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Conflicts, Contracts & Costs:
An Ethical Update

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CONFLICTS, CONTRACTS, AND COSTS: A QUICK ETHICS UPDATE ON CRITICAL LAW PRACTICE CONSIDERATIONS

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This presentation is intended to remind lawyers of their duties in three critical areas that affect a great majority of practicing attorneys. Those areas are:

1. A short reminder of our responsibility to analyze the rules regarding conflicts of interest and either avoid or resolve conflicts as they arise;
2. A reminder how lawyers can be protected by appropriately documenting files, including a solid attorney-client contract, outlining the expectations of both the attorney and the client throughout the representation, as well as closing letters; and
3. Keeping your law offices running smoothly and efficiently by choosing the right equipment and procedures for serving clients, maximizing your talents, and protecting yourself.

Portions of this paper were taken and adapted from earlier CLE presentations which I presented in various institutes and specialty programs.

Part I:

CONFLICTS OF LAW: You Can't Be Everybody's Best Friend . . . or Lawyer, either.

Most lawyers enjoy pursuing, keeping and securing as many clients as possible. Lawyers who have recently started practice have very little worry that their clients' interests are going to conflict, mainly because they don't have very many clients. The larger the firm, however, the more necessary it is to ensure that the interests of various clients do not get you into trouble.

This article will focus on the big issues facing lawyers, and emphasize hints to analyze dangerous situations when they arise. The key to all of this, however, is knowing the rules, and applying your own best intellectual honesty.

1. General Rules

In Texas, the Disciplinary Rules regarding conflicts of interest are as follows:

Rule 1.06 - Conflict of Interest: General Rule

- (a) A lawyer shall not represent opposing parties to the same litigation.

- (b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
 - (1) involves a substantially related matter in which that person's interests are material and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or
 - (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.
- (c) A lawyer may represent a client in the circumstances described in (b) if:
 - (1) the lawyer reasonably believes the representation of each client will not be materially affected; and
 - (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications and possible adverse consequences of the common representation and the advantages involved, if any.
- (d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtain from all such parties to the dispute.
- (e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.
- (f) If a lawyers would be prohibited by this Rule from engaging in particular conduct, no other lawyer, while a member or associated with that lawyer's firm, may engage in that conduct.

Rule 1.07 - Conflict of Interest: Intermediary

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