

Ethics: Are You Phoning It In?

The Ethical Perils of Practicing Law from Your Cell Phone (*with or without a worldwide pandemic)

Presented by:
Jaime Garcia
J. Cruz & Associates, LLC
jgarcia@jca-law.com



1

Ethics: Are you Phoning It In?

NOTICE:

The material is intended for non-commercial use for training purposes. Commercial utilization of the materials contained in these slide materials is prohibited.

2

Aggressive Cell Phone Lawyering – Email to Florida Bar

Dear assholes :

I already told Quinn I needed an extension as I am out of the office until Jan 7 for religious and family purposes . Here we are again, the s████ florida Bar harassing me gain. How about f████ you, the 4th doesn't work, and I'm asking until the 15th

Also I submitted an Answer to the Emergency Suspension weeks ago, did you get it ?

You are in default of being a human being, and are an asshole .

Have a blessed new year . D████ heads

♥?

Sent from my iPhone

Source: Cordeiro, M. (2021, January 08). Orlando lawyer suspended amid flood of complaints citing aggressive, erratic behavior. *Orlando Sentinel*. Retrieved from <https://www.orlandosentinel.com/news/crime/os-ne-orlando-lawyer-justin-infurna-suspended-20210108-xmbmb5jxpjghjldin6uljyedxu-story.html>

© 2020 J. Cruz & Associates, LLC All rights reserved.

3

Texas Disciplinary Rules of Professional Conduct

- Texas ethics rules do not explicitly address cell phones as lawyering tools.
- However, the ethics rules mandate other duties that create ethical expectations for attorneys in their cell phone use for legal practice:
 - » the Duty to be Competent
 - » the Duty to Safeguard Confidential Information
 - » and the Duty to Communicate with the Client
- Read collectively, the rules shed light on the ethical expectations for attorneys as related to lawyering via cellphones.
- Moreover, aside from ethical obligations, a lawyer should remember basic *professionalism* even when using everyday technology and informal communication tools like cellphones!

© 2020 J. Cruz & Associates, LLC All rights reserved.

4

Rule 1.01: Competent and Diligent Representation

- a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:
 - (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
 - (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.
- b) In representing a client, a lawyer shall not:
 - (1) neglect a legal matter entrusted to the lawyer; or
 - (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.
- c) As used in this Rule, “neglect” signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

© 2020 J. Cruz & Associates, LLC All rights reserved.

5

Rule 1.01: Competent and Diligent Representation

- On February 26, 2019, the Texas Supreme Court ordered that Comment 8 to Rule 1.01 be amended to include the expectation that an attorney be competent in the benefits and risks associated with relevant technology, an amendment which mirrors the language in the ABA model rule relating to maintaining competency.
- The Texas Supreme Court made clear that an Attorney’s ethical duty to “Competent and Diligent Representation” as expressed in Rule 1.01 includes a lawyer’s striving to become and remain “proficient and competent” in legal practice, including the benefits and risks associated with relevant technology.

© 2020 J. Cruz & Associates, LLC All rights reserved.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Ethics: Are You Phoning it In? The Ethical Perils of Practicing Law from Your Cell Phone

Also available as part of the eCourse

[Hooked on CLE: May 2021](#)

First appeared as part of the conference materials for the
36th Annual School Law Conference session

"Ethics: Are You Phoning it In? The Ethical Perils of Practicing Law from Your Cell Phone"