



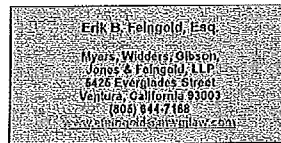
Bridging the Gap '14

PROGRAM MATERIAL

GETTING AND KEEPING CLIENTS: Tips for Effective Marketing

Speaker: Erik Feingold, Esq.

Getting and Keeping Clients



Tips for Effective Marketing

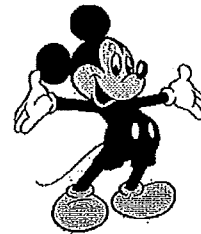
- Stellar and Professional Work Product

Words of Wisdom

- "Don't Confuse Motion With Action"
- - Ernest Hemingway
- "You Miss 100% of the Shots You Never Take"
- - Wayne Gretzky

Tips for Effective Marketing

- Keeping Clients Satisfied



Tips for Effective Marketing

- Meeting People/Getting Involved

Tips for Effective Marketing

- Internet
 - Website
 - Generating Leads With Search Engine Marketing

Tips for Effective Marketing

- Marketing With a Plan

Top Marketing Components

- i. Business Development
- ii. Public relations and community involvement
- iii. Branding and advertising
- iv. Brochures and newsletters
- v. Entertainment

Tips for Effective Marketing

- Accepting All Valuable Speaking and Publishing Opportunities

Business Development

- Marketing Campaigns
- Identify business development goals, new opportunities & strategies for business growth, improved profitability and competitive advantage
- Event Planning
 - Oversee planning & execution of seminars, lawyer speaking engagements (like today!), special events, panel participation, etc.
 - Identify targeted audiences, geographical boundaries and message requirements
 - Niche areas, i.e., Estate Planning vs. Employment Law

Tips for Effective Marketing

- Staying in Touch With Clients

Business Development continued...

- Something that may have been successful in the past may now prove to be nothing more than time-worn assumptions
 - MWGJF made the decision to cut all yellow page advertising at the end of 2007 with the exception of one geographical area because that directory generates leads.
- Regularly examine your firm's various assumptions to see if they are still viable.

Public Relations/Community Involvement

- Bar associations
- Networking groups
- Trade Organizations
- Non-Profit Organizations
 - Committee Involvement

Entertainment

- Sponsorships
- Golf Tournaments
- Lunches
- Concerts
- Open Houses
- Mixers

Branding & Advertising

- Print and Online Advertising
- Direct Marketing
- Internet Marketing
 - Website
 - Search Engine Optimization (SEO)
 - Paid Per Click (PPC)
 - Social Marketing

Questions?



Brochures, Newsletters, Etc.

- Develop and design collateral materials
 - Keep content current & fresh
 - Coordinate all Internal and external requests for marketing materials promptly
 - Maintain firm contacts and mailing databases

ELIMINATION OF BIAS

Speaker: Carmen Ramirez, Esq.

Civil Rights laws and Historic and Modern Cases of Bias and Discrimination

CIVIL RIGHTS DIVISION from the U.S. Attorney General
http://www.justice.gov/crt/publications/division_booklet.pdf

Civil rights Handbook from the California Attorney General's office
https://oag.ca.gov/sites/all/files/agweb/pdfs/civilrights/01cr_handbook.pdf?

Soria vs. Oxnard School District Board of Trustees, 1974
http://www.leagle.com/decision/1974925386FSupp539_1842

Farmworker families
http://www.vcstar.com/news/2013/jun/04/cedc-fillmore-central-station-resident-chosen-to-b/?print_uqc=1

La Conchita School House
<http://www.vcstar.com/news/2011/apr/25/exhibit-highlights-la-conchita-schoolhouse-in/?print=1>

Environmental Justice:
<http://www.kcet.org/socal/departures/landofsunshine/green-justice/three-generations-sue-us-epa-over-toxic-pesticides-at-schools.html>

Santa Paula
<http://www.justice.gov/opa/pr/2000/April/174cr.htm>

Ventura County Voting Rights consent Decree
http://www.justice.gov/crt/about/vot/sec_203/documents/ventura_cd.php

Racially Restrictive real estate covenants: Does your deed have one?
<http://articles.latimes.com/print/2008/jul/27/local/me-covenant27>

Race laws in California
http://en.wikipedia.org/wiki/List_of_Jim_Crow_law_examples_by_State

Ventura County Demographics
<http://quickfacts.census.gov/qfd/states/06/06111.html>

U.S. Department of Justice
Civil Rights Division



The Civil Rights Division



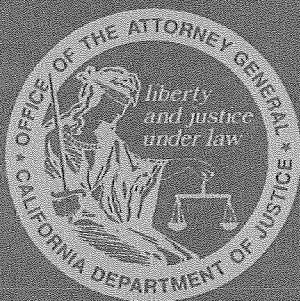
U.S. Department of Justice

UNLAWFUL **Discrimination**

Your Rights and Remedies

Civil Rights Handbook

Third Edition



August 2001

California Attorney General's Office

TRIAL SKILLS 101: Mechanics of a Civil Jury Trial

Speaker: Jill Friedman, Esq.

TRIAL SKILLS 101: Mechanics of a Civil Jury Trial

By Jill L. Friedman, Esq.

Myers, Widders, Gibson, Jones & Feingold, LLP

5425 Everglades Street, Ventura, CA 93003

Tel: (805)644-7188

jfriedman@mwgjlaw.com

www.mwgjlaw.com

1. Pre-trial considerations

a. Deadlines

- i. Discovery cut-off
- ii. Motion cut-off
- iii. CCP §998
- iv. Expert witnesses
- v. Subpoena of documents/witnesses
- vi. Notice to appear/produce
- vii. Jury Fees

b. Local court rules/judge's rules

c. Filing and/or exchange of documents – what and when

i. Motions in Limine

1. Westlaw/Lexis research
2. Note “MIL” during depositions
3. Set up MIL's in computer
4. Page limitations
5. Opposition to filed/anticipated MILs

ii. Stipulated facts

iii. Proposed Statement of the Case

1. Short and sweet

iv. Witness List

1. Joint list
2. Order of witnesses
3. Rebuttal witnesses

v. Exhibit List

1. Admissible vs. referenced documents
2. Joint list
3. Plaintiff's/Defendant's
4. Assign numbers
5. Coordinate to avoid duplication

vi. Trial brief

- d. Evidence/Exhibits
 - i. Consider preparing exhibit notebooks at depositions
 - 1. Bates stamped
 - ii. Stipulation
 - 1. Authentication, foundation, admissibility
 - 2. Chart
 - 3. Assigning numbers
 - iii. Judicial notice
 - iv. Subpoena records to court
 - v. Subpoena custodian of records
 - vi. Redact personal information (Social Security numbers, home addresses, phone numbers)
 - vii. Copies of exhibit notebooks for opposing counsel, judge and witness on the stand
- e. Witnesses
 - i. Subpoenas/on-call agreements
 - ii. Preparation to testify
 - iii. Discovery responses
 - iv. Depositions
 - 1. Notification of changes
 - 2. Page/line summaries
- f. Pocket Briefs
- g. Bifurcation
- h. Jury Instructions
 - i. Special instructions
 - ii. Verdict form
- i. Court reporter
- j. Technology (computers, video, screens, ELMO)
- k. Site visit
- l. Theme of the case

2. Trial call

- a. You do not need to bring all your trial materials
- b. Time estimate
- c. Trailing
- d. CCP §170.6
- e. Notify witnesses, including experts

3. Before you get the call from the court to start trial
 - a. What to wear
 - b. What should your client wear
 - i. What message/image are you trying to get across
 - c. What to bring
 - i. Office supplies
 1. Dollies, boxes
 2. Notepads, pens, Post-it notes, laser pointer
 - ii. Consider security screening (scissors, staplers, exhibit items)
 - iii. Water and snacks
 - iv. Notebooks
 1. Motions in Limine
 2. Main trial notebook
 - a. Contact list
 - b. Calendar
 - c. Things to do
 - d. Key pleadings
 - e. Key statutes/cases
 - f. Voir dire
 - i. Jury panel list
 - ii. Juror chart
 - iii. Questions
 - g. Opening statement
 - h. Order of witnesses
 - i. Exhibits/Motions
 - i. Offering party/exhibit number/description/ruling on admissibility
 - ii. Moving party/nature of motion/moving party/whether it was granted
 - j. Closing argument
 - k. Jury instructions
3. Witnesses
 - a. Subpoenas/on-call agreements
 - b. Page/line summary
 - c. Condensed deposition transcript
 - d. Direct/cross-examination questions
 - e. Introduction of evidence

4. You got the call and you're starting trial
 - a. Meeting the courtroom staff
 - i. Introductions
 - ii. Exchanging contact info
 - iii. Marking exhibits
 - iv. Depositions: lodging originals, copies for judge to read along
 - v. Storing items in the courtroom
 - vi. Electronics
 - b. Pretrial meeting with the judge
 - i. Disclosures
 1. Lack of trial experience
 2. Personal health issues
 - ii. Problematic issues/evidence
 - iii. Judge's preferences (walking in the well, approaching witnesses, sidebars, water/coffee at counsel table)
 - iv. Jury selection process – 6 pack? 12 pack? Alternates? Questions by judge?
 - v. Ev. Code 402 hearings
 - vi. Scheduling issues (dark days/holidays/vacations/witness availability)
 - vii. Notification of timing of witnesses (Local Court Rule)
 - viii. Witnesses: number, exclusion
 - ix. Legal v. factual issues
 - x. Bifurcation
 - xi. Number of sides/peremptories
 - xii. Burden/Order of proof
 - xiii. Standard of proof
 - xiv. Pre-instruction to jury
 - xv. Juror questions
 - xvi. Statement of case
 - c. Rulings on Motions in Limine/Evidentiary Issues
 - i. Make a record
 - ii. Remember to inform your witnesses about rulings
 - d. Voir dire
 - i. Court reporter or no court reporter
 - ii. Attorneys get the list of potential jurors
 - iii. Judge speaks to jurors/statement of the case read/hardships
 - iv. Clerk will call names at random from the computer
 - v. Chart/Post-It notes
 - vi. Order of questioning
 - vii. Challenge for cause – sidebar or in chambers

- viii. Peremptory challenges – “Plaintiff/Defendant would like to thank and excuse juror number x.”
 - ix. Accepting the panel - “Plaintiff/Defendant accepts the panel as presently constituted”
 - x. Swearing in the jury
- e. Pre-instruction by the judge
- f. Opening statements
 - i. It is not “opening argument”
 - ii. Tell the story and make it interesting
- g. Plaintiff’s case
 - i. Witnesses
 - 1. Direct/cross/re-direct/re-cross, etc.
 - 2. Objections (hearsay, relevance, foundation, 352, exceeds the scope)
 - ii. Plaintiff rests
- h. Motions (non-suit)
- i. Defendant’s case
 - i. Witnesses
 - 1. Direct/cross/re-direct/re-cross, etc.
 - 2. Objections
 - ii. Defense rests
- j. Rebuttal
- k. Motions (directed verdict)
- l. Jury instructions
 - i. Conference(s) with judge
 - ii. Meet and confer with opposing counsel
- m. Closing arguments
 - i. Plaintiff/Defendant/Plaintiff
- n. Bailiff is sworn in by clerk to take control of jury during deliberations
- o. Jury deliberations
 - i. How fast does the judge expect counsel to be back in the courtroom
 - ii. Show up outside the courtroom in the morning/evening
- p. Verdict
 - i. Verdict is read
 - ii. Poll the jury
 - iii. Ask the judge to tell the jury that the attorneys might want to talk them afterwards
 - iv. Talk to the jury
- q. Post-trial motions/judgment/appeal

ALWAYS REMEMBER TO:

1. Be on time - every day, every time
2. Turn off your cell phone
3. Make your record
 - a. Court reporter
 - b. Before and/or after the jury comes/goes
 - c. File briefs
4. Do not show exhibits to the jury until admitted into evidence
5. Be courteous/formal
 - a. No calling or referring to people by their first names only
 - b. Do not ask for stipulations in front of the jury
 - c. No making faces, sighing, gesturing
6. Be careful who is around when talking to clients/witnesses
7. Be careful what you/your client do after leaving the courtroom
8. Talk to the jurors after the verdict
9. Win or lose, be civil

Ventura County Superior Court Rules

RULE 8.12 PROCEDURAL RULES FOR CIVIL TRIALS

A. LENGTH OF TRIAL. A realistic and practical period for trial and argument will be determined after consultation with counsel, based upon the circumstances of each case.

B. TRIAL BRIEFS. Trial briefs shall not exceed ten (10) pages. Opposing counsel who have not already done so shall exchange trial briefs at or immediately after announcing ready at the trial call. Unless otherwise ordered by the judge at trial call, briefs are to be filed with judicial assistant in the assigned trial department on the first day of trial.

C. BREVITY.

1. Voir dire and examination of witnesses can and will be limited by the court. Such limitation can be agreed upon by counsel and/or court before the trial commences.

2. Objections. State the legal basis only; do not argue objections unless invited by the court.

D. ANTICIPATE PROBLEMS.

1. Witness availability problems. Counsel must always have back-up witnesses to eliminate delay. There is no exception to this rule. Each counsel shall notify opposing counsel 24 hours in advance of all witnesses counsel intends to call the following day. Failure to follow this rule may result in exclusion of any witness not so disclosed.

2. Potential evidentiary problems should be anticipated and disclosed to the court, with citations, before the trial commences.

3. Scheduling problems. Prompt notice is mandatory.

E. PRE-MARKING OF EXHIBITS. All exhibits shall be submitted to the courtroom clerk on the first day of

trial for pre-marking. Prior to arriving in the trial department, counsel shall exchange all exhibits with opposing counsel and shall agree and stipulate to foundation and admissibility where possible. Any exhibits as to which admissibility cannot be stipulated should be brought to the attention of the court on the first day of trial. Any exhibits not so pre-marked may be excluded from evidence. The only exceptions are exhibits to be used for impeachment. If counsel wish to have the exhibits pre-marked prior to the first day of trial, they should notify the courtroom clerk for an appointment for this purpose. This practice is encouraged.

F. STIPULATE TO AS MANY FACTS AS POSSIBLE.

G. STATEMENT OF CASE. A statement of the case must be stipulated to by all counsel and jointly prepared, consisting of a brief, concise factual statement of the case. It will be read to the jury panel as an introduction to the case. It is not to exceed one page, and is to be filed with the clerk of the trial department on the first day of trial.

H. COOPERATION BETWEEN COUNSEL. Cooperation is the key to expeditious trials; it is essential, expected and professional.

I. WITNESS LISTS. Counsel for all sides shall agree on a single combined list of witnesses who may be called in the trial. The list shall be prepared by counsel for plaintiff. This witness list shall be filed with the clerk in the trial department on the first day of trial, and will be read to prospective jurors.

J. EXAMINATION OF WITNESSES. Prior to calling a witness, counsel shall determine what exhibits will be used during the examination and have those exhibits on the witness stand for easy reference by the witness. The only exception is for exhibits to be used for impeachment.

K. COURT-APPOINTED EXPERT. The court will appoint its own expert under appropriate circumstances, with costs borne by the parties equally.

L. JURY INSTRUCTIONS AND VERDICTS. Instructions and verdict forms are to be agreed to outside of trial time.

1. (Deleted eff. 7/1/1996)

2. Counsel's particular attention is drawn to the Burden of Proof Instruction such as CACI 2.60. Counsel shall agree on the wording of said instruction and submit same to the court before plaintiff rests.

3. Jury instructions prepared by counsel will be accepted only in the format of Exhibit A hereto.

4. Jury verdict forms will be prepared by plaintiff's counsel, but will be agreed upon by all counsel and lodged with the clerk of the trial department before the plaintiff rests.

M. HYPOTHETICAL QUESTIONS.
(Deleted effective July 1, 1995).

N. IN LIMINE MOTIONS. *In Limine* Motions shall be limited to those reasonably necessary to resolve material evidentiary issues and shall conform to the principles announced in *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659. Motions and oppositions, if any, shall be in writing not to exceed three (3) pages each, including points and authorities. Each motion shall be accompanied by a

Ventura County Superior Court Rules

proposed order. Opposing counsel who have not already done so shall exchange motions at or immediately after announcing ready at the trial call. Unless otherwise ordered by the judge at trial call, motions and oppositions are to be filed with the clerk in the assigned trial department on the first day of trial. Immediately after being notified by the court of the time and place for the start of trial in a trailing case, counsel who have not already done so shall meet and confer telephonically as to which *In Limine* motions are contested and shall promptly exchange any written oppositions to another party's motions.

O. CHECKLIST FOR WORKING WITH THE COURTROOM CLERK.

1. Check in with the courtroom clerk. If you are an attorney representing a client, provide three (3) business cards and name of your client.

2. File trial briefs and motions **in limine**.

3. File witness list and statement of the case.

4. Arrange for payment of any jury fees and reporter fees.

5. Pre-mark and exchange exhibits.

6. File request for jury instructions before the plaintiff rests.

7. Lodge all original depositions with the courtroom clerk on the first day of trial.

8. Sign jury stipulation.

9. All depositions, documents, exhibits and other items lodged with the court must be removed from the courtroom by counsel lodging same upon conclusion of proceedings.

10. With regard to messages for counsel during trial, calls to the courtroom should be limited only to urgent messages. Counsel should arrange to check in with their offices during breaks.

P. PROCEDURES REGARDING COURT REPORTERS.

1. Side bench conferences with the reporter are not favored. Such conferences consume undue amounts of time and interrupt the continuity of the trial. The record is available for proceedings outside the presence of the jury during recess.

2. "On and off" the record -- the reporter will respond only to instructions of the court relative to going "on and off" the record.

3. Maintain a record of the question and answer that ends each session or inquire of the reporter before the succeeding session..

(Revised effective January 1, 2013)



As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

1. Advance the legitimate interests of my clients, without reflecting any ill will they may have for their adversaries, even if called on to do so, and treat all other counsel, parties, and witnesses in a courteous manner.
2. Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.
3. Never, without good cause, attribute to other counsel bad motives or improprieties.
4. Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.
5. Adhere to all express promises and agreements, whether oral or written, and, in good faith, to all commitments implied by the circumstances or local custom.
6. When called on to do so, commit oral understandings to writing accurately and completely, provide other counsel with a copy for review, and never include matters on which there has been no agreement without explicitly advising other counsel.
7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delaying trial.
8. Always stipulate to undisputed relevant matters when it is obvious that they can be proved and where there is no good faith basis for not doing so.
9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.
10. Never use any form of discovery scheduling as a means of harassment.
11. Make good faith efforts to resolve disputes concerning pleadings and discovery.
12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.

13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings, and other events.
16. When hearings, depositions, meetings, or other events are to be canceled or postponed, notify as early as possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously-reserved time for other matters.
17. Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.
18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.
19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.
20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.
21. During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.
22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.
23. Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.
24. Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and nonprivileged documents.
25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.
26. Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and nonprivileged information.
27. When called on, draft orders that accurately and completely reflect a court's ruling, submit them to other counsel for review, and attempt to reconcile any differences before presenting them to the court.
28. During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.
29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.
2. Never publicly criticize a judge for his or her rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.
3. Be punctual and prepared for all court appearances, and, if unavoidably delayed, notify the court and counsel as soon as possible.
4. Never engage in conduct that brings disorder or disruption to the courtroom.
5. Advise clients and witnesses of the proper courtroom conduct expected and required.
6. Never misrepresent or misquote facts or authorities.
7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.
8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries, and law clerks.

Conduct Expected of Judges

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.
3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.
4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.
5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings, and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel's required appearance before another judge.
6. Make all reasonable efforts to promptly decide matters under submission.
7. Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.
8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.
9. Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.
10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.
11. Require court personnel to be respectful and courteous toward lawyers, parties, and witnesses.
12. Abstain from adopting procedures that needlessly increase litigation time and expense.
13. Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses, or counsel.

THEORIES OF CRIMINAL LIABILITY

Speaker: Bill Haney, Esq.

Homicide

"The killing of one human being by another."

Either lawful or unlawful

Unlawful Homicide

Murder and Manslaughter

Excusable Homicide

No Criminal Purpose and No Criminal Negligence:

Lawful Act

- Unintentional killing
- Committed by Accident or Misfortune
- In Performance of a Lawful Act by Lawful Means
- Person Causing Death Acted with Ordinary Care and Caution

Justifiable Homicide

(Perfect Self-Defense)

The Killer Must Actually and Reasonably Believe that the Decedent will kill him or cause Great Bodily Injury.

It is necessary under the circumstances to use Deadly Force For the Purpose of Avoiding Death or Great Bodily Injury

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was UNLAWFUL

→ If the Jury has a reasonable doubt that the killing was unlawful They must find the defendant NOT GUILTY.

Justifiable Homicide

(Perfect Self-Defense)

To Justify and Intentional Killing:

The Danger Must be Apparent, Present, Immediate and Instantly Dealt With

The Killing must be done under a well founded belief that it is necessary to save one's self from Death or Great Bodily Injury

The Immediate Danger of Death or Great Bodily Injury must exist at the very time the fatal shot was fired.

(belief in future harm not sufficient)

Justifiable Homicide

(Perfect Self-Defense)

Additional Considerations:

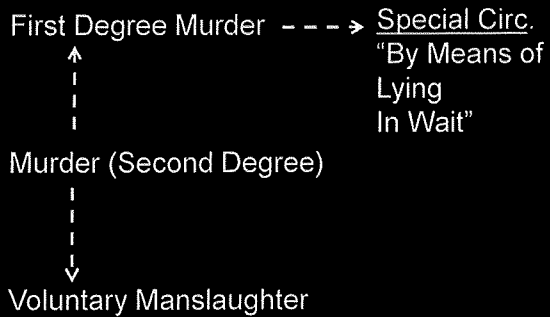
In deciding whether the killer's beliefs were reasonable, consider all of the circumstances known to, and that appeared to the killer

- Prior threats or harm to the victim
- Prior threats or harm to others (known to the killer)

****No DUTY to RETREAT**

****Evidence Code Section 1103(a)** – Defense can bring in decedent's character for violence.

The Law of Murder



The Law of Murder



Murder

1. The Defendant committed an act that caused the death of another.
2. Acted with Malice Aforethought.

Murder

Notes on Malice Aforethought:

- Does not require ill will or hatred toward the victim;
- Must be formed before the act that causes death;
- Does not require deliberation or the passage of time.

Murder

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Murder

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Murder

Two Kinds of Malice:

(1) Express Malice

(2) Implied Malice

Murder

Express Malice Murder:

Intent to Kill

Murder

Two Types of Malice:

(1) Express Malice

(2) Implied Malice

Murder

Implied Malice Murder:

- (1) Defendant intentionally committed an act;
- (2) The natural and probable consequences were dangerous to human Life;
- (3) At the time the defendant knew his act was dangerous to human life;
- (4) He acted deliberately with conscious disregard for human life.

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Implied Malice Murder:

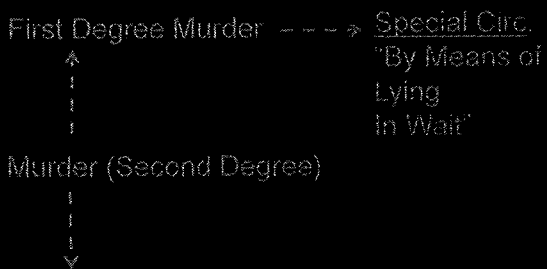
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- (4) **He acted deliberately with conscious disregard for human life.**

The Law of Murder



Voluntary Manslaughter

Voluntary Manslaughter

(1) **Sudden Quarrel or Heat of Passion;**

(2) Imperfect Self-Defense

Voluntary Manslaughter

The defendant killed someone during a sudden quarrel or heat of passion if:

- (1) The defendant was provoked;
- (2) As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning of judgment;
- (3) The provocation would cause a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

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- (1) The defendant was provoked;
- (2) As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning of judgment;
- (3) The provocation would cause a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

Voluntary Manslaughter

Notes on Heat of Passion:

- Slight or remote provocation is not sufficient.
- It is simply not enough that the defendant was provoked. The defendant is not allowed to set up his own standard of conduct.
- In deciding whether the provocation was sufficient, consider whether A PERSON OF AVERAGE DISPOSITION, IN THE SAME SITUATION AND KNOWING THE SAME FACTS, WOULD HAVE REACTED FROM PASSION RATHER THAN JUDGMENT.

Voluntary Manslaughter

(1) Sudden Quarrel or Heat of Passion;

(2) Imperfect Self-Defense

Voluntary Manslaughter

Imperfect Self-Defense:

(1) The defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury;

AND

(2) The defendant actually believed that the immediate use of deadly force was necessary to defendant against the danger;

BUT: At least one of those beliefs was unreasonable.

The Law of Murder

First Degree Murder

i

Murder (Second Degree)

↓

Voluntary Manslaughter

First Degree Murder

Willful, Deliberate and
Premeditated Murder

First Degree Murder

Willfully =

Intended to Kill

First Degree Murder

Deliberately =

Carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

First Degree Murder

Premeditation =

He decided to kill before completing the acts that caused death.

First Degree Murder

- ➡ The length of time a person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated.
- ➡ The amount of time may vary from person to person and according to the circumstances.
- ➡ A cold, calculated decision may be reached quickly.

First Degree Murder

→ The Test is the extent of the reflection, not the length of time.

First Degree Felony Murder

A Killing During the Commission of a Felony Listed in Penal Code Section 189:

Rape, Robbery, Burglary, Kidnapping, etc.

Felonies declared so inherently dangerous by the Legislature that offenders are prospectively warned that any killing during their commission shall be punished by First Degree Murder

Mental State: Simply the Intent to Commit the Underlying Felony

First Degree Felony Murder

Applies even if the killing is unintentional or accidental

(Monica Leech, Western Financial Bank, 1997)

Because Malice is Not Required, Imperfect Self Defense and Provocation Do Not Apply

Second Degree Felony Murder

Murder During a Killing Inherently
Dangerous to Human Life

When Viewed in the Abstract it cannot be
committed without creating a substantial
risk that someone will be killed, or carries
a high probability that death will result

Second Degree Felony Murder

Concept of Malice is Irrelevant

No defense that the defendant did not
mean to commit a homicide or that he was
unaware of the danger inherent in the felony

Must merely show a specific intent to commit
the underlying felony

Second Degree Felony Murder

Inherently dangerous felonies when viewed in the
abstract:

- Attempted Escape From Prison by Force or
Violence
- Reckless or Malicious Possession of a
Destructive Device
- Manufacturing Methamphetamine

Second Degree Felony Murder

Felonies not viewed as inherently dangerous in the abstract:

- Furnishing PCP
- Evading a Police Officer - NO! 2800.2 is not inherently dangerous
- Possession of a Firearm
- False Imprisonment

(Assaultive Felonies Cannot be Prosecuted as Second Degree Felony Murder – they are an integral part of the homicide and must be analyzed as crimes of malice.)

Involuntary Manslaughter

An unlawful killing where the defendant commits a willful act but does not intend to kill and does not act without conscious disregard for human life.

2 Ways:

(A) Killer Committed a Crime that posed a high risk of death or great bodily injury because *of the way in which it was committed*;

(frequently argued in single stab wound knife killings, or single shot gun cases, i.e., a 417 gone wrong) OR

(B) Killer Committed a lawful act, but acted with criminal negligence

Aiding and Abetting

1. The Perpetrator Committed the Crime;

2. The defendant knew that the perpetrator intended to commit the crime;

3. Before or during the commission of the crime, the defendant intended to promote, aid, facilitate instigate or encourage the perpetrator in committing the crime;

AND

4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Aiding and Abetting

(Natural and Probable Consequences Doctrine)

The defendant is liable not only for the crime aided and abetted, but also any other crime that is a natural and probable consequence of that crime.

Aiding and Abetting

(Natural and Probable Consequences Doctrine)

Felony Assault -----> MURDER

But - PC 415 / Misdemeanor Assault Too Tenuous
("Where You From?" Challenge Insufficient for Liability for Murder)

Conspiracy

1. Defendant Agreed With At Least One Other Person to Commit a Crime
2. At the time of the agreement, the defendant and the other alleged members of the conspiracy intended the crime to be committed
3. A co-conspirator committed an over act in furtherance of the conspiracy.

Conspiracy

Agreement may be inferred from conduct

A member of a conspiracy does not have to personally know the identity of roles of all other members.

"A MEMBER OF A CONSPIRACY IS CRIMINALLY RESPONSIBLE FOR ANY ACT OF ANY MEMBER OF THE CONSPIRACY IF THAT ACT IS DONE TO FURTHER THE CONSPIRACY OR IS A NATURAL AND PROBABLE CONSEQUENCE OF THE COMMON PLAN OR DESIGN"

Conspiracy

"TO WITHDRAW FROM A CONSPIRACY, THE DEFENDANT MUST TRULY AND AFFIRMATIVELY REJECT THE CONSPIRACY AND COMMUNICATE THAT REJECTION, BY WORD OR BY DEED, TO THE OTHER MEMBERS OF THE CONSPIRACY KNOWN TO THE DEFENDANT."

A FAILURE TO ACT IS NOT SUFFICIENT ALONE TO WITHDRAW FROM A CONSPIRACY"

ACCOMPLICE CORROBORATION RULE

(Penal Code Section 1111)

A Person is an accomplice if subject to prosecution for the identical crime charged as the defendant.

May not convict the defendant on the testimony of an accomplice unless there is some evidence independent of the accomplices' statement that tends to connect the defendant with the commission of the crime.

Incentivized Witnesses

Informants

Jail House Informants Treated With Caution (Nominal Pay Only)

Ventura County vs. LA County Policies

10-20-Life Leverage (Vicarious Liability for 186.22 Offenders)

Proffer Interviews – Formal Contracts

ETHICS

Speaker: Joel Mark, Esq.

**ETHICAL RULES
FOR THE
CALIFORNIA
PRACTITIONER**

AN OVERVIEW

ETHICAL RULES FOR THE CALIFORNIA PRACTITIONER

AN OVERVIEW

The practice of law involves the zealous and competent representation of our clients' interests. However, the overriding concern in the course of representing our clients is our ethical obligations to the courts, to the public and to the profession, in addition to our ethical obligations to our clients.

The purpose of this outline is to discuss the various ethical concerns that must be kept in mind by all practitioners, including new practitioners. It is not intended as an exhaustive treatise on each of the issues raised. Rather, it is intended as a checklist for further consideration and research so that the ethical issues facing the attorney become aspirational goals rather than traps for the unwary.

I. Ethics Objectives, Rules Sources and Resources

A. Purpose of Ethics Rules:

1. Guidance and professionalism.
2. Discipline.
3. Disbarment and other sanctions.
4. Disqualification.
5. Standard of care. *Mirabito v. Liccardo* 4 Cal. App. 4th 41 (1992).
6. Fiduciary duties. *David Welch Co. v. Erskine & Tully* 203 Cal. App. 3d 884 (1988).
7. Fee collection.
8. But, ethics rules violations do not create a separate cause of action based upon breach alone.

B. Sources and Resources:

1. The primary source of ethical materials relating to attorneys' fees in California is the California Rules of Professional Conduct ("Rules") and the State Bar Act (Business and Professions Code [B&P] sections 6000 through 6238).
2. A secondary source of such materials is the State Bar and local bar association ethics opinions. The State Bar ethics opinions, issued by the Committee on Professional Responsibility and Conduct ("COPRAC"), are available on the California State Bar website (www.calbar.ca.gov) and are searchable. They are, however, non-binding. Additionally, the State Bar offers an ethics hotline (1-800-

- 2ETHICS), which strives to respond to ethics questions raised by California attorneys within four hours or less.
3. The State Bar Committee on Mandatory Fee Arbitration periodically offers "Arbitrator Advisories" (also available on the State Bar website) that cover a variety of ethical and other issues relating to attorneys' fees.
 4. The Committee on Mandatory Fee Arbitration also offers on the website form fee agreements. These cover almost every attorney fee clause and situation and are very user friendly.
 5. The ABA Model Rules and Model Code are not applicable to California attorneys, are sometimes inconsistent with the Rules, and should be looked to by the courts for only secondary guidance. California State Bar Formal Opinion No. 1983-71 (1983).

- C. 2012 Caveat: The California Rules of Professional Conduct have been the subject of extensive revisions over the past few years. The majority of the new rules have been conditionally approved by the State Bar Board of Governors and presently are out for public comment. If adopted, the new Rules all will have different numbers and many may be amended, added or deleted.

II. Ethical Obligations to Clients

- A. Creation of an Attorney-Client Relationship: An attorney-client relationship is a matter of contract, and will be created in the manner any contract may be created. However, the test is the reasonable expectations of the client. Thus, where circumstances would lead a reasonable potential client to conclude that the relationship had been formed, the attorney will be liable for all duties arising out of such a relationship even where the attorney's subject intention was not to represent the client. See, COPRAC Formal Opinion 2003-161.
- B. Declining an Attorney-Client Relationship: Because the standard for the formation of an attorney-client relationship is the reasonable expectation of the client, all decisions to decline such a relationship should be documented between the attorney and the prospective client. And, where there is a potential statute of limitations issue, failure to advise the client of that possibility may be grounds for a malpractice action even where the representation is declined. *Miller v. Metzinger* 91 Cal. App.

3d 31 (1979) [failure to make referral until after running of statute of limitations].

C. The Initial Agreement:

1. Probate Code section 16004(B).
 - a. At the start, the relationship generally is considered at arm's length. *Setzer v. Robinson* 57 Cal. 2d 213 (1962) [based on Civil Code § 2235]; *Baron v. Mare* 47 Cal. App. 3d 304 (1975).
 - b. As a result, the attorney has no obligation to advise the prospective client about the proposed fee agreement and, because the attorney therefore is not on both sides of the transaction, the presumption of undue influence under section 16004 (and its predecessor Civil Code § 2235) does not apply to fee agreements. *Ramirez v. Sturdevant* 21 Cal. App. 4th 904 (1994); *Setzer v. Robinson* 57 Cal. 2d 213 (1962).
 - c. Modification of fee agreement, however, is a new agreement between a fiduciary and principal and does require compliance with and will be subject to scrutiny under Rule 3-300.

D. Termination of the Relationship: Termination of the relationship is governed by Rule 3-700. Where the relationship involves a matter before a tribunal, permission of the tribunal is required and will be given only where the requirements for withdrawal are present, and where withdrawal will not unreasonably prejudice the client or interfere with the administration of justice.

E. Obligations Imposed by the State Bar Act:

1. Preservation of client confidences and secrets (B&P section 6068(e)).
2. Keeping clients informed of all significant developments in connection with the representation (B&P section 6068(m) and (n)).
3. Duty to communicate offers of settlement (B&P section 6103.5).
4. Requirements of fee agreements (B&P sections 6146-6149).

F. Obligations Imposed by the Rules:

1. Maintaining client confidences (Rule 3-100).
2. Competency (Rule 3-110).

3. Refrain from sexual relations with clients and from using the relationship to coerce sexual relations (Rule 3-120).
4. Avoiding interests adverse to a client (Rule 3-300 [fiduciary obligations to clients]).
5. Avoiding representation of adverse interests (Rule 3-310 [duty of loyalty; dual representation] – See First Supplemental Outline).
6. Disclosure of relationship with another party's lawyer (Rule 3-320).
7. Impermissible limitations on liability to a client (Rule 3-400).
8. Disclosure of the lack of professional liability insurance (Rule 3-410).
9. Communications with a client and informing a client of significant developments connected with the representation (Rule 3-500).
10. Communication of settlement offers (Rule 3-510).
11. Obligations specific to representation of an organization of a client (Rule 3-600)
12. Obligations upon termination of employment (Rule 3-700).
13. Obligations regarding trust funds and trust accounting (Rule 4-100).
14. Prohibition against purchasing client property at court-supervised sale (Rule 4-300).
15. Prohibition against accepting gifts from clients (Rule 4-400).
16. Prohibition against testifying before a jury without the client's consent (Rule 5-210).

G. Other Obligations

1. Duty to advise a client about remedies outside the scope of the representation.
2. Duty to refer to a specialist regarding matters relevant to the representation outside the attorney's expertise.

III. Ethical Issues Relating to Attorneys' Fees: See Second Supplemental Outline

IV. Duties to Third Parties

- A. Generally, because of the high ethical obligations attorneys have to zealously represent the interests of their clients, they have no

duties to third parties arising out of their representation of their clients.

- B. Litigation Privilege (Civil Code section 47(b); but, the attorney can be liable for statements made outside of the litigation process and not reasonably related to obtaining the lawful objectives of the litigation process.
- C. However, where it is reasonably foreseeable that a third party is relying upon a misrepresentation, the attorney can become liable to a third party who relies to their detriment, where the attorney acts as an escrow holder for the benefit of a third party or for the failure to properly distribute settlement funds to a third party [split of authority]
- D. Liability to Partners: Generally, an attorney will be liable to a partner for his or her conduct of partnership business, absent formation of the partnership as an LLP
- E. Liability to Other Attorneys: There is no liability to or fiduciary duty owed to an associated attorney (*Beck v. Wecht* 28 Cal. 4th 289 (2002)); however, where one associated attorney is only passively negligent, that attorney may seek indemnity from the active negligent attorney (*Musser v. Provencher* 28 Cal. 4th 274 (2002)).
- F. Liability to Opposing Parties and Counsel:
 - 1. Improper communication with represented party; grounds for disqualification.
 - 2. Inadvertent receipt of privileged materials; duty to advise and return.

V. Duties to the Courts and to the Administration of Justice

- A. Obligations Imposed by the State Bar Act:
 - 1. Duty of licensure (B&P sections 6060-6067)
 - 2. Duty to support the Constitution and laws (B&P section 6068(a)).
 - 3. Duty to maintain respect for the courts (B&P section 6068(b)).
 - 4. Duty to maintain actions only as appear just (B&P section 6068(c)).
 - 5. Duty to maintain causes only consistent with the truth and to never seek to mislead a judicial officer by an

- artifice or false statement of fact or law (B&P section 6068(d)).
6. Duty not to advance facts prejudicial to the honor or reputation of a party or witness unless required by the interests of justice (B&P section 6068(f)).
 7. Duty not to pursue a cause from any corrupt motive of passion or interest (B&P section 6068(g)).
 8. Duty never to reject the cause of the defenseless (B&P section 6068(h)).
 9. Duty to comply with disciplinary investigations, proceedings and conditions (B&P sections 6068(i), (k), (l) and (o)).
 10. Mandatory continuing education (B&P section 6070).
 11. Duty to provide or support provision of pro bono services (B&P section 6073)
 12. Duty to comply with the Rules (B&P section 6077).
 13. Prohibition of conditioning employment upon agreement not to file disciplinary charges (B&P section 6090.5).
 14. Prohibitions regarding acts involving moral turpitude (B&P sections 6100-6103).
 15. Duty not to misrepresent authority (B&P section 6104).
 16. Prohibitions on unlawful solicitation of business (B&P sections 6150-6156).
 17. Restrictions on attorney advertising (B&P sections 6157-6159.53).
 18. Duty to participate in mandatory fee arbitration (B&P sections 6200-6206).

B. Obligations Imposed by the Rules:

1. Improper objectives of employment (Rule 3-200).
2. Prohibition on advising violation of the (Rule 3-210).
3. Prohibition against threatening criminal, administrative or disciplinary charges to obtain advantage in a civil dispute (Rule 5-100).
4. Prohibition against government attorney instituting criminal charges unless supported by probable cause (Rule 5-110).
5. Prohibition against extrajudicial statements expected to be disseminated by public communication if there is a substantial likelihood of materially prejudicing an adjudicative proceeding (Rule 5-120).
6. Requirement to maintain causes by such means only as are consistent with the truth (Rule 5-200(A)).

7. Prohibition against seeking to mislead a judicial officer of jury by as artifice or false statement of fact or law (Rule 5-200(B)).
8. Prohibition against intentionally misquoting a book, statute or decision (Rule 5-200(C)).
9. Prohibition against citing an invalid or overruled decision or statute (Rule 5-200(D)).
10. Prohibition against asserting personal knowledge of a fact at issue except when testifying as a witness (Rule 5-200(E)).
11. Prohibition against suppression of evidence (Rule 5-220).
12. Prohibited contacts with court officials (Rule 5-300).
13. Prohibitions regarding contacts with witnesses (Rule 5-310).
14. Obligations and prohibitions regarding contact with jurors (Rule 5-320).

C. Other Obligations to the Courts

1. Prohibition against filing false pleadings or documents.
2. Prohibition against willful disobedience of lawful court orders.
3. Prohibition against noncompliance with support judgment or order.
4. Prohibition against disrespect to the court (free speech vs. inappropriate criticism; improper courtroom attire).
5. Duty to remain and participate in court proceedings.

VI. Ethical Issues Relating to Client Development and Attorney Advertising: See Third Supplemental Outline.

FIRST

SUPPLEMENTAL

OUTLINE

CONFLICTS OF INTEREST

A SHORT COURSE

William H. Hair, Esq. and Joel Mark, Esq.

Nordman Cormany Hair & Compton LLC
June 22, 2006

1. Introduction
 - a. Nature of the problem
 - b. The temptations
 - c. Ways it can be manifested – civil suit, disqualification, discipline
 - d. The possible penalties
2. Where to find the resources
 - a. Business and Professions Code
 - b. Rules of Professional Conduct
 - c. Court Decisions
 - d. Leading resources and references
 - e. State Bar Resources
 - i. "Gray Book"
 - ii. Sample Fee Agreements
3. The Governing Rules of Professional Conduct
4. "Rules of Thumb" for identifying the problem
 - a. Duty of undivided loyalty
 - b. Duty to inform client
 - c. Duty to maintain client confidences
 - d. Duty to practice competently
5. "Quick Rules" for Conflict Spotting and Resolution
6. Mechanisms for Identifying Potential Conflicts
7. Recent Developments, Updates, Questions
8. Attached references

~~JOEL'S~~
BILL'S AND MIKE'S "QUICK RULES"

FOR CONFLICT SPOTTING AND RESOLUTION

1. Specifically identify the potential client, and make sure that in accepting the engagement it is clear to all who you consider to be the client.
 - a. This may or may not be the person paying the bills. Rule 3-310(F).
 - b. Organizations. Rule 3-600.
 - c. Governmental entities.
 - d. Multiple clients and adverse interests. Rule 3-310.
2. Identify the fields of potential conflicts.
 - a. Potential persons in conflict include:
 - Your current clients and those of all of the lawyers in your office, including co-counsel, partners, associates and of-counsel.
 - Former clients.
 - Relatives, business associates and other persons in special relationships.
 - Relationship with other party's lawyer. Rule 3-320.
 - Conflicts created by staff, such as paralegals, secretaries, etc.
 - Economic Competitors.
 - b. Potential kinds of non-financial conflicts include:
 - Trial counsel as witness. Rule 5-210.
 - Sexual relations with client. Rule 3-120.
 - Consultants, including other attorneys.
 - c. Potential kinds of financial conflicts include:
 - Publication rights. Rule 3-300.
 - Business dealings with clients. Rule 3-310(B)(3).
 - Business transactions with clients. Rule 3-300.
 - Acquiring ownership in a client in connection with legal services provided to the client. Rule 3-300; ABA Formal Ethics Opinion 00-418 (2000).
 - Gifts from a client. Rule 4-400.
 - Loans and advances to client. Rule 3-400.
 - Fee dispute with client – Mandatory Fee Arbitration.
3. If there is a potential conflict, address it as soon as possible.

- a. Do you initial conflicts check before getting any confidential material or information from the potential client.
 - b. The consequences of not doing so.
 - c. If engagement is declined, do it in writing and confirm that nothing confidential was conveyed.
 - d. When you learn more information about who is involved, check again.
 - e. The "First in Time" or "Hot Potato" Rule.
4. Determine the measure of disclosure and consent necessary; when in doubt disclose and obtain consent anyway.
 - a. The Rules of Professional Conduct have four levels of notification/consent to the client when there is a conflict or potential conflict.
 - Conflict is unwaivable; e.g., Rule 3-120(B) or *per se* violation of duty of loyalty.
 - Informed written consent from client; e.g., Rule 3-310(C)-(F).
 - Disclosure to client without written consent also being required; e.g., Rule 3-310(B)(1)-(4).
 - Notice to client without written disclosure or consent being required; e.g., Rule 3-320.
 - b. Consider whether the struggle to avoid the potential conflict is really worth the effort and risk of the potential consequences.
 - c. Is it a waivable conflict? If in doubt, don't take it.
 - d. If waivable, is mere written disclosure enough? If in doubt, also obtain written consent.
 - e. Level of detail of disclosure? If you can think of a possible consequence of the conflict, disclose it.
5. Beware of "Beauty Contests." California Bar Journal, October 2003, p. 10 "Beauty Contests can Turn Ugly."
6. Provide in your engagement letter, if possible, how to resolve potential future conflicts and that fees to date of discovery will remain due.

CONFLICTS OF INTEREST

By William H. Hair

NOVEMBER 20, 2003

The basic rules relating to conflicts of interest are found in the Rules of Professional Conduct (*Rules*) and the State Bar Act in the Business and Professions Code.

Rule 1-100 specifically provides that the Rules are not exclusive - we are bound by, *inter alia*, the State Bar Act and the appellate decisions of the courts. This Rule provides that, although not binding, opinions of ethics committees in California should be consulted for guidance on proper conduct and that ethics opinions and rules and standards of other jurisdictions may also be considered.

COMMUNICATING WITH REPRESENTED PARTY

Rule 2-100 is the basic prohibition of communications with persons who are known to be represented, but provides that the attorney can advise such a person if the attorney is independently consulted by the represented client and the attorney is not in a conflict position by virtue of an existing relationship.

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DEALS WITH CLIENTS

The first specific rule regarding conflicts is Rule 3-300 concerning avoiding interests adverse to a client. This rule prohibits an attorney from entering into a business transaction with a client or knowingly acquiring an "ownership, possessory, security or other pecuniary interest adverse to a client" unless three conditions have been satisfied:

1. The deal and its terms "are fair and reasonable and are fully disclosed and transmitted in writing to the client;" and
2. The client is advised in writing that the client may seek the advice of independent counsel of choice and is given a reasonable chance to do so; and
3. The client thereafter consents in writing to the terms of the deal.

This rule does apply to security interests for past or future fees and costs.

RULE 3-310 AVOIDING ADVERSE INTERESTS

The real "guts" of the conflict of interest rule is Rule 3-310 - which no matter how familiar you may be with this rule, I believe it is prudent, anytime a conflict issue arises, that this rule be re-read and perhaps even diagramed to fit the particular case that you are dealing with. This is something that I do whenever the question arises, even in the obvious cases of possible conflicts.

Rule 3-310 has six subsections with a number of sub-parts to each subsection. In short, it is a complex rule which can have a number of unpleasant results if it is ignored or mistakenly applied.

Sub A defines the terms used, "disclosure", "informed written consent", and "written". These are the only definitions of these terms in the Rules and it is my belief that they are applicable whenever used in the Rules.

Sub B prohibits an attorney from accepting or continuing the representation of a client without giving written disclosure to the client in four separate situations:

(1) The attorney has a "legal, business, financial, professional, or personal relationship with a party or witness in the same matter;" or

(2) The attorney "knows or reasonably should know that:

(a) he or she "previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and (b) the previous relationship would substantially affect the member's representation;" or

(3) He or she "has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter;" or

(4) The attorney "has or had a legal, business, financial, professional interest in the subject matter of the representation." Note that this sub-part has dropped the "personal" interest that is used in the first three sub-parts. I believe, in

an abundance of caution, that an attorney that finds that he or she has a personal interest in the subject matter of the representation aside from the personal/professional desire to do the best job for the client, that the attorney had better make the required disclosure.

It is apparent from a careful reading of subsection B, that there are a number of potential "land mines" for the unwary. The term "same matter" is not defined by the rule and it has been my experience that this term can be the subject of a lot of debate when one of the described situations arises, particularly after a case has been undertaken. The term "reasonably should know" is an obvious potential pitfall when second guessers enter the picture after a case has been ended, or you have been relieved from the representation. Last, but not least, you must bear in mind that the disclosure requirements continue for later discovered relationships.

Sub C deals with the situations where "informed written consent" is required. It has three sub-parts which on reading seem deceptively simple, but in the application to real life situations can be extremely complex. Rule 3-310 (C) provides:

A member shall not, with out the informed
written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients

actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

The term "matter" is again a potential land mine for the unwary. In applying this rule, I have found it very helpful to get out the yellow pad and diagram the facts to make sure of the ground that I am on.

Sub D deals with the situation where an attorney is representing two or more clients and requires that any aggregate settlement have the "informed written consent of each client."

Sub E provides that an attorney may not accept employment adverse to a client or former client without the "informed written consent" of the client or former client where by reason of the representation of the client or former client, the attorney has obtained confidential information material to the employment.

Sub F provides the conditions under which an attorney may accept compensation from someone other than the client. The conditions are, (1) there is no interference with the attorney's independence or professional judgment or with the attorney/client relationship; (2) information relating to the representation is protected as required by B&P § 6068(e); and the attorney gets the client's informed written consent, provided that no written disclosure or consent is required if, (a) non-disclosure is otherwise authorized by law, or (b) the attorney is giving services

on behalf of any public agency which provides legal services to other public agencies or the public.

ORGANIZATIONS

Rule 3-600 covers the basic rules concerning representing an organization, whether a governmental agency, corporation, club or partnership. This rule has recently been under intense scrutiny recently because of its implications under the "whistle blower" scandals, but has survived in its present form so far. The rule provides that an attorney representing "an organization" "shall conform" the representation "to the concept that the client is the organization itself, acting through its highest" officer, etc. It goes on to provide that if the attorney knows that an agent, actual or apparent of the organization intends or is acting in a violation of the law that reasonably can be imputed to the organization, the attorney shall not violate the duty of protecting confidences per B&P § 6068(e), but can "take such actions as appear to the member to be in the best interest of the organization." The rule gives 2 examples of the type of action that may be taken, including urging reconsideration or referring the matter to the highest internal authority of the organization. If this doesn't work, then the attorney's only "out" is to resign as permitted by Rule 3-700.

The rule obligates the attorney; to inform the organizations employees, directors, officers, shareholders, or other constituents that the organization is the client.

Last, but not least, this rule provides that an attorney may represent any officers, constituents, etc. of the organization, subject to the provisions of Rule 3-310 and that when consent is required, that it be given by someone other than the individual being represented.

RULES OF PROFESSIONAL CONDUCT

to the transfer provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.

(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken.

(D) All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable.

(E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.

(F) Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule.

Discussion:

Paragraph (A) is intended to prohibit the purchaser from charging the former clients of the seller a higher fee than the purchaser is charging his or her existing clients.

"All or substantially all of the law practice of a member" means, for purposes of rule 2-300, that, for example, a member may retain one or two clients who have such a longstanding personal and professional relationship with the member that transfer of those clients' files is not feasible. Conversely, rule 2-300 is not intended to authorize the sale of a law practice in a piecemeal fashion except as may be required by subparagraph (B)(1)(a) or paragraph (D).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 2-400. Prohibited Discriminatory Conduct in a Law Practice.

(A) For purposes of this rule:

(1) "law practice" includes sole practices, law partnerships, law corporations, corporate and governmental legal departments, and other entities which employ members to practice law;

(2) "knowingly permit" means a failure to advocate corrective action where the member knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and

(3) "unlawfully" and "unlawful" shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public.

(B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful

discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:

(1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or

(2) accepting or terminating representation of any client.

(C) No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.

Discussion:

In order for discriminatory conduct to be actionable under this rule, it must first be found to be unlawful by an appropriate civil administrative or judicial tribunal under applicable state or federal law. Until there is a finding of civil unlawfulness, there is no basis for disciplinary action under this rule.

A complaint of misconduct based on this rule may be filed with the State Bar following a finding of unlawfulness in the first instance even though that finding is thereafter appealed.

A disciplinary investigation or proceeding for conduct coming within this rule may be initiated and maintained, however, if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard. (Added by order of Supreme Court, effective March 1, 1994.)

CHAPTER 3. PROFESSIONAL RELATIONSHIP WITH CLIENTS

Rule 3-110. Failing to Act Competently

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

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Discussion:

The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 3-120. Sexual Relations With Client

(A) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.

(B) A member shall not:

- (1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or
- (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or
- (3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110.

(C) Paragraph (B) shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship.

(D) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.

Discussion:

Rule 3-120 is intended to prohibit sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (See, e.g., *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903 [126 Cal.Rptr. 785]; *Alkow v. State Bar* (1971) 3 Cal.3d 924, 935 [92 Cal.Rptr. 278]; *Cutler v. State Bar* (1969) 71 Cal.2d 241, 251 [78 Cal.Rptr. 172]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) The relationship between an attorney and client is a fiduciary relationship of the very highest character and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost

strictness for unfairness. (See, e.g., *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 472 [169 Cal.Rptr. 581]; *Benson v. State Bar* (1975) 13 Cal.3d 581, 586 [119 Cal.Rptr. 297]; *Lee v. State Bar* (1970) 2 Cal.3d 927, 939 [88 Cal.Rptr. 361]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. (See, e.g., *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]; *Lantz v. State Bar* (1931) 212 Cal. 213 [298 P. 497].) In all client matters, a member is advised to keep clients' interests paramount in the course of the member's representation.

For purposes of this rule, if the client is an organization, any individual overseeing the representation shall be deemed to be the client. (See rule 3-600.)

Although paragraph (C) excludes representation of certain clients from the scope of rule 3-120, such exclusion is not intended to preclude the applicability of other Rules of Professional Conduct, including rule 3-110. (Added by order of Supreme Court, operative September 14, 1992.)

Rule 3-200. Prohibited Objectives of Employment

A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is:

- (A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
- (B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law.

Rule 3-210. Advising the Violation of Law

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

Discussion:

Rule 3-210 is intended to apply not only to the prospective conduct of a client but also to the interaction between the member and client and to the specific legal service sought by the client from the member. An example of the former is the handling of physical evidence of a crime in the possession of the client and offered to the member. (See *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].) An example of the latter is a request that the member negotiate the return of stolen property in exchange for the owner's agreement not to report the theft to the police or prosecutorial authorities. (See *People v. Pic'l* (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685].)

Rule 3-300. Avoiding Interests Adverse to a Client

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

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(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

Discussion:

Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 4-200.

Rule 3-300 is not intended to apply where the member and client each make an investment on terms offered to the general public or a significant portion thereof. For example, rule 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a third party. B, A's client, makes the same investment. Although A and B are each investing in the same business, A did not enter into the transaction "with" B for the purposes of the rule.

Rule 3-300 is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 3-310. Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

(F) A member shall not accept compensation for representing a client from one other than the client unless:

(1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and

(2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and

(3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if:

(a) such nondisclosure is otherwise authorized by law; or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

Discussion:

Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected.

Other rules and laws may preclude making adequate disclosure under this rule. If such disclosure is precluded, informed written consent is likewise precluded. (See, e.g., Business and Professions Code section 6068, subdivision (c).)

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Paragraph (B) is not intended to apply to the relationship of a member to another party's lawyer. Such relationships are governed by rule 3-320.

Paragraph (B) is not intended to require either the disclosure of the new engagement to a former client or the consent of the former client to the new engagement. However, both disclosure and consent are required if paragraph (E) applies.

While paragraph (B) deals with the issues of adequate disclosure to the present client or clients of the member's present or past relationships to other parties or witnesses or present interest in the subject matter of the representation, paragraph (E) is intended to protect the confidences of another present or former client. These two paragraphs are to apply as complementary provisions.

Paragraph (B) is intended to apply only to a member's own relationships or interests, unless the member knows that a partner or associate in the same firm as the member has or had a relationship with another party or witness or has or had an interest in the subject matter of the representation.

Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners or a corporation for several shareholders, the preparation of an ante-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. In such situations, for the sake of convenience or economy, the parties may well prefer to employ a single counsel, but a member must disclose the potential adverse aspects of such multiple representation (e.g., Evid. Code, §962) and must obtain the informed written consent of the clients thereto pursuant to subparagraph (C)(1). Moreover, if the potential adversity should become actual, the member must obtain the further informed written consent of the clients pursuant to subparagraph (C)(2).

Subparagraph (C)(3) is intended to apply to representations of clients in both litigation and transactional matters.

In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App. 4th 1422 [86 Cal.Rptr.2d 20], the court held that subparagraph (C)(3) was violated when a member, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, subparagraph (C)(3) is not intended to apply with respect to the relationship between an insurer and a member when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

There are some matters in which the conflicts are such that written consent may not suffice for non-disciplinary purposes. (See *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; *Ishmael v. Millington* (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

Paragraph (D) is not intended to apply to class action settlements subject to court approval.

Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].) (Amended by order of Supreme Court: operative September 14, 1992; operative March 3, 2003.)

Rule 3-320. Relationship With Other Party's Lawyer

A member shall not represent a client in a matter in which another party's lawyer is a spouse, parent, child, or sibling of the member, lives with the member, is a client of the member, or has an intimate personal relationship with the member, unless the member informs the client in writing of the relationship.

Discussion:

Rule 3-320 is not intended to apply to circumstances in which a member fails to advise the client of a relationship with another lawyer who is merely a partner or associate in the same law firm as the adverse party's counsel, and who has no direct involvement in the matter. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 3-400. Limiting Liability to Client

A member shall not:

(A) Contract with a client prospectively limiting the member's liability to the client for the member's professional malpractice; or

(B) Settle a claim or potential claim for the member's liability to the client for the member's professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice.

Discussion:

Rule 3-400 is not intended to apply to customary qualifications and limitations in legal opinions and memoranda, nor is it intended to prevent a member from reasonably limiting the scope of the member's employment or representation. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 3-500. Communication

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

Discussion:

Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate

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insignificant or irrelevant information. (See Bus. & Prof. Code, §6068, subd. (m).)

A member may contract with the client in their employment agreement that the client assumes responsibility for the cost of copying significant documents. This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.

Rule 3-500 is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the member. (Amended by order of the Supreme Court, operative June 5, 1997.)

Rule 3-510. Communication of Settlement Offer

(A) A member shall promptly communicate to the member's client:

- (1) All terms and conditions of any offer made to the client in a criminal matter; and
- (2) All amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

(B) As used in this rule, "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

Discussion:

Rule 3-510 is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.

Any oral offers of settlement made to the client in a civil matter should also be communicated if they are "significant" for the purposes of rule 3-500.

Rule 3-600. Organization as Client

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

(B) If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to

Business and Professions Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others:

(1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or

(2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.

(D) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.

(E) A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the individual or constituent who is to be represented, or by the shareholder(s) or organization members.

Discussion:

Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership.

Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships.

Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. (See *People ex rel Deukmejian v. Brown* (1981) 29 Cal.3d 150 [172 Cal.Rptr. 478]; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]; *Woods v. Superior Court* (1983) 149

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Cal.App.3d 931 [197 Cal.Rptr. 185]; *In re Banks* (1978) 283 Ore. 459 [584 P.2d 284]; 1 A.L.R.4th 1105.) In resolving such multiple relationships, members must rely on case law.

Rule 3-700. Termination of Employment

(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client

(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or

(b) seeks to pursue an illegal course of conduct, or

(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

(D) Papers, Property, and Fees.

A member whose employment has terminated shall:

(1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. "Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not; and

(2) Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.

Discussion:

Subparagraph (A)(2) provides that "a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients." What such steps would include, of course, will vary according to the circumstances. Absent special circumstances, "reasonable steps" do not include providing additional services to the client once the successor counsel has been employed and rule 3-700(D) has been satisfied.

Paragraph (D) makes clear the member's duties in the recurring situation in which new counsel seeks to obtain client files from a member discharged by the client. It codifies existing case law. (See *Academy of California Optometrists v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297].) Paragraph (D) also requires that the member "promptly" return unearned fees paid in advance. If a client disputes the amount to be returned, the member shall comply with rule 4-100(A)(2).

Paragraph (D) is not intended to prohibit a member from making, at the member's own expense, and retaining copies of papers released to the client, nor to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.

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Ethics Issues Finding Way Into Courts

Most of the significant decisions which have shaped the law of lawyer disqualification have come since 1990

by Stanley W. Lamport

California lawyers are practicing in an era of increasing ethical awareness and scrutiny. Whether this trend has resulted from the State Bar's expanded disciplinary mandate, or lawyer MCLE requirements, or as a response to the public's perception of the legal profession, there is little question that ethical issues are taking an increasingly prominent role in evaluating lawyer conduct.

It is therefore not surprising that these issues are finding their way into the courts. In 1995 alone, the courts of appeal published over a dozen cases involving lawyer ethical questions in contexts ranging from lawyer disqualification to malpractice to enforceability of lawyer agreements. Indeed, most of the significant reported decisions which have shaped the law of lawyer disqualification have been decided since 1990.

In deciding these cases, courts not only affect the rights of the parties before them, but the legal profession as a whole, in some cases profoundly. Under rule 1-100(A) of the California Rules of Professional Conduct, a lawyer's ethical conduct is governed by opinions of California courts as well as by the Rules of Professional Conduct themselves. Given the volume of issues which confront the courts and the impact that court decisions have on the profession, it is important to understand the principles underlying ethical questions involved in these cases.

Lawyer conflicts of interest are the mostly commonly recurring ethical issue in the courts, underlying most disqualification motions and an increasing number of disputes over lawyer fees. In many legal malpractice cases, the dispute centers around whether a conflict of interest resulted in a deficient performance.

Yet as frequently as the issue arises, there is very little authority defining conflict of interest. To be sure, there are many anecdotal and situational definitions, but no unifying definition. The Rules of Professional Conduct address a number of situations that involve conflicts of interest, the most

prominent being Rule 3-310, which address conflicts of interest in the representation of clients. In most cases, a lawyer is not precluded from accepting a representation that is subject to the rule if there is adequate written disclosure and, in some cases, written consent.

While Rule 3-310 identifies situations in which written disclosure and written consent are required, the rule does not include a conflict of interest definition. This makes it difficult for both lawyers and courts to apply Rule 3-310. The following discussion is intended to get behind Rule 3-310 and address the fundamental policies, underlying issues and conflicts of interest in general.

A conflict of interest is a situation that interferes with a lawyer's ability to fulfill his or her basic duties to a client, because duties exist which a lawyer owes to another or because the lawyer has interests which are extraneous to the representation.

There are two types of conflicts of interest. Potential conflicts arise when the lawyer's ability to fulfill the basic duties is not impaired, but under the circumstances, such a situation could arise during the representation.

Actual conflicts arise when the lawyer's ability to fulfill the basic duties is strained or impaired.

Conflict of interest situations

There are four basic duties that may be violated in conflict of interest situations: (1) the fiduciary duty of undivided loyalty to a client, (2) the duty to inform a client, (3) the duty to maintain client confidences and secrets, and (4) the duty to represent a client competently.

All conflict of interest situations involve conflicting loyalties either between the lawyer's interests and a client's interests or between the interests of two or more clients. In situations where there are conflicting interests between the clients, there can be a tension between the duty to maintain confidential information of one client and the duty to inform the other client. These problems can impair a lawyer's ability to represent a client competently.

The conflicts rules in Rule 3-310 are designed to address situations which inherently strain a lawyer's ability to fulfill these basic duties. It is important to understand the scope of the basic duties and to keep them in mind when analyzing whether a lawyer has a potential or actual conflict. When in doubt, an analysis of the basic duties involved in conflict situations can help determine where a conflict may lie. It can also help determine what disclosures are needed to obtain a client's informed consent.

Duty of undivided loyalty

"Perhaps the most fundamental quality of the attorney-client relationship is the absolute and complete fidelity owed by the attorney to his or her client." (State Bar Formal Opn. 1984-83). "Few precepts are more firmly entrenched than that the fiduciary relationship between attorney and client is of the very highest character." (*Yarn v. Superior Court* (1979) 90 Cal.App.3d 669, 675.)

In the conflicts of interest context, a lawyer's duty of undivided loyalty encompasses three concepts. First, a lawyer has a duty to represent a client's interests, rather than the interests of another. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 289; *Anderson v. Eason* (1930) 211 Cal. 113, 116.) Second, a lawyer must exercise independent judgment on a client's behalf, which means a lawyer must

represent the interests of a client without being influenced by the interests of the lawyer or others that are extraneous to the lawyer-client relationship. (*Anderson v. Eason, supra*, 211 Cal. at 116; State Bar Formal Opn. 1995-141.)

The third concept is a duty to preserve the client's trust and security in the lawyer-client relationship. (*Flatt v. Superior Court, supra* at 282.) The duty precludes a lawyer from assuming a role that is antagonistic to a client, based on the proposition that when a client engages a lawyer in a given matter, the client is entitled to feel that he or she has the undivided loyalty of the lawyer as his or her advocate or champion until the matter is over. (*Flatt v. Superior Court, supra*, at 286.) The confidence and trust which a client reposes in the lawyer is essential to the effective functioning of the fiduciary relationship and one of the foundations of the professional relationship. (*Id* at 282.)

Duty to inform a client

A lawyer has a duty to inform a client of significant developments related to the representation or employment and to promptly respond to reasonable requests for information. This duty is embodied in Business & Professions Code §6068(m) and rule 3-500 of the California Rules of Professional Conduct. The obligation is part of a broader duty of honesty and candor that a lawyer owes a client.

Duty to maintain confidences

B&P Code §6068(e) states that it is a lawyer's duty "to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Section 6068(e) encompasses a duty to preserve the confidentiality of information related to client representation.

The confidentiality duty in §6068(e) is broader than the lawyer-client privilege. (*Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 621, n.5; State Bar Formal Opn. 1993-133.)

"This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge." (ABA Code of Prof. Resp., E.C. 4-4, cited in *Goldstein v. Lees, supra*.) State Bar ethics opinions have defined the duty as encompassing not only privileged communications, but any information related to the representation of a client, from any source, which a client does not want disclosed or the disclosure of which is likely to be embarrassing or detrimental to the client. (See State Bar Formal Opn. Nos. 1976-37, 1980-52, 1981-58, 1986-87 and 1993-133 and LACBA Formal Opn. Nos. 386 (1980), 436 (1985), and 456 (1990).)

While courts and ethics opinions have recognized some exceptions to the duty of confidentiality, it is still extremely broad. Furthermore, it is a duty that survives the conclusion of the lawyer-client relationship. A lawyer is forever precluded from either disclosing a client's confidential information or using that information against a client's wishes.

Duty to practice competently

The duty to practice competently is found in rule 3-110 of the California Rules of Professional Conduct, which states that a lawyer "shall not intentionally, recklessly or repeatedly fail to perform legal services with competence." Rule 3-110(B) states "competence in any legal service" means "to apply the (1) diligence, (2) learning and skill, and mental, emotional and physical ability reasonably necessary for the performance of such service."

Keeping the four basic duties in mind can help demystify many of the conflict of interest claims a court will confront. Ultimately competent representation is a reflection of a lawyer's ability to fulfill these duties.

In a disqualification motion context, it can assist a court in determining whether there is a conflict that requires a lawyer's removal from the case or whether there was adequate disclosure and consent to the conflict.

In malpractice cases, the duty analysis can assist in evaluating the proximate cause between the conflict and the injury alleged and help clarify instructions to the jury on these issues. Duty analysis should result in greater consistency in deciding these issues.

Stanley W. Lamport of Cox, Castle & Nicholson LLP in Los Angeles is past chair of the State Bars' Standing Committee on Professional Responsibility and Conduct.

JOURNAL

**METHODS FOR IDENTIFYING
AND AVOIDING
CONFLICTS OF INTEREST**

COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT

STATE BAR OF CALIFORNIA
ANNUAL MEETING
October 11, 2002
Monterey

I. INTRODUCTION

- A. Purpose and Scope of This Session
- B. Description of Materials

II. CONFLICTS OF INTEREST: INTRODUCTION

A. WHY LAWYERS SHOULD BE CONCERNED ABOUT CONFLICTS OF INTEREST

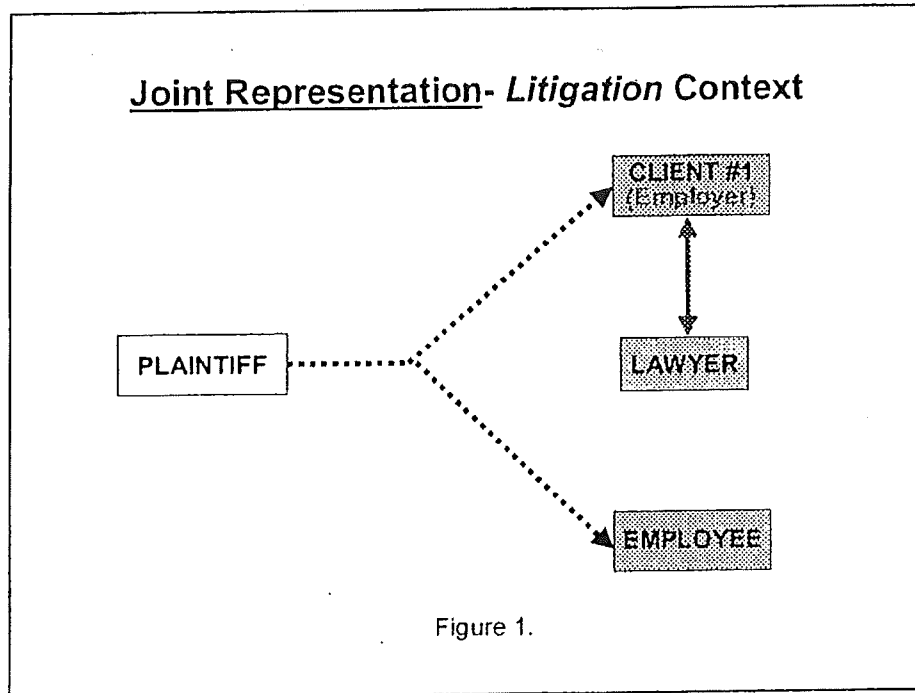
1. Purpose of Conflicts Rules: To protect clients, foster respect and confidence in the legal profession and to ensure the lawyer maintains key fiduciary duties to client.
2. Fiduciary Duties That Regularly Come into Play in Conflicts Situations
 - a. Competent representation
 - b. Full disclosure of all significant facts and developments
 - c. Maintenance of client confidence and secrets
 - d. Undivided loyalty
3. Consequences of Violating Conflicts Rules
 - a. Discipline
 - b. Disqualification
 - c. Civil Liability
 - d. Other consequences
4. Sources of Guidance on Ethical Duties:
 - a. California Rules of Professional Conduct
 - b. State Bar Act
 - c. ABA Model Rules
 - d. Ethics opinions: State Bar; Local Bar Association; ABA

B. RELEVANT CALIFORNIA RULES OF PROFESSIONAL CONDUCT

1. Rule 3-300 [Business Transactions Between Lawyer and Client]
2. Rule 3-310 [Avoiding Representation of Adverse Interests Between and Among Clients]

III. JOINT CLIENTS IN THE SAME MATTER

- A. When a lawyer represents multiple clients in the same matter, special issues can arise.
- B. An example of joint representation in *litigation context* would be:



C. Specific examples:

1. Employer and employee;
2. Employer and prospective employee;
3. Corporation and corporate officers, board members;
4. Partnership and general and limited partners.
5. Note that we have not included co-defendants in a criminal case. The potential for conflicts here is greater than in civil matters (e.g., one co-defendant testifying against another to cut a deal). This presents special issues beyond the scope of this program.

5. "a preexisting relationship with one client that would adversely affect the lawyer's independent judgment on behalf of the other client;"
6. "conflicting demands by the clients for the original file once the representation has ended." **State Bar Formal Ethics Opn. 1999-153.**

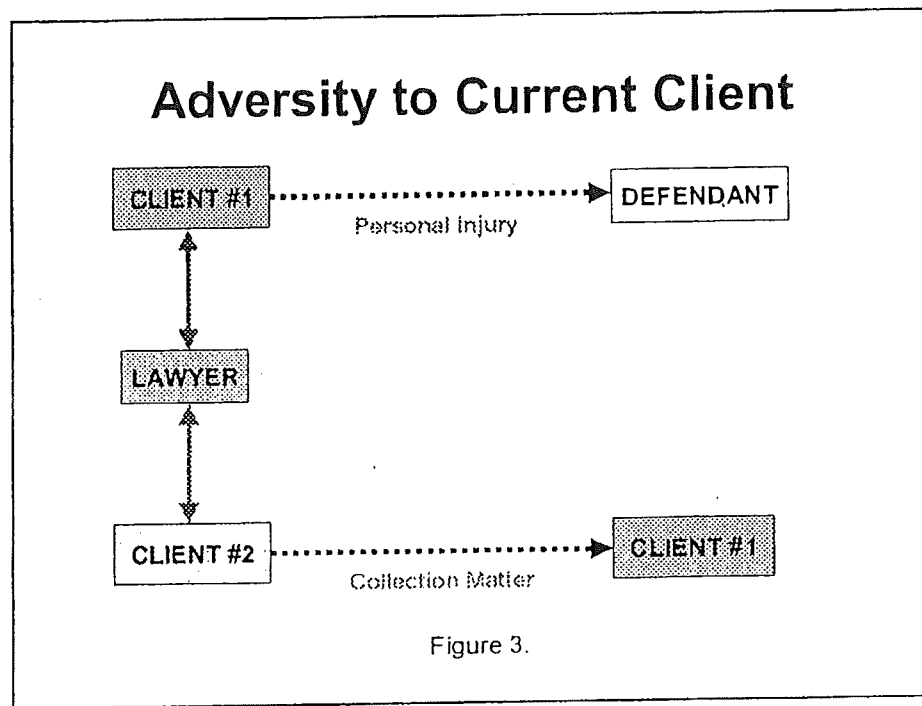
G. Applicable rules.

1. Rule 3-310(C)(1): potential conflicts
2. Rule 3-310(C)(2): actual conflicts
3. Joint-client exception to attorney-client privilege. Evid. Code § 962.

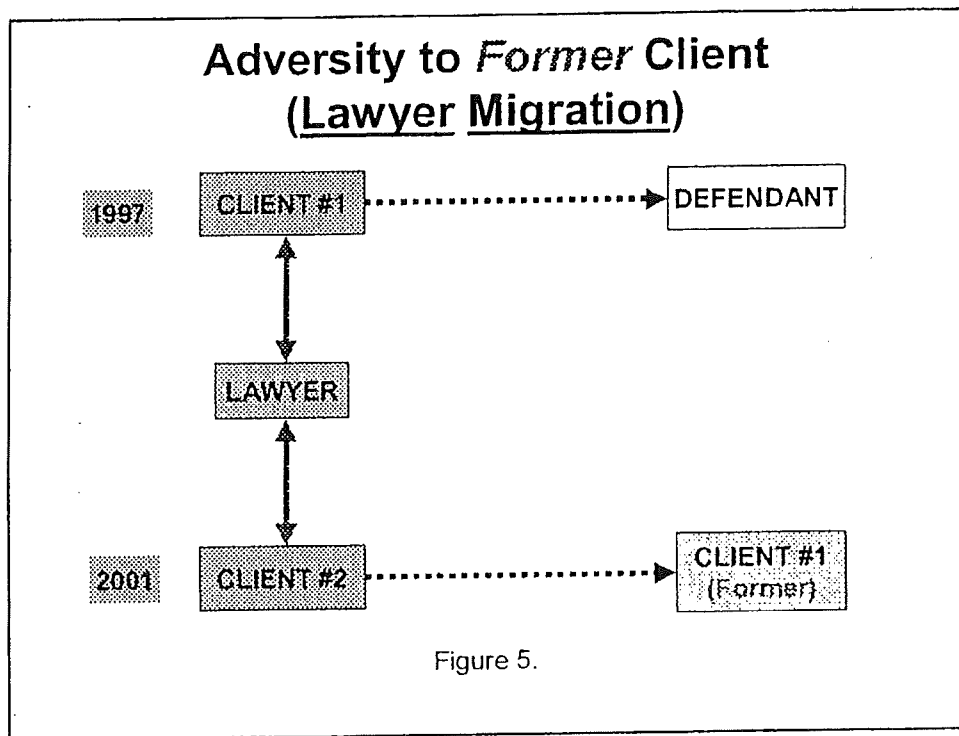
IV. REPRESENTING ONE CLIENT AGAINST A PRESENT OR FORMER CLIENT

A. BRIEF OVERVIEW & INTRODUCTION

1. Current Client. You cannot represent a client in a matter adverse to against another current client, even if the matters in which you are representing those clients are different and unrelated. Flatt v. Superior Court, 9 Cal.4th 275 (1994).



- a. Even if Lawyer has not learned any confidential information of Client #1 from the Client #1 vs. Defendant matter that is material to the Client #2 vs. Client #1 matter, Lawyer is precluded from representing Client #2 because of the duty of loyalty a lawyer owes each client.
- b. The "**hot potato**" rule prevents a lawyer from dropping a client to take on a new matter. Truck Ins. Exchange, 6 Cal.App.4th 1050, 1059, 8 Cal.Rptr.2d 228, 233 (1992).



- b. Lawyer Migration. A client has become a former client because the lawyer has migrated from one firm to another. Figure 5.
- c. Substantial Relationship Test. If Client #1 claims that Lawyer has confidential information materials to the Client #2 v. Client #1 matter, how does Client #1 prove this without having to disclose precisely what Client #1 does not want disclosed or used: the client's confidential information. The answer lies in the substantial relationship test that California has judicially adopted. Once the former client proves the former and present matter are substantially related (facts, law & lawyer's involvement), lawyer is conclusively presumed to have obtained confidential information because the client cannot prove what the lawyer knows or does not know. H.F. Ahmanson & Co. v. Salomon Bros., 229 Cal.App.3d 1445 (1991).

V. LAWYER'S INTERESTS AND RELATIONSHIPS

A. INTRODUCTION -- OVERVIEW OF LAWYER-CLIENT CONFLICTS.

1. Non-Financial Interests. Examples include:
 - a. Trial counsel as witness. **Cal. Rule 5-210.**
 - b. Sexual relations with client. **Cal. Rule 3-120.**
2. Financial Interests. Examples include:
 - a. Publication rights. **Cal. Rule 3-300.**
 - b. Business dealings with others. **Cal. Rule 3-310(B)(3).**
 - c. Business transactions with clients. **Cal. Rule 3-300.**
 - d. Acquiring ownership in a client in connection with the legal services provided to that client. **Cal. Rule 3-300**; ABA Formal Ethics Opin. 00-418 (2000)..
 - e. Gifts from a client. **Cal. Rule 4-400.**
 - f. Loans and Advances to Client. **Cal. Rule 4-210.**
 - g. Limiting malpractice liability. **Cal. Rule 3-400.**
 - h. Fee Dispute with client. See *Cal. Bus & Prof. Code §§ 6200 et seq.*, concerning mandatory arbitration of fee disputes between client and lawyer.

Contacts NCHC Conflicts Report

Conflicts search:

Search Result

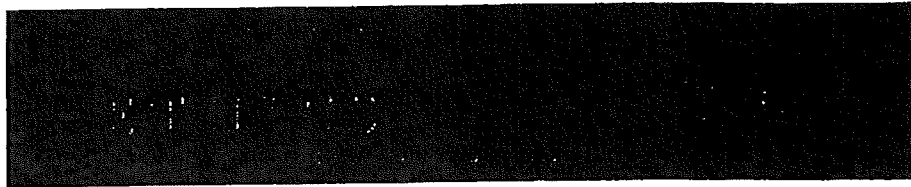
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Risky Business. . .Representing Multiple Interests

by Richard A. Zitrin

A San Francisco Attorney represents the driver-husband and passenger-wife in a simple auto accident. Now the couple is divorcing, and it's not amicable. A small Los Angeles law firm has represented an International Union and several of its Southern California locals for years; now there's a dispute between the International and one of the locals that may lead to litigation. A Riverside lawyer negotiates a contract for the sale of a business between two of his biggest clients; a year later they're accusing each other of negotiating in bad faith.

By the time these lawyers—composites based on real cases—sought help out of their conflict of interest dilemmas, it was too late.

Indeed, where a lawyer's loyalty to a particular client is any way impaired by that attorney's other loyalties or interests, withdrawal—and the loss of a valued client—may be the least that can happen. At worst is the possibility a malpractice lawsuit or even potential discipline under rule 3-310 of the California Rules of Professional Conduct.

Recognizing the Problem

The everyday practice of most firms, large and small, is replete with potential conflicts of interest. Careful practitioners must learn to spot these situations and anticipate potential problems before they occur. I advise lawyers who consult me to follow these rules:

First, think not of conflicts of interest, but of *potential* conflicts. Look at any representation situation from the point of view that there is—or could be—a conflict of interest, rather than from the perspective that there's not.

Second, think beyond "conflicts;" think in terms of "*impaired loyalty*." This phrase, taken from rule 1.7 of the American Bar Association Model Rules of Professional Conduct, suggests the lawyer ask not "do I have a conflict of interest?" or even "do I have a potential conflict?" The question becomes, "Is there *any* way—through my representation or *anything else*—in which my loyalty to Client may be impaired?"

Third, remember that, although in perhaps 99 to 100 cases a conflict will never ripen, it is impossible to predict with certainty *which* case is the 100th. The only way to protect the interests of all clients—and the law firm itself—is if preventive measures are undertaken at the inception of representation, and in *all* 100 cases.

Solving the Problem

There are many situations in which multiple clients not only can but should have the same lawyer. See rule 3-310 of the California Rules of Professional Conduct,

Discussion. But situations where the lawyer's ability to represent a client is impaired should trigger a full explanation to the client(s). A disclosure of divided loyalties will rarely, if ever, be meaningful if it merely recites the existence of the problem. At a minimum, the lawyer must also advise the client of "the actual and reasonably foreseeable adverse consequences. (Rule 3-310(A)(1), California Rules of Professional Conduct.) But for the best protection of both the clients and the law firm, I advise lawyers to take a more complete approach:

1. memorialize all communications, not just the clients' consents;
2. specifically address what happens to attorney-client confidences in the multiple representation situation;
3. spell out specific ramifications of multiple representation in an if/then format; and
4. specifically address the ground rules of what will happen in the event a conflict arises, including withdrawal.

One point—too often overlooked—which should always be a part of any disclosure is how client confidentiality will be treated. Clients have come to expect that lawyers will strictly protect every confidence, and they will still expect it, even if they are co-plaintiffs in a personal injury case, or both sides in a contract negotiations, or the parties to an "uncontested" dissolution. But allowing such parties to tell their mutual lawyer anything which can be held in confidence vis-à-vis the other party inevitably asks for trouble. It is almost impossible to maintain, for example, "his" secrets as against "her," and "hers" as against "him," with the parties feeling mistrust, knowing that the lawyer may know something they don't. This may doom efforts to cooperate before they've begun. The best solution is to agree—in advance—that, among multiple clients, there shall be no confidences. Should the client insist on blurting out a "confidence," however, the lawyer may be required to withdraw.

Say that you won't be able to explain

Explaining the multiple representation from an "if this happens, then here's what happens next" point of view may make the ramifications clearer to the client. The if/then approach is also valuable in explaining confidences, and in delineating when the lawyer must withdraw from representation.

One final point: Client consent can't cure conflicts in every—or even most—situations. The lawyer should adopt the standards suggested by rule 1.7 of the American Bar Association Model Rules of Professional Conduct: Agree to conflict waivers only where the clients' consents, viewed objectively, are reasonable, and make certain no consent is obtained where the lawyer is unable to make full disclosure.

These suggestions for preventive, anticipatory communications are neither new, nor particularly sophisticated, nor difficult to carry out. But the dangers of ignoring such communications can be severe. The rewards are ample: clients who are more efficiently served with quality legal help, and lawyers who are free to serve the needs of all their clients without fear of the consequences.

Richard A Zitlin is a San Francisco sole practitioner and an Adjunct Professor of Law at the University of San Francisco School of Law. His principle practice is advising of attorneys on issues of legal ethics and malpractice avoidance. He is a member of the State Bar of California's Committee on Professional Responsibility and Conduct, and other state, local and ABA committees on legal ethics and legal services issues.

(Article taken from Vol. 1, No. 1; Winter 1992-93 Ethics Hotliner)

*Conflict—
anyone
disclose
client info to
other even
to explain
conflict?*

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NUMBER
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WRITER'S E-MAIL ADDRESS
lcastro@nchc.com

October 16, 2003

Mr.

Mrs.

Re: Marriage of _____

Dear Mr. and Mrs.:

Mrs. has requested that this law firm represent her in a dissolution of marriage action to Mr.. However, we have advised Mrs. that we cannot represent her due to the fact that we have previously represented both you and Mrs. unless you each acknowledge and waive this conflict of interest in writing.

Please read this letter carefully and do not execute it unless you believe you fully understand it and are agreeable to its terms. Additionally, you may discuss this agreement with independent counsel of your own choosing.

First, as you know, this law firm has represented both of you in the preparation of the Family Trust dated March 5, 1996. During this representation, information of a confidential nature regarding your financial condition or other matters may have been revealed by either of you to a member of this firm which places one of you at an advantage over the other in a dissolution of marriage action. While we are not aware of any such specific information having been revealed to any member of this firm, we cannot state with certainty that such information was not revealed by one of you to a member of this firm at some time in the past.

Second, you each may have individual rights, liabilities and interests as spouses regarding support, community property, separate property, property division, taxes, alimony, and a number of other issues arising out of your marriage to one another

Mr.
Mrs.
October 16, 2003
Page 2

and/or its dissolution. By agreeing to have this firm represent Mrs. in the dissolution of your marriage to each other, each of you acknowledge and understand that this firm will be representing Mrs. and not Mr. with regard to any of these potential rights, liabilities and interests. Rather, Mr. , should he choose to retain legal counsel, will be required to retain separate counsel of his own choosing to look out for his individual interests in respect to all such rights, liabilities and interests.

Third, because this firm would be representing Mrs. only we will likely be speaking with her about confidential matters. Thus, by agreeing to have us represent Mrs. and not Mr. in a dissolution of marriage action, you each acknowledge and understand that all such communications between this office and Mrs. will be privileged and protected from disclosure to Mr.

If you are both agreeable to a future attorney-client relationship between this firm and Mrs. in a dissolution of marriage action adverse to Mr., please execute and date where indicated below. Please return one executed copy of this letter to my attention. The second copy should be retained in your files. If you have any questions or doubts about the matters discussed in this letter, feel free to call us or to consult with another attorney.

By executing this letter below, you each: (1) acknowledge that we have disclosed our past representation of the other party in another matter; and (2) consent to our representation of Mrs. in a dissolution of marriage action to Mr.

I apologize for the formality of this letter, but the law requires this sort of formality and experience teaches us that it is better to be clear about the terms of the engagement at the outset.

Very truly yours,

NORDMAN, CORMANY, HAIR & COMPTON

William H. Hair

LMC:lmc

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Mr.
Mrs.
October 16, 2003
Page 3

I HAVE READ THIS LETTER AND I AGREE TO BE BOUND BY ITS TERMS. I HAVE BEEN INFORMED OF AND WAIVE ANY CONFLICT OF INTEREST ARISING FROM THE FIRM'S REPRESENTATION OF MYSELF AND MR. IN MATTERS RELATING TO THE CREATION OF OUR FAMILY TRUST. I UNDERSTAND THAT I HAVE THE RIGHT TO HAVE THIS AGREEMENT REVIEWED BY INDEPENDENT COUNSEL.

Date: _____

Mrs.

I HAVE READ THIS LETTER AND I AGREE TO BE BOUND BY ITS TERMS. I HAVE BEEN INFORMED OF AND WAIVE ANY CONFLICT OF INTEREST ARISING FROM THE FIRM'S REPRESENTATION OF MYSELF AND MRS. IN MATTERS RELATING TO THE CREATION OF OUR FAMILY TRUST. I CONSENT TO THE FIRM'S REPRESENTATION OF MRS. IN A DISSOLUTION OF MARRIAGE ACTION TO ME. I UNDERSTAND THAT I HAVE THE RIGHT TO HAVE THIS AGREEMENT REVIEWED BY INDEPENDENT COUNSEL.

Date: _____

Mr.

SECOND

SUPPLEMENTAL

OUTLINE