

# You Don't Need To Hire an Attorney: Even Though You Should

## Brief Essay on Legal Ethics Based on the ABA Model Code of Professional Ethics [And Just a Little Common Sense]

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### Thesis

An attorney is not permitted to tell a client or a potential client that an attorney (experienced, qualified, or otherwise) is needed or required to render legal services in any given situation unless the statement is also disclaimed as not requiring an attorney.

Permitted alternative: An attorney is allowed to recommend services and emphasize the reasons why representation would be advantageous to a client or potential client. An attorney can impress upon potential clients, even to a great extent, just how valuable his services are.

### Definitions

**Advise** –verb (used with object) 1. to give counsel to; offer an opinion or suggestion as worth following: I advise you to be cautious.  
2. to recommend as desirable, wise, prudent, etc.: He advised secrecy.  
3. to give (a person, group, etc.) information or notice (often fol. by of): The investors were advised of the risk. They advised him that this was their final notice.  
–verb (used without object) 4. to take counsel; consult (usually fol. by with): I shall advise with my friends.  
5. to offer counsel; give advice: I shall act as you advise.

**Need** –verb (used with object) 8. to have need of; require: to need money.

**Require** –verb (used with object) 1. to have need of; need: He requires medical care.  
2. to call on authoritatively; order or enjoin to do something: to require an agent to account for money spent.  
3. to ask for authoritatively or imperatively; demand.  
4. to impose need or occasion for; make necessary or indispensable: The work required infinite patience.  
5. to call for or exact as obligatory; ordain: The law requires annual income-tax returns.  
6. to place under an obligation or necessity: The situation requires me to take immediate action.  
7. Chiefly British. to desire; wish to have: Will you require tea at four o'clock?

*Random House Unabridged Dictionary*

### Formulation of Argument

[EC refers to sections on Ethical Consideration; DR refers to sections on Disciplinary Rules; U.S.C. stands for United States Code]

1. Individuals have a constitutional right to defend themselves pro se in criminal cases and a statutory right to represent themselves in civil cases in either prosecution or defense.  
28 U.S.C. § 1654
2. The general public is unsophisticated when it comes to law.  
EC 2-9
3. Lawyers must maintain the highest professional conduct.  
EC 1-5
4. Lawyers must act with integrity and both establish and enforce ethical standards.  
EC 8-7, DR 1-102, DR 2-101

5. Advertisements are to be for informational purposes only.  
EC 2-8, DR 2-101
6. Advertisements must be objective and truthful.  
EC 2-10, DR 1-102, DR 2-101
7. Lawyers must take special care to avoid misleading the public.  
EC 2-9, DR 1-102, DR 2-101
8. Lawyers should not place undue emphasis on style and advertising stratagems.  
EC 2-10, DR 2-101
9. Lawyers give advice.  
EC 7-7, DR 2-104
10. Only clients have the authority to choose or decline legal options in services.  
EC 7-7, 7-8, DR 2-104
11. Lawyer should advise clients of possible outcomes.  
EC 7-8
12. Lawyers should recommend but may not demand courses of action.  
EC 7-7, 7-8
13. Decisions by clients are binding on attorneys.  
EC 7-8
14. Lawyers may advise unrepresented adversaries to obtain counsel.  
EC 7-18, DR 7-104
15. Lawyers' personal interest should not interfere with duty of loyalty to clients.  
EC 5-1
16. Lawyers shall treat with consideration all persons involved with the legal system.  
EC 7-1, DR 7-104

### **Analysis**

If the true statement of law and fact is, "you do not need or require a lawyer," then the false statement is, "you need a lawyer." While a non-lawyer should certainly be able to advise a person that he or she needs a lawyer, a practicing attorney is in such a position of authority that to tell a client or prospective client that he or she requires an attorney is to create a false or misleading perception in direct conflict with the law and with the Model Rules.

The Model Code clearly lays out the high standards that lawyers are expected to maintain. Lawyers are required to avoid even the perception of impropriety. Lawyers are to set standards for their profession and are obligated to enforce the standards from within.

Lawyer advertising is supposed to be informative. Lawyer advertising is not to be false, misleading, deceptive, self-laudatory, or unfair. Lawyer advertising is to be objective and truthful.

Under the Model Rules, lawyers are to advise and counsel their clients. Lawyers are to give advice and present options. Lawyers are not to give imperative direction to clients or potential clients. Lawyers, both in advertising and in practice, are not to misrepresent law or facts to clients, adversaries, tribunals, or the public.

Not every referenced code section above refers explicitly to advertising. However, every section refers to the standards of permissible conduct by which lawyers must abide. For example, EC 7-1 states that an attorney may advise an unrepresented adversary only that he should obtain counsel. If an attorney cannot tell an opponent, whom the attorney will not receive a penny from in attorney's fees, that he must hire an attorney, then how can it be reasonable to think that an attorney can tell someone from whom the attorney wishes to receive compensation that the potential client must hire an attorney?

The statement, "you need a lawyer," is unfair at best. However, the same statement can easily be construed as misleading or deceptive. Upon even cursory inspection, the statement is in fact patently false in all but very specific cases.

Since the cases where attorneys are mandatory are so fact-specific and are determined exclusively on judicial discretion—not attorney discretion—an attorney has no ethical basis to make an imperative statement that any given person needs a lawyer. Indeed, any such statement is unethical.

[Note: All states have adopted a variation on the ABA Model Rules of Professional Responsibility, except California, Maine, and New York. The rules of ethics for California and New York tend to be even more strict than are the Model Rules.]

### **Conclusion**

Since there always has to be a "so what," here are the implications. Yet to be mentioned is the gem of a section: EC 1-4. All sections are important, but EC 1-4 establishes the moral and professional duty for lawyers to police their own kind. And to do so voluntarily.

Can the falsity of "you need a lawyer" as uttered by an attorney be disputed? Not without farce.

So what does that mean? Under the Model Code, if one attorney hears another attorney say or sees another attorney publish (in print or electronic), then the first attorney should voluntarily report the violation to the proper Office of Lawyers Professional Responsibility (or similar agency that deals with lawyers' ethics violations).

The duty of all lawyers is to ensure that our profession maintains the highest standards. We and the entire judicial system operate exclusively at the pleasure of public trust.

An attorney should not tell a layperson to hire an attorney (especially not him or herself) in an imperative manner.

Even worse is the attorney who tells the layperson he or she must hire an experienced or qualified attorney over one of lesser experience. Since all licensed attorneys are qualified (except in certain fields, such as patent law), all lawyers are qualified. It is up to the lawyer to determine whether he or she is of competent knowledge and experience to offer representation. The attorney who tells a potential client only to hire an experienced attorney is in gross violation of the Rules. If a person need not hire an attorney to begin with, then certainly he is not required to hire any particular attorney if he should choose to hire one at all.

Is it in the potential client's benefit to hire an experienced attorney? That fact can probably not be disputed. And the advertising attorney can say as much. But the advertising attorney cannot mandate, or even imply, that the potential client must do so.

### **Reference Material**

28 U.S.C. § 1654  
Title 28. Judiciary and Judicial Procedure  
Part V. Procedure  
Chapter 111. General Provisions  
§ 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

### **Annotated Cases to § 1654**

Defendant in criminal proceeding has constitutional and statutory right to represent himself. U.S. v. Treff, C.A.10 (Utah) 1991, 924 F.2d 975, certiorari denied 111 S.Ct. 2272, 500 U.S. 958, 114 L.Ed.2d 723.

Accused has fundamental right to confront his accusers and his "country," to present himself and his position to jury not merely as a witness or through a "mouthpiece" but as a man on trial who elects to plead

his own cause and he is not obliged to seek what counsel would record as a victory but what he sees as tantamount to condemnation or doubt rather than vindication. *U. S. v. Dougherty*, C.A.D.C.1972, 473 F.2d 1113, 154 U.S.App.D.C. 76.

Defendant has moral right to stand alone in his hour of trial and denial of that right is not to be redeemed through the prior estimate of someone else that the practical position of defendant will be enhanced through representation by another or the subsequent conclusion that defendant's practical position has not been disadvantaged. *U. S. v. Dougherty*, C.A.D.C.1972, 473 F.2d 1113, 154 U.S.App.D.C. 76.

While there is no constitutional right to self-representation in civil cases there is statutory right of long standing to such self-representation. *Andrews v. Bechtel Power Corp.*, C.A.1 (Mass.) 1985, 780 F.2d 124, certiorari denied 106 S.Ct. 2896, 476 U.S. 1172, 90 L.Ed.2d 983.

### **ABA Model Code of Professional Responsibility**

[Sections presented in full.]

#### EC 1-4

The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules.

#### EC 1-5

A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

#### EC 2-8

Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties -- relatives, friends, acquaintances, business associates, or other lawyers -- and disclosure of relevant information about the lawyer and his practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone directories, newspapers, other forms of print media, television or radio, should be formulated to convey only information that is necessary to make an appropriate selection. Such information includes: (1) office information, such as name, including name of law firm and names of professional associates; addresses; telephone numbers; credit card acceptability; fluency in foreign languages; and office hours; (2) relevant biographical information; (3) description of the practice, but only by using designations and definitions authorized by [the agency having jurisdiction of the subject under state law], for example, one or more fields of law in which the lawyer or law firm practices; a statement that practice is limited to one or more fields of law; and/or a statement that the lawyer or law firm specializes in a particular field of law practice, but only by using designations, definitions and standards authorized by [the agency having jurisdiction of the subject under state law]; and (4) permitted fee information. Self-laudation should be avoided.

#### EC 2-9

The lack of sophistication on the part of many members of the public concerning legal services, the importance of the interests affected by the choice of a lawyer and prior experience with unrestricted lawyer advertising, require that special care be taken by lawyers to avoid misleading the public and to assure that

the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits of lawyer advertising depend upon its reliability and accuracy. Examples of information in lawyer advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principal factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service, which cannot be measured or verified. Since lawyer advertising is calculated and not spontaneous, reasonable regulation of lawyer advertising designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

#### EC 2-10

A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcast is relevant, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to compare the qualifications of the lawyers available to represent him. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems which serve to hinder rather than to facilitate intelligent selection of counsel. Because technological change is a recurrent feature of communications forms, and because perceptions of what is relevant in lawyer selection may change, lawyer advertising regulations should not be cast in rigid, unchangeable terms. Machinery is therefore available to advertisers and consumers for prompt consideration of proposals to change the rules governing lawyer advertising. The determination of any request for such change should depend upon whether the proposal is necessary in light of existing Code provisions, whether the proposal accords with standards of accuracy, reliability and truthfulness, and whether the proposal would facilitate informed selection of lawyers by potential consumers of legal services. Representatives of lawyers and consumers should be heard in addition to the applicant concerning any proposed change. Any change which is approved should be promulgated in the form of an amendment to the Code so that all lawyers practicing in the jurisdiction may avail themselves of its provisions.

#### EC 5-1

The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

#### EC 7-7

In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

#### EC 7-8

A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the

possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

#### EC 7-10

The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

#### EC 7-18

The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

#### EC 8-7

Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

#### DR 1-102 Misconduct.

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (2) Circumvent a Disciplinary Rule through actions of another.
- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

#### DR 2-101 Publicity.

(A) A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

(B) In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103, the following information in print media distributed or over television or radio broadcast in the geographic area or areas in which the lawyer resides or maintains offices of in which a significant part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101(A), and is presented in a dignified manner.

(1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;

- (2) One or more fields of law in which the lawyer or law firm practices, a statement that practice is limited to one or more fields of law, or a statement that the lawyer or law firm specializes in a particular field of law practice, to the extent authorized under DR 2-105;
- (3) Date and place of birth;
- (4) Date and place of admission to the bar of state and federal courts;
- (5) Schools attended, with dates of graduation, degrees and other scholastic distinctions;
- (6) Public or quasi-public offices;
- (7) Military service;
- (8) Legal authorships;
- (9) Legal teaching positions;
- (10) Memberships, offices, and committee assignments, in bar associations;
- (11) Membership and offices in legal fraternities and legal societies;
- (12) Technical and professional licenses;
- (13) Memberships in scientific, technical and professional associations and societies;
- (14) Foreign language ability;
- (15) Names and addresses of bank references;
- (16) With their written consent, names of clients regularly represented;
- (17) Prepaid or group legal services programs in which the lawyer participates;
- (18) Whether credit cards or other credit arrangements are accepted;
- (19) Office and telephone answering service hours;
- (20) Fee for an initial consultation;
- (21) Availability upon request of a written schedule of fees and/or estimate of the fee to be charged for specific services;
- (22) Contingent fee rates subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs;
- (23) Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;
- (24) Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled to without obligation an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information;
- (25) Fixed fees for specific legal services, the description of which would not be misunderstood or be deceptive, provided that the statement discloses that the quoted fee will be available only to clients whose matters fall into the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged in print size at least equivalent to the largest print used in setting forth the fee information.

(C) Any person desiring to expand the information authorized for disclosure in DR 2-101(B), or to provide for its dissemination through other forums may apply to [the agency having jurisdiction under state law]. Any such application shall be served upon [the agencies having jurisdiction under state law over the regulation of the legal profession and consumer matters] who shall be heard, together with the applicant, on the issue of whether the proposal is necessary in light of the existing provisions of the Code, accords with standards of accuracy, reliability and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services. The relief granted in response to any such application shall be promulgated as an amendment to DR 2-101(B), universally applicable to all lawyers.

#### DR 2-104 Suggestion of Need of Legal Services.

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

- (1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization.

(3) A lawyer who is recommended, furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

#### DR 7-104 Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client

### Appendix

#### Chronology of Adoption of the Model Rules or Code

##### Jurisdiction Date of Adoption

New Jersey 7/12/84  
Arizona 9/7/84  
Montana 6/6/85  
Minnesota 6/13/85  
Washington 7/25/85  
Missouri 8/7/85  
Delaware 9/12/85  
North Carolina 10/7/85  
Arkansas 12/16/85  
New Hampshire 1/16/86  
Nevada 1/26/86  
Maryland 4/15/86  
Connecticut 6/23/86  
New Mexico 6/26/86  
Florida 7/17/86  
Idaho 9/3/86  
Wyoming 11/7/86  
Indiana 11/25/86  
Louisiana 12/18/86  
Mississippi 2/18/87  
Utah 3/20/87  
North Dakota 5/6/87  
Wisconsin 6/10/87  
Pennsylvania 10/16/87  
South Dakota 12/15/87

##### Jurisdiction Date of Adoption

Kansas 1/29/88  
Oklahoma 3/10/88  
Michigan 3/11/88  
West Virginia 6/30/88  
Rhode Island 11/1/88  
Kentucky 6/12/89  
Texas 6/20/89  
South Carolina 1/9/90  
Illinois 2/8/90  
Washington, DC 3/1/90  
Alabama 5/2/90  
Virgin Islands 1/28/91  
Colorado 5/7/92  
Alaska 4/14/93  
Hawaii 12/6/93  
Massachusetts 6/9/97  
Virginia 1/25/99  
Vermont 3/9/99  
Georgia 6/12/00  
Tennessee 8/27/02  
Oregon 1/1/05  
Iowa 4/20/05  
Nebraska 6/8/05  
Ohio 8/1/06

## **ABA Model Code As Related to ABA Model Rules**

[Cited Sections Only]

EC 1-4 Rule 6.1

EC 1-5 Rule 8.4(a), (b), (c), (e) & (f)

DR 1-102(A)(1) Rule 8.4(a)

DR 1-102(A)(2) Rules 5.1(c), 5.3(b), 8.4(a)

DR 1-102(A)(3) Rules 8.4(b) & (f)

DR 1-102(A)(4) Rules 3.3(a)(1), (2) & (4), 3.4(a) & (b), 8.4(c) & (f)

DR 1-102(A)(5) Rules 3.1, 3.2, 3.3(a)(1), (2) & (4), 3.4, 8.4(d) & (f)

DR 1-102(A)(6) Rules 3.4(b), 8.4(b) & (f)

Canon 2: Making Counsel Available

EC 2-8 Rules 7.1, 7.2(a) & (c), 7.4

EC 2-9 Rule 7.1

EC 2-10 Rule 7.1(a) & (c)

DR 2-101(A) Rule 7.1

DR 2-101(B) Rules 7.1, 7.2(a)

DR 2-101(C) Rule 7.1

DR 2-104 Rules 1.16(a), 7.3

Canon 5: Independent Judgment

EC 5-1 Rules 1.7(a) & (b), 1.8(c), (d), (e), (f), (g) & (j)

Canon 7: Zeal Within the Law

EC 7-7 Rule 1.2(a)

EC 7-8 Rules 1.2(a) & (c), 1.4, 2.1

EC 7-10 Rule 4.4

EC 7-18 Rule 3.8(c), 4.2, 4.3

DR 7-104 Rules 3.4(f), 4.2, 4.3

Canon 8: Improving Legal System

EC 8-7 Rule 6.1