DISBARMENT, SUSPENSION, DISCIPLINE – OH MY!

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AGENDA

- **Trust Accounting Gone Wrong**
- **Inadequate Attorney-Client Communication**
- **Misrepresentation and Dishonesty**
- **Declining or Terminating Representation - Top Attorney Mistakes**
- **Charging Unreasonable Fees; Fee Disputes**
- **Engaging in the Unauthorized Practice of Law**
- **Ignoring a Disciplinary Complaint**



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TRUST ACCOUNTS/IOLTA

- With certain exceptions, attorneys are required to:
  - Create and Maintain Interest-Bearing Trust Accounts (IOLTA)
  - Rule 1.15(f) – provisions for IOLTA Trust Accounts
  - Rule 1.15(g) – provision for certification and exemptions

- What is an IOLTA Account?
  - Bank accounts into which an attorney or firm deposits client funds that either are small in amount, or will be held for such a short time, that they will not earn interest income sufficient to cover costs incurred to secure such income.

- What happens to interest earned on IOLTA Account?
  - It is paid to the Indiana Bar Foundation to support pro bono legal aid and other public services

TRUST ACCOUNTS/IOLTA

- Indiana attorneys MUST provide an annual IOLTA certification to the Office of Admissions & Continuing Education (part of annual registration)

- If you are EXEMPT from the IOLTA requirement you must still certify the exemption.

- YOU are responsible for ensuring your understanding as to if you must maintain (or are exempt) from IOLTA requirements.

SAFEKEEPING PROPERTY RULE 1.15(A)

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

SAFEKEEPING PROPERTY
RULE 1.15(B) & (C)

(b) A lawyer may deposit his or her own funds reasonably sufficient to maintain a nominal balance in a client trust account.

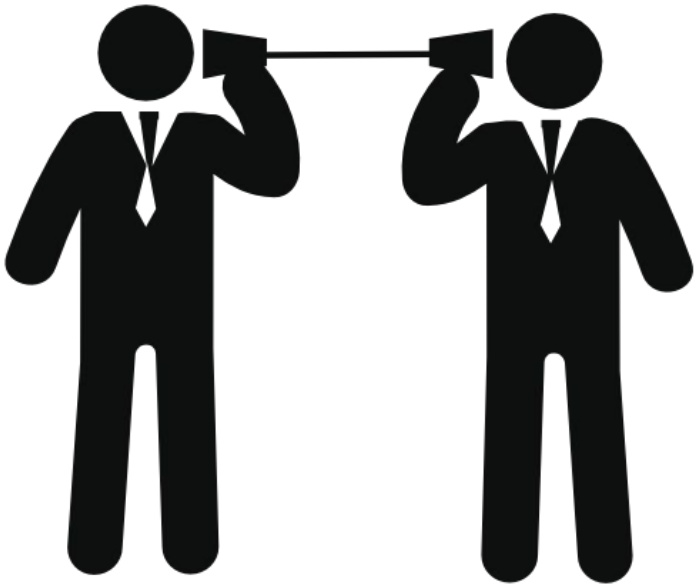
(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

SAFEKEEPING PROPERTY
RULE 1.15(D) & (E)

(d) Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

INADEQUATE ATTORNEY/CLIENT COMMUNICATION



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WORKING WITH CLIENTS



Golden Rules for developing a successful practice:

1) The client is the boss.

2) Never forget Rule #1.

ALLOCATION OF RESPONSIBILITY BETWEEN LAWYER & CLIENT

What's it mean to be the boss? See PCR 1.2:

Client controls the objectives of the representation

Lawyer shall consult client on the means to be used to pursue the objective

Lawyer impliedly authorized to act

ETHICAL BASELINE: PCR 1.4

RULE HAS TWO ASPECTS:

- Temporal: Be prompt (prior to taking action)
  - Bad news doesn't get better with age

- Substantive: Give the client sufficient information to participate intelligently in decision-making

- Gear toward client's sophistication

BUT Always meet client's expectations; some expect more communication than others

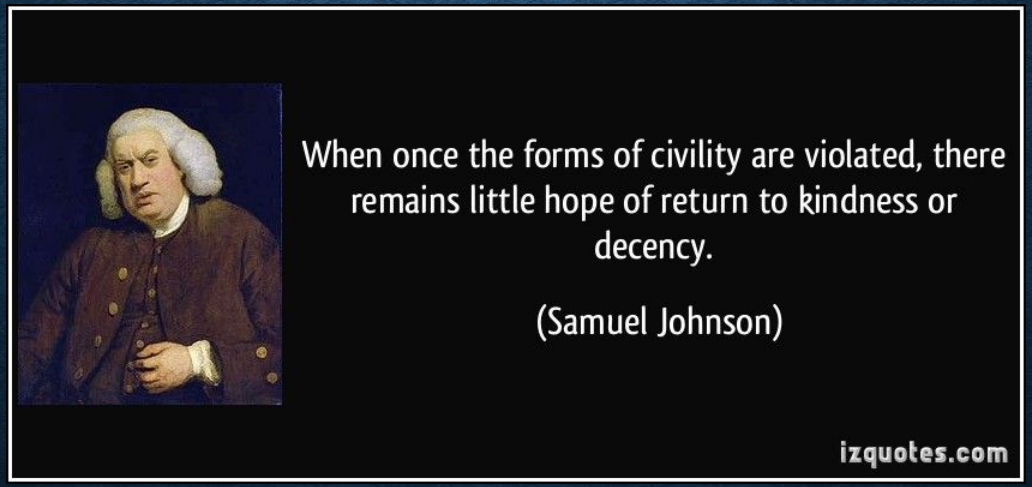
BEST PRACTICES

1) Return client calls and messages within 24 hours **OR** Acknowledge the call promptly.

2) Send your client drafts of significant documents one week before they must be filed with a court or government agency or shared with a third-party.



COMMUNICATIONS WITH DIFFICULT CLIENTS



UNREASONABLE CLIENT DEMANDS

- Incumbent on lawyers to explain benefits of civility (which often include a lower legal bill)

- Knowing when to say enough is enough


MISREPRESENTATION
DISHONESTY

M.R. 4.1 – TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

M.R. 4.2 – COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

M.R. 4.3 - DEALING WITH UNREPRESENTED PERSON(S)

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

CANDOR TO THE TRIBUNAL

Only principle that trumps the attorney-client privilege [Rule 3.3(c)].

- Rule of Prof. Conduct 3.3:
  - An attorney shall not make a false statement to the courts [3.3(a)(1)];
  - Continuing duty to correct any false statements what are inadvertently made [3.3(a)(1)];
  - Must disclose authority that is directly on point in a controlling jurisdiction and not otherwise disclosed [3.3(a)(2)].
  - Shall not offer evidence that we know is false [3.3(a)(2)].
  - Later learn evidence if false, shall take steps to reasonable remediate the situation, including disclosure to the tribunal [3.3(a)(3), and 3.3(b), and Cmt. 1].

EXAMPLE:

A judge checked a lawyer's Facebook page after the lawyer requested a continuance because of the death of her father. The young lawyer's Facebook posts revealed that "there wasn't a lot of grief expressed online". Instead, the lawyer's posts described a week of partying and drinking with friends. When the lawyer asked for a second continuance, the judge declined and disclosed the results of her research to the senior partner at the young lawyer's law firm.

Model Rule 3.3 – prohibits false statements to a tribunal

Lesson learned?

Ethical Rule violation?



TOP MISTAKES WHEN DECLINING OR TERMINATING A REPRESENTATION

M.R. 1.16

Client-Lawyer Relationship

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud, despite the lawyer’s discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

M.R. 1.16 (CONT.)

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

TERMINATING REPRESENTATION OF A CLIENT

When is a lawyer required to stop representation of a client?

To avoid a violation of the Rules (e.g., would involve the lawyer in a crime/fraud)

Lawyer is impaired

Lawyer is discharged



WHEN YOU MAY "FIRE" THE CLIENT

- Anytime you can do so without "material adverse effect" on the client's interests
- Client persists on a course lawyer reasonably believes is criminal or fraudulent
- Use of lawyer's services to perpetuate a crime or fraud
- Client insists on action that is repugnant to lawyer
- Client fails to fulfill its obligations to counsel
- Representation will cause lawyer to suffer unreasonable financial burden or has been rendered unreasonably difficult by the client
- Other "good cause"



VOLUNTARY WITHDRAWAL

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WRONGFUL DISCHARGE

M.R. 1.2(D), 1.6(B)(5), 1.13, 1.16, AND 5.2

- Employment-at-will doctrine and in-house counsel

- Protection against retaliation if "blow the whistle" - - M.R. 1.13 "UpJohn Warnings" – "Corporate Miranda Warnings"
  - Employees have the right to sue in tort for relatiatory discharge, wrongful termination, and wrongful discharge
  - Employees must prove that they were actually or contructively discharged or relatialted against for engaging in protected behavior or reporting conduct reasonably believed to violate public policy

- Do the protections apply to in-house counsel?

HOW TO MAKE A PROFESSIONAL EXIT

Avoid

Take steps to avoid prejudice to the client

Facilitate

Facilitate a transition with client's new lawyer, including prompt delivery of files

Send

Send client advance notice of withdrawal in pending litigation (see sample forms)



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FEES! RULE 1.5

Fees Must Be Reasonable!

Look to Rule 1.5 for guidance/factors on reasonableness

Does NOT have to be in writing unless stated in Rule 1.5 otherwise (e.g., contingent fee agreements)

M.R. 1.5 FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

M.R. 1.5 FEES (CONT.)

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

GOOD KNOWLEDGE

- Fee arrangements should be in writing (even thought not always required)
  - Include the scope of the representations and the basis or rate of the fees and expenses for which the client is responsible

- If you modify fee contract AFTER the representation has commenced – presumed to be the product of undue influence.

- Fee Collection – MOST DISPUTES
  - Explain the basis for your fees to the client
  - Do not overcharge!
  - Do not request unreasonable fees
  - Practice good billing practices and keep accurate records

- We have the right to be compensated for our work, but for what is "**reasonable**"

WHAT ARE THE ABUSES OF HOURLY BILLING?

- No one is following you around.
- Doing more work than necessary to get bills and hours up.
- Mini-frauds?
- Obsession with statistics and meeting numbers, and what does that do you personnel?

ALTERNATIVE FEE AGREEMENTS

Best Practices

1) Define in writing the scope of work in matters involving flat fees
2) What related services, if any, are not included (e.g., limited engagement to collect unpaid child support)
3) Document client's informed consent to limitations on the scope of the representation

KEY: Flat fee does not lower your standard of care.



FIXED FEES

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation, a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

INTEREST ON LAWYER TRUST ACCOUNT ("IOLTA")

- Meets the separate accounts requirement for client funds
- All client funds that cannot earn net interest are kept in the IOLTA account, and the IOLTA interest is paid to a central fund used to fund legal services for those unable to pay.
- Never allow just 1 lawyer to carte blanche in billing clients, law firms should have at least 2 lawyers responsible for administration of IOLTA accounts

Keep good records! Do not comingle funds!

- National Bank of Indianapolis – common bank for IOLTA accounts in Indiana.

CONTINGENT FEES

- MR 1.5 – all jurisdictions require that contingent fees be in writing, and mandate specific disclosures or regulate the amount or calculation of the contingency.

- Used in multiple situations: collections, civil rights, securities and anti-trust class actions, real estate, tax appeals, and patent litigation

- MR 1.5(d) - Forbidden in the following: divorce and criminal matters

- WATCH OUT for the "too easy" cases!

STATUTORY FEES

- Some statutes, e.g. Social Security Act, directly control the amount and calculation or a fee

- Some statutes, e.g. Equal Access to Justice Act, provide for fee shifting
  - Means prevailing plaintiff recover fees from unsuccessful defendant

- Each jurisdiction has developed it own statutory fee rules

HOURLY FEES (M.R. 1.5)
ABA FORMAL OPINION 93-379, PG. 301

- **Rule**: a lawyer MUST disclose to a client the basis on which the client is to be billed for both professional time and other charges; invoice MUST fairly reflect the basis on which the client's charges have been determined.



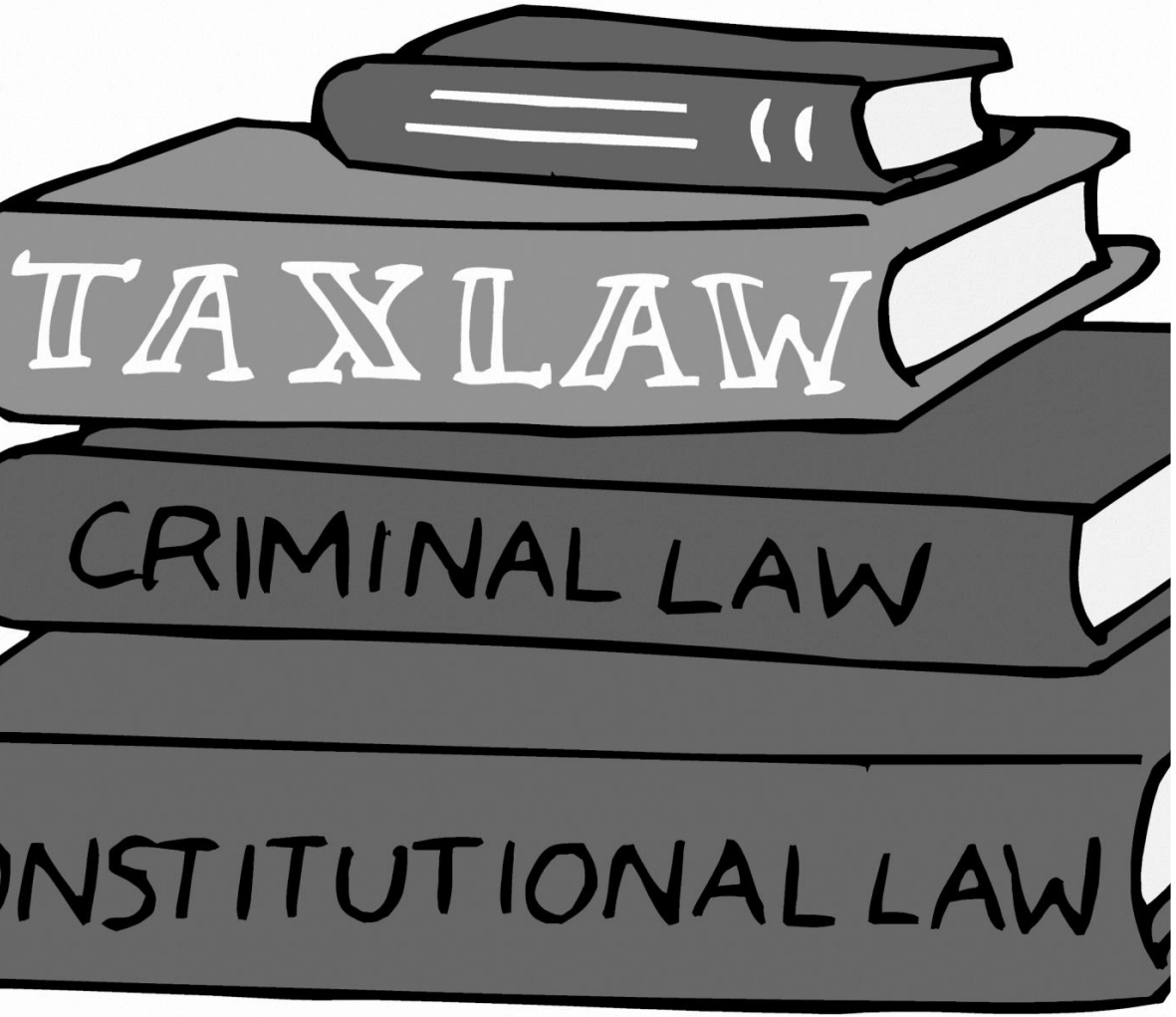
COMMUNICATING WITH CLIENTS ABOUT FEES

Best Practices: engagement terms and fee statements should be clear

- Have a written engagement letter or fee agreement in ***all*** matters (see sample)
- Specify who the client is and who it is not
- Specify what you are hired to do (and not do)
- Send monthly invoices *promptly*

TIPS ON MITIGATING RISK (AND PROVIDING GOOD CLIENT SERVICE)

Monitor	Proactively monitor collection; use retainers
Document	Document important advice – a short email is usually sufficient
Provide	Provide drafts for review
Scope	Document your scope of engagement
Don't oversell	Don't oversell what you can accomplish
Be Clear	Be clear about the cost of service



THE UNAUTHORIZED PRACTICE OF LAW ("UPL")

MOST COMMONLY OCCURS WHEN YOU ARE OPERATING REMOTELY:

Need to ensure you are not engaging in UPL – present in remote jurisdiction where you are not licensed while practicing in jurisdiction in which you are licensed (and vice versa) (Rule 5.5);

Properly supervising non-attorney personnel (Rule 5.3);

Need to exercise care when utilizing technology (Rule 1.1);

Ensure adopt virtual practices the enable you to uphold duties of competence (Rule 1.1), diligence (Rule 1.3), confidentiality (Rule 1.6), and communication (Rule 1.4)

ABA Formal Opinion 495 (lawyers remote work & UPL); ABA Formal Opinion 498 (supervision)

LIVE/RESIDE WHERE NOT LICENSED

Ethically permitted under Model Rule 5.5 to practice law in the jurisdiction(s) in which the lawyer is licensed **even if** the lawyer is physically located in a jurisdiction in which the lawyer is not licensed.

– See ABA Formal Opinion 495

The "key" to this determination is the representations an attorney makes to the public.

Cannot hold out or establish an office or other systematic and continuous present in jurisdiction not admitted to practice law. Presence can be systemic and continuous even in not physically present

FACTOR ANALYSIS

Check the local jurisdiction to see if interpreted Rule 5.5 differently than the model rule

Attorney should not establish an office or other systematic and continuous presence in jurisdiction where not licensed

Attorney should not “hold out” as licensed in a jurisdiction in which they are not licensed (watch out for business cards)

Do not advertise in jurisdictions in which is not admitted

For this practice (what learned so far) – watch out doing webinars to groups residing in jurisdictions you are not licensed

Use disclaimers on your materials - “solely licensed in .. X...”

CAN YOU PREPARE ESTATE PLAN FOR SOMEONE IN DIFFERENT JURISDICTION?

Scenario Questions:

Can an Ohio attorney draft a will for an out-of-state resident?

At what point does an attorney's assistance cross the line into UPL?

Does the client's change in residence to a state in which the attorney is not licensed require the termination of professional relationship or can it continue in a modified form?



LOCAL PRACTITIONERS

"Sure, you can draft a will for a non-resident, but just don't sign your name to it."

"No, drafting a will for a non-Ohio resident would be in violation of the unauthorized practice of law."

Difference in opinions leaves a 50/50 chance of two options:

business as usual or disbarment

Varies

ANSWER:

Depends on if the non-resident's jurisdiction has adopted Model Rule 5.5 and what that jurisdiction deems the "practice of law"

PRACTICE OF LAW

Task Force on the Model Definition of the Practice of Law

* * *

(c) A person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(1) Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others;

(2) Selecting, drafting, or completing legal documents or agreements that affect the legal rights of a person;

(3) Representing a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or

(4) Negotiating legal rights or responsibilities on behalf of a person.

PRACTICING LAW EXAMPLE

In another case, an individual gave a client legal advice and practiced law by aiding the client in designating probate and non-probate assets, selecting a form of trust, designating various beneficiaries, and determining tax treatment. The conduct was also considered the practice of law.

Akron Bar Ass'n v. Miller, 684 N.E.2d 288 (Ohio, 1997).

PRACTICING LAW EXAMPLE

Giving legal advice concerning the application, preparation, advisability, or quality of any legal instrument or document or forms thereof in connection with the gift of property is the practice of law.

Florida Bar re Advisory Opinion-Non-lawyer Preparation of Living Trusts, 613 So. 2d 426 (Fla., 1993).

Drafting a will for an out-of-state resident likely falls within one of the examples above, and there is **UNAUTHORIZED**.

Any exceptions?



TEMPORARY BASIS: RULE 5.5(C)

May provide legal services on a "temporary basis" in a jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts.

4 exceptions stated in Rule 5.5(c)

TEMPORARY BASIS

RULE 5.5 (C)(4)

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction . . .

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction . . .

(4) are not within paragraphs (c) (2) or (c)(3) and **arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.**

REASONABLY RELATED

Previously represented by the lawyer or may be resident in or have substantial contacted with the jurisdiction in which the lawyer is admitted.

The matter have significant connection with that jurisdiction in which the lawyer is admitted

Significant aspects of the lawyer's work might be conducted in the jurisdiction in which admitted, or a significant aspect involve the law or the jurisdiction in which admitted.

REASONABLY RELATED

Client's activities or the legal issues involve multiple jurisdictions (e.g., multinational corporation)

Services may draw on a lawyer's expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, national-uniform, foreign, or international law.

Temporary pro bono services in jurisdiction that has been affected by a major disaster.

RULE 5.5

None of the Rule 5.5 exceptions allow a lawyer to establish an office or other systemic and continuous present in a jurisdiction in which they are not admitted.

But . . .

Services may be “temporary” even if on a recurring basis, or an extended period of time (e.g., lengthy litigation)



IGNORING A DISCIPLINARY COMPLAINT

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A GREAT PRIVILEGE

Holding a law license and practicing law is a “privilege” not a “right”

PRIVILEGE GETS YOU 5 THINGS

- Initiate a lawyer-client relationship
- Provide legal advice
- Any legal papers or pleadings on behalf of the client can only be signed by the lawyer
- Carry out legal proceedings in court of law
- Charge a fee for these legal services.

SIDE NOTE:

If a non-lawyer working for you or your firm does any of the 5 things on the prior slide, they, AND YOU, can get in trouble/disciplined under the Rules of Professional Conduct

More to come on this topic: **MR 5.3 Supervision and MR 5.5 Unauthorized Practice of Law**

See footnote 1 on pg. 19 of your textbook



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DISCIPLINARY COMPLAINT

- Who files it?
  - Clients, Judges, Other Lawyers, or Third Parties
- Is it a criminal or civil type of process?
  - Neither, but a lawyer gets due process (e.g., notice of charges, invoke 5th Amendment) and the rules of civil procedure and evidence apply.
- What is the burden of proof?
  - Clear and convincing evidence
- How is a claim adjudicated?
  - By judges or other lawyers – not a jury
- Can a lawyer appeal a disciplinary decision/holding?
  - Yes, a lawyer can appeal a committee's decision

A GENERAL DISCIPLINARY PROCESS

- Grievance Filed – **Triggers the due process right**
- Disciplinary Commission review the grievance and can either dismiss it (not raise misconduct) or find potential misconduct
- If potential misconduct, attorney is notified and the grievance is investigated (private investigation, not public)
- Lawyer gets to respond to the grievance with a written response (time limits on this!)
- Investigation concludes – additional review by the FULL Disciplinary Commission and they can either dismiss it or proceed for formal complaint against the attorney

THE <u>WORST</u> THING YOU CAN DO IS NOT RESPOND TO THE DISCIPLINARY COMMISSION.

YOU WILL GET A VIOLATION FOR NON-RESPONSIVENESS!

A GENERAL DISCIPLINARY PROCESS (CONT.)

- If a formal complaint is filed, the lawyer will be notified
- Complaint is filed with the Clerk of the Supreme Court (becomes public).
- A hearing officer is appointed by the Supreme Court to hear evidence
- Lawyer can obtain its own lawyer to represent him/her/them and present evidence/witnesses
- Hearing officer hears the evidence and makes a report on the case to the Supreme Court (this is not a final decision) – however, many cases mediate and "plea" out the charges and then that gets sent to Supreme Court for approval.
- Supreme Court has final decision and can hear evidence of its own in some cases
- All orders and opinions of discipline that go past investigation phase can be located on the Disciplinary Commission website!

POTENTIAL VIOLATION SANCTIONS

- Private Public Reprimand
- Fine $$
- Interim Suspension – immediate loss of license pending subsequent hearing
  - Only when convicted of serious crime, abandons a law practice, or otherwise threatens serious harm to the public
  - *Matter of Giuliani* – pg. 29 in textbook (coming up in slides)
- Suspension from the practice of law – either with or without automatic reinstatement
- Disbarment (permanent) – if "interim" can be with or without automatic reinstatement
- Reciprocal Discipline

Other: You can also face civil liability, malpractice claims, criminal charges, or equitable remedies.

DISCIPLINARY COMMISSION WEBSITE INDIANA

https://www.in.gov/courts/discipline/



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