



WSSFC 2024

Quality of Life/Ethics Track – Session 7

Conflicts When Representing Both Parties in a Legal Transaction

Presenters:

*Dean R. Dietrich, Weld Riley S.C., Wausau
Peyton B. Engel, Hurley Burish S.C., Madison
Annabelle Vang, Kowalski, Wilson & Vang LLC, Madison*

About the Presenters...

Dean R. Dietrich, a shareholder with Weld Riley, S.C., has represented clients in the areas of lawyer ethics and professional responsibility for more than 45 years. He has represented attorneys in matters before the Wisconsin Supreme Court and the Office of Lawyer Regulation and consults with law firms and lawyers regarding compliance with the Rules of Professional Conduct. Dean has served as Chair of the State Bar Committee on Professional Ethics in addition to past service on the Committee appointed by the Wisconsin Supreme Court to review changes to the Wisconsin Rules of Professional Conduct for Attorneys. Dean currently serves as Past President of the State Bar of Wisconsin. He is a member of the ABA's Center for Professional Responsibility and the Association of Professional Responsibility Lawyers. He is a graduate of Marquette University Law School.

Peyton B. Engel is an associate in Hurley Burish, S.C.'s civil litigation practice helping both businesses and individuals. In addition to civil suits, Peyton represents attorneys, doctors and other licensed professionals in disciplinary matters. In 2020 Peyton co-taught Professional Responsibility at the University of Wisconsin Law School. Before joining the firm, Peyton worked for over 18 years in information technology with 16 years of that time spent specialized in network and information security. While in law school, Peyton interned with the Wisconsin Court of Appeals and tutored foreign law students in both Contracts and Property. Outside of the law, Peyton's interests include opera, cooking, and guitar.

Annabelle Vang is a partner at Kowalski, Wilson, & Vang. She practices family law specializing in divorce, child custody/placement, support issues, and guardianships. She also takes Guardian ad Litem cases in Dane and Sauk County. Annabelle has been voted a Rising Star with Wisconsin Super Lawyers from 2018-2023. In 2016 she received the Belle Case La Follette award from the Wisconsin Law Foundation and was part of the inaugural class of the G. Lane Ware Leadership Academy. Annabelle has been a Fellow of the Wisconsin Law Foundation since 2022, a professional honor and distinction awarded to 2.5% of the State Bar's total membership. In 2023 she was elected into the State Bar Board of Governors representing Dane County. Annabelle has been the keynote speaker for the following seminars/topics: Wisconsin Child Support Enforcement Association, MATC Youth Career and College Fair, Hmong Language and Cultural Enrichment Program, and Authenticating Social Media Evidence. Annabelle is a member of the State Bar's Family Law Section, Dane and Sauk County Bar Association, Wisconsin Asian American Bar Association, and Legal Association for Women. She is a Board Member of The Hmong Institute, dedicated to preserving Hmong heritage. She also volunteers with the Family Law Assistance Clinic in Dane County.

CONFLICTS WHEN REPRESENTING BOTH PARTIES IN A LEGAL TRANSACTION

Annabelle Vang, Dean Dietrich & Peyton Engel

JOINT REPRESENTATION

Sooner or later, we all wind up representing more than one client in the same matter. There is no inherent problem in doing so, but multiple representation raises potential ethical concerns. Most of the ethical challenges involved in multiple representation derive from four sources, so it is worthwhile to begin with them:

1. The duty of loyalty;
2. The duty of confidentiality;
3. Communication; and
4. Decision-making within the representation.

These four areas are obviously important when representing individual clients as well, but before we dig into how to form and manage a joint client relationship, we need to understand how they operate differently in the joint-client context.

a. The Duty of Loyalty.

A lawyer owes each client a duty of loyalty. With respect to multiple representation, the first concern arises from SCR 20:1.7:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client [...]

We will address paragraph (b) later, but for now our focus is on the fact that a lawyer cannot fulfil the duty of loyalty when representing clients whose interests are opposed or whose interests diverge in such a way that competently representing one client would preclude asserting claims or defenses on behalf of another.

Comment 8 clarifies the issue of material limitation somewhat:

Even where there is no direct adverseness, a conflict of interest exists if there is a **significant risk** that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of

the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. ***The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.*** (emphasis supplied)

As is common with questions of professional responsibility, there is no bright-line rule for us to follow. An attorney needs to weigh both the magnitude of a risk, and its likelihood.

Comment 23 offers further guidance on the representation of multiple parties in a single matter:

[...] On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant.

In other words, the duty of loyalty encompasses the duty to pursue all available reasonable avenues on behalf of all clients. When a conflict makes it likely that one client's ability to take a given position at some point in the future will be limited, joint representation is unadvisable.

A lawyer owes the duty of loyalty equally to all clients. The upshot of this is that when clients' interests diverge, joint representation may not be possible, and it is the lawyer's job to foresee and address that possibility.

b. The Duty of Confidentiality.

The core of SCR 20:1.6 is familiar: "(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)." Neither paragraph (a) nor paragraph (b) says anything explicit about joint representation. The goal of the rule is to foster "the trust that is the hallmark of the client-lawyer relationship," and to encourage the client "to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter."

Although the Supreme Court Rules are basically silent on the implications of the duty of confidentiality in the context of joint representation, the law is not. The general rule is as follows:

(1) If two or more persons are jointly represented by the same lawyer in a matter, a communication of either co-client that otherwise qualifies as privileged under §§ 68- 72 and relates to matters of common interest is privileged as against third persons, and any co-client may invoke the privilege, unless it has been waived by the client who made the communication.

(2) Unless the co-clients have agreed otherwise, a communication described in Subsection (1) is not privileged as between the co-clients in a subsequent adverse proceeding between them.

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, § 75 (The Privilege of Co-Clients).

Although not every jurisdiction may have precedent directly addressing these points, the implications are important:

1. Any of the jointly represented clients may invoke the attorney-client privilege regarding any information qualifying for the privilege; and
2. Jointly represented clients have no right of confidentiality against one another should their interests become adversarial.

The Restatement doesn't mention confidentiality between jointly represented clients during the course of the joint representation, but the duty of loyalty answers that question because an attorney may not withhold from one jointly-represented client information provided by another jointly-represented client if doing so would materially limit the representation. Put another way, a jointly-represented client is not entitled to demand that information he or she provides to the lawyer be withheld from other jointly-represented clients.

c. Communication.

SCR 20:1.4 governs communications in the client-lawyer relationship. The model rule does not directly address communications in the context of multiple representation, but again, the duty of loyalty precludes communicating differently with one jointly represented client than with another. Obviously, communications need not all be identical, but a lawyer has, for example, the duty to promptly inform each client of developments, to consult with each client about objectives, to address each client's reasonable requests for information, and so on.

d. Decision-Making within the Representation.

It should come as no surprise by this point that jointly-represented clients are each entitled to participate in the decision-making process. The clients are free to arrive at joint decisions as they please, of course. From the lawyer's perspective, SCR 20:1.2 looms large: "[...] a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are pursued." Again, the duty of loyalty drives the lawyer's responsibilities with respect to decision-making: a lawyer may not privilege one interests over another's, and therefore may not give jointly-represented clients unequal decision-making authority.

A FRAMEWORK FOR THINKING ABOUT ETHICS QUESTIONS

Now that we've covered the basic duties that give rise to ethical problems in joint representation, it is helpful to provide a useful framework for confronting ethical questions in general. Specifically:

1. What do the rules require? In any given situation, what is a lawyer obligated to do in order to comply with the rules of professional conduct?
2. What do the rules permit? Beyond what the lawyer is obligated to do, what is a lawyer permitted to do, under the rules of professional conduct, in a given situation?
3. What would good practice be? Given the bare minimum that a lawyer is required to do in a given situation, and the outer limits on what a lawyer may do in that situation, what would be the best course of action?

Put another way, what must you do in order to avoid running afoul of the rules, what must you not do in order to avoid running afoul of the rules, and where is the best medium between those two extremes?

The goals of the analytical process described above are twofold. First and foremost, a lawyer must be a good steward of the clients' interests. We are obligated to zealously advocate for our clients, in the present context, for all of our clients simultaneously. Second, the lawyer's interests are also of great importance. Much of the art in navigating the minefield of multiple representation revolves around making sure that clients give informed consent, and that conflicts are accurately identified and effectively waived. This aspect of the process protects both the clients and the lawyer who serves them.

PROPERLY FORMING A JOINT CLIENT RELATIONSHIP

I. Initial Discussion with Clients.

A joint client relationship should begin with a discussion. In addition to the usual topics (*e.g.*, the purpose of the representation, *etc.*), a discussion contemplating joint representation should cover the following:

1. ***The risks and benefits of joint representation.*** The main benefit is usually cost (*i.e.*, not forcing all clients to pay for their own attorney), but there can be others, such as presenting a united front, potentially greater leverage or ability to negotiate a settlement, and streamlining the pace of proceedings. The main risk is generally that if a conflict arises, all clients will be left to seek new counsel. But other risks remain, including that by agreeing to joint representation, clients forego the right to individual representation.
2. ***What a conflict is.*** The lawyer should discuss with the clients what "conflict of interests" means in the context of the proposed representation, whether or not the clients are likely to have any conflicts, and—to the extent it is possible to say—whether those conflicts are consentable.
3. ***Whether the clients will have to consent to any conflicts.*** If the lawyer knows of, or can foresee, any consentable conflicts, these should be identified, and their implications discussed.

4. ***What the lawyer's withdrawal would mean.*** If a non-consentable conflict arises, or a conflict which is consentable but for which one or more clients do not grant consent, a lawyer ordinarily must withdraw from the representation (see comment 4 to model rule 1.7). In some cases, it may be possible to obtain an advance waiver so that the lawyer can continue representing a single client (see comment 22 to model rule 1.7¹). Such a waiver should be crafted with as much specificity as possible, however, because it is asking clients to consent to the lawyer's continued representation of a conflicted party.
5. ***The duty of confidentiality.*** One aspect of joint representation that clients absolutely must understand is that they do not ordinarily enjoy confidentiality as to one another within the scope of the representation.
6. ***Decision-making ground rules.*** To the extent possible, it is wise to discuss how decisions will be made within the representation, and how disagreements will be resolved.
7. ***Opting out.*** All potential clients should be made aware that joint representation is optional, and they have the ability to seek their own counsel.

II. Putting it in Writing.

In the interest of clarity, and to avoid any confusion or dispute down the road, the underpinnings of the joint representation should be memorialized in writing. Typically, this consists of three items.

First, a joint representation letter. This is a letter sent to all prospective clients outlining several of the key points:

1. The rules of professional responsibility require you to make certain disclosures and obtain informed consent before undertaking joint representation.
2. It is impossible to predict all potential conflicts but at present you are not aware of any that preclude joint representation.
3. Because joint representation involves balancing the interests of multiple clients, theoretically it could lead to different results than an individual client might obtain with their own individual advocate, but that if that risk appeared significant in this matter, you would not propose joint representation.
4. The clients will jointly hold the attorney-client privilege as to third parties with respect to communications between any of the clients and your firm, but as to one another, and that if the clients were separately represented, their communications to their counsel would be confidential from the others.
5. Conflicts could arise (*e.g.*, over conflicting instructions from clients, over divergence of goals, because one client wishes to pursue a claim against

¹ Specifically: "Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding."

another, or because of a dispute over resolution of the matter), and this would require you to withdraw; withdrawal would mean that the clients would need to seek new counsel.

6. You will maintain a common file for the representation, and if you are required to withdraw, you will retain it until you receive a common set of instructions about where it should be sent.
7. Include a copy of your jurisdiction's rules addressing representation of clients when present or potential conflicts exist (in Wisconsin that would be SCR 20:1.7-1.9, but your mileage may vary).
8. Each client should feel free to consult with independent counsel about the merits and hazards of joint representation, and the representation will not commence until all clients have acknowledged, by signing and returning the letter, that they have been advised about potential conflicts and attorney-client privilege.

A sample joint representation letter is included below for your reference.

Second, a fee agreement: special care should be taken to clearly identify the scope of the representation. The fee agreement should contain a passage such as the following, reiterating that the representation is joint:

Joint Representation. Our rules of professional conduct require that we make certain disclosures to you and obtain your informed written consent to this joint representation. I have set forth those disclosures in a separate letter, which each of you will be required to sign in order for us to proceed with this matter. As of this date, it does not appear that a conflict of interest exists which would prevent us from representing you jointly. You all share an identical interest in pursuing this action, but we will need to explain, and you will need to consent to assuming, certain risks and realities associated with joint representation.

The fee agreement, like the joint representation letter, should be signed by all clients.

Obviously, the fee agreement also needs to set forth who is paying (and how much), and the fact that the joint clients have equal rights in the representation, regardless of who is footing the bill.

Finally, any necessary waivers. If there are present conflicts, or if future conflicts are foreseeable, and they are consentable, the attorney should document them, addressing specifically:

1. The facts and circumstances giving rise to the conflict;
2. The nature of the conflict (*i.e.*, an explanation of the way in which those facts and circumstances could cause divergence between client interests);
3. The risks and benefits of proceeding with the representation in spite of the conflict; and

4. A statement that each client has been advised of the conflict, has had the opportunity to seek independent advice about whether or not to proceed, and explicitly affirms, by signing, that he or she consents to proceeding in spite of the conflict.

In some situations, lawyers are not required to obtain informed consent in writing. Nevertheless, doing so is good practice, particularly when conflicts are identified at the commencement of the representation. Obtaining signed consents to conflicts from each client is a powerful protection, should trouble arise down the road.

SCENARIOS FOR DISCUSSION

The Startup

Three potential clients come to your office, asking for your help. They plan to open a business that builds custom ovens for restaurants. Dave is the money guy: he's going to put up the funds to rent a space and furnish it with the necessary equipment. Paul is a decorator who has been consulting with restaurants for years: he's got the connections in the business, and they plan to continue to use his trade name, "Making it Right," which is well established, and known by people in the restaurant industry. Nancy is an engineer: she will do the actual design work and supervise production. They want advice about what type of business entity to use, taxes, help with negotiating a lease, and so forth. What topics would you want to discuss with them before committing to helping?

Divorce

Jack and Sharon have been married five years, and now want to get divorced. They have no children, but their finances are complex. Jack is the sole owner of a company that has substantial assets, but they are currently leveraged to fund a business expansion. Sharon earns a good salary, but the bulk of her compensation is in the form of stock grants, which vest incrementally over a five-year period. They would prefer to share a lawyer; how would you advise them, and what would you want before undertaking the representation?

Driver and Passenger

Larry gave Sharon a ride. They were each injured in an automobile collision, but Sharon, the passenger, was hurt much more severely. They are certain the other driver was at fault, and they want to sue. What problems might there be in terms of representing both of them?

Insurer/Insured

You are frequently hired by an insurance company to defend their insured. They have recently hired you to defend Frank. One night, around bar time, Frank's car collided with an unoccupied parked car, damaging it. Frank left a note, with his contact information, and a few days later, the owner of the damaged car sent Frank an estimate for the repairs: around \$9,500, which is comfortably within the property damage policy limit. Frank tendered the claim to his insurer using an app on his phone; his message said, "I want to report an accident in which my car hit a parked car."

During a meeting with Frank, he revealed to you that he had been drinking that night, so he asked his friend Nick, who was sober, to drive him home. Nick was sober because he quit drinking after an incident that caused him to lose his driver's license. You tell Frank that his policy says the insurer is not liable "if the insured permits an unlicensed person to drive." Frank says he hadn't realized this, and hadn't intended to conceal anything from the insurance company by the way he reported the incident. He asks that you settle the claim without revealing that Nick was driving. What should you do?

Marital Property Agreements

Ed and Brenda are getting married and would like to get a Marital Property Agreement drafted in the event of legal separation or divorce. The parties have equivalent assets, debts, and income. They are both in complete agreement regarding what they want the document to say. They simply want an attorney to draft the document for the both of them so they can proceed with wedded bliss. What conflicts might arise from this? Would it make a difference if the agreement was grossly inequitable?

Mediation

Jack and Rose are getting divorced and would like to hire a mediator to help them reach a resolution. To cut down on costs, they do not want advocacy counsel to represent them but would split the cost of a lawyer to conduct a mediation and draft the Marital Settlement Agreement. Are there any conflicts with this? What steps should you as a mediator take to ensure neither party believes they are legally represented by you?

Same scenario as above, but Jack had initially called your office for a divorce consultation anticipating that you might represent him in his case. You had a lengthy 30 minute consultation with him in which he shared very private information about both his finances and his animosity towards his wife. Are you still able to act as a mediator in this case? What steps should you take to ensure you are ethically able to proceed as a mediator?

Grandparent Visitation

Red and Kitty want to file for grandparent visitation of their granddaughter, Leia. They have been married to one another for 50 years and Leia used to spend every summer break at their house before her parents abruptly cut off their contact with her. Are you able to represent both parties in a grandparent visitation case? Would your answer change if Red and Kitty were no longer married to one another?

Same scenario as above, but Kitty has a well-documented problem with alcohol abuse. What might be the conflicts in continuing to represent both parties?

SAMPLE JOINT REPRESENTATION LETTER

Date

VIA FIRST CLASS MAIL

Client 1 address Client 2 address Client 3 address ...

Re: Joint representation in the matter known as _____

Ladies and Gentlemen:

You have indicated an interest in our firm representing you simultaneously with respect to the referenced matter. Our rules of professional conduct require that we make certain disclosures to you and obtain your informed written consent to this joint representation. As of this date, it does not appear that a conflict of interest exists which would prevent us from representing you jointly. While all of you share an identical interest in staying out of this action, we need to explain the resulting risks and request your consent to the joint representation.

It is impossible to predict all of the potential conflicts that could arise from this joint representation, but there are particular risks that we wish to bring to your attention.

Because of the joint representation, we will seek to balance your interests rather than vigorously advocating on behalf of a single client on an issue. Theoretically, this could lead to results less favorable for one of you than might be obtained if you were represented separately. In this particular matter, I believe that this is an insignificant risk.

The attorney client privilege bars our disclosure to others of our confidential communications with you. As joint clients, you will be joint holders of any attorney client privileges arising from communications between any of you and this firm regarding this matter. For example, if one of you discloses information to our firm, you cannot instruct us not to disclose that information to the others. In other words, any communications made between any of you and this firm regarding this matter will not be confidential as to the other clients. If any of you were separately represented, your lawyers would not be required to disclose your communications with them to any other party. Each of you should consider whether our firm's joint representation of you is acceptable under these conditions.

A conflict could arise in the future if we receive conflicting instructions from one of you. That situation, if unresolved, could require us to withdraw from representing all of you, requiring each of you to incur the expense and delay involved in hiring new attorneys. It is therefore important that we receive a common set of instructions from all of you. Inconsistent instructions could arise from your development of differing objectives. Given our understanding of the lawsuit, we believe your objectives are presently consistent, but no set of jointly represented clients has identical personal needs or circumstances. Each of you should consider your personal needs and circumstances, and determine whether or not any existing differences between you are significant before consenting to joint representation.

A conflict also could arise if you develop inconsistent strategies during the course of the litigation. For example, if one of you wants to pursue a goal that might adversely affect the other, a conflict of interest would exist that could require us to withdraw as your attorneys. If one of you determines that pursuing shared strategies is not in your best interest, we may be required to withdraw from representing you. We will also confer with all of you regarding strategies to reduce the risk that we will later be required to withdraw from the representation. Again, given the nature of your status as non-parties to the lawsuit, we do not view this as a significant risk.

While the facts of this case (as we currently understand them) do not require the advocacy of positions which are antagonistic to any of you, a conflict could arise if you become parties in the case, and one or more of you are sued on the basis of differing facts or legal theories. If that occurs, we will be required to withdraw as your attorneys. If for any reason any of you have a claim against the other, we cannot represent or advise you with respect to any such claim, and you should consult with separate counsel. To the extent one of you chooses to assert claims against the other in these proceedings, we could be required to withdraw as your attorneys.

A conflict also could exist if a dispute arises between you regarding the resolution of this matter, or your respective responsibilities for payment of any amount owed. If such dispute cannot be resolved between you, we could be required to withdraw as your attorneys. At present it does not appear that any of these conflicts exist or are likely to arise in the future. Nevertheless, conflicts could arise during the course of the representation.

During the course of these proceedings, we will maintain a file containing original correspondence, pleadings, and other documents and materials. If we are required to withdraw from representing you, we will retain the original file until we receive a common set of instructions about where and to whom to transmit the file.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts exist. We have included a copy of the applicable rules for your review.

We recommend that each of you consult independently with other counsel to review your personal objectives and to advise you on consenting to our joint representation of you. You should be comfortable with these issues prior to consenting to a joint representation. If you agree to this joint representation under these conditions, we require a written waiver of conflict from each of you before we proceed with the engagement. Our representation of you will not begin until you have acknowledged in writing that you have been advised of the potential conflicts associated with your respective interests, that you acknowledge the Joint Client Exception to the Attorney Client Privilege and that you want our firm to represent all of you in connection with the lawsuit. Our receipt of a copy of this letter with your signature will constitute that acknowledgment.

Thank you for your interest and confidence in our law firm. If you have any questions, please contact me.

Yours very truly,

I understand and acknowledge that _____s representation of Client 2 and Client 3, as outlined above, creates a potential conflict of interest in its representation of me in this or a future related matter. With that understanding, I nevertheless consent to _____'s representation of Client 2 and Client 3.

Client 1 signature: _____

I understand and acknowledge that _____s representation of Client 1 and Client 3, as outlined above, creates a potential conflict of interest in its representation of me in this or a future related matter. With that understanding, I nevertheless consent to _____'s representation of Client 1 and Client 3.

Client 2 signature: _____

I understand and acknowledge that _____s representation of Client 1 and Client 2, as outlined above, creates a potential conflict of interest in its representation of me in this or a future related matter. With that understanding, I nevertheless consent to _____'s representation of Client 1 and Client 2.

Client 3 signature: _____

...

Conflicts when Representing Both Parties in a Legal Transaction



STATE BAR OF WISCONSIN
PINNACLE

1

The Startup

Three potential clients come to your office, asking for your help. They plan to open a business that builds custom ovens for restaurants. Dave is the money guy: he's going to put up the funds to rent a space and furnish it with the necessary equipment. Paul is a decorator who has been consulting with restaurants for years: he's got the connections in the business, and they plan to continue to use his trade name, "Making it Right," which is well established, and known by people in the restaurant industry. Nancy is an engineer: she will do the actual design work and supervise production. They want advice about what type of business entity to use, taxes, help with negotiating a lease, and so forth. What topics would you want to discuss with them before committing to helping?

2

2

Divorce

Jack and Sharon have been married five years, and now want to get divorced. They have no children, but their finances are complex. Jack is the sole owner of a company that has substantial assets, but they are currently leveraged to fund a business expansion. Sharon earns a good salary, but the bulk of her compensation is in the form of stock grants, which vest incrementally over a five-year period. They would prefer to share a lawyer; how would you advise them, and what would you want before undertaking the representation?

3

3

Driver and Passenger

Larry gave Sharon a ride. They were each injured in an automobile collision, but Sharon, the passenger, was hurt much more severely. They are certain the other driver was at fault, and they want to sue. What problems might there be in terms of representing both of them?

4

4

Insurer/Insured

You are frequently hired by an insurance company to defend their insured. They have recently hired you to defend Frank. One night, around bar time, Frank's car collided with an unoccupied parked car, damaging it. Frank left a note, with his contact information, and a few days later, the owner of the damaged car sent Frank an estimate for the repairs: around \$9,500, which is comfortably within the property damage policy limit. Frank tendered the claim to his insurer using an app on his phone; his message said, "I want to report an accident in which my car hit a parked car."

5

5

During a meeting with Frank, he revealed to you that he had been drinking that night, so he asked his friend Nick, who was sober, to drive him home. Nick was sober because he quit drinking after an incident that caused him to lose his driver's license. You tell Frank that his policy says the insurer is not liable "if the insured permits an unlicensed person to drive." Frank says he hadn't realized this and hadn't intended to conceal anything from the insurance company by the way he reported the incident. He asks that you settle the claim without revealing that Nick was driving. What should you do?

6

6

Marital Property Agreements

Ed and Brenda are getting married and would like to get a Marital Property Agreement drafted in the event of legal separation or divorce. The parties have equivalent assets, debts, and income. They are both in complete agreement regarding what they want the document to say. They simply want an attorney to draft the document for the both of them so they can proceed with wedded bliss. What conflicts might arise from this? Would it make a difference if the agreement was grossly inequitable?

7

7

Mediation

Jack and Rose are getting divorced and would like to hire a mediator to help them reach a resolution. To cut down on costs, they do not want advocacy counsel to represent them but would split the cost of a lawyer to conduct a mediation and draft the Marital Settlement Agreement. Are there any conflicts with this? What steps should you as a mediator take to ensure neither party believes they are legally represented by you?

8

8

Same scenario as previous slide, but Jack had initially called your office for a divorce consultation anticipating that you might represent him in his case. You had a lengthy 30-minute consultation with him in which he shared very private information about both his finances and his animosity towards his wife. Are you still able to act as a mediator in this case? What steps should you take to ensure you are ethically able to proceed as a mediator?

9

Grandparent Visitation

Red and Kitty want to file for grandparent visitation of their granddaughter, Leia. They have been married to one another for 50 years and Leia used to spend every summer break at their house before her parents abruptly cut off their contact with her. Are you able to represent both parties in a grandparent visitation case? Would your answer change if Red and Kitty were no longer married to one another?

10

Same scenario previous slide, but Kitty has a well-documented problem with alcohol abuse. What might be the conflicts in continuing to represent both parties?

11

11

©2024 State Bar of Wisconsin

Accurate reproduction with acknowledgment granted. All rights reserved.

This document provides information of a general nature regarding legislative or other legal developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues, and additional facts and information or future developments may affect the subjects addressed.

12

12