

Coronavirus Response: Legal Ethics FAQ

1. How can I support the justice system and lawyer wellness in the midst of a Coronavirus (COVID-19) outbreak?

Part of being a competent, diligent lawyer is remaining aware of current events. RPC 1.1, 1.3.

- Stay up to date on recommendations and advice of public health authorities, including the [Oregon Health Authority](#). Follow all recommendations.
- Regularly review information and updates provided by courts, including the Oregon Judicial Department (OJD [Alerts & Emergency Closures](#)), your local circuit court, the United States District Court for the District of Oregon (USDC [Information regarding Coronavirus Disease \(COVID-19\) and Court Operations](#)) and any other jurisdictions in which you appear.

2. I'm not sick, but I want to prepare for the possibility I may be ill or need to self-quarantine. What should I do?

Create a lawyer succession plan so that you have backup available if you become ill or unavailable to clients.

- Lawyers should plan now for the possibility that they may unexpectedly become incapacitated. As the Legal Ethics Committee explains in [OSB Legal Ethics Op 2005-129](#), a lawyer's duty of competent representation includes arranging to safeguard clients' interests in the event of the lawyer's impairment, incapacity or death. RPC 1.1.
- This duty is especially pressing for a lawyer who has no partners, associates or employees. Absent advance planning, if a sole practitioner with no staff becomes incapacitated there may be a significant lapse of time after the problem arises during which the lawyer's clients' needs are not met. As the committee explains, "The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such circumstances."
- Having a comprehensive succession plan is encouraged, and can protect clients' interests. The Professional Liability Fund's guide, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, provides detailed information about the steps practicing attorneys can take to plan for possible incapacity. The guide is available at no cost to members on the PLF's [website](#) or on BarBooks.
- For other resources related to disaster planning, including resources from the PLF, see the Bar Counsel article [When Disaster Strikes: Ethical Obligations for the Worst-Case Scenario](#) (November 2018).

3. I am afraid to go to court or meet with others because of possible exposure to Coronavirus, what are my ethical obligations to clients?

- Public health authorities, including the [Oregon Health Authority](#), have advised individuals to make decisions about avoiding risk of exposure based on their personal risk profile (e.g. age, underlying health conditions), in consultation with their medical providers.
- Communicate with clients about how your personal decisions may impact the representation. Attorneys have a duty to keep clients reasonably informed about the status of their case, and explain matters to the extent reasonably necessary to permit a client to make an informed decision regarding the representation. RPC 1.4. Explain to clients if your decisions will change the manner of your representation. For instance, will you need to meet with clients via teleconference instead of in-person? Will you need to continue or delay matters? Will another attorney need to help with the case?
- Consider whether you can continue to provide competent, diligent representation to your clients. RPC 1.1; 1.3. If a client might be harmed by delay or you will be unable to adequately prepare for matters, then you may need to withdraw. RPC 1.16(a)(1)
- If you need to withdraw from representation, see Answer to Question 5 for more information.

4. I am sick, and it may be COVID-19, what are my ethical obligations to clients?

- Communicate with clients about how the illness may impact your representation. Attorneys have a duty to keep clients reasonably informed about the status of their case, and explain matters to the extent reasonably necessary to permit a client to make an informed decision regarding the representation. RPC 1.4. Explain to clients if your illness will change the manner of your representation. For instance, will you need to meet with clients via teleconference instead of in-person? Will you need to continue or delay matters? Will another attorney need to help with the case?
- Consider whether you can continue to provide competent, diligent representation to your clients. RPC 1.1; 1.3. If a client will be harmed by delay or you are unable to adequately prepare for matters, then you may need to withdraw. If a lawyer's physical health materially impairs the lawyer's ability to represent the client, the lawyer must seek to withdraw from representing the client. RPC 1.16(a)(2). See Answer to Question 5 on withdrawal.
- ***If you are ill, do not go to court without first notifying the judge assigned to your case, or the presiding judge, and seeking direction on how to appear. Do not engage in ex parte contact about the merits of your matter unless permitted by court rule. RPC 3.5(b).***
- If you believe you have committed malpractice as a result of your illness or need specific advice regarding avoiding malpractice during your illness call the Professional Liability Fund at 503-639-6911.

5. I'm too sick to continue representation in a case, what are my ethical obligations to clients?

- If a lawyer's physical health materially impairs the lawyer's ability to represent the client, the lawyer must seek to withdraw from representing the client. RPC 1.16(a)(2).
- In lieu of withdrawal, the lawyer might ask other law firm colleagues to substitute on the matter.
- If a lawyer has a succession plan in place, consider whether to initiate the plan. If you are relying on representation by a lawyer outside of your firm, you should seek client consent (some lawyers include language that allows assistance by lawyers outside of their firm in their engagement agreements).
- If withdrawal is necessary, lawyers must take all reasonably necessary steps to protect clients' interests upon withdrawal. RPC 1.16(d). Upon withdrawal, RPC 1.16(d) requires that the lawyer 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 fees or expenses that have not been earned or incurred.
- What notice is reasonable and what steps are reasonably practicable to protect clients' interests will depend on the particular case. Reasonable notice may not be possible in litigation matters if there are short and sensitive timelines that cannot be extended. In such cases, lawyers may not be allowed to withdraw. On the other hand, if there is sufficient time for the client to hire substitute counsel and any existing deadlines are either far in the future or easily continued without prejudice to the client, then withdrawal is a reasonable option.
- If a matter is pending before a court, check court rules to see if court permission or notice is required. Comply with any court rules, as required by RPC 1.16(c).
- ***If you are ill, do not go to court without first notifying the judge assigned to your case, or the presiding judge, and seeking direction on how to appear. Do not engage in ex parte contact about the merits of your matter unless permitted by court rule. RPC 3.5(b).***
- If a court orders you to remain on the case, you must do so.
- If you believe you have committed malpractice as a result of your illness or need specific advice regarding avoiding malpractice during your illness call the Professional Liability Fund at 503-639-6911.

Oregon lawyers who need prospective legal ethics guidance about their own conduct may contact the Legal Ethics Helpline at 503.431.6475.