



ABA Law Students! Put a Dent in Your Debt!
Win up to \$10,000
in ABA's Facebook Sweepstakes

ENTER NOW ►

Advertisement

You're a Lawyer? Can I Ask You a Question?

Vol. 16 No. 1

By Christopher Ryan and Neda Mirafzali

Christopher Ryan, an associate attorney with Aardema Whitelaw, PLLC in Grand Rapids, Michigan, can be contacted at crvan@aardemawhitelaw.com.

Neda Mirafzali, an associate attorney with The Health Law Partners, PC in Southfield, Michigan, can be contacted at nmirafzali@thehlp.com.

No matter how new you are to the legal profession, you have likely heard the following phrase: "You're a lawyer—can I ask you a question?" While being approached for legal advice can be exciting and flattering, there are a number of pros and cons you should consider before you give off-the-cuff legal advice.

Consider the attorney-client relationship

It may appear to you that you are merely giving advice to an acquaintance, but you must beware of the possible formation of an attorney-client relationship. The minute the attorney-client relationship forms, lawyers are bound by their state's professional responsibility rules.

Attorney-client relationships are not always memorialized in a retainer agreement. Sometimes, the relationship can be implied from the conduct of the parties. If a reasonable person in the client's position would interpret a lawyer's conduct to be an agreement to provide legal services, an attorney-client relationship is formed. Defining the relationship from the beginning can avoid confusion and ethical issues down the road.

Pro bono

Lawyers are taught to give back to society, seek out opportunities to promote the legal profession, and contribute to the community. Like most lawyers, you probably do not do this enough (especially if you are early in your career). Occasionally giving free legal advice can be a good way to give back to society without jeopardizing your billable hours.

On the other hand, devoting too much time to free representation could quickly impact your bottom line. Lawyers have bills to pay too (the least of which being student loans), and it is not unreasonable for lawyers to be paid for their time. Give of your time, but be careful not to let "side projects" detract from your primary law practice. Try to judge upfront when a pro bono task will require more time than you have to spare.

Contemplate referring the work

If you practice health law and are asked for legal advice about bankruptcy, consider referring the case to another attorney. Rule 1.1 of the Model Rules of Professional Conduct requires lawyers to provide competent representation. Your referral can not only avoid ethical issues for you if you are not familiar with an area of law but also can help create a network of specialized attorneys who may refer cases to you. If you do not know which lawyer to recommend, suggest a local bar association's lawyer referral service.

Promote your practice

If you recently started your own firm, friends and family may be your first clients. Many attorneys build their practices solely on word-of-mouth. Therefore, producing high-quality work early in your career (even if it is without charge) can help form your professional reputation. Again, even with family and friends you must take care not to unintentionally enter into an attorney-client relationship.

Conflicts

The rules surrounding conflicts vary by jurisdiction. The bottom line is before discussing any legal matter with someone, you must confirm there are no conflicts of interest. If you are in a large firm, this can be especially difficult, since the number of clients represented by your firm may be very large. Talk to your employer about the conflict-check system in place at your firm.

Conducting a conflict check helps ensure your firm's existing clients are protected. Further, you are generally under an ethical obligation to make sure that you keep your firm's clients' interests above the interests of others. Sometimes, those obligations may mean telling your friends or family that you cannot represent them. In those cases, referring the matter may be your best option.

There will be times where you will be in a great position to give legal advice to a friend or family member. Other times, you may conclude the best course is to decline giving advice. Regardless of your final conclusion in each case, first consider all the pros and cons before giving casual legal advice.