



**Federal Bar
Association**
San Diego Chapter



presents:

NINTH ANNUAL ALL-DAY ETHICS, COMPETENCE, AND ELIMINATION OF BIAS MCLE EVENT

January 25, 2023, from 9:00 a.m. to 3:35 p.m.

Cost (per course): San Diego FBA & ICLA Members – FREE
FBA National Members – \$10.00
Non-FBA Members – \$40.00

Location: Webinar (Zoom)

MCLE: 4.0 hours Ethics; 1 hour Competence; 1 hour Elimination of Bias

The San Diego FBA invites you to attend its ninth annual all-day California MCLE event.

California MCLE credits are available separately for each of the sessions listed below. The meeting link and written materials will be sent to all participants one day prior to the event.

9:00 a.m. – 10:00 a.m.: [*Duties to Current, Former and Prospective Clients, Including with Regard to the Safekeeping of Funds \(Ethics 1 of 4\)*](#)
Anne Rudolph and Eric Deitz
San Diego County Bar Association Ethics Committee

10:05 a.m. – 11:05 a.m.: [*Lawyers, Substance Use Disorders and Wellbeing \(Competence\)*](#)
Greg Dorst, The Other Bar

11:15 a.m. – 12:15 p.m.: [*Engagement Agreements, Candor in Mediation, and More \(Ethics 2 of 4\)*](#)
Deborah Wolfe and Charles Berwanger
San Diego County Bar Association Ethics Committee

12:20 p.m. – 1:20 p.m.: [*Communications with Represented and Unrepresented Persons \(Ethics 3 of 4\)*](#)
Michael Crowley and Richard Hendlin
San Diego County Bar Association Ethics Committee

1:30 p.m. – 2:30 p.m.: [*Civility and Candor \(Ethics 4 of 4\)*](#)
Irean Swan and Andrew Servais
San Diego County Bar Association Ethics Committee

2:35 p.m. – 3:35 p.m.: [*Microaggressions \(Elimination of Bias\)*](#)
Carolina Bravo-Karimi, Wilson Turner Kosmo LLP

DUTIES TO CURRENT, FORMER AND
PROSPECTIVE CLIENTS,
INCLUDING WITH REGARD TO
SAFEKEEPING OF FUNDS
January 25, 2023

Presented by Eric R. Deitz and
Anne M. Rudolph

Scope of Representation

- Who is the Client?
- California Evidence Code section 951 defines a "client" as:

A person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

Conflicts of Interest

- Many forms.
- Conflicts with joint clients, current and former clients, conflicts with the lawyer or firm.
- Prior to consulting with a new client or an existing client on a new matter, run a conflict check. Continuing obligation to identify and address potential conflicts
- Informed written consent before/concurrent with engagement.
- Rule 1.7
- Rule 1.9
- Rule 1.18
- Evidence Code § 962

Conflicts of Interest

- Rule 1.7 for Current Clients

- Written consent if representation is directly adverse or if there is a significant risk that the representation will be materially limited by responsibilities or relationships with another client, a former client, a third person, or the lawyer's own interests.
- Even if written consent not required, written disclosure is required if the lawyer has a business, financial or personal relationship with a party or witness or personal relationship with another party's lawyer.
- Additional informed written consent when potential conflict becomes actual conflict.
- May have to withdraw if there is an actual conflict.

- Rule 1.9 for Former Clients

- Written consent required from former client for representation of another client in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client.

Conflicts of Interest

- Rule 1.18 for Prospective Clients
 - Person who, directly or indirectly, consults a lawyer for the purpose of retaining the lawyer or securing legal services or advice.
 - Even when no lawyer-client relationship is formed, a lawyer shall not use or reveal information protected by B&P Code section 6068(e) and Rule 1.6 that the lawyer learned as a result of the consultation.
 - Written consent needed from prospective client to represent a person with adverse interests in the same or a substantially related matter.

Advance Conflict Waivers

- When California revised the Rules of Professional Conduct effective November 1, 2018, it did not adopt the comment to ABA Model Rule 1.7(a) regarding advance waivers.
- The comment to the Model Rule provides that an advance waiver signed by a sophisticated client is “more likely to be effective.”
- Comment 9 to RPC 1.7 reflects that client sophistication is only a “relevant” consideration
- The enforceability of an advance waiver is fact-specific.
- Rule 1.7
- *Galderma Labs v. Actavis Mid-Atlantic, LLC*, 927 F. Supp. 2d 390 (2013)
- *Sheppard Mullin Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal. 5th 59

Scope of Representation

- **Who is paying the bill?**
- Rule 1.8.6
 - Must maintain Client confidences (B&P 6068(e) & Rule 1.6).
 - Written consent of the Client required before, at the time of, or as soon as reasonably practicable.
 - Consent of the person paying the bill recommended.
 - To whom to return unused funds at conclusion?

New Rules Re: Client Funds & Property

- Under Rule 1.15(d)(1), as revised, a client must be notified within 14 days of the attorney's receipt "of funds, securities, or other property in which the lawyer knows or reasonably should know the client or other person has an interest.
- Under Rule 1.15 (d)(7), a lawyer must "promptly distribute any undisputed funds or property in the possession of the lawyer or law firm that the client or other person is entitled to receive." The revision deletes the predicate requirement of a client requesting disbursement of funds.
- Subject to exceptions, including with respect to a client's entitlement to receive funds held by a lawyer, money or property held by counsel must be distributed within 45 days of receipt, or the client and lawyer must otherwise agree in writing. (RPC Rule 1.15 (f) and (g).)
- Reporting requirements: Rule of Court 9.8.5/Client Trust Account Protection Program ("CTAPP"). Effective date: February 1, 2023.

Questions?

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