

March 2018

Legal Ethics in Land Development—A Real Kick in the grASS

ETHICAL CONSIDERATIONS IN LAW USE REPRESENTATION



MCGINNIS LOCHRIDGE we're in it together®

Michael Shaunessy

ACKNOWLEDGMENTS I KNOW GOOD JOKES WHEN I STEAL THEM

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Brytne Kitchens, my Co-Author



I. THE DISCIPLINARY RULES

- The Rules are frequently difficult to apply in Real Estate and Land Use Situation
 - The Rules are so litigation oriented they are frequently difficult to apply to real estate transactions and land use representation.
- The Disciplinary Rules Application to Suits against Lawyers
 - A Violation of the Rules Does NOT establish liability.
 - However, a Violation of the Rules are often used as evidence of negligence or abetting in fraud.



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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.



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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 a A/C Relationship Exists is not sufficient, by itself.

-Its an Objective Not Subjective Standard

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



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II. CREATION OF AN ATTORNEY CLIENT RELATIONSHIP

C. HOWEVER,

1. The HOBBY Rule: Charging fees or 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, but the attorney makes no effort to correct the misunderstanding.



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