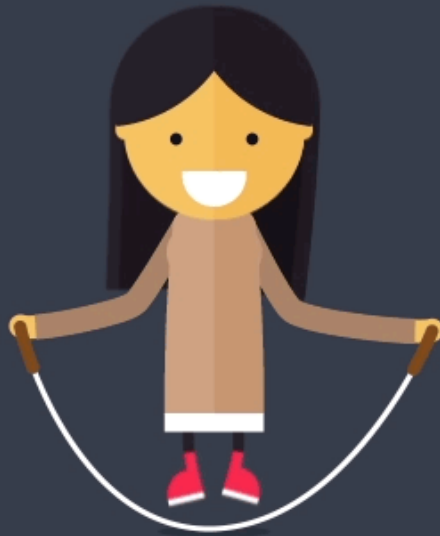



Keep Calm and Govern Yourself Accordingly



D. Nichole Davis, Esq.
Risk Management Director
Lawyer Mentoring Program Administrator
South Carolina Bar

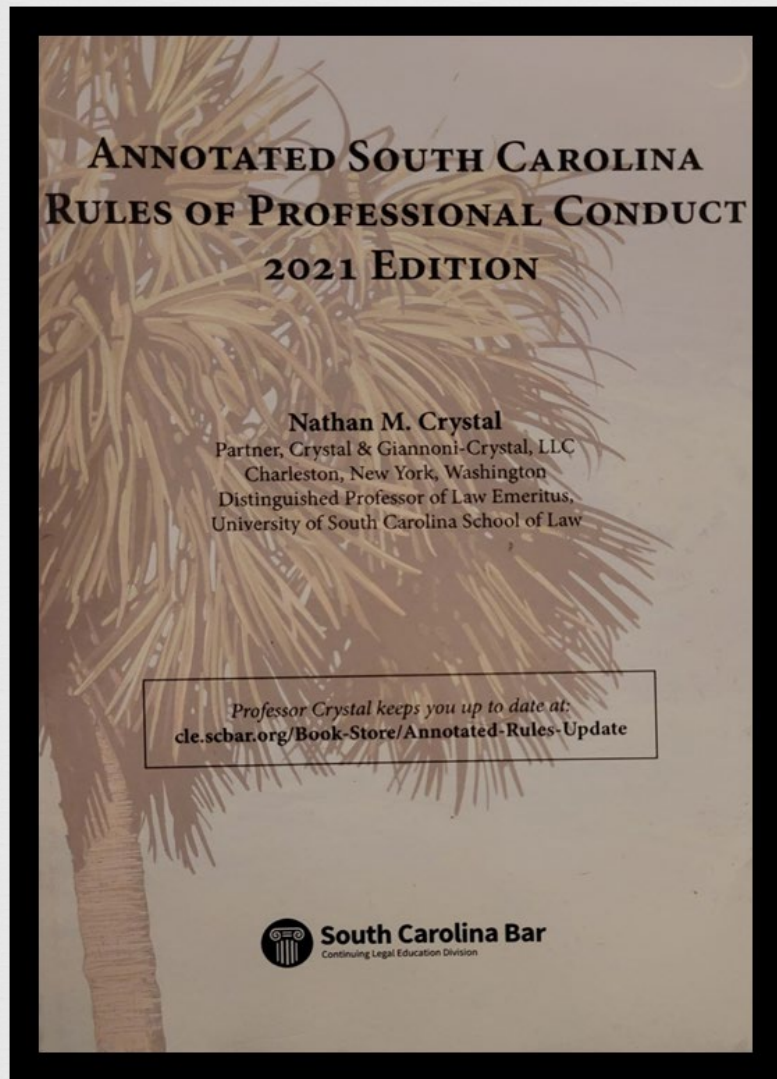
Let's Jump In!!



A man in a dark suit, white shirt, and blue tie is speaking at a podium. He has his eyes closed and a slight smile. The background is a solid blue color. A microphone is positioned in front of him. In the bottom right corner, the letters "abc" are visible.

**Believe it or not, lawyers
have ethic rules.**

Ethical best practices include...





1.0(e) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association, or in a legal services organization; lawyers employed in the legal department of a corporation, government, or other organization; and lawyers associated with an enterprise who represent clients within the scope of that association.

Rule 1.13: Organization as a Client



"WHO'S YOUR CLIENT?"



Pursuant to 1.13(a):

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.



**I'M NOT YOUR
LAWYER**

**BUT I DID STAY AT A HOLIDAY
INN EXPRESS LAST NIGHT**



What Communication is Protected?



Rule 1.6: Confidentiality



(a) A lawyer shall not reveal information **relating to the representation of a client** unless the client gives **informed consent**, the disclosure is **impliedly authorized** in order to carry out the representation or **the disclosure is permitted by paragraph (b)**.

There are 8 exceptions to the rule.

1. To prevent the client from committing a criminal act;
2. To prevent reasonably certain death or substantial bodily harm;
3. To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
4. To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

5. To secure legal advice about the lawyer's compliance with these Rules;
6. To respond to allegations in any proceeding concerning the lawyer's representation of the client;
7. To comply with other law or a court order; or
8. To detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Going Up the Chain of Command



(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

DUNDER MIFFLIN, INC.

PAPER COMPANY



CFO



VP of Sales



Regional
Manager



Asst. Regional
Manager



Asst. to the
Regional Manager



There is an emergency
exception.

(c) Except as provided in paragraph (d), if,

(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, **then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.**

(e) A lawyer who reasonably believes that he or she has been **discharged** because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who **withdraws** under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to **assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.**

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer **shall** explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Rule 4.3: Dealing With Unrepresented Person

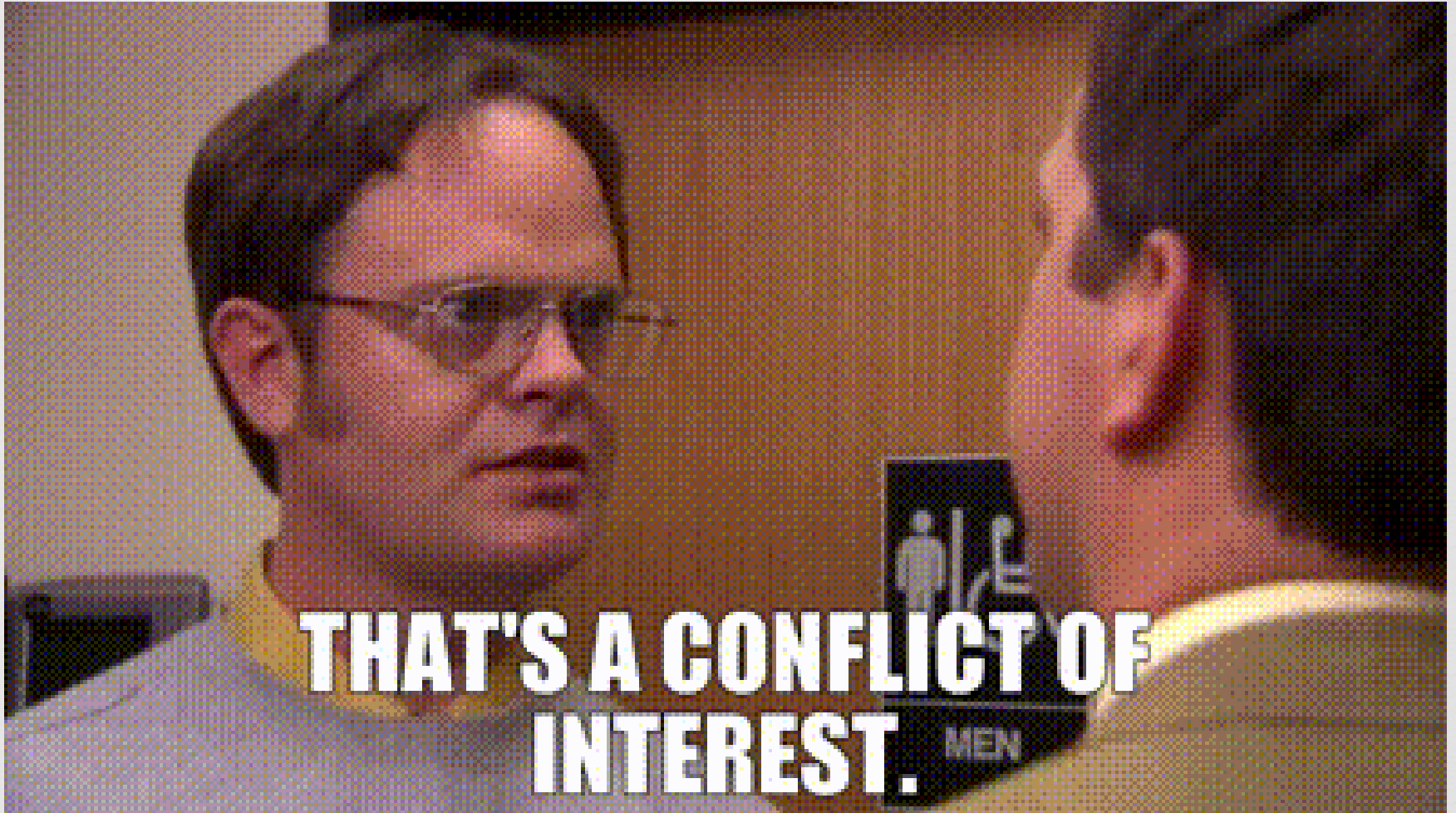


You never know what you're going to get.

In dealing on behalf of a client with a person who is not represented by counsel, a **lawyer shall not state or imply that the lawyer is disinterested.** When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer **shall make reasonable efforts to correct the misunderstanding.**

(g) A lawyer representing an organization **may** also represent any of its directors, officers, employees, members, shareholders or other constituents, **subject to the provisions of Rule 1.7.**

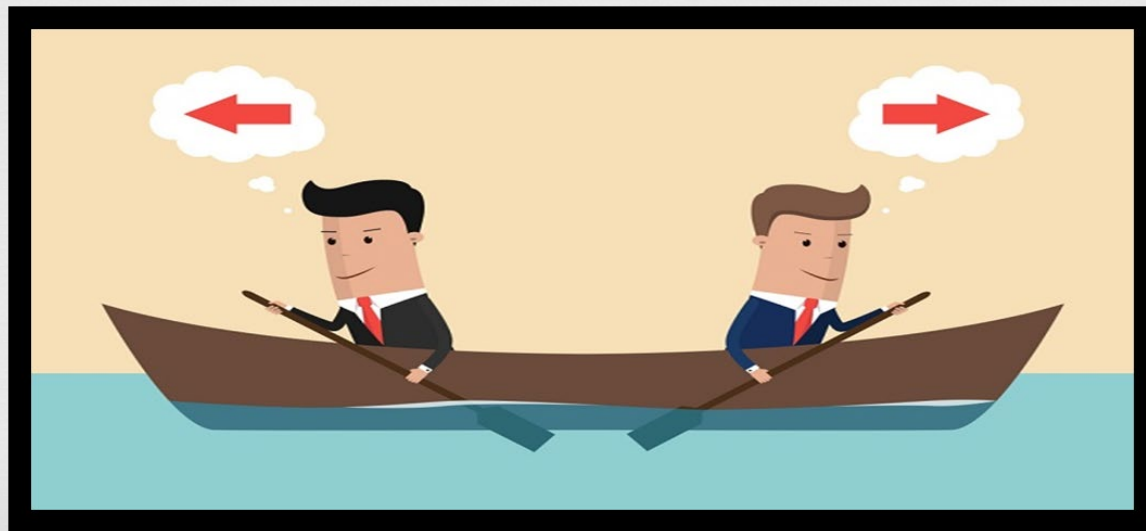




Rule 1.7: Current Clients

Establishes two types of
“concurrent” conflicts

1. “Direct Adversity”
2. “Material Limitation”



The mechanism for analyzing and pursuing client consent to a concurrent conflict – Rule 1.7(b)

1. Lawyer meets “reasonable belief” threshold;
2. Representation not prohibited by law;
3. Clients are not adverse in the same litigation; **AND**
4. Lawyer obtains clients’ “informed consent”

Informed Consent



Obtaining Informed Consent

1. Should be in writing; and
2. Should include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved.

Right to REVOKE





A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict.

LITERARY RIGHTS

Rule 1.8(d)



1.8(d) Prior to the conclusion of representation of a client, a lawyer shall **not** make or negotiate an agreement giving the lawyer **literary or media rights** to a portrayal or account based in substantial part on information relating to the representation.



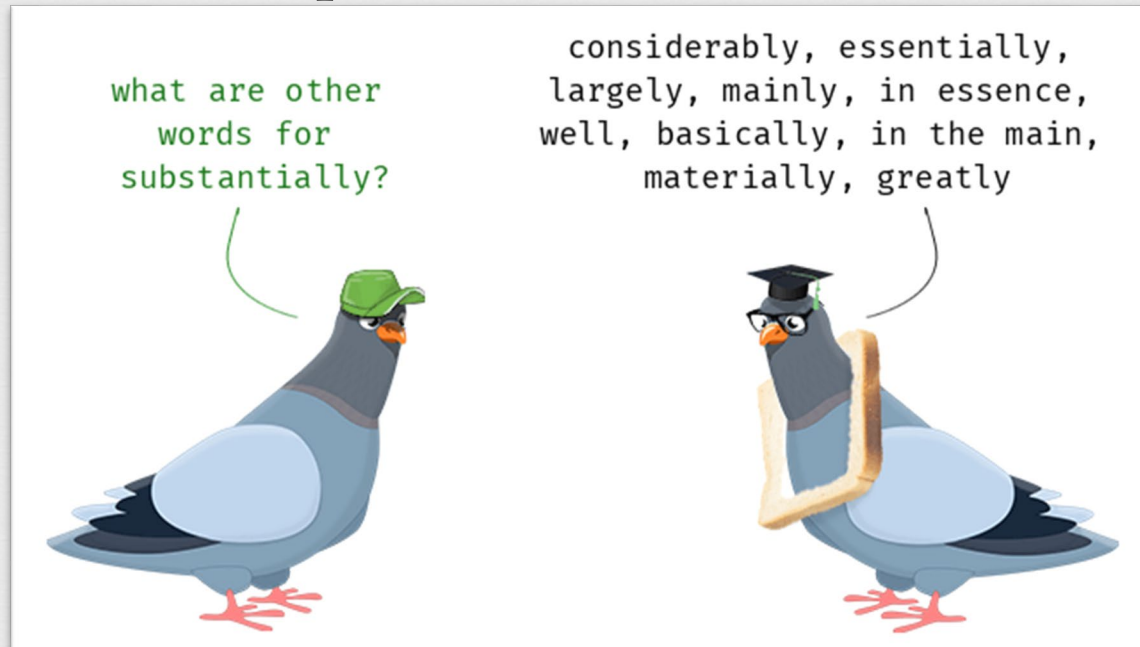
1.8(k) A lawyer related to another lawyer as parent, child, sibling or spouse shall not personally represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer unless the client gives informed consent.

Rule 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a **substantially related** matter in which that person's interests are **materially adverse** to the interests of the former client unless the former client gives informed consent, confirmed in writing.

What is “substantially related”?

Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.



Rule 1.10: Imputations of Conflicts of Interests – General Rule

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9, unless:

- a) the prohibition is based on a personal interest of the prohibited lawyer, and
- b) there is not a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(e) A lawyer representing a client of a public defender office, legal services association, or similar program serving indigent clients shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter if:

(1) the lawyer is **screened** in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and

(2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c).

What does it mean for a lawyer to be “screened”?

According to 1.0(n), "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

Rule 1.11: Special Conflicts of Interest for Former and Current Government Employees

Former government lawyers shall not represent a client in connection with a matter in which the lawyer participated personally and substantially while employed by the government unless the former agency gives its informed consent, confirmed in writing.

When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

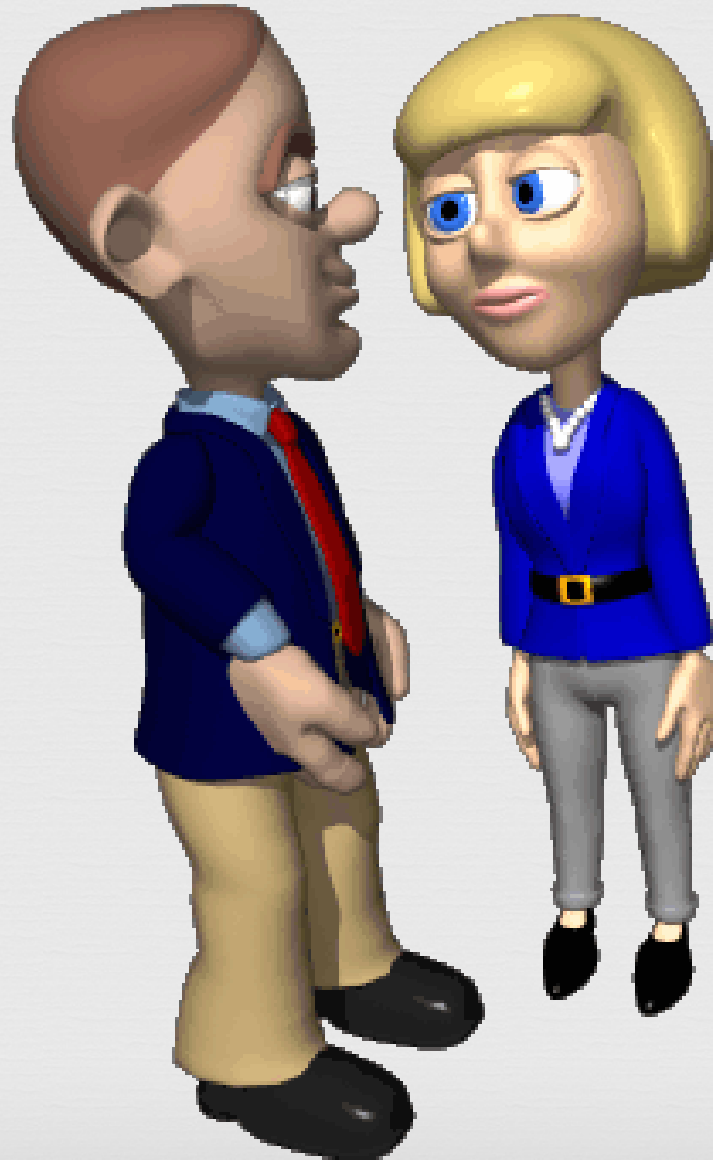
Basic Approach to Conflicts

- Identify the client(s).
- Determine whether a conflict exists.
- If there is a conflict:
 - Do you reasonably believe you can provide competent and diligent representation to each affected client?
 - Is it consentable?
- Has each affected client given informed consent?
- Is it necessary to decline or withdraw from the representation?

Rule 4.2: Communication with Person Represented by Counsel



Rule 8.4: Misconduct



Rule 8.3: Reporting Professional Misconduct



Never attribute to malice that
which is adequately explained by
stupidity.

HANLON'S RAZOR

Let's switch gears.



WHAT'S GOING ON?



**South
Carolina
Bar**

Professional Liability Committee



Chair: Charles Kinney



PREFERRED INSURANCE PROVIDERS



Swiss Re

Corporate Solutions

The
Hanover
Insurance Group®



PEARL INSURANCE®

Professional Responsibility Committee



Chair: Barbara Seymour



HOD Meeting on 5/12/22



Rule 5.5: Unauthorized Practice of
Law; Multijurisdictional Practice of
Law



Pending Petitions



1. Advertising (filed 4/28/20)
2. Rule 1.15(e) (filed 4/26/22)
3. Rule 5.5 (filed 8/24/22)

Upcoming HOD Items



- œ Keyword Advertising Proposal
- œ Rule 5.4 Proposal



Ethics Advisory Committee



Chair: Amie Clifford



Ethics Advisory Opinion

22-01



The Ethics Advisory Committee addressed whether a lawyer has an ethical obligation to maintain the confidentiality of the information provided by an individual since it was provided in the course of seeking legal advice.

Ethics Advisory Opinion

22-02



The Ethics Advisory Committee addressed whether an attorney violates Rule 7.4(b) by holding the law firm and its attorneys out as experts by virtue of the website's name if the attorney or law firm pays for a featured placement on Expertise.com.

Ethics Advisory Opinion

22-03



The Ethics Advisory Committee addressed whether the inquirer has a duty, as an officer of the court, to report this event to the appropriate authorities to prevent the University president and possibly himself, since he presently has no official institutional capacity from committing a criminal act (*e.g.*, conspiracy to cover-up possible criminal activity) pursuant to Rule 1.6(b)(1) or might the information now be considered generally known under Rule 1.9(c)(1).

Ethics Advisory Opinion

22-04



The Ethics Advisory Committee addressed whether a lawyer could charge an amount to cover administrative costs associated with stop-payment fees and trust account check reissuance and re-mailing fees for checks that remain outstanding for more than 30 days after issuance.

Ethics Advisory Opinion

22-05



The Ethics Advisory Committee addressed whether the inquirer could continue to represent his client in a probate matter if he knows that his client forged the plaintiff's signature on a beneficiary receipt/release, notarized that forged signature, and then submitted the receipt/release to the probate court to represent that the plaintiff had received the distributions to which she was entitled and released the estate and client from any liability or claims.

Ethics Advisory Opinion

22-06



The Ethics Advisory Committee addressed whether the inquirer could limit the scope of representation to assisting in the preparation of pleadings and whether the inquirer would be required to include a disclosure such as “Prepared with the Assistance of Counsel” on any documents that inquirer helped draft.



Lawyer Mentoring Program

A program of the South Carolina Supreme Court

- 4 hours of CLE credit, including 2 hours of ethics.
- Free mentoring luncheons. (1 hour of CLE credit.)
- Speed mentoring events.

connect.scbar.org/mentoring

Have an ethics question?!?!



Nichole Davis

ndavis@scbar.org

803-576-3820

Everything we discuss is...



QUESTIONS



