OHIO ASSOCIATION for JUSTICE

TRIAL LAWYERS HELPING PEOPLE

2019 Annual Convention

May 1st – 3rd

Professional Conduct Session

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Professionalism

Charles Kettlewell, Esq.

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Professional Conduct Session

Trending Litigation and Office Ethics

Gary Leppla, Esq.

Litigation and Office Ethical Trip Wires….

Ohio Association for Justice
Annual Convention
2:30 pm to 3:15 pm
May 3, 2019
Columbus, Ohio

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I. Conflicts of Interest- the Clarified Landscape

A. Current Clients, Ohio Prof. Conduct Rule 1.7 :

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if ….(1) the representation … will be **directly adverse** to another current client; (2) there is a **substantial risk** that the lawyer's ability … will be **materially limited by the lawyer's responsibilities to another client**, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue …unless …: (1) … able to provide competent and diligent representation to each …..; (2) each …. **gives informed consent, confirmed in writing;** (3) the representation is not precluded by division (c) of this rule.

(c) Even if …. lawyer shall not accept …. representation if …..: (1) ….. **prohibited by law**; (2)… assertion of a claim by **one client against another client…. in the same proceeding.**

B. Former Clients, Prof. Conduct Rule 1.9:

(a) Unless the former client gives **informed consent, confirmed in writing**, 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 …… materially adverse** to the interests of the former client.

(b) Unless the former client gives **informed consent, confirmed in writing**, ….. in which a **firm with which the lawyer formerly was associated** had previously represented a client where both of the following apply: (1) the interests of the client are

materially adverse to that person; (2) the lawyer had **acquired information** about the client that is…. material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter **shall not** thereafter do either of the following: (1) **use information relating to the representation** to the disadvantage of the former client ……

C. Board of Professional Conduct 2019-01 Advisory Opinion:

"In evaluating the potential conflicts …. a lawyer must consider if the matters are directly adverse and whether there is a substantial risk that the lawyer's ability to effectively represent a client will be materially limited by the lawyer's responsibilities ….[T]he representation of one client is considered directly adverse and a conflict when the client is asserting a claim against another client of the lawyer. Although the Ohio Rules of Professional Conduct permit a lawyer, through informed written consent, to accept … material limitation conflict, the **Board recommends that this type of representation be avoided** ….. In the event a lawyer does obtain informed written consent, a lawyer is still required to provide competent and diligent representation to each affected client. ***A lawyer may not withdraw from representation of a current client in order to undertake representation of the adverse party, even if the matters are unrelated***. …. However, if the new matter is not the same or a substantially related matter, the lawyer may represent the former adverse party. Finally, a lawyer who is unable to represent a prospective client due to a conflict may, in good faith, recommend another lawyer ……A lawyer should not refer a potential client to a person the lawyer believes to be incompetent or dishonest."

D. Withdrawn 1988 Advisory Opinion: Per 2019 opinion: Withdrawn Adv. Op. 1988-24 contained a question about whether a lawyer may request fees for work completed prior to withdrawal. The Board has declined to address that question in the body of this opinion because the Board does not have advisory authority related to matters of state law and does not find it ethically appropriate for a lawyer to withdraw from representation of a current client for the sole purpose of taking on representation of another, potentially more profitable, client. Nevertheless, the Board cautions lawyers that there is Ohio case law which finds that if a lawyer does not see a matter to conclusion and voluntarily withdraws without just cause, then a breach of contract has occurred under Ohio law, whether the contract's payment terms were for an hourly rate or a contingent fee. W. Wagner & G. Wagner Co., L.P.A. v. Block, 107 Ohio App.3d 603, 669 N.E.2d 727 (6thDist. Erie County 1995). Per the court in W. Wagner, the attorney cannot recover unless he or she had good cause to withdraw. Id.

E. Wrongful Death Settlements, Conflicts inherent:

Presume the Executor/Administrator, empowered to bring claim for beneficiaries, is also a claimant, as may be family members of personal representative. Advocacy issues before Probate Court upon settlement, absent agreement of the parties, may inherently create a conflict.

1. R.C. 2125.02: Parties-Damages

(A)(1) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably

presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent.

…….

(C) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

2. R.C. 2125.03: Distribution to beneficiaries

(A)(1) The amount received by a personal representative in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code, whether by settlement or otherwise, shall be distributed to the beneficiaries or any one or more of them. **The court that appointed the personal representative**, except when all of the beneficiaries are on an equal degree of consanguinity to the deceased person, s**hall adjust the share of each beneficiary in a manner that is equitable, having due regard for the injury and loss to each beneficiary resulting from the death** and for the age and condition of the beneficiaries. If all of the beneficiaries are on an equal degree of consanguinity to the deceased person, the beneficiaries may adjust the share of each beneficiary among themselves. If the beneficiaries do not adjust their shares among themselves, the court shall adjust the share of each beneficiary in the same manner as the court adjusts the shares of beneficiaries who are not on an equal degree of consanguinity to the deceased person.

F. Who do you represent? Wrongful death beneficiaries or Executor?

II. Ethical Issues raised by Use of Technology, Cloud Storage, etc. ….obligations if there is a breach….report, inform, repair?

A. Hackers, "*Iran and China….*" ***"Just because you're paranoid doesn't mean they aren't after you."*** *— Joseph Heller, Catch-22*

B. Facebook, social media:

1. Social media risks: British Parliament, *Commerce Select Committee*, attacks Facebook: *The blistering report concludes the committee's work, which started as a study of how social media can be manipulated to influence elections like Britain's 2016 vote to exit the European Union, but became a closer examination of Facebook's business practices. The committee held several hearings related to Facebook's relationship with Cambridge Analytica, the voter-targeting firm that gained access to 87 million Facebook users.*

2. Other Facebook problems: New Jersey lawyers allegedly caused a paralegal to "friend" the plaintiff in a personal injury case so they could access information on his Facebook page that was not available to the public…..*The "friend" request, made "on behalf of and at the direction of" the lawyers, "was a ruse and a subterfuge designed to gain access to non-public portions of [the] Facebook page for improper use" in defending the case, alleges the NJ Office of Attorney Ethics.*

3. NY Times 2/25/19: Report: Apps are sending sensitive health and other data to Facebook ….*One example detailed by the Journal shows how a woman would track her period and ovulation using an app from Flo Health. After she enters when she last had her period, Facebook software in the app would send along data, such as whether the user may be ovulating.*

The Wall Street Journal's testing firm found that the data was sent with an advertising firm… ID can be matched to a device or profile….Facebook says it doesn't allow, but it did occurred

C. HIPAA concerns in storing client records

D. Risks of New Drivers License program- storage of birth certificates, etc.

E. Hotel Data Breaches

F. Phishing, Extortion, Bots…exploiting and creating fear…*HOW DID THEY GET ONE OF MY PASSWORDS?*

G. Increased filters, change passwords, change e mail addresses?

H. Staffers who stumble into costly mistakes

I. Your duties pre-hack, during hack, and post hack, duty to be "reasonable" and familiar, technical advisors on speed dial: New ABA View: Lawyers' Obligations After an Electronic Data Breach or Cyberattack,

ABA Formal Opinion 483, October 17, 2018:

"Even lawyers who make 'reasonable efforts to prevent the . . . unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client,' …. [must] stay abreast of changes in technology, and …. properly supervise other lawyers and third-party electronic-information storage vendors, may suffer a data breach. When they do, they have a duty to notify clients of the data breach ….. in sufficient detail to keep clients 'reasonably informed' and with an explanation 'to the extent necessary to permit the client to make informed decisions regarding the representation.'

J. OBLIC: REPORT IT TO YOUR INSURANCE CARRIER IMMEDIATELY…..

https://www.oblic.com/wp-content/uploads/2016/08/Cyber-Liability-for-Lawyers-Summer-2016-Mote.pdf

1. R.C. 1349.19 Private disclosure of security breach of computerized personal information data…..**"Personal information" means an individual's name….. in combination with and linked to any one or more of the following data elements, when the data elements are not encrypted, redacted, or altered by any method or technology ….Social security number;…Driver's license number or state identification card number;….Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account.**
2. Prof Conduct R. 1.6…Comment 18: **"The unauthorized access to or the inadvertent or unauthorized disclosure of information related to the representation of a client does not constitute a violation …. if the lawyer has made reasonable efforts to prevent the access or disclosure.**

K. LAWYERS SHOULD NETWORK AND SHARE CONCERNS

III. File retention

A. No mandated period. But: trust accounting-7 years, acknowledgment of no insurance-5 years

B. Specific considerations: minors, potential malpractice claims, applicable period of limitations

C. Client papers and property: What is included? …medical records, lawyer's notes, expert reports, deposition transcripts, pleadings, physical evidence, etc.

D. E mail retention, if of "substantive impact" on future representation

E. What is "reasonably necessary" to the client

F. Closing letter states period of retention

G. Retainer agreement with notice of retention

H. Opportunity for client to take the file after termination of representation

I. Digital or cloud storage of scanned documents unless actual document of "legal significance"

J. Succession planning including file retention

See OHIO ETHICS GUIDE: Client File Retention, Ohio Board of Professional Conduct

https://docs.wixstatic.com/ugd/c6a571_74c6aeb9ea7248049dcf132f5323eaf9.pdf

IV. Reporting Abuse and Neglect/ Misconduct

A. R.C. 2151.421 children…revisions effective 3/20/2019:

The Ohio Revised Code Section 2151.421 clearly removes the option of choice, and requires immediate reporting of known or suspected alleged child abuse and neglect by professionals, specifically including Attorneys

B. R.C. 5101.63 adults…revisions effective 3/20/2019:

Any attorney admitted to the practice of law in this state having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services.

V. Revisiting IOLTA and Electronic Record Keeping

A. Requirement: Depositing client funds:

4705.09 (A)(1) (a) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for

purposes of depositing client funds held by the attorney, firm, or association that are nominal in amount or are to be held by the attorney, firm, or association for a short period of time,

B. Ohio Rules of Professional Conduct:

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation …..

(1) maintain a copy of any fee agreement with each client;

(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:

(i) the name of the client;

(ii) the date, amount, and source of all funds received on behalf of such client;

(iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;

(iv) **the current balance for such client.**

(3) maintain a record for each bank account that sets forth all of the following:

(i) the name of such account;

(ii) the date, amount, and client affected by each credit and debit;

(iii) the balance in the account.

(4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;

(5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule

C. Practical enforcement

(1) Inquiry following any ethics complaint;

(2) Request for proof of ledger, and form of ledgers.

(3) Separate basis for discipline.

D. Deposit of probate funds Amendments to Ohio Revised Code 4705.09 as effective March 23, 2018.

The changes permit a fiduciary or an attorney serving as the estate fiduciary to transfer estate funds received by the fiduciary in the fiduciary's name to the fiduciary's attorney for deposit in a Probate IOLTA maintained by the fiduciary's attorney or the attorney serving as the estate fiduciary, but ONLY if

- the probate court, upon petition, approves each deposit
- the attorney, in consultation with the fiduciary, has determined that the funds are nominal in amount or will be held in the Probate IOLTA for a short period of time
- such funds are deposited in a new, pooled Probate IOLTA

E. Client Trust Account records must be kept for 7 years after end of representation. Prof Conduct R. 1.15

VI. Noteworthy Board of Professional Conduct Advisory Opinions:

1. Issue: Non-disclosure/Confidentiality in settlement agreements

   OPINION 2018-3 Issued June 8, 2018

   Settlement Agreement Prohibiting a Lawyer's Disclosure of Information Contained in a Court Record

   SYLLABUS: A settlement agreement that prohibits a lawyer's disclosure of information contained in a court record is an impermissible restriction on the lawyer's right to practice.

   A lawyer may not participate in either the offer or acceptance of a settlement agreement that includes a prohibition on a lawyer's disclosure of information contained in a court record.

   A lawyer is not required to abide by a client's decision to settle a matter if the settlement is conditioned on a restriction to practice and must withdraw from the representation. (prospective)

2. Issue: False and Misleading Domain Names:

OPINION 2018-05 Issued August 3, 2018

Lawyer and Firm Website Domain Names:

SYLLABUS: The registration and publication of a domain name is a ***form of advertising and a professional designation subject to the Ohio Rules of Professional Conduct.***

A lawyer or firm is encouraged, but not required, to include in a domain name the name of the lawyer or firm, its partners, initials, or some other specific identifying criteria.

A lawyer may not include a specific field of practice in a domain name if it conveys or implies a specialty when the lawyer is not in fact certified in that specific field of practice.

A lawyer's use of domain name that references a specific city or municipality, when the lawyer or firm does not have a physical and active office in that city or municipality, is a ***false or misleading communication***.

3. Issue: Conflicts OPINION 2019-1 February 8, 2019 ……Withdraws 1988-024

Representation of Adverse Party in Unrelated Matters *see above*

VII. Disciplinary Decisions of Note by the Ohio Supreme Court

A. Vacating default suspensions and consent-to-discipline.

In a formal complaint certified to the Board of Professional Conduct on March 2, 2017, relator charged attorney with multiple ethical violations arising from his neglect of a single matter, failure to reasonably communicate with the affected client, failure to deliver the client's file to successor counsel, and failure to cooperate in the ensuing disciplinary investigation. There was a failure to file Answer to that Complaint, resulting in an interim default suspension on June 12, 2017. **Three days later**, counsel for attorney filed a motion for leave to answer and a motion to vacate the interim default suspension, which was ***unopposed***, but **license not restored until August 10, 2017**…..**with two Justices dissenting!**

Consent to discipline ***stipulated*** between Relator and Respondent, rejected three times by Board of Professional Conduct (in anticipation of what Supreme Court might do) 6 month suspension with all stayed *(almost derailed by failure to inform client of lack of professional liability insurance, which was not alleged in the Bar's complaint.)* Dayton Bar Association v Wilcoxson, 153 Ohio St.3d 279 (2018)

B. Failure to Co-operate with Investigation

Disciplinary Counsel v. Rutherford, 2018-Ohio-2680, Supreme Court of Ohio July 11, 2018

Failure to Cooperate

Beginning in February 2016, relator sent multiple letters of inquiry and a notice of intent to file a complaint to the addresses that Rutherford had registered with the Office of Attorney Services. …. letters were returned marked "attempted-not known," "unable to forward," "addressee unknown," or "not deliverable as addressed." Relator also sent those

documents to the e-mail address Rutherford had registered with the Office of Attorney Services, and relator received responses from relator's e-mail server that the deliveries had been completed. But Rutherford failed to contact relator ….failed to provide relator or the Office of Attorney Services with a valid residential or office address.

In March 2016, relator's investigator …. learned that Rutherford had been evicted from his residence and …. no forwarding address. …The investigator left letters of inquiry on Rutherford's desk, which had stacks of unopened mail on it.

The board found that Rutherford violated Prof.Cond.R. 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation) and Gov.Bar R. V(9)(G) (requiring a lawyer to cooperate in a disciplinary investigation). Relator's complaint also charged that Rutherford's failure to provide his current residential and office addresses to the Office of Attorney Services violated Gov.Bar R. VI(4)(B) …

C. Repeated Discipline for Neglect:

Disciplinary Counsel v. Engel, 2018-Ohio-2988, Supreme Court of Ohio July 31, 2018

Noting that [counsel] has twice been disciplined for the same type of misconduct that he has been found to have committed in this case, and that ….. he failed to fully cooperate in the disciplinary process, the board recommended that he be suspended from the practice of law for two years with 18 months of the suspension stayed. On his application for reinstatement, the board would also require him to submit proof that (1) he has continued to receive counseling from a qualified healthcare professional, (2) he is adhering to the

recommendations of his primary care physician, (3) he is in compliance with his March 7, 2017 OLAP contract and any extension of it, and (4) a qualified healthcare professional has determined that he is able to return to the competent and ethical professional practice of law. Following his reinstatement to the practice of law, the board further recommended that Engel be required to comply with the recommendations of his healthcare professionals while serving a two-year period of monitored probation pursuant to Gov.Bar R. V(21)…. Having overruled Engel's objections, we adopt the board's findings of fact, misconduct, aggravating and mitigating factors, and recommended sanction. Accordingly, we suspend Andrew Mahlon Engel from the practice of law in Ohio for two years, with 18 months of the suspension stayed on the condition that he engage in no further misconduct. If he fails to comply with the condition of the stay, the stay will be lifted, and he will serve the entire two-year suspension.

VIII. Misconduct in Mediation: Revisited

A. Typical mediation agreement language:

Confidentiality: The mediation will be confidential. Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding. Only a mediated agreement, signed by the parties, or their counsel, may be so admissible. The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The parties understand that, other than any settlement agreement reached between the parties, the mediator will destroy all documents relating to the

mediation following its conclusion. The mediation is considered by the parties and the mediator as settlement negotiations. The parties understand the mediator has an ethical responsibility to break confidentiality if he suspects another person may be in danger of harm.

B. Mediation duty of confidentiality prohibit Motion for Sanctions?

R.C. 2710.03 Mediation communications privileged.

(A) **Except as otherwise provided in section 2710.05 of the Revised Code, a mediation communication is privileged as provided in division (B) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in section 2710.04 of the Revised Code.**

(B) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication. A mediator may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(C) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

IX. Switching Law Firms….another conduct guide!

https://docs.wixstatic.com/ugd/c6a571_e7673b18089f41a0b9ca9ee8a3ed5ffe.pdf

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What To Do and What Not To Do When You Receive a Legal Ethics Grievance

William Mann, Esq.

WHAT TO DO AND WHAT NOT TO DO WHEN YOU INITIALLY RECEIVE A LEGAL ETHICS GRIEVANCE

Lawyers are typically notified that a legal ethics grievance has been filed against them when they receive a Letter of Inquiry from the Office of Disciplinary Counsel or from a Certified Grievance Committee. The letter will usually contain a copy of the grievance that has been filed or that has come to the attention of the legal ethics prosecutors.

The initial stage of your legal ethics case is important because "once a bell has been rung it cannot be un-rung." Your mindset in the initial stage of your legal ethics case is to recognize that, rightly or wrongly, you are in a legal ethics hole. Therefore:

1. Stop digging.

2. Come up with a plan that will help you fill the hole in as much as possible, so that you can step out of it.

WHAT TO DO

1. Be cool and calm. If you are not cool and calm, get cool and calm. You need to be able to think clearly and act accordingly.

2. Promptly open the Letter of Inquiry.

3. Promptly and carefully read the contents of the Letter of Inquiry and all the attachments to that letter.

A. Study the Letter and the attachments to it.

B. Understand what is and what is not in the Letter and the attachments to it.

C. Prepare to explain the legal ethics grievance accurately, clearly and briefly to a third person. Until you are fully prepared to do this you probably don't completely understand the grievance against you.

4. Objectively ask yourself: "Is this a serious legal ethics grievance or is it just some mumbo jumbo that hardly even makes any sense, or is it, on its face, very weak?"

A. If the grievance is objectively serious, make sure you understand the complete sum and substance of the grievance against you. What is being alleged? What is not being alleged?

5. Remain as silent as you reasonably can while you figure out a strategy, a plan, as to how to respond to the grievance.

6. *WARNING: take this with a grain, a truck load or a boat load of salt because it suggests that you should hire somebody such as myself:* If you don't know how to properly respond to the grievance, or you are not sure how to properly respond to the grievance, promptly get help from a lawyer who is familiar with the legal ethics system in Ohio. If you don't know what to do, don't do it. *NOTE: many lawyers offer a free initial consultation. I do. So, there is no good reason not to reach out for help when you need it.*

7. When you seek help from an appropriate lawyer (assuming you do) be prepared to explain the grievance to him or her in an accurate, clear and brief fashion. Think about what you are going to say, and how you are going to say it before you talk with another lawyer. This will help you get better quality legal service, get it faster and probably for less money, than a mixed-up presentation will get for you.

8. Present your case to your consulting lawyer in chronological fashion. Start at the beginning. Move to the middle. Then, move to the end.

9. At first, go into Joe Friday Mode. "Just the facts, just the facts." Save your questions and comments for after your factual presentation.

10. If your consulting lawyer asks you a question:

A. Listen carefully to the question.

B. Answer the question directly and to the point.

C. Be truthful with yourself and with your consulting lawyer.

11. After you make a factual presentation, and you have answered your consulting lawyer's questions, express your comments in a fashion that is direct and to the point. Also, ask questions that are direct and to the point. When asking questions:

A. Ask one question at a time.

B. Make your questions direct and to the point. Use short sentences and plain language.

C. Avoid jargon because it may mean one thing to you and something else to another.

D. Listen carefully to the answer to your question before you start to speak again.

12. Determine, in a reasonably prompt fashion, if you want to hire a lawyer to represent you in your legal ethics matter. You are not required to do so. If the case against you is objectively weak, and straightforward, you may not need a lawyer. But if you are in doubt, get a lawyer.

13. Put a plan together as to how you will handle this legal ethics grievance. You can revise and amend the plan as circumstances change, but always have a reasonably well thought out plan. Do not just start doing stuff without first carefully considering *what* you are doing, and *why* you are doing it. Until you have put this plan together, remain as silent as you realistically can. Remember, anything you say can be used against you in a legal ethics proceeding.

13. In response to the Letter of Inquiry, tell the truth.

14. Remember, the truth if poorly told will frequently lose. WHAT you say is important. HOW you say it is just as important.

15. Do not discuss your legal ethics case or anything related to it on social media. The laws of legal ethics do not fade away and disappear just because something is said in cyber space as opposed to real space.

WHAT NOT TO DO

1. Do not panic. The great trial lawyer, Gerry Spence, says that if you are not worried about your case than you don't care about your case. He is correct. But if your concern becomes excessive and you panic or are consumed by anxiety, you are in trouble because your ability to function will be limited.

2. Do not go into denial about the legal ethics grievance and hope that it will, somehow, just magically go away. It won't.

3. Do not underreact to your legal ethics grievance. Do not be nonchalant about your legal ethics matter.

4. *WARNING: grain, or more, of salt time, again.* Do not adopt the attitude that, "I will handle this case myself, but if this really turns bad, I will then hire a lawyer to represent me in the matter." By the time you hire a lawyer, his or her hands may be substantially tied by what you have done or failed to do.

I have had cases that resulted in significant discipline for my client where, in my opinion, they would have hired me right away, I could have probably been able to get the entire case to go away.

5. Remember, the Office of Disciplinary Counsel or a Certified Grievance Committee is never your lawyer.

6. Do not adopt the attitude that, "If I explain that what I did, or thought that what I did, was reasonable, all will be forgiven."

7. Do not adopt the attitude that, "If I show I am a nice person or a good lawyer that the Office of Disciplinary Counsel or a Certified Grievance Committee will not want to pursue a legal ethics case against me."

CONCLUSION

5. Statistics show that the best time to win a legal ethics grievance is in the early stages of the legal ethics process. If the legal ethics prosecutor seeks a finding of probable cause, there is an estimated chance of greater than 95% that they will get PC on at least one charge. If your case goes to a hearing, there is an estimated greater than 90% chance that you will be found to have violated at least one legal ethics rule or regulation. But most legal ethics grievances that are filed are dismissed at the conclusion of the initial investigative stage.