

Chapter X

Ethically Resolving Conflicts of Interest

Gregory G. Gosfield, Esq.

Klehr Harrison Harvey Bransburg LLP
Philadelphia

Shelly A. Solomon, Esq.

Fox Rothschild LLP
Philadelphia

Table of Contents

Chapter X

Ethically Resolving Conflicts of Interest X-1

Gregory G. Gosfield, Esq., and Shelly A. Solomon, Esq.

1.	Current Headlines	X-7
1.1.	G.M. Lawyers Hid Fatal Flaw	X-7
1.2.	Some Conflict Waivers Are Rubbing GCs the Wrong Way.....	X-10
2.	Preconditions	X-13
2.1.	Attorney-Client Relationship.....	X-13
2.2.	Duties; Loyalty, Confidentiality, Public Trust	X-14
2.3.	Conflict.....	X-15
2.4.	Enforcement.....	X-15
3.	Recognizing the Conflict of Interest.....	X-17
3.1.	Introduction.....	X-17
3.2.	Recognizing the Conflict of Interest	X-17
3.3.	Current Clients.....	X-19
3.4.	Common/Dual Representation in Transactional Matters.....	X-19
3.5.	Prospective or "Future" Clients.....	X-20
3.6.	The Lawyer's Own Self-interest.....	X-20
3.7.	Former Clients.	X-21
3.8.	Third Parties.	X-22
3.9.	Imputation of Conflicts.....	X-23
3.10.	Continuing Obligations with a Lawyer's Change in Law Firms.	X-23
4.	Recognizing when the Conflict May Be Waived.....	X-24
4.1.	Consentability.	X-24
4.2.	Informed Consent.	X-26
5.	Obtaining and Documenting Informed Consent and Waiver	X-26
5.1.	Waiver Need Not Be Written.....	X-26
5.2.	Revoking the Waiver – The Lawyer's Risk.	X-27
5.3.	Prospective Waiver of Future Conflicts.	X-27
6.	Use of Confidential Information to Obtain the Waiver; Use of Confidential Information after the Waiver Has Been Obtained, and Its Effect on the Attorney-Client Privilege.....	X-28
6.1.	Use of Confidential Information to Obtain the Waiver.	X-28
6.2.	Use of Confidential Information and the Attorney-Client Privilege.....	X-29

Appendices	X-31
<i>Appendix 1: Pennsylvania Rules of Professional Conduct (with Comments)</i>	<i>X-31</i>
§81.2. Scope	X-32
Rule 1.0. Terminology	X-35
Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer.....	X-36
Rule 1.3. Diligence	X-39
Rule 1.4. Communication	X-41
Rule 1.5. Fees.....	X-44
Rule 1.6. Confidentiality of Information	X-46
Rule 1.7. Conflict of Interest: Current Clients.....	X-53
Rule 1.8. Conflict of Interest: Current Clients: Specific Rules	X-61
Rule 1.9. Duties to Former Clients	X-68
Rule 1.10. Imputation of Conflicts of Interest: General Rule	X-71
Rule 1.13. Organization as Client	X-74
Rule 1.16. Declining or Terminating Representation	X-77
Rule 1.18. Duties to Prospective Clients.....	X-78
Rule 3.3. Candor toward the Tribunal	X-80
<i>Appendix 2: Cases, Treatises and Other Authorities</i>	<i>X-85</i>
1. <i>Al-Yusr Townsend & Bottum Co. v. United Mid East Co.</i>	X-87
2. <i>Baldasarre v. Butler</i>	X-89
3. <i>Beal v. Mars Larsen Ranch Corp.</i>	X-90
4. <i>Brennan's, Inc. v. Brennan's Restaurants, Inc</i>	X-91
5. <i>Collins v. Collins</i>	X-93
6. <i>Elizabeth A. Comando on behalf of 10 Centre Drive, LLC v. Mary F. Nugiel and RCP Management Company, and Pride Construction Services, LLC.</i> .. X-93	
7. <i>Craft Builders, Inc. v. Taylor</i>	X-94
8. <i>Hawley Ave. Assocs., LLC v. Russo</i>	X-95
9. <i>King v. Martin</i>	X-95
10. <i>In re Lanza</i>	X-95
11. <i>McKesson Information Solutions, Inc., v. Duane Morris, LLP</i>	X-96
12. <i>McNair v. Rainsford</i>	X-98
13. <i>Meyer v. Maus</i>	X-99
14. <i>Mursau Corp. v. Florida Penn Oil & Gas, Inc.</i>	X-99
15. <i>Oasis West Realty, LLC. V. Kenneth A. Goldman et al.</i>	X-99
16. <i>Parker v. Carnahan</i>	X-100
17. <i>Simpson v. James</i>	X-101
18. <i>Star Centers, Inc. v. Faegre & Benson, L.L.P.</i>	X-102
19. <i>Unified Sewerage Agency v. Jelco Inc.</i>	X-103
20. <i>United States v. Nicholas</i>	X-104

21. <i>Zendell v. Neport Oil Corp.</i>	X-105
22. VIRGINIA Opinions of the Standing Committee on Legal Ethics	X-106
<i>Appendix 3: Code of Ethics and Standards of Practice of the National Association of Realtors</i>	X-109

For complete content, please contact Gregory Gosfield
215-569-4164 | ggosfield@klehr.com