

CURRENT DEVELOPMENTS IN LEGAL ETHICS

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CORE ETHICAL DUTIES

- COMPETENCE, Rules 1.1 and 1.3
- COMMUNICATION, Rule 1.4
- CONFIDENTIALITY, Rule 1.6
- CONFLICTS OF INTEREST (avoidance),
Rules 1.7 thru 1.14

Basic Premises Are the Same

- Enacted generally for the purpose of preventing individuals from using their public position or authority for personal, financial benefit.
- Difficulty is in recognizing and applying variations and overlapping or conflicting requirements.

WHAT WILL WE COVER?

- Dual or Multifaceted Ethical Rules for Attorneys and Public Employees
- Choice of Law
- Unauthorized Practice of Law
- State and Local Government Ethics
- Specific Traps for In-House Counsel
- No-Cost Government Contracting
- Unsolicited Electronic Mail

WHICH ETHICS RULES APPLY?

- Rule 8.5 Disciplinary Authority; Choice of Law Provisions
- Simultaneous Application of Multiple Jurisdictions' Rules
- Counsel Subject to Discipline in a Jurisdiction Where You Are NOT Licensed To Practice Law

Priority of Sources and Provisions

Dependent on *where* you are, literally;
and

- Is position private or public?
- If contracting, with private or public entities?
- What is current state of relationship?
- Any reporting or certifying obligations?
- Are you practicing law or not?
- If not practicing law, are you engaging in law related services? See Rule 5.7

WHAT IS UPL?

- Defining the “practice of law”
- New UPL Enforcement Teeth
- Trends in UPL Enforcement
- Tenn. Environmental Council v. Tenn. Water Quality Control Bd., 254 S.W.3d 396 (App. 2007).

SURVEYS DON'T LIE

“High Rates of Misconduct in Government”

- ETHICS RESOURCE CENTER
- JANUARY 2008 Survey

GIFTS FROM OUTSIDE SOURCES

- Most states specifically regulate
 - Widely attended gatherings,
 - Food and beverage gifts,
 - Token gifts, and
 - Training gifts.
- While usually allowed in part, all gifts, even token ones, usually must be reported. *See, e.g.,*
- Connecticut State Government Ethics Act:
<http://www.ct.gov/ethics/cwp/view.asp?a=2306&q=301614> and
- North Carolina State Government Ethics Act:
<http://www.ethicscommission.nc.gov/ethicsact.htm>

TRAPS FOR IN-HOUSE COUNSEL

- Contingency Fee Agreements
- Outside Counsel Too, D.C. Op. 226
- Contact with a Represented Entity
- Investigations
- Interviews
- Conflicts in Organizational Representation

Communicating by E-Mail

- Add the “attorney-client privileged” label to all communications that are privileged, *but only those that are*, in the subject line.
- Shorten long email strings.
- Share e-mails only with client reps. who need to know-- watch where your privileged message is going, and make sure your clients do, too.
- Know what electronic documents to destroy as well as when and how to save them too.

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Communications via this Web site do not establish an attorney-client relationship and any information sent to Firm before establishing an attorney-client relationship as evidenced by a signed engagement letter agreement can and will be used for the benefit of the firm's existing clients; accordingly, until we have formally established an attorney-client relationship, do NOT send any confidential information or any information you would expect to be maintained in confidence through this web site or through any email address posted on this web site.

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Do You Know Whom To Contact?

Make Sure You Know:

- *When To Obtain Guidance*
- *Where to Obtain Guidance*
- *Whom to Contact*
 - Both Officially and Unofficially