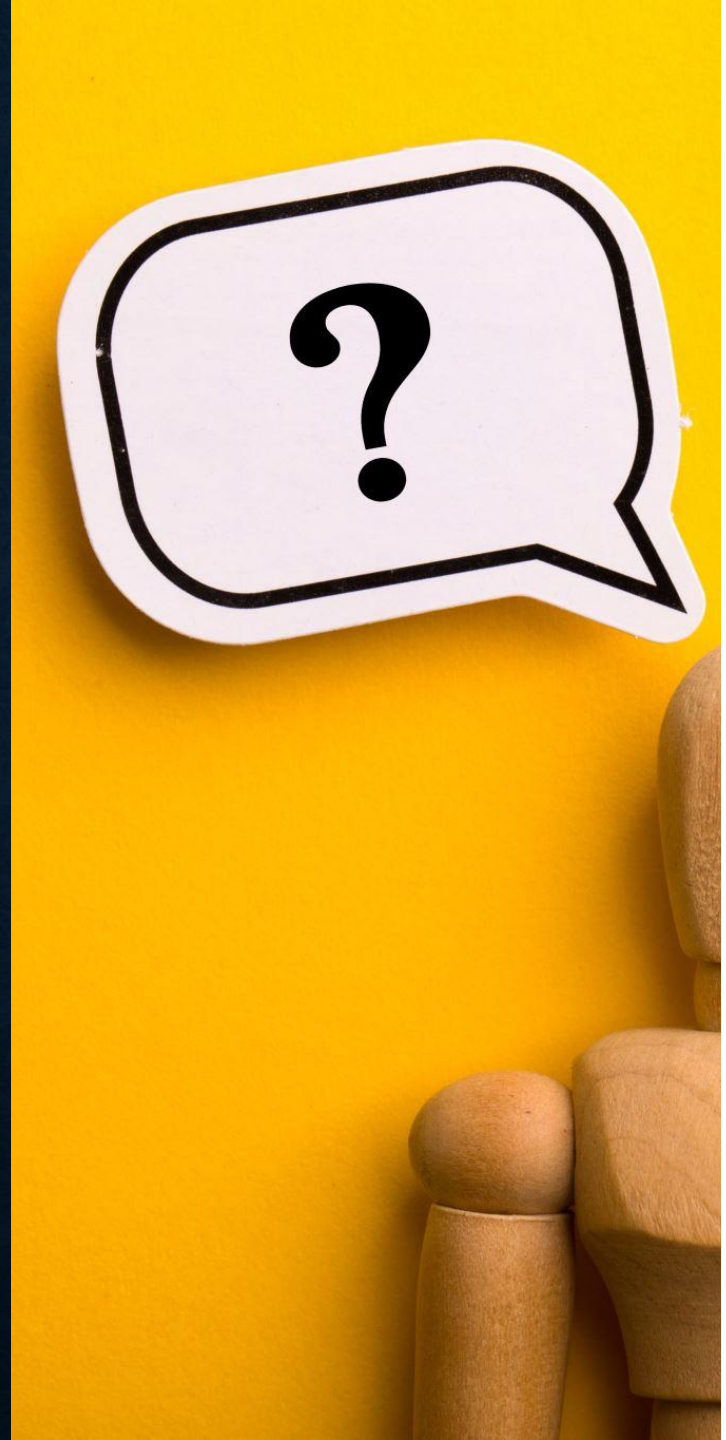
# Conflicts of Interest: Specific Rules

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# INTRODUCTION: CONFLICTS OF INTEREST

- Rules appear deceptively simple.
- In difficult situations, seek independent, professional advice from another lawyer.

# MODEL RULE 1.8

Protects clients by flatly banning some conflicts as non-consentable and heavily regulating the content of disclosure and consent obligations required of lawyers and law firms for specific conflicts where consent can be sought.

# MR 1.8(A) BUSINESS TRANSACTIONS

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# BUSINESS TRANSACTIONS WITH CLIENTS

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

# MR 1.8, COMMENT 1

- Requirements must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer is drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client.

- the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

# LIGGETT V. YOUNG, PG. 237

- What are the facts?
- What is the issue?
- How was Rule 1.8(a) implicated and were its requirements met?
- Why or why not?

# SUB-SECTION OF BUSINESS WITH CLIENT DIRECTOR/OFFICER/BOARD POSITIONS

- Conflicts of Interest May Arise:
  - The lawyer's duties to the entity as its counsel
  - The lawyer's fiduciary duties to the entity as a director
  - The lawyer's personal self-interest inherent in simultaneously serving in both roles

- The lawyer-director should recuse themselves from representing the entity-client or from giving legal advice while serving on its board as an effective way to avoid most, but not all, of the types of conflicts above.

- Not barred from serving in the dual capacity, but highly cautioned due to Rules 1.2,(Scope), 1.1 (Competence), 1.13 (Corporate Miranda Warnings), 1.6 (Confidentiality), and 1.7 (Conflicts of Interest)
  - SIDE NOTE: No imputation for personal conflicts of interest unless there is significant risk of materially limiting the representation of the client by the remaining lawyers in the firm

- Engagement letter with Board is HIGHLY RECOMMENDED (pg. 240 last full paragraph)!



# MR 1.8(B) DO NOT DISADVANTAGE A CLIENT

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(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.



# MR 1.8(C) GIFTS



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(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

# MR 1.8(D) MEDIA RIGHTS

# M.R. 1.8(D) MEDIA RIGHTS

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.



# M.R. 1.8(E) LITIGATION FUNDING

# MR 1.8(E) LITIGATION FUNDING

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses. The lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.



# M.R. 1.8(F) NON-CLIENT PAYOR

# MR 1.8(F) NON-CLIENT PAYOR

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

# M.R. 1.8(F)
# RE: INSURANCE DEFENSE

- Paradigm Insurance Co. v. The Langerman Law Offices PA (pg. 259)
  - What is the issue?
  - What are the facts?
  - What are a lawyer's duties to non-parties?
  - Do lawyer's owe duties to non-parties?

- Other Issues:
  - What other rules come into play here?
  - What conflict issues are at play in these scenarios?
  - What are bad faith claims? Reservation of rights? (pg. 266-267)




# M.R. 1.8(G) AGGREGATE SETTLEMENT

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(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

# BURROW V. ARCE, PG. 245

- What are the facts?

- What do the Plaintiffs argue? Defendants?

- What are the issues raised by fee forfeiture?
  - Are actual damages a prerequisite to fee forfeiture?
  - Is fee forfeiture automatic and entire for all misconduct?
  - If not, is the amount of the fee forfeiture a question of fact for a jury or one of law for the court?

- Rule: A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter. Satisfy the public interest in protecting attorney-client privilege.
  - Factors (e.g., clear and serious violation) for how much forfeited on pg. 248, last paragraph, and pg. 250-254



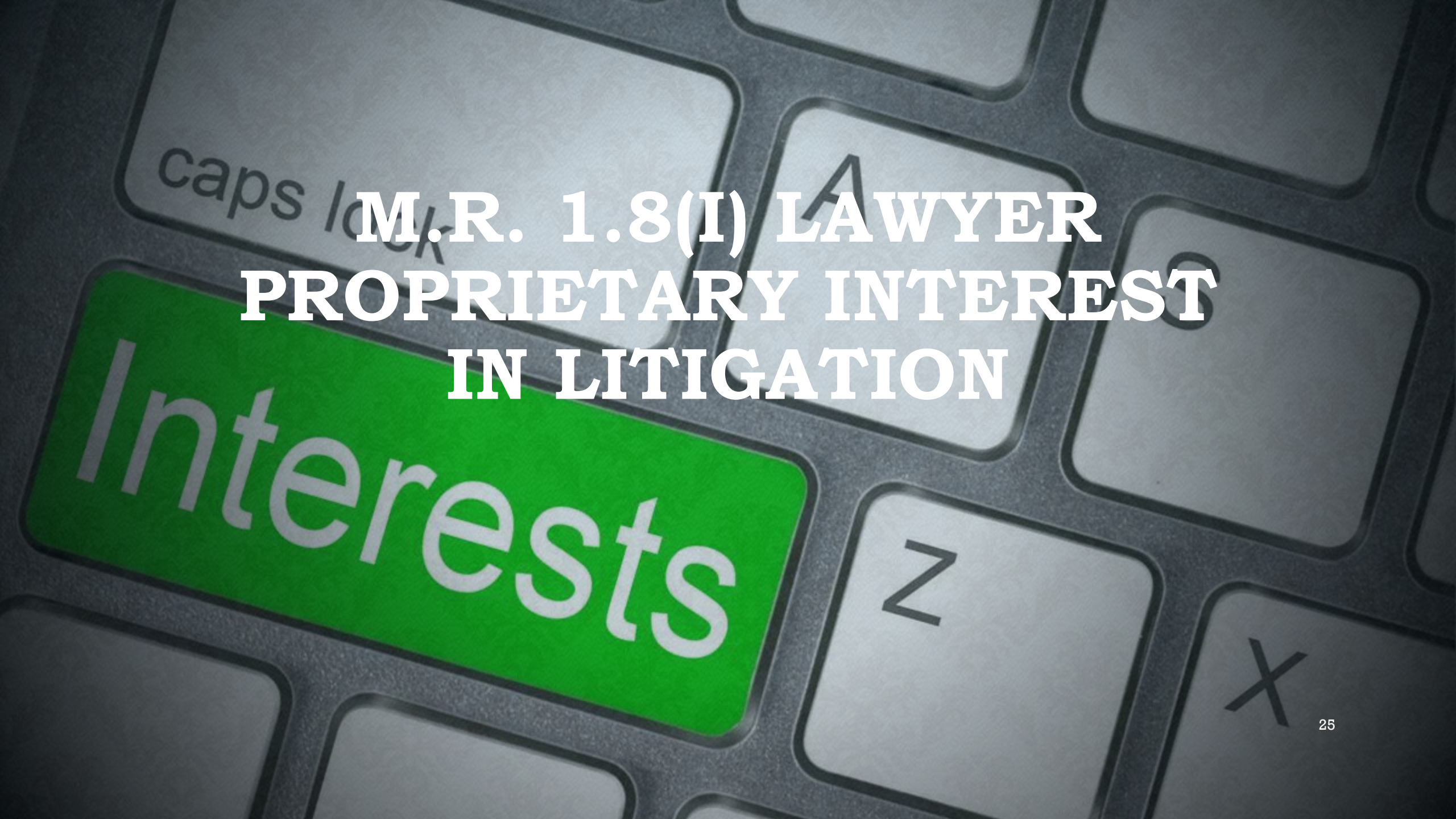

# M.R. 1.8(H) LIMITING LAWYER LIABILITY

# M.R. 1.8(H) LIMIT LAWYER LIABILITY

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.




# M.R. 1.8(I) LAWYER PROPRIETARY INTEREST IN LITIGATION

# M.R. 1.8(I) LAWYER PROPRIETARY INTEREST IN LITIGATION

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.



# M.R. 1.8(J) SEXUAL RELATIONSHIPS WITH CLIENTS

# M.R. 1.8(J) SEXUAL RELATIONSHIPS WITH CLIENTS

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

# IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V. MONROE, PG. 255

- What are the facts of this case?
- Who reported the conduct?  Why?
- What factors are considered to determine the attorney sanction?
- What sanction did this attorney receive?
- **Note**: Sex **MUST** pre-date the attorney-client relationship!!

