

COMMON ETHICAL CHALLENGES FOR SOLO/SMALL FIRM PRACTITIONERS

GEORGE J. ZAMARY, ESQ. – ZAMARY LAW FIRM, LLC

EDWIN W. PATTERSON, III, ESQ. – CINCINNATI BAR ASSOCIATION

WHO USES THE CBA ETHICS HOTLINE THE MOST?



- Solo/Small Firm Practitioners
- Why?
 - Because they often don't have the resources available of talking to other lawyers in their office like those at medium to large size law firms.

WHAT HAPPENS WHEN YOU CALL THE CBA ETHICS HOTLINE?



- Each month two attorneys are listed to answer calls to the hotline.
- Each member on the hotline is part of the Ethics Committee.
- The Committee has a standard Ethics Hotline Report that is filled out for each call.

WHAT IS THE ETHICS HOTLINE REPORT?

- It provides members of the CBA Ethics Committee the ability to review facts and issues at its monthly meeting.
- It allows the CBA Ethics Committee the ability to address trends and issues within the legal community.
- Allows for collegial discussion about issues and concerns facing local attorneys.

ETHICS HOTLINE REPORT

- Identifies Inquiring Attorney
- Provides a record of the facts
- Identifies issues presented
- Identifies Disciplinary Rules discussed
- Disclaimer given



ETHICS HOTLINE REPORT

- Caller often receives a response immediately
- Issues addressed again later at monthly meeting
- Revisions or additional opinions may be presented later



CLIENT COMMUNICATIONS

- Failure of lawyers to communicate with clients
 - Top client complaint
 - More simply, the client does not know or understand what is happening in their matter
- Utilize Engagement and Disengagement Letters
- Attorneys leaving firm may notify clients advising them of his or her departure, identify his or her new location of practice, and indicate a willingness to provide legal services at the new location. The Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline, Op. 98-5

CONFLICTS OF INTEREST

- Representation of Multiple Parties
 - Ohio Rules of Professional Conduct - Rule 1.7
 - May be done but a written waiver should be executed
 - Even if affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:
 - (1) the representation is prohibited by law;
 - (2) the representation would involve the assertion of a claim by one-client against another client represented by the lawyer in the same proceeding.



WHAT IF CLIENT ASKS ATTORNEY TO INVEST IN A BUSINESS WITH THEM?

- Ohio Rules of Professional Conduct – 1.7, 1.8
 - It is improper for an attorney to enter into a business transaction with a client who is not represented by independent counsel. *Medina County Bar Association v. Carlson* (2003), 100 Ohio St.3d 134, 2003-Ohio-5073
- Happened so frequently – Rule 1.8
 - Attorneys can do it, but be aware of what must be done to allow for it.



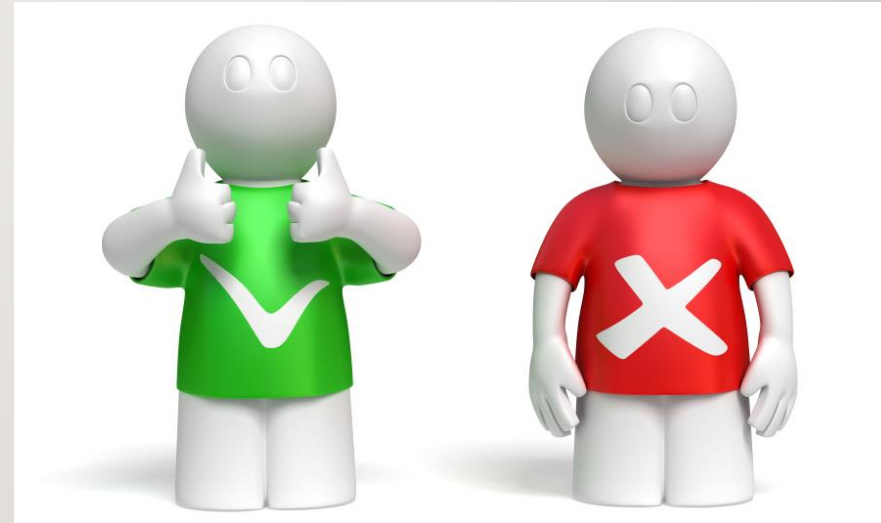
CONFLICT CHECKS



- A lot of small firm/solo practitioners come from larger firms where at times they may have represented other parties
 - See Rules 1.9, 1.10
 - *Kala v. Aluminum Smelting & Refining Company* (1998), 81 Ohio St.3d 1
 - Sets forth three-part test to determine whether an individual or entire law firm should be disqualified from representing a party when an attorney leaves employment with a firm representing a party and joins a law firm representing the opposing party

SUBSTANTIAL RELATIONSHIP TEST - KALA

- Is there a substantial relationship between the matter at issue and the matter of the former firm's prior representation;
- If there is a substantial relationship between these matters, is the presumption of shared confidences within the firm rebutted by evidence that the attorney had no personal contact with or knowledge of the related matter; and
- If the attorney did have personal contact with knowledge of the related matter, did the new law firm erect adequate and timely screens to rebut a presumption of shared confidences with the new firm so as to avoid imputed disqualification?



TERRY DOESN'T LIKE KALA

- Prefers *Cleveland v. Cleveland Electric Illuminating Co.* (1976), 440 F. Supp. 193 – aka *Cleveland*²
- *Green v. Toledo Hosp.* (2002), 94 Ohio St. 3d 480



CLIENT FUNDS & PROPERTY

- “The files belong to the client.” Board Adv. Op. 98-5, CBA Ethics & Professional Responsibility Committee Op. 2006-2, CBA Report December 2006 at 10.
- Trust Accounts – O.R.C. §4705.09-4705.10
- Duty remains on lawyer to properly maintain accounts
 - See Rule 1.15
 - The failure to keep time records does not diminish the duty to appropriately account for client funds upon discharge or withdrawal. *Columbus Bar Ass’n v. Farmer* (2006), 111 Ohio St.3d 137, 2006-Ohio-5342

RETENTION OF CLIENT FILES

- ABA Informal Op. 1384 (March 1977)
 - Recommends guidelines for attorneys who wish to destroy old files
- CBA Op. 96-97-3 and CBA Report, March 2000
 - More discussion regarding retaining and disposing of client file
- Ohio Board of Profession Conduct
 - Ohio Ethics Guide – Client File Retention (See Handout)

QUESTIONS?????

- What issues do you face?
- How can CBA help?

