

Ethics: Going Beyond the Model Rules

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Scenario One

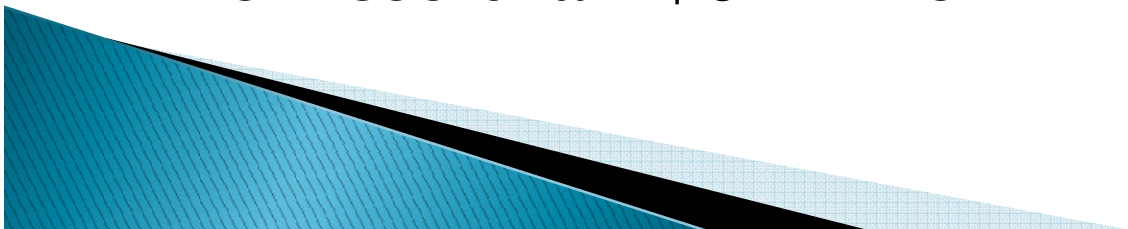


“It makes all the difference in the world whether we put truth in the first place or in the second place.”

—Richard Whately,
quoted in *On
Compromise*, 1910.

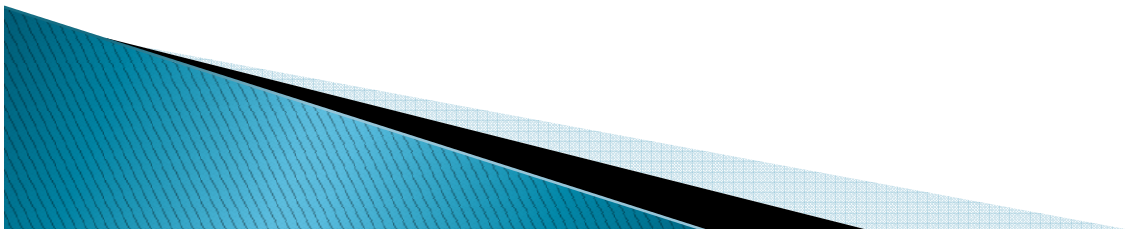
Scenario One

- ▶ MWU sues Former Contractor for damages
- ▶ Court Mandates Settlement Conference
- ▶ General Manager, Gen Counsel & Litigation Counsel Confer
- ▶ General Manager gives Gen Counsel & Litigation Counsel Authority to Settle for anything over \$4.25 million
- ▶ Settlement Judge asks re Settlement Authority
- ▶ MWU Gen Counsel says No Authority to Settle for less than \$6 million



Scenario One

- ▶ Did the General Counsel act appropriately?
- ▶ What about the litigation counsel?



Scenario Two

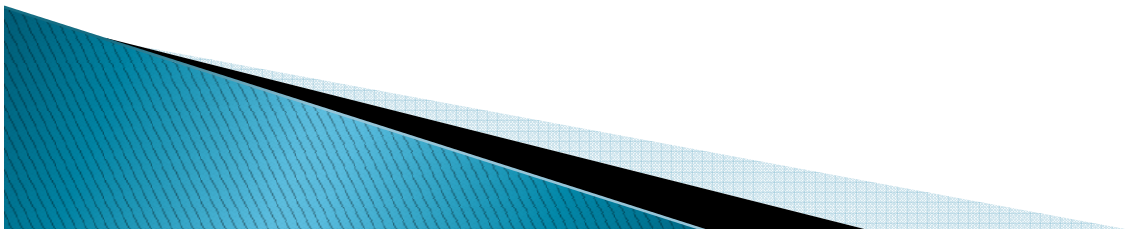
“No man can serve two masters...”

--King James Bible, Luke 16:13




Scenario Two

- ▶ MWU Retains New Law Firm as Gen Counsel
- ▶ The Engagement Letter Between MWU and Law Firm Includes an “Advance Waiver”



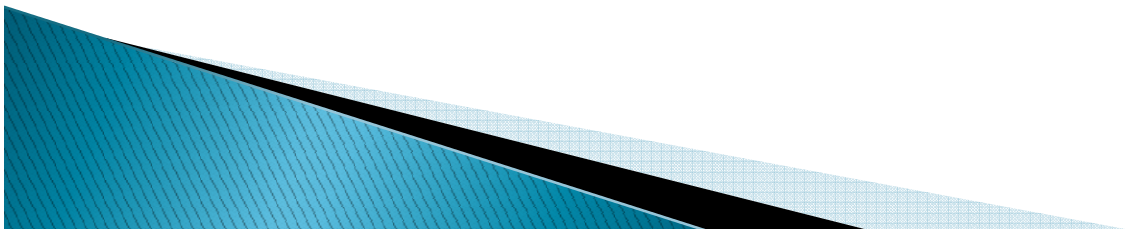
Scenario Two

*“MWU recognizes that Law Firm represents a large number of clients which have business before various City boards and commissions other than MWU. MWU acknowledges that it would not be feasible for Law Firm to cease all such representation as a condition of undertaking the representation of MWU. MWU agrees that Law Firm may continue to **represent existing and future clients in any matter adverse to the City so long as those matters do not involve MWU as a party and they do not involve matters on which Law Firm has advised or otherwise represented MWU (hereafter referred to as ‘UNRELATED MATTERS’).** In consideration of Law Firm’s agreement to represent MWU, **MWU waives any conflict of interest relating to UNRELATED MATTERS;** and MWU agrees that Law Firm’s representation of MWU **will not serve as the basis of any disqualification of Law Firm in UNRELATED MATTERS.**”*



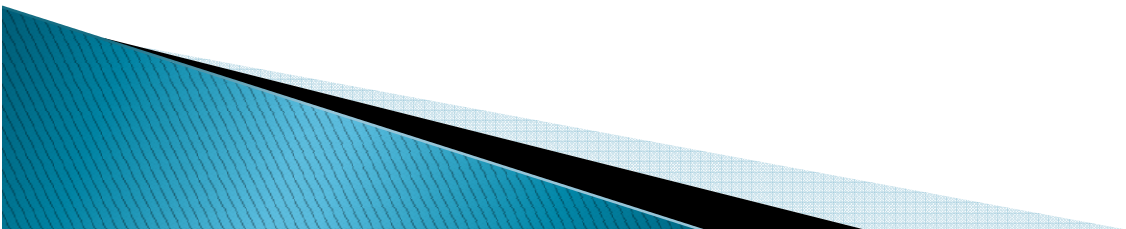
Scenario Two

- ▶ MWU Retains New Law Firm as Gen Counsel
- ▶ The Engagement Letter Between MWU and Law Firm Includes an “Advance Waiver”
- ▶ Law Firm Represents Proponent of Controversial Redevelopment Project
- ▶ City Planning Commission Denies Approval
- ▶ City Council Affirms Denial of Approval
- ▶ Law Firm Sues Challenging Denial
- ▶ City Moves to Disqualify Law Firm in Suit



Scenario Two

- ▶ Should the disqualification motion be granted?



Scenario Three

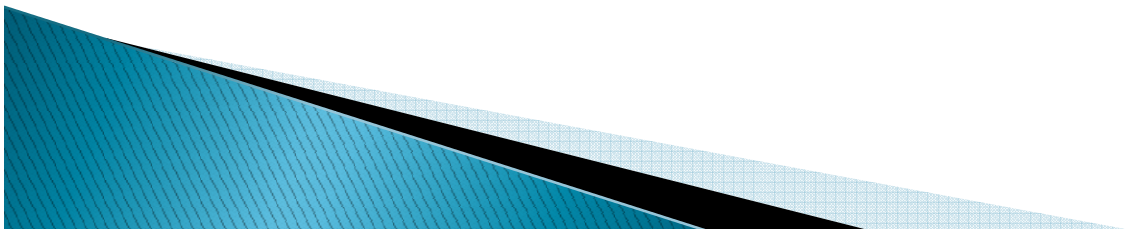


"In theory, there is no difference between theory and practice. But in practice, there is."

– Yogi Berra

Scenario Three

- ▶ MWU is Defendant in Sex Discrimination Claim
- ▶ Treatment Plant Mgr is also Named Defendant
- ▶ MWU Asks Law Firm to Defend Both
- ▶ Multiple Client Engagement Letter w/Waiver
 - MWU Pays All Fees
 - No Secrets Between Defendants
 - Law Firm May Continue to Represent MWU if Conflict Arises
- ▶ One Week Prior to Trial Law Firm Meets to Prepare Treatment Plant Manager



Scenario Three

Treatment Plant
Manager:

“There is something really bothering me, and I don’t know what to do about it.”

Law Firm Partner:

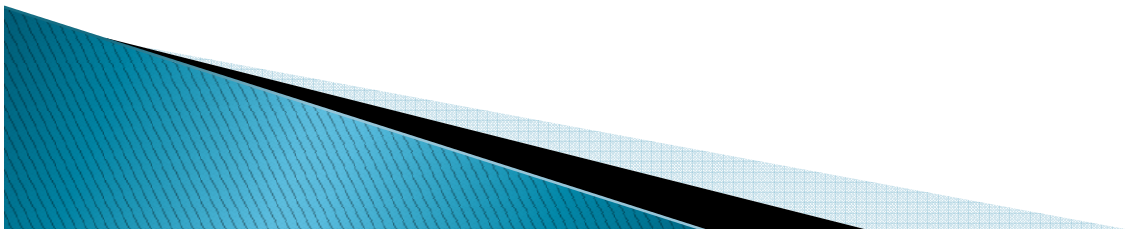
“Well tell me about it. That is what I am here for. I am your lawyer.”

Treatment Plant
Manager:

“I have been having an affair with the named plaintiff for several years. We are still seeing each other.

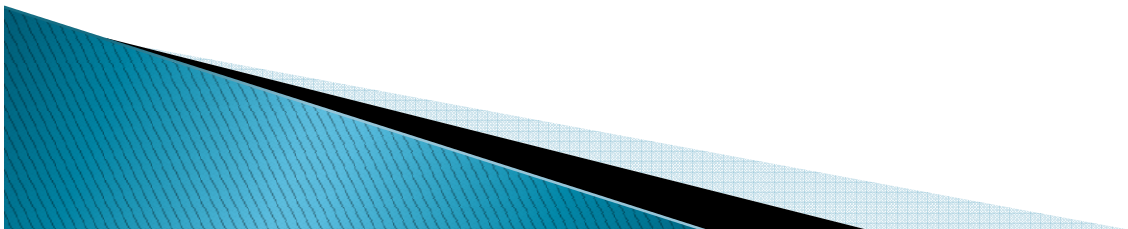
“I cannot allow any of this to come out. It would ruin my marriage. It would ruin my career with MWU.

“What should I do?”



Scenario Three

- ▶ What should the lawyer do now?



Scenario Four

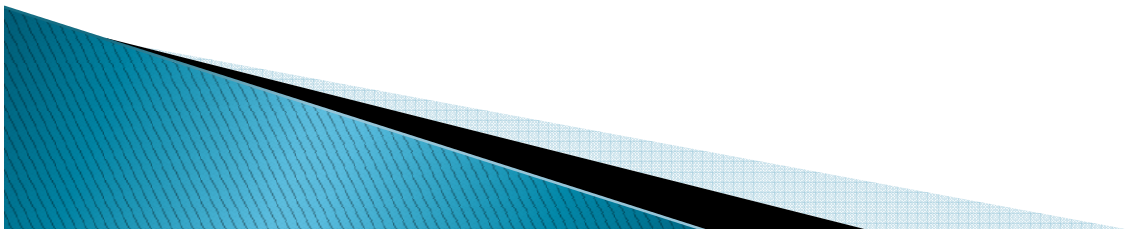
"Where are we going,
and why am I in this
handbasket?"

– Bumper Sticker



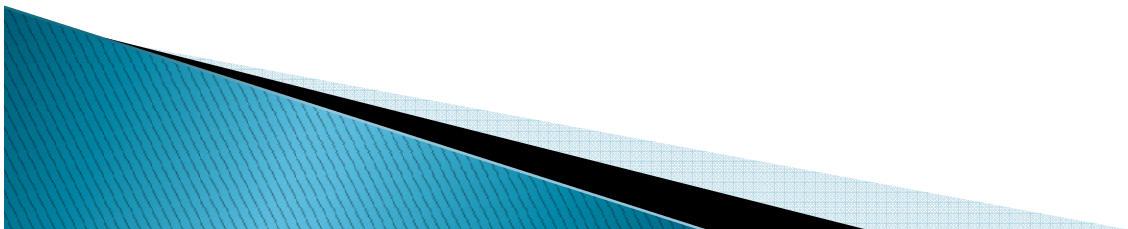
Scenario Four

- ▶ MWU Gen Counsel Learns DMRs may have been Falsified
- ▶ Gen Counsel Undertakes Internal Investigation
- ▶ State Commences Enforcement Action
- ▶ State Seeks Discovery of Investigation Documents
- ▶ MWU Objects on Attorney–Client Privilege and Work Product Grounds
- ▶ State Says the Internal Investigation Documents Are Not Privileged



Scenario Four

- ▶ Does the State get the internal investigation documents?



Questions?

