



2019
MID-YEAR
ENERGY FORUM

Tuesday, October 15, 2019 – Wednesday, October 16, 2019
Renaissance Downtown Hotel • Washington DC

Session A: *ETHICS: How to Identify and Address Client Conflict*

No set of ethical issues bedevils practitioners as often as those raised by client conflicts. An attorney's duty of loyalty is absolute, but conflicts are not always easy to spot, and many conflicts are waivable. Added complications arise in administrative settings, where generic issues are often discussed alongside actively litigated matters. This discussion will address the intricacies of these issues.

Speaker:
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Conflicts with Current Clients

- Model Rule 1.7: A lawyer shall not represent a client if it would result in a concurrent conflict of interest
 - Concurrent Conflict:
 - Representation of one client is directly adverse to another client (even if that client has other counsel in the matter)
 - Representation of one client will likely cause another client to be adversely affected
 - Lawyer's judgement may be impaired by their own financial, business, property or personal interest

Conflicts with Current Clients

- Can concurrent conflicts be resolved?
 - Yes, if all of these factors are present:
 - Clients are not directly adverse to one another in the same proceeding
 - The representation is not prohibited by law
 - Lawyer reasonably believes they can provide competent and diligent representation to both clients
 - Each affected client gives informed consent, in writing

Conflicts with Former Clients

- Model Rule 1.9: A lawyer cannot represent a current client if the lawyer represented a former client in the same or substantially related matter where the current client's interests are materially adverse to the interests of the former client *unless the former client gives informed consent.*

Conflicts with Former Clients

- Model Rule 1.9 (portion not applicable to DC):
 - Lawyer may not represent client in same or substantially related matter in which lawyer's former firm previously represented a former client if:
 - Former client's interests are adverse to current client; and
 - Lawyer acquired confidential information protected under MR 1.6, or information that would disadvantage the former client

Government Lawyer Conflicts

- Former government employees may not represent a client in a matter in which they participated personally and substantially, without the written consent of the agency
- If a former government employee is disqualified from a matter, the firm may not handle the matter unless:
 - The gov't lawyer is screened and receives no fees
 - Written notice is provided to the agency

Government Lawyer Conflicts

- 18 USC § 1905: Government employees and officials have a duty to maintain the confidentiality of government information
- 18 USC § 207: Government employees are restricted from participating in certain matters when they leave government
 - Permanent: matters involving specific parties where lawyer participated personally and substantially
 - Two Years: matters falling under “official responsibility”