

Ethical Issues in Personal Injury Matters

WILLIAM J. PRICE

ELK AND ELK CO. LTD

330-618-1480 WPRICE@ELKANDELK.COM

WHY DO YOU NEED THIS PROGRAM?

(BESIDES CREDIT)



PERCEPTION OF LAWYERS

It is a brave new world
with clients...

Here is why.....

“Can you stiff your divorce lawyer?”

“What to do when you are mad at your lawyer.”

“Tips for filing a complaint against an attorney.”

“What does it take to get an attorney disbarred?”







Goal of today

Ethical Pitfalls with any Personal Injury Case;

Communication with the client - Meeting the ethical standards;

Co-Counseling Cases- what you need to know;

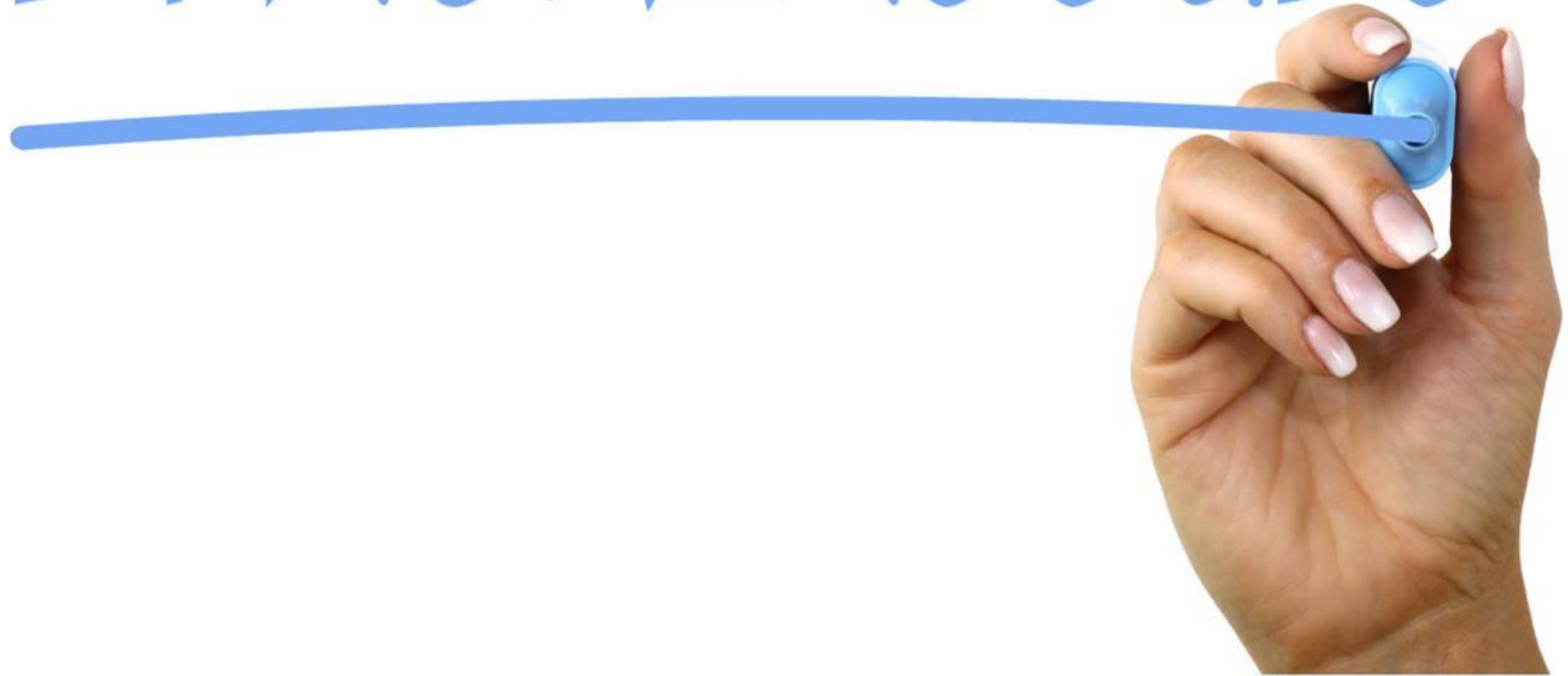
Classical Disciplinary Issues;

Disagreeing with a client;

When you need the client's authority;

A GOAL
WITHOUT A PLAN
IS JUST A WISH

ETHICAL ISSUES





Co-Counseling cases - What you need to know.





BUSTED

You know what you did.





Fee Contract

CONTRACT

This Agreement contain the entire agreement of the parties with respect to the Agreement. All parties shall act to complete the contract described within a reasonable time. All parties shall act to complete the contract described within a reasonable time. All parties shall act to complete the contract described within a reasonable time. All parties shall act to complete the contract described within a reasonable time.



If you are investigated...
Disciplinary Counsel
always asks for it.

O.R.C. 4705.15 15 (B)

If an attorney and a client contract for the provision of legal services in connection with a claim that is or may become the basis of a tort action and if the contract includes a contingent fee agreement, that agreement shall be reduced to writing and signed by the attorney and the client. The attorney shall provide a copy of the signed writing to the client.

What is in your fee
agreement?

Items to be addressed in fee contract

1. Fee percentage:
 1. Identify through all stages;
 2. Explain what contingency means and when fee is earned;
2. Expenses:
 1. Identify expenses typically incurred;
 2. Costs all way through trial - appeal as well;
 3. How they will be paid;
3. Terms of agreement:
 1. Communication with client;
 2. Explain how the client and lawyer expect to work together;
 3. Duty to Cooperate;
 4. Scope of representation;
 5. Client's decisions
4. Termination of relationship:
 1. Quantum Meruit - Conversion Clause

Conversion Clause

Converts the fee due under the fee contract to a alternate fee if the contract is terminated before the contingency occurs.

Typically, this is your hourly and staff to the date of the termination.

Include your expenses.

Typical Condition - there must be an offer on the table.

Careful- if the hourly is seen as a penalty and forces the client to settle, then you may be in hot water.

Items to be included in fee contract

Ambiguities: always resolved against the client.

Key: Client must fully understand the terms and agree to them.

How does the client fully
understand?

What needs to be in the letter:

Date discussed the contract;

Terms of the agreement - highlight fee and expenses;

Communication with your office;

Disagreement or confusion over representation:

- Give them the steps of what they are too do;
- Why they need to ask questions about confusion:

Through out the case:
send them more letters.

Whether the fee is reasonable

Did you adequately inform the client of the likelihood of recovery?

- Pros and Cons of the case?

Did you adequately inform the client of the amount of recovery?

- What are the damages in the case ?

Is there documentation of this?

Co-Counsel Relationship

HOW TO PROTECT YOURSELF.

How can a lawyer divide fees with another lawyer?

ORPC 1.5 (e)(1): the division of fees is in proportion to the services performed by each lawyer,

OR each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client.

What does “assume joint responsibility for representation mean”?

Opinion 88-26 and 2003-3 gives guidance.

A LAWYER “ASSUMES RESPONSIBILITY” WHEN THE
LAWYER USES HIS OR HER LEGAL JUDGMENT,
EXPERTISE, OR EXPERIENCE ON BEHALF OF THE CLIENT.

Here is the ultimate
question....

Did the lawyer participate in the case by using his/her legal skills or independent judgment?

Fee Agreement – what
needs to be in there?

ORCP 1.5 (e)(2)

REQUIREMENT ONE: Written consent from client after disclosure of identity of each lawyer;

REQUIREMENT TWO: Fees are divided;

REQUIREMENT THREE: HOW THE FEES ARE DIVIDED AS SET FORTH IN 1.5 (e) (1)

- Proportion of services performed?
- OR- assumption of responsibility?

Technical Issues:

All parties must sign the fee agreement.

All parties must have a copy of the fee agreement.

Fee agreement must reflect O.R.C. 4705.15

End must sign distribution statement.

What is necessary to assume joint responsibility?

SOL;

Basic facts about the case;

Strengths and Weaknesses and how affects the objective;

Dates/Times about case while in litigation;

Answer any basic questions about the case;

PIT FALLS OF CO-COUNSEL IN PERSONAL INJURY CASES

Experience.

- Issue spotting and ability to handle.
- Client Management-
 - Managed by Secretary or Paralegal or by the Attorney?

Money:

- Fund experts and litigation costs.
- Product Liability Experts: \$100k in costs.
 - More than their pay roll for year.
- Largest cost of Litigation: copy costs.

Trial Experience.

- Not many trials now, but.....

Communications - Basics to Overcome Typical Problems

Keeping the client reasonably informed

“The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.”

- Comment 5, Rule 1.4;

Objective – what is it?



Life Cycle of the Case:

Step One: Outline Objective, how to achieve it, what problems you see right now as to achieving the objective

Step Two: As evidence is accumulated, how does it impact the case:

- Photographs;
- Medical Records: Comments in records
- Experts:
- Do not forget typical issues : Facebook, social and economic issues, etc.

Step Three: Settlement Process

When does the communication need to be in writing?

Easy Topics: Fee Contract, Settlement Statement, Settlement.

Difficult Topics: Settlement Authority, Issues in Case Affecting Representation

Always follow up with a
letter when...

GUT TELLS YOU TOO.

Any time you and the
client have a
disagreement.



Life Cycle of the Case

ROAD MAP OF THE CASE

Topics to discuss with the client

Explain the work you are doing on the case;

What is the future next steps;

Review with the client the evidence to date and how impact case;

Provide the positives and negatives on how it will affect the objective in the case;

Disagreement with the Client

What to keep in mind when you disagree with client.

Control the Issues:

- Accepting offers and rejecting;
- Principle v. Monetary Reward;

Inform the Client of all Ramifications;

Consequences are key;

When to terminate the representation;

Classic Disciplinary Issues in Personal Injury Cases

When you need to obtain informed consent from client

Making Demands, Settlement Authority, Finalizing the Case;

Dismissing the case - even voluntarily;

Failing to disclose information which would impact client's informed decision on a case

Filing Suit;

Moving forward with Trial;

When can you contact
the potential client
directly?



ALLOWED COMMUNICATION

The person contacted is a lawyer;

The person contacted has a family relationship with the lawyer;

The person contacted has a close personal relationship with the lawyer;

The person contacted has a prior professional relationship;

Question 1.

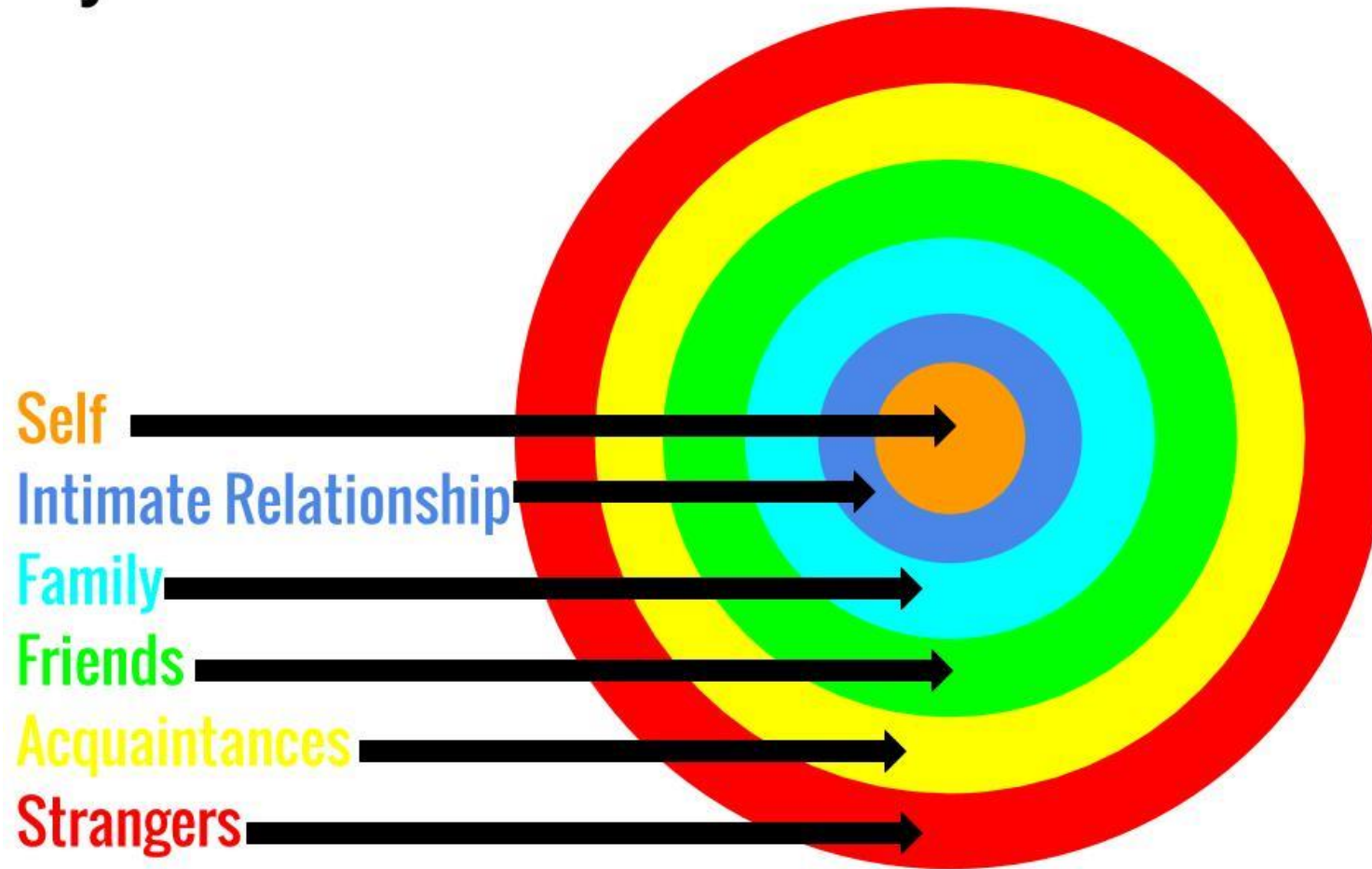
WHAT IS A FAMILY RELATIONSHIP?

Are Their If My	Parent	Grand Parents	2 x Grand Parents	3 x Grand Parents	4 x Grand Parents	5 xGrand Parents	6x Grand Parents	7 x Grand Parents	8 x Grand Parents	9 x Grand Parents	10 x Grand Parents
Parent	Sibling	Niece or nephew	Grand Niece or nephew	2 x Grand Niece or nephew	3 x Grand Niece or nephew	4 x Grand Niece or nephew	5 x Grand Niece or nephew	6 x Grand Niece or nephew	7 x Grand Niece or nephew	8 x Grand Niece or nephew	9 x Grand Niece or nephew
Grand Parents	Niece or nephew	1st cousin	1st cousin 1 x removed	1st cousin 2 x removed	1st cousin 3 x removed	1st cousin 4 x removed	1st cousin 5 x removed	1st cousin 6 x removed	1st cousin 7 x removed	1st cousin 8 x removed	1st cousin 8 x removed
2 x Grand Parents	Grand Niece or nephew	1st cousin 1 x removed	2nd cousin	2nd cousin 1 x removed	2nd cousin 2 x removed	2nd cousin 3 x removed	2nd cousin 4 x removed	2nd cousin 5 x removed	2nd cousin 6 x removed	2nd cousin 7 x removed	2nd cousin 8 x removed
3 x Grand Parents	2 x Grand Niece or nephew	1st cousin 2 x removed	2nd cousin 1 x removed	3rd cousin	3rd cousin 1 x removed	3rd cousin 2 x removed	3rd cousin 3 x removed	3rd cousin 4 x removed	3rd cousin 5 x removed	3rd cousin 6 x removed	3rd cousin 7 x removed
4 x Grand Parents	3 x Grand Niece or nephew	1st cousin 3 x removed	2nd cousin 2 x removed	3rd cousin 1 x removed	4th cousin	4th cousin 1 x removed	4th cousin 2 x removed	4th cousin 3 x removed	4th cousin 4 x removed	4th cousin 5 x removed	4th cousin 6 x removed
5 xGrand Parents	4 x Grand Niece or nephew	1st cousin 4 x removed	2nd cousin 3 x removed	3rd cousin 2 x removed	4th cousin 1 x removed	5th cousin	5th cousin 1 x removed	5th cousin 2 x removed	5th cousin 3 x removed	5th cousin 4 x removed	5th cousin 5 x removed
6x Grand Parents	5 x Grand Niece or nephew	1st cousin 5 x removed	2nd cousin 4 x removed	3rd cousin 3 x removed	4th cousin 2 x removed	5th cousin 1 x removed	6th cousin	6th cousin 1 x removed	6th cousin 2 x removed	6th cousin 3 x removed	6th cousin 4 x removed
7 x Grand Parents	6 x Grand Niece or nephew	1st cousin 6 x removed	2nd cousin 5 x removed	3rd cousin 4 x removed	4th cousin 3 x removed	5th cousin 2 x removed	6th cousin 1 x removed	7th cousin	7th cousin 1 x removed	7th cousin 2 x removed	7th cousin 3 x removed
8 x Grand Parents	7 x Grand Niece or nephew	1st cousin 7 x removed	2nd cousin 6 x removed	3rd cousin 5 x removed	4th cousin 4 x removed	5th cousin 3 x removed	6th cousin 2 x removed	7th cousin 1 x removed	8th cousin	8th cousin 1 x removed	8th cousin 2 x removed
9 x Grand Parents	8 x Grand Niece or nephew	1st cousin 8 x removed	2nd cousin 7 x removed	3rd cousin 6 x removed	4th cousin 5 x removed	5th cousin 4 x removed	6th cousin 3 x removed	7th cousin 2 x removed	8th cousin 1 x removed	9th cousin	9th cousin 1 x removed
10 x Grand Parents	9 x Grand Niece or nephew	1st cousin 9 x removed	2nd cousin 8 x removed	3rd cousin 7 x removed	4th cousin 6 x removed	5th cousin 5 x removed	6th cousin 4 x removed	7th cousin 3 x removed	8th cousin 2 x removed	9th cousin 1 x removed	10th cousin

Question 2.

WHAT IS A CLOSE PERSONAL RELATIONSHIP?

My Personal Boundaries



HYPOTHETICAL - A

TRADITIONAL CLIENT

HYPOTHETICAL - B

FRIEND

RECOMMENDS YOU

HYPOTHETICAL - C.

LAWYER REFERS A
CLIENT TO YOU

HYPOTHETICAL - D

FORMER CLIENT RECOMMENDS

What is solicitation?

DEFINITION

O.R.P.C. 7.3 cmt. states “solicitation is a type of advertising communication initiated by a lawyer that is directed to a specific person and includes an offer to provide legal services.”

*Shapiro v. Kentucky Bar
Assoc.* (1988), 486 U.S.
466

Reasons why the Bar takes this position

7.3 States:

Private importuning of a trained advocate in direct personal communication;

Private citizen v. Trained Advocate

Assumption: client overwhelmed by the circumstances

Difficult to evaluate alternatives to representation.

Lawyer will convince them immediately

Possible undue influence/intimidation/over-reaching.

Shapiro:

Lawyer is a coercive presence

Lawyer will immediately pressure the client to say yes.

SOCIAL MEDIA SITES



HYPOTHETICAL - E

Client is represented by
counsel and calls you...

WHAT DO I DO?

CLIENT BELIEVES
THERE IS A
RELATIONSHIP
WHEN...

**THERE IS A
RELATIONSHIP.**

WHEN DECLINE RELATIONSHIP.

STATUTE DATES;

DOCUMENT DATE OF MEETING; CONTENT DISCUSSED; AND REASONS WHY NOT MEETING;

NO ATTORNEY RELATIONSHIP/AGREEMENT

ANY DOCUMENTS REVIEWED - RETURNED

RECOMMEND SEEK OTHER COUNSEL

ALWAYS IN A LETTER.

THE LETTER IS THE MOST
IMPORTANT WEAPON AGAINST
ANY POTENTIAL CLIENT.
