUSINESS DEVELOPMENT

- A. Networking – internally and externally –people may be less social post pandemic. You may have to be much more proactive to seek out networking opportunities.
- B. Don't put off business development and networking when you are junior, even if it is hard. But DO know what is expected of you at your level – don't be afraid to ask!
 - a. Networking with other “juniors” (bankers, lawyers, paralegals, underwriters, etc.) can be particularly effective business development – these people will become decision makers and you will grow with them,
 - b. Challenge: Go make three new friends at this conference that you will keep in touch with!
- C. The best business development you can do is to understand what you do.

XII. WELL-BEING

- A. Practicing law – for most of us – is not a 9 to 5 job. But it is also not a 24/7 job. While Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client, that does not mean an instantaneous reply.
- B. Set forth boundaries whether working at home or in the office – but be flexible!