

2015 NJSBA Annual Meeting

Ethics and Professionalism Track

Ten (Plus) Ways to Stay out of Ethics Trouble

Co-Sponsored by the Solo & Small Firm Section

Speakers:

William C. Mack, Esq.

Law Office of William C. Mack, Lake Hopatcong

Robert W. McAndrew, Esq.

Law Office of Robert W. McAndrew, Cedar Knolls

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NJSBA ANNUAL MEETING

TEN (PLUS) WAYS to STAY OUT OF ETHICS TROUBLE

William C. Mack, Esq. and Robert W. McAndrew, Esq.

May 13, 2015

TEN (PLUS) WAYS TO STAY OUT OF ETHICS TROUBLE

- 1) Introduction – Brief Overview of the New Jersey Ethics Process
- 2) TEN (PLUS) WAYS...
 - a) Be honest and truthful! – RPCs 3.3, 3.4, 4.1, 4.2, 8.4. *In re Harris*, 182 NJ 594 (2005); *In re DiBiasi*, 102 NJ 152 (1986)
 - b) Be diligent! RPC 1.3. *In re Yetman*, 113 NJ 556 (1989); N.J. Advisory Comm. On Professional Ethics Op. 692 (October 28, 2002)
 - c) Be careful with client funds - don't be negligent...or worse! RPC 1.15; *In re Wilson*, 81 NJ 45 (1979)
 - d) Keep good trust account records and follow good habits. R. 1:21-6; RPC 1.15; *In re Pomerantz*, 155 NJ 122 (1998).
 - e) Communicate with your client and other attorneys. RPC 1.4
 - f) Always provide a written retainer agreement/memo. RPC 1.5; *Alpert v. Quinn*, 410 NJ Super 510 (App. Div. 2009), certify. denied, 203 NJ 92 (2010).
 - g) Charge fairly and reasonably and bill promptly. RPC 1.5
 - h) Don't take on a matter you know nothing about (without help!) RPCs 1.1; 1.16(a); *In re Yetman*, 113 NJ 556 (1989)
 - i) Avoid conflicts of interest. RPCs 1.7, 1.8
 - j) Avoid criminal activity (!). RPC 8.4.
 - k) Cooperate in any ethics proceeding. *In re Gavel*, 22 NJ 248 (1956)

TEN (PLUS) WAYS TO STAY OUT OF ETHICS TROUBLE

May 13, 2015

New Jersey State Bar Association
Annual Meeting and Conference

Be Truthful!

RPC 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) **make a false statement of material fact or law** to a tribunal;
- (2) **fail to disclose a material fact** to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
- (3) **fail to disclose to the tribunal legal authority** in the controlling jurisdiction known to the lawyer to be **directly adverse** to the position of the client and not disclosed by opposing counsel;
- (4) **offer evidence that the lawyer knows to be false**. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or
- (5) **fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal**, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

Be Truthful!

RPC 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) **unlawfully obstruct another party's access to evidence** or unlawfully **alter, destroy or conceal a document or other material** having potential evidentiary value, or counsel or assist another person to do any such act;
- (b) **falsify evidence**, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) **knowingly disobey an obligation under the rules of a tribunal** except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless.
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

Be Truthful!

RPC 4.1 Truthfulness in Statements to Others

- (a) In representing a client **a lawyer shall not knowingly:**
- (1) **make a false statement of material fact or law** to a third person; or
 - (2) **fail to disclose a material fact** to a third person when disclosure is necessary
- to avoid assisting a criminal or fraudulent act by a client.
- (b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

Be Truthful!

RPC 8.4 Misconduct

It is professional misconduct for a lawyer to:

...

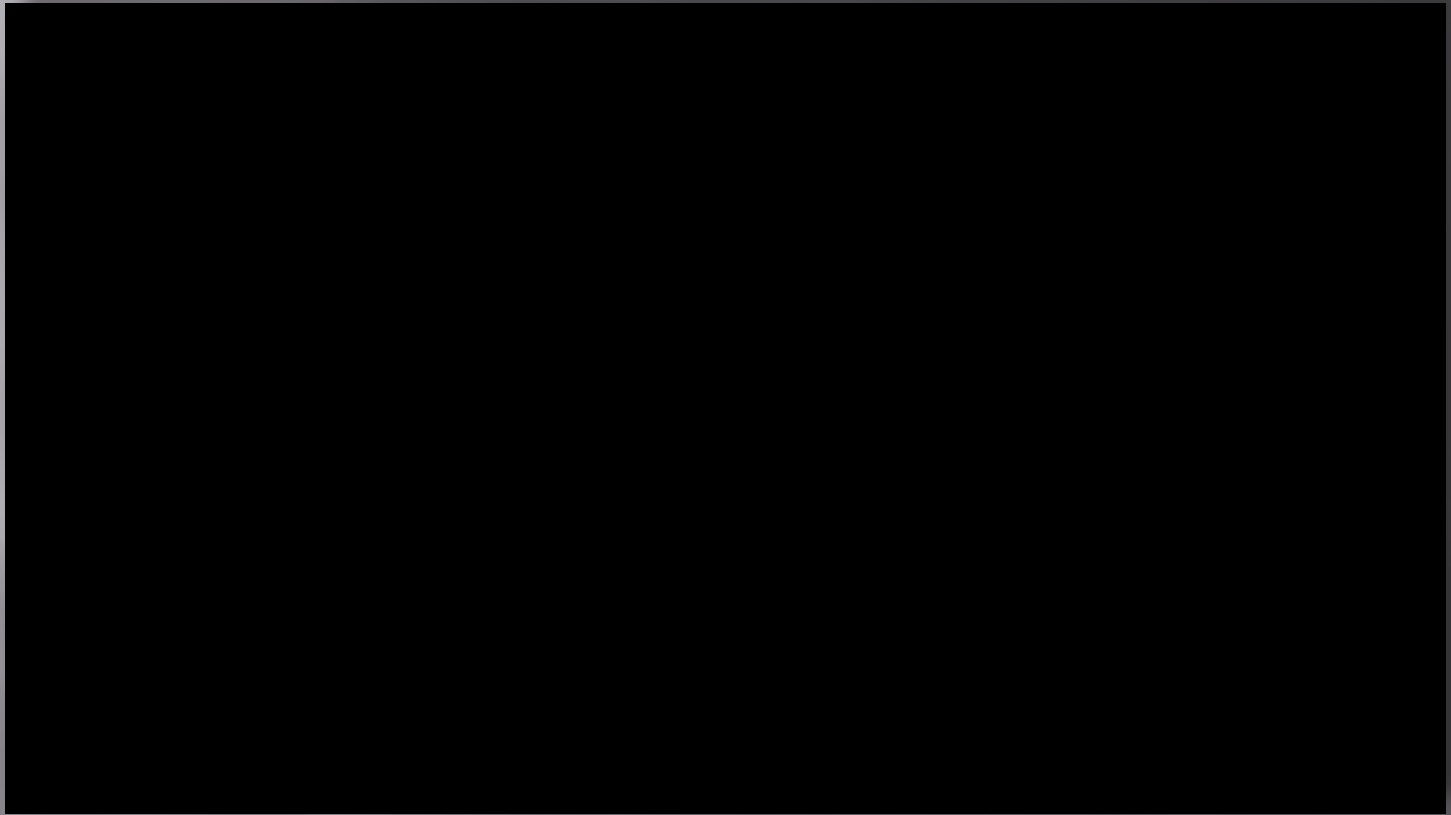
(c) **engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**

Be Diligent!

RPC 1.3 Diligence

A lawyer shall act with **reasonable diligence and promptness** in representing a client.

Be Diligent!



Treat Your Client's Funds with Care!

Operating Account



YOUR MONEY

Trust Account



NOT YOUR MONEY

Treat Your Client's Funds with Care!

RPC 1.15 Safekeeping Property

- (a) **A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.** Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.
- (b) **Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.** Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.
- (c) **When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests.** If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- (d) A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.

Be Careful with Your Trust Account!

1:21-6 Recordkeeping; Sharing of Fees; Examination of Records

(a) Required Trust and Business Accounts. **Every attorney who practices in this state shall maintain** in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

- (1) **a trust account or accounts, separate from any business and personal accounts** and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and
- (2) **a business account** into which all funds received for professional services shall be deposited.

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Be Careful with Your Trust Account!

(c) Required Bookkeeping Records.

(1) **Attorneys**, partnerships of attorneys and professional corporations who practice in this state **shall maintain in a current status and retain for a period of seven years after the event that they record:**

(A) **appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule** and of any other bank account which concerns or affects their practice of law, **specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement.** All trust account receipts shall be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item...; and

(B) **an appropriate ledger book, having at least one single page for each separate trust client**, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. **A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed;** and

(C) **copies of all retainer and compensation agreements with clients;** and

(D) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and

(E) **copies of all bills rendered to clients;** and

(F) copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and

(G) **originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained;** all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and

(H) **copies of all records, showing that at least monthly a reconciliation has been made** of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and

(I) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

Honor Your Trust Account!



Communicate!

RPC 1.4 Communication

- (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- (b) **A lawyer shall keep a client reasonably informed** about the status of a matter and promptly comply with reasonable requests for information.
- (c) **A lawyer shall explain a matter** to the extent reasonably necessary to permit the client to make **informed decisions** regarding the representation.
- (d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Provide Written Retainer Agreements!

Legal Services Retainer

1. PARTIES TO THIS AGREEMENT. This Agreement is between _____, a _____
Professional Corporation, (hereinafter "Attorney") and _____
in the County of _____, State of _____.

2. LEGAL SERVICE
_____ represent Client before all federal
production and distribution b

3. LEGAL SERVICE
Attorney under this agreement
relations with clients, nor a

4. OBLIGATION
agreement while updating
communications without
developments or change
and/or how to reach Cl

5. HOURLY FEES. The Attorney responsible for Client's legal matter under this Agreement is James Worthy, and
legal services rendered by James Worthy shall be billed at \$225 per hour. Should an associate attorney be assigned work on
the Client's matter, legal services rendered by that associate attorney shall be billed at \$150 per hour. Should a paralegal be
assigned work on the Client's matter, legal services rendered by that paralegal shall be billed at \$55 per hour. Attorney will
charge in increments of one tenth of an hour, rounded up for each attorney to the nearest one tenth of an hour. Attorney will
charge a minimum of one tenth of an hour for any activity related to the matter under this agreement.

6. COSTS. Client shall pay all "costs" in relationship to attorney's legal services under this agreement. Costs include,
but are not limited to, long-distance telephone charges, facsimile charges, court filing fees, deposition costs, expert fees and
expenses, investigation costs, mileage charges, parking, messenger service fees, photocopying expenses, process server fees
and any other related expenses incurred by Attorney to provide satisfactory legal services to Client.

7. RETAINER. Client shall pay to Attorney a retainer of 20,000 Dollars to be applied against attorney's fees and
costs incurred by Client or expenses paid by Attorney on behalf of Client. This amount shall be deposited in an interest-
bearing trust account. Client authorizes Attorney to withdraw funds from the trust account to pay for and keep current
Client's charges for legal services provided under this agreement. If any amount of client's retainer is remaining (except for
interest) in the trust account at the time of the termination of this agreement, after attorney's fees and costs have been fully paid,
the remaining amount of the retainer shall be refunded to Client.

8. STATEMENTS AND/OR PAYMENTS. Attorney shall send Client monthly statements to Client's most recent
address on record, detailing attorney's fees and costs and monies, any funds applied from the retainer, and any current
balance still owing. Statements are to be paid in full within 10 days after the Statement has been mailed.

Provide Written Retainer Agreements!

RPC 1.5 Fees

(b) **When the lawyer has not regularly represented the client**, the basis or rate of the fee shall be **communicated in writing** to the client before **or within a reasonable time after** commencing the representation.

Charge Fairly – Bill Promptly!



Charge Fairly – Bill Promptly!

RPC 1.5 Fees

(a) **A lawyer's fee shall be reasonable.** The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the **time and labor** required, the **novelty and difficulty** of the questions involved, and the **skill** requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the **fee customarily charged** in the locality for similar legal services;
- (4) the **amount involved** and the **results obtained**;
- (5) the **time limitations** imposed by the client or by the circumstances;
- (6) the nature and length of the **professional relationship with the client**;
- (7) the **experience, reputation, and ability** of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

Know What You're Doing!



Know What You're Doing!

RPC 1.1 Competence

A lawyer shall not:

- (a) **Handle** or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes **gross negligence**.
- (b) **Exhibit a pattern of negligence** or neglect in the lawyer's handling of legal matters generally.

RPC 1.16 Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

...

- (2) the lawyer's **physical or mental condition materially impairs the lawyer's ability** to represent the client; or

Avoid Conflicts of Interest!

RPC 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), **a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.** A concurrent conflict of interest exists if:

(1) the representation of one client will be **directly adverse** to another client;

or

(2) there is a significant risk that the **representation of one or more clients will be materially limited by the lawyer's responsibilities to another client,** a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) **each affected client gives informed consent, confirmed in writing, after full disclosure and consultation,** provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

(2) **the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation** to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Avoid Conflicts of Interest!

RPC 1.8 Conflict of Interest: Current Clients; Specific Rules

- (a) A lawyer shall not enter into a **business transaction** with a client...
- (b) Except as permitted or required by these rules, a lawyer shall not use **information relating to representation of a client to the disadvantage of the client** unless the client after full disclosure and consultation, gives informed consent.
- (c) A lawyer shall not solicit any **substantial gift** from a client...
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer **literary or media rights** to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide **financial assistance** to a client in connection with pending or contemplated litigation...
- (f) A lawyer shall not accept **compensation** for representing a client **from one other than the client** ...
- (g) A lawyer who represents two or more clients shall not participate in making an **aggregate settlement of the claims** of or against the clients, or in a criminal case an **aggregated agreement as to guilty or no contest pleas**, unless each client gives informed consent ...
- (h) A lawyer shall not:
 - (1) make an agreement **prospectively limiting the lawyer's liability** to a client for malpractice ...
- (i) A lawyer shall not acquire a **proprietary interest in the cause of action** or subject matter of litigation the lawyer is conducting for a client....

Don't Be A Criminal!



Don't Be A Criminal!

RPC 8.4 Misconduct

It is professional misconduct for a lawyer to:

...

(b) **commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness** as a lawyer in other respects;

If You are Subject of a Grievance... Cooperate!



NJSBA ANNUAL MEETING

TEN (PLUS) WAYS to STAY OUT OF ETHICS TROUBLE

William C. Mack, Esq. and Robert W. McAndrew, Esq.

May 13, 2015

FREQUENTLY INVOKED RPCs

RPC 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

- Act with "commitment and dedication"
- Advocate zealously
- Do not procrastinate; avoid "unreasonable" delay
- Control your workload
- Do not adopt "head in sand" approach
- Work on the "hateful" files
- Solo? Plan for disposition of files

CASES: *In re: Pajerowski*, 156 N.J. 509, 516 (1998) (2 years to obtain a default in one case and 5 years to pursue another case); *In re: Yetman*, 113 N.J. 556, 562 (1989) ("head in sand" approach regarding estate administration); *In re: Smith*, 101 N.J. 568, 571-572 (1986) (neglecting administration of a simple estate for over one year was "gross negligence" and lack of diligence)

RPC 1.4. Communication

- **(a)** A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- **(b)** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

- **(c)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- **(d)** When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct

- Client must be told how, where and when he/she can get in touch with you

Reasonably informed = sufficient info to "actively participate" in decisions

Convey all settlement offers

In transactions advise client of risks in a way client can understand

Do not make/agree to changes in contract documents unless client informed

Client level of sophistication important

You cannot "hide" your own malpractice from client; client entitled to know and obtain new counsel

CASES: *Conklin v. Hannoeh Weisman*, 145 N.J. 395, 414-416 (1996) (client sophistication; erroneous or incomplete legal advice may be malpractice but may not be an ethical violation); *In re: Loring*, 73 N.J. 282, 290 (1977) (attorney must provide full, frank and truthful information on all significant issues); *State v. Sheika*, 337 N.J. Super. 228, 249 (App. Div.) certif. den. 169 N.J. 609 (2001) (in a criminal case attorney consultation with client re: death penalty inadequate); *Passanante v. York*, 138 N.J. Super. 233, 239 (App. Div. 1975), certif. den. 70 N.J. 144 (1976) (attorney must inform client of malpractice)

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - **(1)** the representation of one client will be directly adverse to another client; or
 - **(2)** there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - **(1)** each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
 - **(2)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - **(3)** the representation is not prohibited by law; and
 - **(4)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

- Read and understand the Rule

- Divided loyalty not acceptable

- Avoid any situation in which it can be claimed that your loyalty to the client may be compromised by your loyalty to another client or your own (and your family's) personal interests

- Disqualification from further representation is a likely penalty

- Waiver of conflict must be in writing and with client's full knowledge of risks and client's "informed consent"
- Even after waiver attorney must "reasonably" believe that competent representation of the clients is not compromised
- Be prepared to recommend other counsel

CASES: *Opinion 682 of the Adv. Comm. On Prof. Ethics*, 147 N.J. 360, 368 (1997) (attorney cannot serve two masters); *Dewey v. R.J. Reynolds Tobacco Co.*, 109 N.J. 201, 204, 208-209 (1988) (disqualification for conflict); *Wyeth v. Abbott Labs.*, 692 F. Supp. 2d 453 (D.N.J. 2010) (conflict but no disqualification - no sharing of confidential info from prior representation relating to present litigation and no "overlapping" of law firm's personnel); *In re: Davis*, 14 N.J. 166, 171 (1953) (attorney who will be beneficiary should not draft Will; recommend other counsel); *Baldassarre v. Butler, et al.*, 132 N.J. 278, 296 (1993) (attorney cannot represent buyer and seller in a complex real estate transaction even with a waiver)

RPC 1.8. Conflict of Interest: Current Clients; Specific Rules

- **(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - **(1)** the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
 - **(2)** the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
 - **(3)** the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

- **(b)** Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.
- **(c)** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- **(d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- **(e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - **(1)** a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - **(2)** a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and
 - **(3)** a non-profit organization authorized under R. 1:21-1(e) may provide financial assistance to indigent clients whom it is representing without fee.
- **(f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - **(1)** the client gives informed consent;
 - **(2)** there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
 - **(3)** information relating to representation of a client is protected as required by RPC 1.6.
- **(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a

consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

- **(h)** A lawyer shall not:
 - **(1)** make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or
 - **(2)** settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- **(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.
- **(j)** While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.
- **(k)** A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.
- **(l)** A public entity cannot consent to a representation otherwise prohibited by this Rule.
- - Business transaction with clients rife with pitfalls and risk insurance coverage

Liability for malpractice cannot be "negotiated away" during pendency of representation absent "defiant client"

Attorney's conflict is imputed to the entire firm

CASES: *Haggerty v. Red Bank Borough*, 385 N.J. super. 501, 516 (App. Div. 2006) (conflict of attorney who was "Of Counsel" conflicted entire firm); *In re: Humen*, 123 N.J. 289, 300 (1991) (attorneys "repeatedly" warned regarding pitfalls of doing business with clients); *Jacob v. Norris McLaughlin & Marcus*, 1128 N.J. 10, 17 (1992) (contracts that violate the RPCs also violate public policy and may not be enforced); *P&M Enterprises v. Murray*, 293 N.J. Super. 310, 314 (App. Div. 1996) (loan from attorney to client is "presumptively invalid")

***** AND *****

In re: Gavel: Don't Forget to Cooperate!

Moreover, as an attorney-at-law of this State he knew that the burden of proof was upon him as a fiduciary to establish clearly the absence of taint in his transactions. As the attorney proceeded against he certainly should have known that his burden was no less in these proceedings and that he was obliged to make not merely an answer to the specific allegations of the numbered paragraphs of the complaint but a full, candid and complete disclosure of all facts reasonably within the scope of the transactions set forth in the charges against him. [*In re Gavel*, 22 N.J. 248, 263 (1956).]



William C. Mack

After receiving his J.D. degree with honors from the University of Pennsylvania Law School, Bill joined Schnader, Harrison, Segal & Lewis in Philadelphia. Bill's practice focused on financing, including leverage leasing and project finance. After 11 years at Schnader, during which he became a partner and headed the firm's project finance practice, Bill was recruited to join one of his clients as a senior business executive. For the next 18 years Bill held c-level positions with this and three other companies in the independent power generation industry. Bill established his solo practice in New Jersey in 2006. Among his clients is one of the leading legal software providers to the legal market. He is also project investment consultant to a private equity fund specializing in investments in the energy sector. Bill is a past Chair of the Solo and Small Firm Section of the New Jersey Bar Association, a member of the District XA Ethics Committee and a member of the American Bar Association.

Robert W. McAndrew, Esq.

Bob McAndrew completed his undergraduate education at Brooklyn College of the City University of New York graduating with a degree in English and a minor in secondary education. He received his law degree from Seton Hall Law School, with honors, in 1978. While in law school, Bob served as an assistant editor of the Law Review.

After a clerkship with the Hon. Mark A. Sullivan, Associate Justice of the New Jersey Supreme Court, Bob embarked on his legal career. Over the past thirty-plus years, he has focused his practice almost exclusively on litigation. He is admitted to the practice of law in both New Jersey and New York. He is also admitted to, and has handled matters before, the United States District Court for the Districts of New Jersey and the Southern District of New York, the United States Court of Appeals for the Third Circuit and the United States Supreme Court.

Bob's practice includes the prosecution of professional liability claims (primarily legal malpractice), commercial litigation and insurance coverage litigation. He is frequently called upon to serve as an expert in cases involving legal malpractice. In addition to this, over the course of his career, he has had significant experience in real estate, estate litigation and personal injury matters.

Bob is a member of the New Jersey and Morris County Bar Associations. In 2007, he served as the President of the Morris County Bar Association. In 2005, he held the same position in

the Morris County Bar Foundation, the charitable arm of the MCBA. He has served by appointment of the New Jersey Supreme Court as a member of the District X Ethics Committee and, in 2008, as the first Chair of District XB. He has also served on the Board of Trustees of Northwest Jersey Legal Services and is a current member of the Morris and Sussex Vicinage Minority Concerns Committee. He is a member of the NJSBA Solo and Small Firm Section and the ad hoc Committee on Malpractice Insurance. He is a past Chair and current member of the MCBA Civil Practice Committee. In 2011 he was recognized as the Professional Lawyer of the Year for Morris County by the New Jersey Commission on Professionalism in the Law.