

April 2017



**Cover your  
Grass!!!**

**ETHICAL  
CONSIDERATIONS IN  
LAND USE  
REPRESENTATION**



MCGINNIS LOCHRIDGE

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Michael Shaunessy

**ACKNOWLEDGMENTS**  
**I KNOW GOOD JOKES WHEN I STEAL THEM**

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## **I. THE DISCIPLINARY RULES**

- The Rules are frequently difficult to apply in Real Estate and Land Use Situations
  - The Rules are so litigation oriented they are frequently difficult to apply to ethical issues that arise in representing parties in real estate and land use matters.
- The Disciplinary Rules Application to Suits against Lawyers
  - A violation of the Rules does NOT establish liability.
  - However, a violation of the Rules is often used as evidence of negligence or abetting in fraud.



3

## **II. CREATION OF AN ATTORNEY-CLIENT RELATIONSHIP**

- A. The A/C relationship is contractual in nature; arising from the attorney's agreement to provide legal services to the client.
- May be expressly created through a written contract, or
  - Impliedly created by the actions of the parties.



4

## II. CREATION OF AN ATTORNEY-CLIENT RELATIONSHIP

B. Whether expressly or impliedly created, there must be “some manifestation that *both* parties intended to create an attorney-client relationship.”

-One party’s mistaken belief an A/C relationship exists is not sufficient, by itself.

-It is an objective, not subjective, standard

C. I DISCLAIM that an A/C relationship is created by my making this presentation.



5

## II. CREATION OF AN ATTORNEY-CLIENT RELATIONSHIP

D. HOWEVER,

1. The HOBBY Rule: Charging fees or receiving payment is NOT required for the creation of an attorney-client relationship; and

2. The relationship may be created by implication when the attorney knows that a person reasonably—but mistakenly—expects the attorney to provide legal services, and the attorney makes no effort to correct the misunderstanding.



6

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