

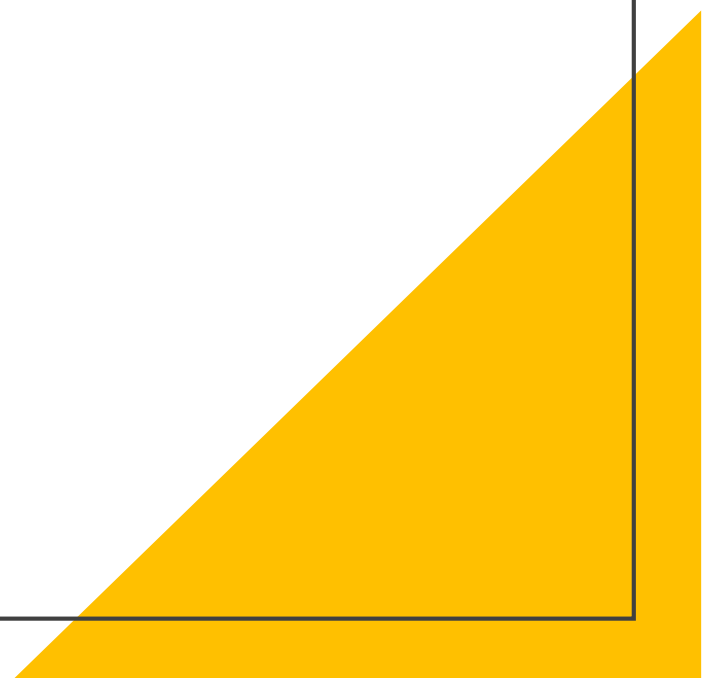
WLR Symposium Panel 3

Addressing Ethical Dilemmas

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Solicitation of Clients

- ABA Rule 7.3
 - No live person-to-person contact to solicit clients when a significant motive is pecuniary gain unless the contact is with:
 - A lawyer
 - Person with whom the attorney has a close relationship
 - Person who routinely uses for business purposes the type of legal services offered by the lawyer
 - Pro bono services not covered by this Rule
 - NAACP v. Button, 371 U.S. 415 (1963) – upheld right of NAACP lawyers to solicit potential clients in civil rights litigation
 - Alabama Ethics Opinion RO-2003-01

Creating Facts to Support a Complaint

For example, requesting a parade permit so that it will be denied and a lawsuit filed

Not aware of any specific ethical prohibitions

Theoretically could there be a standing issue (actual case or controversy)

But short of an actual admission to that effect seems unlikely court would probe state of mind

- Organization had no intention of marching even if permit was granted
- Individual had no intention of actually purchasing a cake from the baker even if baker had offered to make one

Speaking to the Press

- ABA Rule 3.6
 - No extrajudicial statement that is substantially likely to be public and will materially prejudice the matter being adjudicated
 - Can state:
 - Claim, offense or defense and usually identify of persons involved
 - Public record information and litigation schedule
 - Request for assistance in obtaining evidence/information
 - Warning of danger of person involved when there is a likelihood of substantial harm
 - Can also protect client from substantial undue prejudicial effect of recent publicity not initiated by the lawyer or her client
 - Note that statements made in court are generally protected from libel but similar statements made to the press are not
 - Defamation claim arising out of press conference in capital case where attorney accused another individual of having committed the murder

Paying Client's Costs

DC Rule of Professional Conduct 1.8

- Historically attorneys only permitted to loan money to clients for costs and repayment was required even if the client lost the case
- Rule amended in 1980 to permit payment of litigation costs as well as medical or living expenses necessary to permit client to continue the litigation

California Rule 1.8.5

- Can lend money repayment of which is dependent on outcome
- Can pay costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests when the client is indigent

Informing Client of Settlement Offer

- ABA Rule 1.4
 - Must promptly inform client of substance of settlement offer unless the client has previously indicated the proposal will be unacceptable or has authorized the lawyer to accept or reject the offer
- ABA Rule 1.2
 - A lawyer shall abide by a client's decision whether to settle a matter
- California Opinion 1989-114
 - In case where statutory attorney's fees are available such as federal civil rights actions, attorney must inform client that fees are the client's property which the client may waive as a condition of settlement