

**CIVIL LITIGATION PANEL VOLUNTEER TRAINING**  
**Wednesday, April 14, 2021**  
**U.S. District Court for the District of Arizona**  
*Ethics Presentation*

The ethical duties in a pro bono representation are the same as in any other representation. The same duties of competence, diligence, communication, confidentiality, loyalty, and all of the others still apply. However, different issues may arise with pro bono clients.

ER 1.1. Competence.

- Today's training.
- Investigate the facts; do not rely solely on what client tells you.
  - o See also 1.3 (diligence), 3.1 (meritorious claims).

ER 1.2. Scope, authority.

- Carefully define scope, in writing, and discuss so client understands.
- Respect client's decisions re whether to settle, even if you disagree. You and the client may place different relative values on money vs. day in court.

ER 1.4. Communication.

- Can be a challenge, esp. with prisoners.
- Figure out the best ways for your client and you to communicate and how to best keep in touch if they move (or are moved).

ER 1.5. Fees.

- Try to negotiate any fee award separately from main settlement.

ER 1.6. Confidentiality.

- Inform yourself about which communications with prisoners are confidential and take steps to ensure confidentiality (e.g., stamp communications as legal mail).

ER 1.14. Diminished capacity.

- May come up more often than in your normal practice.
- To the extent possible, maintain normal client-lawyer relationship.
- May take reasonably necessary protective action.

ER 1.15. Safekeeping property.

- This isn't really an ethics issue, but opening bank accounts for prisoners can be tricky because of bank ID requirements. There are banks that will do it (e.g., Wells Fargo).

ER 1.16. Terminating representation.

- May be necessary if client is unreasonably difficult (although pro bono clients are often the kindest and most appreciative).
- Attention to supervision/pairing of clients with attorneys may help avoid problems.

ER 4.2. Communications with represented parties. Be careful re former employees (*Lang*).