David vs. Goliath: How Policyholders Hold Great Power When Insurers Issue Reservations of Rights and Panel Counsel Fail to Obey Ethical Rules

Total: **137 Minutes**

Speakers:
Stephen Thomas

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Millions of times per year, liability insurers issue reservations of rights agreeing to defend their policyholders against liability disputes, which always creates some conflict of interest between the reserving insurers and their policyholders because each wants the other to pay. Fifty American jurisdictions have consistently ruled that if the reservation of rights creates an ethically disqualifying conflict of interest, pre-approved "panel" defense lawyers may not accept representation of the policyholder nor accept compensation from the reserving insurer unless they first clear potential conflicts of interest created by the reservation of rights, usually by obtaining informed written consent. Sadly, most panel lawyers utterly fail to obey the Rules.

Armed with Rules 1.4 (disclosure), 1.7 (conflicts of interest), and 1.8.6 (compensation), policyholders alone wield great power to select and direct independent counsel at the insurer's expense to defend against the liability dispute. Success rests upon understanding timing, burden, and proof.

This will be a "how to" course for policyholders and their independent counsel to quickly, easily, and cheaply resolve conflicts of interest with a single mantra: "Just say no!"

Topics include:

- Situation background and conflicts of interest (20 min.)
- Delivery package (10 min.)
- **Ethics:** Overview of ethical rules and compliance for dependent counsel (35 min.)
- **Ethics**: Principals informing goals and techniques for success (15 min.)

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- Primary jurisdiction doctrine (7 min.)

- Insurance defense principles and evidence development (15 min.)

- **Ethics:** Six prongs of Ethics Rule 1.7 (15 min.)

- **Ethics:** Ethics Rule 1.4 – written record (10 min.)

- **Ethics:** Rule 1.6 – protection of confidential information (10 min.)

- **Ethics:** Rule 1.8 – consent to pay dependent counsel (10 min.)

- Disparate case law (5 min.)

- Insurance industry defenses (10 min.)

Total: 137 minutes, 95 ethics

Speaker Bio: Stephen Thomas

EDUCATION: Brown University (A.B., 1970), Dean's List Washington University (J.D., 1974), Editor, Washington U. Law Quarterly, 1973-74

PROFESSIONAL PRACTICE: Principal fields of study include: duty to defend, conflicts of interest, reservations of rights, the right to independent (Cumis) counsel, lawyers' ethical obligations, reasonableness of attorney fees, insurer reimbursement claims, good faith reliance on counsel, insurer good or bad faith, and insurance coverage in complex civil litigation.

PUBLICATIONS:
Los Angeles Lawyer: The Cumis Canon (11/20)
House Counsel: The Insurer's Duty to Defend (10/98)
California Law Business: The Advisor, Cash Crop (9/97)
ABA - TIPS: Reservations of Rights and Conflicts of Interest: The Policyholder's Perspective (2/96)
Consulting Editor: California Continuing Education of the Bar, (1991)

LECTURES AND PRESENTATIONS:
David vs. Goliath: How Policyholders Hold Great Power When Insurers Issue Reservations Of Rights And Panel Counsel Fail To Obey Ethical Rules (12/22)
Understanding Liability Insurance Basics: A Brief Guide for Policyholders, Victims, and Their Lawyers (11/20)
Wild Fire Insurance Primer - Beware the Perjury Trap (10/20)

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