



OHIO
ASSOCIATION for
JUSTICE
TRIAL LAWYERS HELPING PEOPLE

2016 Annual Convention

Professional Conduct Session

Thursday May 5, 2016



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Legal Ethics: Exploring the Many Shades of Gray

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LEGAL ETHICS:

Exploring the Many Shades of Gray

Alison De Villiers, Esq.
Beckman Weil Shepardson LLC

Ohio lawyers are governed by:

Supreme Court Rules for the
Government of the Bar of
Ohio

The Rules of Professional
Conduct (Amended 3/15/16)

The Attorney's Oath of Office

Topics Covered in the Ohio Rules of Professional Conduct

- | | |
|---|--|
| 1. Client-Lawyer Relationship | 5. Law Firms and Associations |
| 2. Counselor | 6. Public Service |
| 3. Advocate | 7. Information About Legal Services |
| 4. Transactions with Persons Other than Clients | 8. Maintaining the Integrity of the Profession |

Can lawyers keep a buffer of firm money in the IOLTA/Client Trust Account?





Opposing counsel is consistently rude/disrespectful to you and your client. Ethical violation?

Let's talk about:

Solicitation of Clients!

Can I present a legal seminar and distribute information, including brochures with my law firm contact information, at the exit?

Can a lawyer stay after the presentation to answer specific legal questions of attendees?



Other Solicitation Examples:

Text messages?

Recorded telephone messages from lawyers?

\$100 to a referral source?



Can I notarize a signature over Skype?

The case has concluded. Can I pitch the file?



Your case settles, and defense counsel is now requesting that you sign a release that indemnifies the Defendant against any liens or subrogation claims. OK?





Defense counsel fails to cite a controlling case which supports their side in a MSJ. Let it go?

Annie and Betty are involved in an accident with another vehicle driven by Charlie. Both Annie and Betty are injured. Betty was Annie's passenger and there is some question as to whether Annie is at fault.



Can you represent both Annie and Betty?

What should I do if I am confronted with a legal ethics problem?

- Stay calm
- Do not take any immediate or rash action
- Do not try to cover up or hide the problem
- Do not ignore the problem
- Promptly address the problem
- Seek independent counsel, if necessary

How can I avoid ethical problems before they happen?

- Know the rules
- Trust your instinct
- Talk to other lawyers
- Call your local Bar Association
- Call a lawyer who specializes in ethics if you have a question
- Know when to ask for help

Don't make a problem worse!



Covering things up can lead to an increased sanction

Questions?
Stories to Share?



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OHIO RULES OF PROFESSIONAL CONDUCT

(Effective February 1, 2007; as amended effective March 15, 2016)

Sections of Rules Referenced in Presentation:

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 or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:

- (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.

- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, confirmed in writing, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

The Supreme Court of Ohio
Board of Professional Conduct
Opinion 2015-2 – Issued August 7, 2015

“A lawyer may present a legal seminar to prospective clients and may make brochures and law firm information available near the exit of the seminar. A lawyer may not meet contemporaneously with prospective clients who attend the legal seminar to answer legal questions, even in the attendees sign up to so in advance. An exception exists for lawyers providing pro bono legal services. Finally, the “prior professional relationship” exception under Prof. Cond. R. 7.3(a) does not apply to prospective clients who are employees of an existing organizational client of the presenting lawyer.”

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

RULE 7.2: ADVERTISING AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may pay any of the following:
- (1) the reasonable costs of advertisements or communications permitted by this rule;

- (2) the usual charges of a legal service plan;
- (3) the usual charges for a nonprofit or lawyer referral service that complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio;
- (4) for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

(d) A lawyer shall not seek employment in connection with a matter in which the lawyer or law firm does not intend to participate actively in the representation, but that the lawyer or law firm intends to refer to other counsel. This provision shall not apply to organizations listed in Rules 7.2(b)(2) or (3) or if the advertisement is in furtherance of a transaction permitted by Rule 1.17.

RULE 7.3: SOLICITATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless either of the following applies:

- (1) the person contacted is a lawyer;
- (2) the person contacted has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by division (a), if any of the following applies:

- (1) the person being solicited has made known to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress, or harassment;
- (3) the lawyer knows or reasonably should know that the person to whom the communication is addressed is a minor or an incompetent or that the person's physical, emotional, or mental state makes it unlikely that the person could exercise reasonable judgment in employing a lawyer.

(c) Unless the recipient of the communication is a person specified in division (a)(1) or (2) of this rule, every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone whom the lawyer reasonably believes to be in need of legal services in a particular matter shall comply with all of the following:

- (1) Disclose accurately and fully the manner in which the lawyer or law firm became aware of the identity and specific legal need of the addressee;

(2) Disclaim or refrain from expressing any predetermined evaluation of the merits of the addressee's case;

(3) Conspicuously include in its text and on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication the recital - "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY."

(d) Prior to making a communication soliciting professional employment pursuant to division (c) of this rule to a party who has been named as a defendant in a civil action, a lawyer or law firm shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (d) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(e) If a communication soliciting professional employment from anyone is sent within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following "Understanding Your Rights" shall be included with the communication.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to do any of the following:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

RULE 1.4: COMMUNICATION

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

**See Rule 1.15 (page 1) for reference to "7 years" requirement provided in this slide.*

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client 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.

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer may do either of the following:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to do any of the following:

- (a) violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;
- (g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

- (a) A lawyer shall not knowingly do any of the following:
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division

(a) of this rule, unless all of the following apply:

(1) the lawyer will be able to provide competent and diligent representation to each affected client;

(2) each affected client gives informed consent, confirmed in writing; (3) the representation is not precluded by division (c) of this rule.

Attorney's Oath of Office¹

... hereby affirm that I will support the Constitution and the laws of the United States and the Constitution and the laws of Ohio, and I will abide by the Code of Professional Responsibility.

In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons. I will honestly, faithfully, and competently discharge the duties of an attorney-at-law.

¹ Ohio State Bar Association. (n.d.). *Law and You 13*. Retrieved April 4, 2016, from [www.ohiobar.org: http://downloads.ohiobar.org/conres/lawandyou/Law_and_You_13.pdf](http://www.ohiobar.org/downloads.ohiobar.org/conres/lawandyou/Law_and_You_13.pdf)



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Friending for Evidence

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Ethics And Professionalism You Can Really Use

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