

Thursday, November 4, 2021
11:00 AM – 12:15 PM

Seminar 11

Count on Consent—Do Not Expect Forgiveness.

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Outline of Presentation

- I. Introduction
- II. Current Client Conflicts
 - A. Direct Adversity
 - 1. Commercial Negotiations
 - 2. Zero-Sum-Game Situations
 - 3. The “Hot Potato” Issue
 - 4. “Thrust Upon” Conflicts
 - 5. Corporate Family Issues
 - B. Material Limitation Conflicts
 - 1. In General
 - 2. Confidential Information Conflicts
 - 3. Multiple Representation in Nonlitigation Matters
 - 4. Intentional Multiple Representation
 - 5. Unintentional Multiple Representation
 - 6. “Joint Confidences” Rule
 - C. Organizational Conflicts
 - 1. In General
 - 2. General Partnerships
 - 3. Limited Partnerships
 - 4. Close Corporations
- III. Former Client Conflicts
 - A. Same or Substantially Related Matter Conflicts
 - 1. Former Client Rule
 - 2. Are the Matters “Substantially Related” and the Interests “Materially Adverse?”
 - a. “Substantially Related”
 - b. “Materially Adverse”
 - 3. When Does a Current Client Become a Former Client?
- IV. Confidential Information Conflict
 - A. Prospective Clients

V. Personal Interest Conflicts

A. Prior Work Conflicts

VI. Imputation of Conflicts

VII. Consent to Conflicts

A. Requirements for Valid Consent

VIII. Consequences of Conflicts

A. Motions to Disqualify

B. Actions for Damages, Including Punitive Damages

C. Fee Forfeitures

D. Disciplinary Actions

IX. Hypotheticals for discussion