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GREG NEEDS A LAWYER: IS HE GETTING AN ETHICAL ONE?

Megan McDermott*

INTRODUCTION

As a long-time teacher of professional responsibilities, I’ve found the prohibitions on solicitation and the restrictions on third-party payment to be among the hardest ethics rules to teach. Most of the client-centered rules of professional conduct are intuitive: provide competent and diligent representation to clients, don’t take advantage of clients or charge exploitative fees, safeguard client funds and property. Even the more challenging rules, like the confidentiality and conflict of interest rules, make sense to students once they appreciate the relationship of trust and confidence between lawyer and client.

On the other hand, the rules limiting how a lawyer can actually find clients, and when the lawyer may accept payment from someone else for representing those clients, are far less intuitive, particularly when taught as part of a course that also addresses the crisis in access to justice. After learning of the Legal Services Corporation’s recent finding that 92% of low-income people received insufficient or no legal help for life-impacting legal problems, students find it downright alarming that lawyers are largely prohibited from initiating personal contact with potential clients who are in need of representation.

Succession, as actor Robert Duvall once said of baseball pitcher Roger Clemens, has been “the answer to my prayers.” As my colleagues in this

* Associate Teaching Professor, University of Wisconsin School of Law. I am grateful to my Spring 2022 Professional Responsibilities students, who spotted many of the issues addressed in this Essay as part of their final exam. Thanks as well to my Symposium colleagues for their comments and suggestions.

1. See MODEL RULES OF PROF. CONDUCT r. 1.1 (AM. BAR ASS’N 2023).
2. See id. r. 1.3.
3. See id. r. 1.8.
4. See id. r. 1.5.
5. See id. r. 1.15.
6. See id. r. 1.6.
7. See MODEL RULES OF PROF. CONDUCT r. 1.7 (AM. BAR ASS’N 2023).
Symposium capably demonstrate, the entire Succession series provides a terrific entrée for students to a variety of legal issues. But this Essay focuses on two short scenes in a single episode as fodder for teaching more than a dozen different rules of professional conduct, including ethical obligations that can be extremely challenging for students to conceptualize.

I. The Problem: How to Teach Solicitation and Third-Party Payment?

The goal of my professional responsibilities class is to expose students to the ethical dilemmas that they will likely face in practice, and then give them the tools to resolve those ethical dilemmas. Although the class draws on a variety of authorities, including case law, ethics opinions, and the Restatement of the Law Governing Lawyers, our focus is on the Model Rules of Professional Responsibility, promulgated by the American Bar Association (ABA), plus the comments thereto. I aim to provide students with at least an initial exposure to the entirety of the rules, from the preamble through the choice of law issues in ABA Model Rule 8.5. As we journey through the course, two Model Rules in particular have been perennial stumbling blocks for me as I try to teach my students in a way that will be both meaningful and memorable.

The first challenging rule is ABA Model Rule 7.3, which prohibits “solicit[ing] professional employment by live person-to-person contact when a significant motive . . . is the lawyer’s or law firm’s pecuniary gain.” Although there are exceptions to this general rule—namely, soliciting employment from other lawyers, soliciting employment from a “person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm,” and soliciting employment from a person who “routinely uses for business purposes the type of legal services offered by the lawyer”—these restrictions largely preclude for-profit lawyers from approaching potential clients in underserved communities who need legal assistance with basic issues like employment, housing, personal injury, and other consumer issues. As such, this prohibition is sometimes counter-intuitive to law students.

That movie is also a treasure trove of helpful scenes that I use frequently to illustrate various concepts in my Civil Procedure class. One of my colleagues at University of Wisconsin School of Law has prepared a useful Reader’s Guide to assist first-year students in understanding the legal concepts addressed in the book. See David Schwartz, A Reader’s Guide to A Civil Action (2014), https://law.wisc.edu/s/c_29/jk4zd/readers_guide-2014.docx.

10. See MODEL RULES OF PROF. CONDUCT r. 73(b)(1) (AM. BAR ASS’N 2023).
11. Id. r. 73(b)(2).
12. Id. r. 73(b)(3).
But future lawyers who fail to internalize this rule do so at their own peril.  

Similarly, students are often surprised to learn that accepting payment from a third party is not nearly as simple as cashing the check. Instead, ABA Model Rule 1.8(f) bars lawyers from accepting third party payment unless several conditions are satisfied. Specifically, the client must give informed consent, there can be “no interference with the lawyer’s independence of professional judgment,” and “information relating to representation of a client is protected as required by” the confidentiality rule in ABA Model Rule 1.6.

To help students understand why these prohibitions are as critical as the other client-centered obligations that seem more intuitive, I like to give students examples of how the most scurrilous or desperate might exploit these situations to undermine the client’s interests and, ultimately, cast the entire profession into disrepute. For years, the movie The Verdict (starring Paul Newman) has been one of my go-to sources for scenes of a lawyer behaving badly. For example, in one early scene, we are introduced to the main character as a dissolute Boston lawyer who uses the obituaries (or, as commonly known in Massachusetts, “the Irish sports page”) to generate client leads. I typically play the clip where he pays a funeral home directly a few bucks so that he can approach a grieving widow during a wake and press a business card into her catatonic hand. “Ah, yes,” the students say. “Thank you, ABA, for making sure that our colleagues can’t sully our profession with such dastardly behavior.”

13. See, e.g., Tex. Gov’t Code Ann. § 82.062 (2023) (providing that a district court may suspend or revoke an attorney’s license for barratry); see also Nikki N. Carmody & Dan A. Atkerson, Professional Responsibility, 47 SMU L. Rev. 1529, 1529 (1994) (explaining that this Texas statute has “created dire results for the improper solicitation of clients”).
15. Id. r. 1.8(f)(2).
16. Id. r. 1.8(f)(3).
17. For more ideas about how to use popular culture as a teaching tool for legal ethics, see generally J. Thomas Sullivan, Defending the Guilty: Lawyer Ethics in the Movies, 79 Mo. L. Rev. 585 (2014); Amy S. Beard, From Hero to Villain: The Corresponding Evolutions of Model Ethical Codes and the Portrayal of Lawyers in Film, 55 N.Y.L. Sch. L. Rev. 961 (2011); Carrie Menkel-Meadow, Can They Do That? Legal Ethics in Pop Culture: Of Characters and Acts, 48 UCLA L. Rev. 1305 (2001); Michael Asimow, Bad Lawyers in the Movies, 24 Nova L. Rev. 533 (2000); Tonja Haddad, Silver Tongues on the Silver Screen: Legal Ethics in Movies, 24 Nova L. Rev. 673 (2000); see also id. at 674 n.5 (collecting sources).
18. The Verdict (20th Century Fox 1982).
So that takes care of the solicitation rules. But I’ve struggled to find a good illustration of third-party payment. Intuitively, it doesn’t make sense that a person willing to pay for a lawyer to represent a particular client would not have that client’s interests in mind. Why impose so many restrictions?

II. The Solution: Season 3, Episode 2 of Succession

As I kept alert for ways to improve my teaching of these two important rule provisions, Season Three of Succession delivered not one but two terrific scenes for helping students delve deeply into these issues.

A. Setting the Stage

The two scenes that I’ll be discussing stem from the same general plot narrative: Waystar Royco’s legal troubles have reached a fever pitch. The FBI is conducting raids, Congress is conducting hearings, and the Department of Justice has made clear that heads will roll. Or at least one head will roll. Waystar hopes to pin the blame on one executive as part of a plea deal that lets the company off the hook. Who will be the corporate scapegoat? Founder and patriarch Logan Roy (Brian Cox)? Or perhaps the second-born son Kendall Roy (Jeremy Strong), a one-time heir apparent to his father’s business, now disgraced by addiction and scandal, including a failed attempt to wrest board control from Logan?

More likely, the Roy family will point the finger at someone outside the immediate bloodline. Good sacrificial options abound, including Gerri Kellman (J. Smith-Cameron), the general counsel who tries (but often fails) to keep Waystar Royco as close to the line of legality without crossing over; Tom Wambsgans (Matthew Macfadyen), the social climbing son-in-law who is in largely loveless partnership with Logan’s only daughter Siobhan “Shiv” Roy (Sarah Snook); and last but not least, Greg “Greg the Egg” Hirsch (Nicholas Braun), a Roy-adjacent hanger-on who is the grandson of Logan’s estranged brother, Ewan Roy (James Cromwell), and a disfavored cousin to the Roy siblings.\(^20\) The normally hapless Greg shows his conniving side during Seasons One and Two, seeking to protect himself by keeping incriminating documents that Tom ordered him to shred.\(^21\) But as Season Three gets underway, Greg

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realizes that he is probably going to need a lawyer if he wants to stay out of federal prison.\textsuperscript{22}

Greg is not the typical low-income person in need of a lawyer that students envision when they consider access to justice issues. Nor is Greg especially sympathetic, living rent-free in a luxury New York City apartment thanks to his family connections and partying alongside Kendall with reckless abandon. But Greg is, for good reason, anxious about his precarious situation at Waystar Royco and has no idea how to find or afford capable representation.

\textbf{B. Greg Meets Oliver Noonan}

We see Greg’s stress on full display in an early scene in Season Three, Episode Two, when Greg invites a 1L friend (Lia, a bit part played perfectly by Gabby Beans) to his corporate apartment to try to pick her brain about what he should do, as he puts it, “legally.”\textsuperscript{23} When she responds that she hasn’t “even finished first semester, Greg,” Greg says in desperation, “I just need someone to talk to, Lia.”\textsuperscript{24}

At that precise moment of pathos and vulnerability, we hear a knock at Greg’s apartment door. Greg’s distress is apparent as he puts a hand on his chest says, “Oh God. Oh man, what now?”\textsuperscript{25} The knocking becomes more insistent, and Greg peers through the eyehole of his apartment door and cautiously calls out “Hello?”\textsuperscript{26} In response, we hear the quintessential smooth-talking voice of a big firm lawyer “Hi . . . Oliver Noonan? Gerri Kellman said you’d agreed that I could come talk to you?”\textsuperscript{27} Confused, Greg asks through the still-closed door, “Oh. Right? Who buzzed you in—?”\textsuperscript{28} After an awkward pause, Oliver (John Sand- ers) gives the non-answer that “I met you during the Hill hearings?”\textsuperscript{29} Memory jarred, Greg opens the door slightly and we see Oliver for the first time, peering in through the crack in the door like Jack Nicholson in \textit{The Shining}.

Oliver takes a step forward through the open door as he says, “There were a lot of us, right! I’m from Arbuthnot Weiss, and I’m just checking

\textsuperscript{23} \textit{Succession: Mass in Time of War}, supra note 22.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{29} \textit{Succession: Mass in Time of War}, supra note 22.
in to say hi . . .”30 “Oh, that’s nice,” Greg interrupts nervously.31 “Am I paying for this?”32 As Oliver tries to wedge himself further through the apartment foyer, he answers, “No, my fees are paid by Waystar. Should I come in and . . . and . . . and explain?”33 Greg, not yet convinced that he should let this stranger in his apartment, physically blocks Oliver’s entry and steps outside into the hallway, asking, “Sorry, from Waystar? So from Logan?”34 Another non-answer from Oliver: “No, no, I’m from Arbuthnot Weiss . . .”35 Then a belittling half-joke, “Greg, keep up man. Heh heh.”36 Launching straight into his pitch (with no apparent regard for the fact that they are now in the open hallway of an apartment building),37 Oliver continues, “I’m just checking in to see if the FBI’s been in contact and answer any questions?”38

Greg, still confused, says, “Right . . . because . . . Okay and you’re, like —”39 Taking the opportunity to fill in the blank decisively, Oliver cuts him off, “I’m your lawyer.”40 Awkward pause. “Right?”41 Another awkward pause. “Yeah?”42 When this last “yeah?” invites a non-committal “yeah?” from Greg, Oliver dives into the plan: “So I’ll just, I’ll call Gerri and tell her that we’re all squared away, and if the government calls, then she can tell them that I represent you.”43

Let’s pause a moment. Assuming that Greg’s non-committal “yeah” has resulted in a lawyer-client relationship between Oliver and Greg—which is obviously Oliver’s assumption here—Oliver’s plan epitomizes a number of problems with the newly formed relationship. Oliver’s first step will be to tell Gerri Kellman about their conversation, which is a disclosure of information relating to the representation under ABA Model Rule 1.6(a).44 Perhaps Oliver could argue that this

30. Id.
31. Id.
32. Id.
33. Id.
34. Id.
35. Succession: Mass in Time of War, supra note 22.
36. See Model Rules of Prof. Conduct r. 4.3 (Am. Bar Ass’n 2023) (“When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.”).
37. See id. r. 1.6(c) (“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”). See also id. r. 1.6 cmt. 19 (“[T]he lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”).
38. Succession: Mass in Time of War, supra note 22.
39. Id.
40. Id.
41. Id.
42. Id.
43. Id.
44. Model Rules of Prof. Conduct r. 1.6(a) (Am. Bar Ass’n 2023).
disclosure falls within the exception permitting disclosures that are “impliedly authorized to carry out the representation.” Otherwise, how would the FBI know to contact Oliver instead of Greg?

Still, in most attorney-client relationships, the lawyer emphasizes the duty to keep client information confidential early in the relationship. As comment 2 to Rule 1.6 explains, the lawyer’s obligation to keep client information confidential “contributes to the trust that is the hallmark of the client-lawyer relationship.” When the client trusts the lawyer to keep information confidential, “[t]he client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.” In fact, these sensitive topics are precisely the type of information “the lawyer needs . . . to represent the client effectively.” Here, Oliver is not starting off the relationship on the right foot by foregoing that important conversation with Greg. To the contrary, by informing Greg that he will be sharing their conversation with Gerri, Oliver is creating the opposite impression of how a healthy attorney-client relationship normally operates.

Likewise, Oliver is giving an incorrect impression of the allocation of authority between attorney and client as set forth in ABA Model Rule 1.2(a). Under Rule 1.2(a), the client determines the objectives of the representation, plus the lawyer consults with the client about the means by which those objectives will be pursued. Here, we see no effort by Oliver to determine what Greg’s objective is. Instead, Oliver is telling Greg in no uncertain terms that he, the lawyer, is calling the shots here, in conjunction with Waystar’s general counsel.

The client communication rule is also overlooked in this exchange. In particular, ABA Model Rule 1.4(b) requires that the “lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Comment 5 elaborates that “[t]he guiding principle” underlying Rule 1.4 is that “the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests.” Yet we see no effort by Oliver to help the obviously confused and distressed Greg

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45. Id.
46. ABA Model Rule 4.2 prohibits the FBI from contacting Greg directly, if the FBI knows that Greg is represented by counsel in connection with their investigation. Id. r. 4.2.
47. Id. r. 1.6 cmt. 2.
48. Id.
49. Id.
50. Model Rules of Prof. Conduct r. 1.2(a) (Am. Bar Ass’n 2023).
51. Id. r. 1.4(b).
52. See id. r. 1.4 cmt. 5.
understand his situation. Instead, Oliver creates the impression that he gets to call all the shots.

Finally, and most helpful for my teaching purposes, we’ve caught Oliver in the act of violating ABA Model Rule 1.8(f).\(^{53}\) It’s clear that (at least in Oliver’s mind) the only thing standing in the way of a hefty paycheck from Waystar is Greg’s assent to be represented by Oliver. Armed with Greg’s half-hearted “Yeah,” Oliver is ready to start billing those sweet, sweet hours.

But there’s no indication that any of the three requirements in ABA Model Rule 1.8(f) are satisfied. First, sub. (1) requires Oliver to obtain Greg’s informed consent.\(^{54}\) “Yeah” is not going to cut it here. Instead, ABA Model Rule 1.0(e) requires Oliver to “communicate[ ] adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”\(^{55}\)

Second, we have good reason to question whether Oliver is going to be able to exercise independent professional judgment as required by sub. (2).\(^{56}\) Perhaps we can give Oliver the benefit of the doubt here, but his conduct suggests that his main interest is being able to report back to Waystar that Greg is securely within the fold.

Third, information relating to Oliver’s representation of Greg must be protected under sub. (3), in keeping with ABA Model Rule 1.6.\(^{57}\) In other words, Oliver can’t simply run back to Gerri and share his discussions with Greg. Paying a person’s legal fees does not automatically entail the right to the client’s information, at least not in the absence of the client’s informed consent. As noted above, there’s nothing in this short exchange that would suggest that Greg has previously given his consent, or that Greg’s “Yeah” could be interpreted as consent to any aspect of Oliver’s plan.

Returning to the scene unfolding in Greg’s hallway, we can see that Greg is as uncomfortable with the situation as I am. Greg asks Oliver if he can “hold on for one moment” and just “hang tight so we can seal the deal.”\(^{58}\) Then he runs back into the apartment and stage whispers to his friend, “So, there is a lawyer here, Lia, and he’s saying he is my

\(^{53}\) See id. r. 1.8(f).

\(^{54}\) Id. r. 1.8(f)(1).

\(^{55}\) Id. r. 1.0(e). Here, a higher-level class on white collar crime might discuss the nuances of the informed consent conversation, since it’s probably fair to assume that a joint defense agreement may be involved. I explored these issues in a separate article. See Megan McDermott, Ethics Lessons from Outside Counsel Plotline in Succession, LAW360 (May 10, 2023, 4:26 PM), https://www.law360.com/articles/1605246/print?section=compliance.

\(^{56}\) See Model Rules of Prof. Conduct r. 1.8(f)(2) (Am. Bar Ass’n 2023).

\(^{57}\) See id. r. 1.8(f)(3).

\(^{58}\) Succession: Mass in Time of War, supra note 22.
lawyer. Do you think he is probably my lawyer?" Greg’s next question shows precisely how confused and overwhelmed he is by the situation: “He couldn’t, like sue me, or not, um, arrest—or subpoena me could he? I don’t really know what any of it means.” Lia has no idea either, but she offers to text her professor. “Yeah, text him, text him,” Greg says as he heads back to deal with Oliver, who has now made his way into Greg’s foyer.

Greg’s confusion in the moment is a helpful illustration of why in-person solicitation is generally impermissible under ABA Model Rule 7.3. Specifically, comment 2 to Rule 7.3 points to “[a] potential for over-reaching . . . when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services.” The comment further explains that “[t]his form of contact subjects a person to the private importuning of the trained advocate in a direct, interpersonal encounter.” The comment concludes by perfectly describing Greg’s state of mind, noting that “[t]he person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon an immediate response.”

Returning back to the scene, we see Greg summoning up a bit of false bravado, swaggering back to Oliver, who has now made his way into the foyer. As Lia looks on with a frown (perhaps about her choice of future profession), Greg tells Oliver, “Yo! Yeah man, I think it’s good, I feel uh . . . just a couple of quick questions, which is do you choose me, or do I choose you?” Oliver responds with a laugh that falls somewhere between a forced chuckle and an outright scoff and then gives the only ethical answer in this situation: “Hahaha. Well, you choose Greg!”

59. Id.
60. Id.
61. Note to students: Your law professors cannot offer legal advice, for reasons you will understand when you take a professional responsibilities class.
63. Model Rules of Pro. Conduct r. 7.3 cmt. 2 (Am. Bar Ass’n 2023).
64. Id. For illustrating comment 2, I prefer this scene from Succession to the scene from The Verdict, where the bereaved widow stares straight ahead blankly and then let Paul Newman’s business card slip to the floor. It is clear that “the private importuning of the trained advocate” is not going to generate new client business in that scene.
65. Id.
67. Id. Any other answer would be a false and subject Oliver to discipline under Model Rules of Pro. Conduct r. 8.4(c) (Am. Bar Ass’n 2023) (conduct involving dishonesty, fraud, deceit or misrepresentation). Other disciplinary rules may also apply, including Model Rules of Pro. Conduct r. 7.1 (Am. Bar Ass’n 2023) (lawyers may not make a false or misleading communication about their services).
Greg asks Oliver for more time to think and then sends him on his way, saying, “See you soon! Not that that constitutes a legally binding promise.”\textsuperscript{68} It’s not clear that Oliver has digested the message, because he responds, “I’ll call Gerri.”\textsuperscript{69} “I’ll call Gerri first,” Greg replies, as he shuts the door.\textsuperscript{70}

C. Greg Meets Pugh

As Season Three, Episode Two continued, I confess to losing track of the plot because my mind was spinning with the teaching possibilities presented by this goldmine of a scene between Oliver and Greg.\textsuperscript{71} So I was totally unprepared for the double whammy later in that same episode, when Greg sits down with Grandpa Ewan for a consultation with a lawyer that Ewan has offered to pay for.\textsuperscript{72} We know from past seasons that Ewan is a board-level shareholder at Waystar Royco. We also know that he does not get along at all with Logan. So Ewan has plenty of ulterior motive in “helping” Greg in this situation.

The scene begins with Greg and Ewan sitting in the lobby area of a law firm. “Er, Gramps,” says Greg, “This isn’t the lawyer I had recommended?”\textsuperscript{73}

“Pugh’s a good fellow,” Ewan responds. “He’s helping me set my estate in order.”\textsuperscript{74}

Stop right there. Can an estate lawyer represent a client in a white-collar criminal investigation? The answer is “maybe” under ABA Model Rule 1.1, which requires that a lawyer provide “competent representation to a client.”\textsuperscript{75} In turn, “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”\textsuperscript{76} Comment 2 to Rule 1.1 elaborates that “[a] lawyer need not have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar.”\textsuperscript{77}

\textsuperscript{68} Succession: Mass in Time of War, supra note 22.
\textsuperscript{69} Oliver needs to tread carefully when speaking to Gerri, because “[e]ven when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.” Model Rules of Prof. Conduct r. 1.18(b) (Am. Bar Ass’n 2023)
\textsuperscript{70} Succession: Mass in Time of War, supra note 22.
\textsuperscript{71} My family generally refuses to watch legal movies or tv shows with me because I always ask to pause in order to take notes. We got hooked on Succession before we realized how many fun legal issues we would be encountering.
\textsuperscript{72} Succession: Mass in Time of War, supra note 22.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Model Rules of Prof. Conduct r. 1.1 (Am. Bar Ass’n 2023).
\textsuperscript{76} Id.
\textsuperscript{77} See id. r. 1.1 cmt. 2.
Moreover, “[a] lawyer can provide adequate representation in a wholly novel field through necessary study.” Sounds like Pugh has his work cut out for him if he’s going to be defending Greg during the FBI investigation of Waystar Royco.

Pugh greets Greg and Ewan with his “double black-eye with a strong filter double espresso shot,” and then Pugh and Ewan share a call-and-response joke that sets the stage for Pugh’s politics—“America’s always right!” says Ewan; “Never left!” answers Pugh. Ewan tells Greg, “I think you’re going to like Pugh. He’s incredibly intransigent.”

“Right? Good . . . yeah,” says Greg, sounding nervous and uncertain about the situation he’s walking into.

As Greg tries to find a place to sit in Pugh’s office, he faces a stack of Redwelds on one of the chairs. “Do you mind if I just . . . you probably have a system?” Greg asks as he picks up the folders. “No, this is good right here,” Pugh says, pointing to the edge of an already cluttered desk.

78. Id.
79. Whether Pugh can bill Ewan for the time it takes to come up to speed is another question. Rule 1.5(a) requires that all fees be reasonable, and evaluation of reasonableness depends in part on “the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.” Model Rules of Prof. Conduct r. 1.5(a)(1) (Am. Bar Ass’n 2023). I assign my students a case involving a junior associate who took the laboring oar in opposing a summary judgment motion in a foreclosure action—a straightforward legal and factual matter, unless of course you are a new lawyer who has never encountered these issues before. In that case, the court concluded that charging over $125,000 for a new lawyer to come up to speed on a basic issue was not reasonable. See Robert L. Wheeler, Inc. v. Scott, 777 P.2d 394, 395-96 (Okla. 1989).
80. Succession: Mass in Time of War, supra note 22.
81. Id. An intransigent lawyer likely believes that he is fulfilling his due of diligent representation under ABA Model Rule 1.3, comment 1 to Rule 1.3 characterizes diligence as “zeal in advocacy,” and some lawyers have embraced their perceived role as “zealous advocate” to the detriment of other ethical obligations, prompting a few states to remove these references from their version of the rules. See, e.g., Ohio R. Prof. Conduct 1.3, Comparison to Model Rules of Prof. Conduct r. 1.3 (Am. Bar Ass’n 2023) (“The reference to a lawyer’s duty to act ‘with zeal in advocacy upon the client’s behalf’ . . . is deleted. Zealous advocacy is often invoked as an excuse for unprofessional behavior”); see also Paul C. Saunders, Whatever Happened to ‘Zealous Advocacy’?, N.Y.L.J. (Mar. 11, 2011, 12:00 AM), https://www.law.com/newyorklawjournal/almID/1202485578500/ [https://perma.cc/VF4W-6BE2] (addressing New York’s decision to join several other states in removing references to “zeal” from their professional conduct rules). Moreover, even the most zealous advocate must avoid running afoul of ABA Model Rule 3.1, which says that a lawyer may not “bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.” Model Rules of Prof. Conduct r. 3.1 (Am. Bar Ass’n 2023).
82. Succession: Mass in Time of War, supra note 22.
83. Id.
84. Id. Some of my students suggested that Pugh’s failure to have a less cluttered filing system could be a rule violation. That’s one way to tell which students have no prior experience working in a law office! Still, a lawyer who sees clients in his office does have a duty under ABA Model Rule 1.6(c) to take reasonable measures not to leave information about other clients exposed. Model.
Pugh is all business as he addresses Greg: “So. Priority one: Your well-being and a satisfactory outcome.” Greg likes what he is hearing. Pugh continues, as Grandpa Ewan nods approvingly, “Priority two: Expose the structural contradictions of capitalism as reified in the architecture of corporate America.” Say what? Greg’s expression here is Emmy-worthy. “Uh-huh. Good, also good,” Greg says, sounding nowhere near as excited as he was about priority one. Pugh continues, “You’re our little wedge, Greg. A nice little wedge to open up the hood and have a poke around in at Waystar.” As Grandpa Ewan looks on with a smile, Greg weakly responds, “Okay, good.” Then, somewhat more assertively, “I guess I am quite focused on, like, my position and me in particular not getting fired or going to jail—if that isn’t too selfish?” Pugh responds non-committally, “Eyes on the prize, Greg. Eyes on the prize.” And, scene.

I’ve never been party to this specific type of attorney-client conversation, but sources who have worked in pro bono impact litigation have shared that this priority-setting conversation between Greg and Pugh is exactly what you’d expect when the pro bono attorney takes on a new client: “Here’s what our organization will do for you, the client, and here’s what we will do for the public interest, as a non-profit organization with a specific mission statement and funding restrictions.” That said, I have questions about whether starting any attorney-client relationship with this type of speech is wholly consistent with ABA Model Rule 1.2(a), which requires the client to determine the objectives of the representation, and then consult with the lawyer regarding the means.

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85. Succession: Mass in Time of War, supra note 22.
86. Id. There’s a bit of self-referential humor here, because Pugh’s priorities for representing Greg likely mirror the priorities of Succession’s writers.
87. Id.
88. Id. Pugh needs to tread carefully when “having a poke around... at Waystar,” because ABA Model Rule 4.4 calls for a lawyer to “respect the rights of third persons,” which includes Waystar Royco. Model Rules of Prof. Conduct r. 1.6(c) (Am. Bar Ass’n 2023). Among other things, this rule prohibits Pugh from “using methods of obtaining evidence that violate the legal rights of Waystar Royco. Id.
89. Succession: Mass in Time of War, supra note 22.
90. Id.
91. Id.
92. Model Rules of Prof. Conduct r. 1.2(a) (Am. Bar Ass’n 2023). The Model Rules of Professional Conduct do not typically vary an attorney’s obligations based on whether the client is paying for the lawyer’s services or getting free representation. Limited exceptions include ABA Model Rule 6.5, which sets forth a more limited conflict of interest rule for short-term pro bono clinics, and ABA Model Rule 7.3(b), which only prohibits the solicitation when the motive is “pecuniary gain.” Id. r. 6.5; id. r. 7.3(b).
Here, it’s obvious that Pugh, and not Greg, has set priority two as one of the objectives of the representation.

The more obvious problem here is that Pugh isn't a pro bono attorney conducting impact litigation. Instead, Pugh is a private lawyer who is being paid by an estate client to provide criminal defense to a third person. Particularly given Ewan's investment in Waystar Royco, coupled with Ewan's animosity toward Logan, Pugh's conduct in this scene raises several red flags under the rules of professional conduct.

Let’s start with ABA Model Rule 1.8(f), which was also implicated by the scene between Greg and Noonan.93 Pugh will have to obtain Greg’s informed consent in order to accept payment from Ewan for services provided to Greg. We can give Pugh the benefit of the doubt here, because there’s likely more discussion to come after the end of the scene. As ABA Model Rules 1.8(f)(1) and 1.0(e) require, Pugh is going to have to explain the materials risks and reasonably available alternatives to Greg.94 At the very least, Pugh is going to have to explain that by engaging Pugh, Greg will be foregoing the opportunity to hire a lawyer who will focus entirely on priority one, namely Greg’s well-being and a satisfactory outcome.

It’s harder to give Pugh the benefit of the doubt regarding the remaining provisions of ABA Model Rule 1.8(f). In particular, ABA Model Rule 1.8(f)(3) requires that information relating to the representation must be protected.95 By having this initial conversation with Ewan in the room, Pugh is giving every indication that Ewan will be privy to all of the information Pugh learns while representing Greg.96 Describing Greg as “our little wedge” further underscores the expectation that any information gleaned will be shared with Ewan.

Pugh’s compliance with ABA Model Rule 1.8(f)(2) requires more in-depth analysis. Is Pugh going to be able to exercise independent

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93. Unlike Oliver Noonan from the previous scene, Pugh probably does not have to worry about solicitation under ABA Model Rule 7.3. Solicitation only occurs when the communication has been “initiated by or on behalf of a lawyer or law firm.” See id. r. 7.3. Here, it appears that Greg (with Ewan's encouragement) has initiated the communication. However, if it turns out that Pugh encouraged Ewan to bring Greg to meet him, then Pugh has violated ABA Model Rule 8.4(a), which states that “[i]t is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.” Id. r. 8.4(a).
94. Id. r. 1.8(f)(1); id. r. 1.0(e).
95. See id. r. 1.8(f)(3).
96. Although attorney-client privilege is state specific, Grandpa Ewan's mere presence in the room may destroy the privilege, if a court determines that the communications between Pugh and Greg were not “in confidence” due to presence of a non-privileged third person. Let’s hope that Pugh is familiar with the case law in his jurisdiction, because failing to take steps to protect privilege is likely a violation of Rule 1.1 and could give rise to a malpractice claim from Greg. See id. r. 1.1.
professional judgment here, with Grandpa Ewan paying the bills and also having a stake in the ultimate outcome for Waystar? Comment 15 to ABA Model Rule 1.8 raises the issue of conflicts of interest arising from a fee arrangement and states that the lawyer must comply with ABA Model Rule 1.7. In turn, Rule 1.7(a)(2) provides that a conflict of interest arises if there is a “significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibility to another client . . . or by a personal interest of the lawyer.” Comment 13 to ABA Model Rule 1.7 explains that conflicts may arise “based on the lawyer’s own interest in accommodating the person paying the lawyer’s fee or by the lawyer’s responsibilities to a payer who is also a co-client.” In this scenario, we see both types of conflicts.

Even though this situation presents a conflict of interest under ABA Model Rule 1.7(a)(2), comment 2 to Rule 1.7 gives Pugh a four-step process for evaluating whether he can represent Greg notwithstanding the potential conflict. Step one requires Pugh to identify who the client is. Here, Pugh must analyze the conflicts both with respect to new client Greg and existing client Ewan.

Step two requires Pugh to determine whether a conflict exists. This step calls for Pugh to think through all of the issues that could foreseeably arise if he allows his estate client, Ewan, to pay for Pugh to defend new client, Greg, in a matter in which Ewan has a personal stake as well.

Judging from the white hair, it’s likely that Pugh went to law school before the ABA adopted its modern conflicts of interest rules. However, my more recently trained legal mind spins with the potential conflicts of interest created both by Ewan’s financial interest in Waystar Royco (which Pugh, as Ewan’s estate lawyer, must be aware of), and by Ewan’s animosity toward his brother Logan. In fulfilling his duties to client Greg, will Pugh be materially limited by his duties to client Ewan? Conversely, in fulfilling his duties to client Ewan, will Pugh be materially limited by his duty to client Greg? By stating that a conflict of interest exists based on “a significant risk,” ABA Model Rule 1.7(a)(2) requires a lawyer to imagine all of the ways that the representation could foreseeably go wrong. Here, for example, we can imagine that

97. Id. r. 1.8 cmt. 15.
98. See Model Rules of Prof. Conduct r. 1.7(a)(2) (Am. Bar Ass’n 2023).
99. See id. r. 1.7 cmt. 13.
100. See id. r. 1.7(a)(2) cmt. 2.
101. Id.
102. Id.
103. See William Freivogle, A Short History of Conflicts of Interest, The Future?, 20 Prof. L., 2010, at 3, 3 (explaining that the ABA provided limited guidance on conflicts of interest issues prior to the adoption of the Model Rules of Professional Conduct in 1983).
104. Model Rules of Prof. Conduct r. 1.7(a)(2) (Am. Bar Ass’n 2023).
the best outcome for Ewan might involve throwing a hapless scapegoat like Greg under the bus, thereby allowing Waystar Royco to continue to generate massive returns for Ewan’s estate. Obviously, if this scenario materializes, one of Pugh’s clients would be gravely disappointed by the outcome.

Step three asks Pugh to “decide whether the representation may be undertaken despite the existence of a conflict.”\(^{105}\) Here, Pugh needs to look to ABA Model Rule 1.7(b), which addresses when a conflict is consentable.\(^{106}\) We can easily dispose of sub. (2), which states that the representation may not be prohibited by law.\(^{107}\) We can also dispose of sub. (3), which states that the representation cannot “involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.”\(^{108}\)

This provision, in conjunction with the imputed conflicts rule in Rule 1.10(a), simply means that you can’t have a situation where lawyers from the same firm are appearing on opposite sides of the “v.” in a case caption.\(^{109}\)

That leaves sub. (1), which asks Pugh whether he “reasonably believe[s] that [he] will be able to provide competent and diligent representation to” Ewan and Greg?\(^{110}\) The stakes here are quite high because if a conflict does arise, comment 4 may require Pugh to withdraw from both representations. Here, Pugh might wish to pause and recall Aesop’s fable about the dog with a bone who saw his reflection in the water and barked because he wanted that bone as well, only to watch his bone drift away down the river. Likewise, by aiming for an even bigger paycheck from Ewan, Pugh may end up losing his lucrative estate client altogether.

Even if we assume that Pugh can get past this gut check moment, step four (and ABA Model Rule 1.7(b)(4)) requires Pugh to obtain informed consent from both Ewan and Greg.\(^{111}\) Once again, ABA Model Rule 1.0(e) calls for frank conversations with both individuals about the ways in which Pugh’s representation of Greg could be a terrible idea for Greg, for Ewan, or for the two of them collectively.\(^{112}\)

Finally, Pugh’s “eyes on the prize” comment strikes me as a great example of a lawyerly dodge that fails the duty to communicate adequately.

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105. See id. r. 1.7(a)(2) cmt. 2.
106. See id. r. 1.7(b).
107. See id. r.1.7(b)(2).
108. See id. r.1.7(b)(3).
109. Id. r. 1.7(b)(3); id. r. 1.10(a).
110. Model Rules of Prof. Conduct r. 1.7(b)(1) (Am. Bar Ass’n 2023).
111. See id. r.1.7(b)(4).
112. See id. r.1.0(e).
under ABA Model Rule 1.4(b). What’s the “prize” here? Is it Greg’s well-being? Or is it the dismantling of capitalism? Depends on who you ask, and two of the three people in the room might agree that it’s the latter. Comment 5 to ABA Model Rule 1.4 requires Pugh to give Greg “sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” Here, Pugh is shirking his duty to give Greg adequate information by dodging Greg’s simple question: “Will you put my interests first?” For any ethical lawyer, there’s only one good answer to this question. By refusing to give a direct answer, Pugh has relegated himself to the ethical doghouse, along with Oliver Noonan.

**Conclusion**

Effective teaching tools abound in pop culture and, as this Symposium illustrates, *Succession* is a treasure trove of plot lines and smaller moments that can be picked apart for deeper meaning. When I announced to my Spring 2022 Professional Responsibilities class that their final exam would be based on analyzing scenes from *Succession*, they cheered. Even writing this Essay has been, dare I say it, fun. I hope it’s entertaining for the reader as well, but more importantly, I hope it helps to deepen understanding of lawyers’ ethical obligations.

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113. See id. r.1.4(b).
114. As Pugh is probably well aware, “Eyes on the Prize” is the title of a PBS civil rights documentary series from the 1980s. See generally *Eyes on the Prize: America's Civil Rights Years 1954–1965* (PBS television broadcast 1987). As such, Pugh’s use of this phrase does not likely to refer to the preservation of a yuppie’s corporate job.
115. *MODEL RULES OF PROF. CONDUCT* r. 1.4 cmt. 5 (AM. BAR ASS’N 2023).