

MEMORANDUM

TO: Members of the Alabama State Bar

FROM: The Office of General Counsel

DATE: March 18, 2020

RE: Ethical Concerns Related to the COVID-19 Pandemic

The current coronavirus crisis is distinctive and unprecedented in many ways. However, our obligation as lawyers to inform ourselves and respond appropriately is not exceptional, even when dealing with COVID-19. Whether dealing with massive hurricanes, tornados or pandemics, our clients are depending on us to know what to do in times of crises. Here are a few considerations:

Rule 1.1, *Alabama Rules of Professional Conduct*, addresses a lawyer's obligation of "competence." A lawyer's ethical duty of competence includes obtaining the requisite "legal knowledge" needed to prepare a case or reasonably advise a client, including staying up to date on both substantive and procedural changes that may affect clients.

The Supreme Court of Alabama issued an administrative order on March 13, 2020, suspending all in-person court proceedings for 30 days. That order can be found [here](#). Importantly, the court noted many exceptions to this administrative rule, and specifically reiterated that it could not extend statutes of limitations that may run during the 30-day extension. The Supreme Court has issued supplemental orders on March 15, which you can read [here](#), and two additional and separate orders on March 17, 2020. (Click [here](#) for Administrative Order 3 and [here](#) for Administrative Order 4.) Most federal courts have also issued guidelines outlining their expectations for lawyers dealing with quarantine issues.

The duty of competence further requires a lawyer to be mindful of certain key personnel, i.e., a paralegal, that may have specialized knowledge about client issues. The lawyer in charge of a file has an obligation to make sure clients can maintain access to important information should those key employees fall ill. If a lawyer is retaining important information or funds that a client may need during these uncertain times, a plan of action should be created to facilitate or address those concerns.

Rule 1.4, *Alabama Rules of Professional Conduct*, outlines a lawyer's ethical obligation to communicate with clients. The lawyer should keep a client "reasonably informed about the status of a matter...and...explain a matter to the extent reasonably necessary to permit the client to make informed decisions..." This obligation includes explaining to your clients that there have been recent developments and that there could be more down the road that affect their case.

In some cases, your client may have been seriously affected by the coronavirus. Rule 1.14, *Alabama Rules of Professional Conduct*, discusses dealing with clients who suffer from diminished capacity. The general requirement when dealing with a client during a period of diminished capacity, is to maintain a normal-client relationship as reasonably possible. However, if the lawyer reasonably believes a client with diminished capacity cannot adequately act in his or her own self-interest and is at

risk of substantial physical, financial, or other harm unless action is taken, he or she may ethically take reasonably necessary protective measures to help the client. In some cases, this may include consulting with individuals or organizations that have the ability to take action and protect the client. In appropriate cases, this may include seeking the appointment of a guardian ad litem, conservator, or guardian. Due to the recent closure of the majority of the court systems, any judicial action requiring an in-person hearing will need to be approved by the presiding judge, or designee, in your jurisdiction.

The Office of General Counsel (“OGC”) understands how difficult this time is on every lawyer, every client, every staff member and every family. We are hopeful that you will let us help you with your difficult decisions. If you have questions about an ethical issue or obligation, please email us at ethics@alabar.org. For all other OGC inquiries, please email us at: ogc@alabar.org.