THE DISCIPLINARY PROCESS

• Take a complaint seriously.
• Respond promptly.
• Consider getting counsel.
• If you erred, admit it.

Complaints can be brought by:
--Clients
--Adverse parties
--Opposing counsel
--Judges
--Any one else
--Bar Counsel

If by Bar Counsel:
--Requires authorization by Peer Review Panel
--Standard under DC §11(a) is sufficiently credible or verifiable information indicating or suggesting an ethics violation

If complaint does not show clear and convincing evidence of an ethical violation, will be dismissed.

--Complaint sent to you for response
--Your response sent to complainant
--Can go back and forth a number of times
If Bar Counsel believes there is clear and convincing evidence of an ethics violation:

--Stipulated resolution

--Proceed to formal charge

Public discipline:
--disbarment
--suspension
--public censure
Private reprimand
Diversion (not “discipline”)

All stipulations require BPR approval.

Stipulations for public discipline also require Wyoming Supreme Court approval.

Formal process:

--Formal charge submitted to PRP for probable cause hearing
  --Can’t attend
  --No record
  --Per DC §12(b), standard is fact sufficient for reasonably prudent person to believe there was an ethics violation.

--Formal Charge filed and served by mail.

--20 days to answer

--Proceeds under enumerated WRCP in DC 11(n)

Hearing under DC 19:

--WRE apply
--No experts allowed on “ultimate issue” of rule violation
--Questionable right for witnesses to have counsel present
If BPR determines no clear and convincing evidence of a violation:

--Case dismissed.
--Bar Counsel cannot appeal.
--Attorney cannot recover costs.

If BPR decides there is clear and convincing evidence of a violation, hearing reconvenes for evidence of aggravating and mitigating circumstances for determination of sanction.

BPR issues findings of fact and conclusions of law, then:

--if private sanction, done.
--if public sanction, makes recommendation to WSC.

BPR makes decision regarding costs to be assessed based on cost bill from Bar.

No provision for allocation of costs if only some charges are proved.

Discretion of BPR.

Appeal process:
--Rules of Appellate Procedure apply, sort of.
--File exceptions to BPR report.
--Court “shall” set briefing schedule and hearing, as it deems appropriate

Not clear what Court can do:

--Approve BPR report and issue discipline.
--Reject BPR report and dismiss?
--Reject BPR report and send back?
--Reject BPR report and decide result on record it has, then issue that discipline?
Conflicts of Interest
- Failure to recognize a conflict can result in:
  - Loss of client
  - Loss of income
  - Discipline
- Important at every stage of your practice

When do you have an attorney-client relationship?
- Section 14 of Restatement (Third) of the Law Governing Lawyers:
  “A relationship of client and lawyer arises when: (1) a person manifests to a lawyer the person’s intent that the lawyer provide legal services for the person; and

Easier “definition”
- A relationship of some type exists for conflict purposes when the attorney gets confidential information.
What is "confidential information"

Rule 1.0(b) definition:

“information provided by the client or relating to the client which is not otherwise available to the public.”

NOT:

--just told to attorney by client
--could be otherwise known
-- “public,” but “available to public”

Critical to identify when you have an attorney-client relationship for conflict purposes, so any questions?

Rule 1.7

All about loyalty to your current client.

Can’t handle ANY case that is adverse, regardless of subject matter.

Let’s look at examples:

1. Representing both sides

Can’t represent 2 parties on opposite sides of an issue or transaction, even if they claim not to be “adverse.”

Can’t draft a contract for both sides.

Can’t represent both sides in an “uncontested” divorce.

But see Rule 2.2

---allows an “intermediary”
---”old school”
---usually a bad idea
What do you do?

- Represent one of the parties.
- In writing, inform the other that you do not represent him.
- Also inform him that he should get his own counsel.

2. Adverse matters

- Rule 1.7 is all about loyalty.
- Can’t represent John in sale of home to Ruth then represent Jill in a personal injury suit against John.
- Your loyalty is to John on ALL legal matters.

Can’t represent husband and wife, Jim and Mary, with regard to their business, then represent Jim in his divorce from Mary.

- Can represent neither in the divorce, but could continue to represent their business.

3. Multiple parties

- Arises when parties appear to be on the same side of a matter.
  - Passengers in a car suing the driver
  - Defendants who are aligned against the plaintiff’s claims.
- But, look down the road . . .

Problems can arise

- In multiple plaintiff matter, what if not enough money to satisfy all the claims?
  - Can’t represent any when this arises because you have confidential info from all.
  - Must withdraw and lose a good fee.

In multi defendant case, what if one has the chance to get out by pointing the finger at another?

- Same result as with multi plaintiff case, you have confidential info and must withdraw from all.
- Lose money and clients.
HELP! ! ! What do lawyers do?

Rule 1.7 offers some help:

- Some conflicts are "waivable."
- But what does that mean and how is it determined?

“Waivability test”

1. Lawyer reasonably believes that he/she will be able to provide competent and diligent representation to each client,

2. it is not prohibited by law, such as in some criminal matters, and

3. representation does not involve the assertion of a claim by one client against another of the attorney’s clients in the same litigation.

What if it passes this test?

- Discuss the conflict or potential conflict with each client separately.
- Nature of conflict.
- Ramifications of the conflict.

Can apply that test yourself,

but better to have a disinterested attorney evaluate it.

Not a partner or associate since they might have an indirect interest.
4. Non-client conflict

If you receive confidential information from a potential client who then does not hire you, you can’t represent the other side against that potential client.

Rule 1.18 addresses this.

Goes back to definition of confidential information.

5. Conflict with responsibilities to another client.

You can’t represent a client if the representation would interfere with your responsibilities to another client.

This goes beyond the “directly adverse” situation.

6. Conflict with your interests

You can’t take a case if your own personal interests would limit the representation.

Financial, familial, or anything

Very broad
Examples:

1. You can’t act as a lawyer for a client who is buying property from you.
2. Can’t take a case which you are not competent to handle just for the fee.
3. Can’t take a position you are personally opposed to if it will get in the way.

What to do to avoid a conflict?

1. Get background information before meeting.
2. Run a conflict check before meeting.
3. Ask about other attorneys who have been consulted.
4. Send a “non-engagement” letter if representation is declined.
5. Be prepared for a m/disqualify.

What if you move firms?

1. When you move firms, you take your and your former firm clients with you for conflict purposes.
   a. Conflict analysis is for “former client.”
   b. Can show no involvement with that client.
   c. Your new firm can put up a “Chinese wall” to cordon you off from a potential conflict case.

Any questions??

If in doubt, think LOYALTY.

The End