

Buchalter

August 16, 2024 | 2:00-3:00 pm

Columbia Gorge Discovery Center and
Museum | The Dalles

Oregon
State
Bar

Agricultural
Law Section



Sowing the Seeds of Professionalism

Legal Ethics Lessons from the Down on the Farm

Amber Bevacqua-Lynott

Buchalter Professional Responsibility Group
San Diego, Portland & Seattle



Presenter

Amber Bevacqua-Lynott

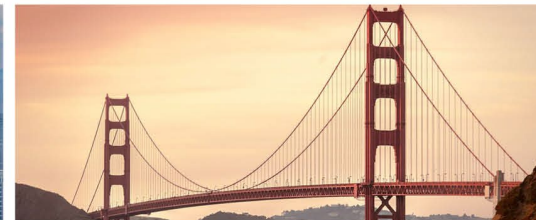
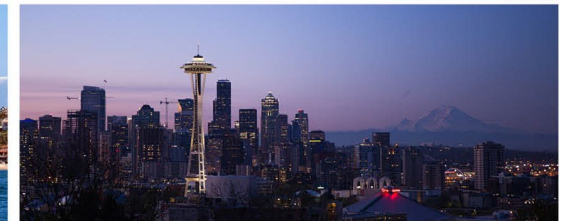
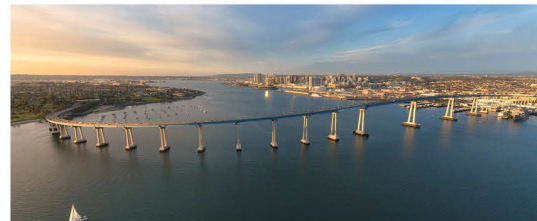
Senior Counsel & Associate General Counsel

(Portland, Seattle, and San Diego)

Professional Responsibility & Litigation Practice Groups



Buchalter
AZ | CA | CO | OR | UT | WA





The content of this program is for general information purposes only and does not constitute legal or professional advice.

The opinions expressed are my alone and do not necessarily represent the opinions of Buchalter, the Oregon State Bar or the Agricultural Law Section.

Lawyer

noun - [law-er]

Someone who does precision guesswork based on unreliable data provided by those of questionable knowledge.

(See also: trouble-solver, magician)

ETHICAL DILEMMAS



ETHICAL DILEMMAS EVERYWHERE

imgflip.com

Perspective



2023

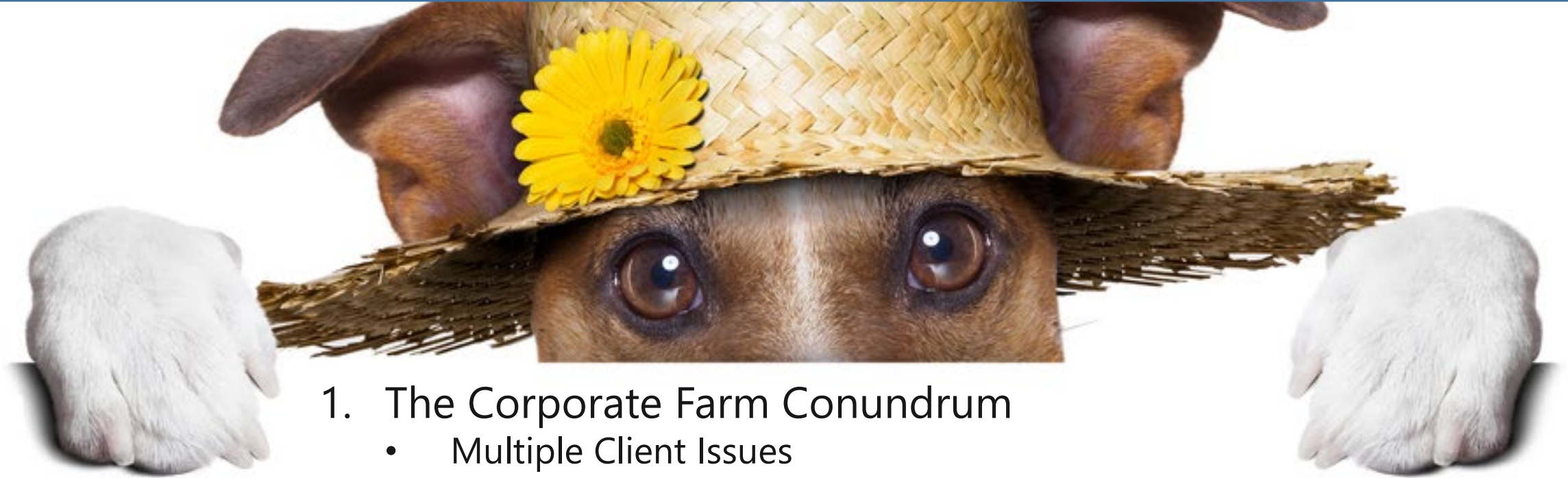
Annual Report Intake and Client Assistance Office

Type of Matter	Number	Percent
Criminal	432	31%
Domestic Relations	211	15%
Civil Dispute	110	8.0%
Litigation	92	6.7%

Source of Inquiry	Number	Percent
Client	550	33%
Opposing Party	334	20%
Third Party	187	11%
Opposing Counsel	42	2.5%
OSB	30	2.0%

Primary Subject of Inquiry	Number	Percent
Communication	164	9.7%
Competence or Diligence	147	8.7%
Dishonesty or Misrepresentation	123	7.3%
Malpractice/Quality of Services (not misconduct)	110	6.5%
Conduct Prejudicial to Justice	86	5.1%
Return Client File	82	4.9%

Scenarios



1. The Corporate Farm Conundrum
 - Multiple Client Issues
 - Communication & Privilege Issues
2. Don't Bet the Farm on Bogus Bug Spray
 - Confidentiality & Exceptions
 - Corporate Responsibility
3. You Can Hit the Hay ... But Not the Hay Truck!
 - Communications with Represented & Third Parties

The Corporate Farm Conundrum




1

Multiple Client Issues



The Situation

A photograph of four young children, two boys and two girls, dressed in formal business suits and ties. They are sitting around a dark conference table in what appears to be a meeting room. The children are smiling and looking towards the camera. The background is slightly blurred, showing a window and other parts of the room.

You have been asked by the Board of Directors for Agribusiness Corp. to defend it in a public and private nuisance and breach of contract case brought by surrounding land owners. The company also wishes to counterclaim for breach of contract, slander and defamation.

Who is the Client?

- The company
 - Who has the authority to retain you for the company?
 - Officers & directors
 - Who does that mean you represent?
 - RPC 1.13: You represent the entity, generally...

RULE 1.13 ORGANIZATION AS CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.



The Situation

Agribusiness Corp. also asks you to defend the CEO and COO, who were individually named in the suit. These officers would also like to be included in the counterclaims for slander and defamation.

- May you do so?
- If so, what is required?



Who is the Client?

- Individual stakeholders
 - RPC 1.13: You represent the entity, generally...
- The “reasonable expectations” test
 - *In re Weidner*, 310 Or. 757, 801 P2d 828 (1990)
 - Does the client subjectively believe that the lawyer is representing the client?
 - Is the client’s subjective belief objectively reasonable under the circumstances?

RULE 1.13 ORGANIZATION AS CLIENT

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent may only be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.



Fee Agreement Not Necessarily Controlling

Contrary to defendants' contention, although the retainer agreements do indeed establish defendants' lawyer-client relationship with the LLCs, they do not preclude the existence of a lawyer-client relationship with the individual plaintiffs as well, through conduct and plaintiffs' reasonable expectations.

—*O'Kain v. Landress*, 299 Or. App. 417, 430, 450 P.3d 508 (2019)



The Situation

Agribusiness Corp. would also like for you to defend a couple of individually named defendants who are employees of the company—a farmhand and a farm foreman.

They, likewise, want to be included in the counterclaims for slander and defamation.

- May you do so?
- If so, what is required?



Who is the Client?

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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



Who is the Client?

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

- (b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
 - (4) each affected client gives informed consent, confirmed in writing.



Avoiding Conflicts from the Outset



“ * * * If there is the slightest doubt as to whether or not the acceptance of professional employment will involve a conflict of interest between two clients or with a former client, or a conflict between the interests of any client and that of the attorney, or may require the use of information obtained through the service of another client, the employment should be refused.”

—*In re O'Neal*, 297 Or. 258, 264, 683 P.2d 1352 (1984)

Other Considerations

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

- (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 client-lawyer relationship; and
 - (3) information related to the representation of a client is protected as required by Rule 1.6.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.



Case Development

During discovery, the farm foreman testifies at deposition that she alerted management to concerns over noise and chemical pollution on the property. This information exonerates the farm foreman from any individual culpability in the lawsuit, but supports that the company (or its officers and directors) are culpable under all causes of action.

- Does this information give rise to a conflict? If so, what result?
- Does the result change if the farm foreman's testimony is found to be demonstrably untruthful?



Divergence of Interests

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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 - (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

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

- (b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client



"Hot Potato" Rule



"So inviolate is the duty of loyalty to an existing client that not even by withdrawing from the relationship can an attorney evade it."

—*Forrest v. Baeza*, 58 Cal. App. 4th 65, 79,
67 Cal. Rptr. 2d 857 (1997)

Duty Arises upon Knowledge of Adversity

A lawyer must have available some factual predicate suggesting a conflict of interest before he or she will be held accountable for a violation of the ethics rules.

—*In re Bristow*, 301 Or. 194, 204-05, 721 P.2d 437 (1986)



Case Development

After discovery is complete and the arbitration/trial date is approaching, CEO notifies you that she is leaving Agribusiness Corp. and initiating employment claims against the company.

- Does this information give rise to a conflict? If so, what result?
- Are you permitted to represent CEO in her action against Agribusiness Corp.?



Divergence of Interests

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client



Additional Fact



Former CEO agrees to have you continue defending her with respect to the Agribusiness Corp. litigation, but tells you that she would like you to communicate with counsel for Customer and see if you can negotiate a settlement or otherwise get her dismissed from the case.

- May you do so?
- Do you need to consult with or get permission from Agribusiness Corp. to do so?
- Are any conflicts created by this request? If so, what result?

Change of Heart

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

- (a) [A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

RULE 1.7(a) & (b) CONFLICT OF INTEREST: CURRENT CLIENTS



Communication and Privilege Issues



A New Development

In discovery, it comes to light that the Agribusiness Corp. farmhand either knowingly cut corners on his handling of chemicals or engaged in intentional sabotage because he was unhappy with Agribusiness Corp.

- What obligations do you have to disclose this information to Agribusiness Corp.?
- Does this information give rise to a conflict? If so, what result?



Competing Duties

RULE 1.4 COMMUNICATION

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

RULE 1.7(a) & (b) CONFLICT OF INTEREST: CURRENT CLIENTS



Another New Development



Following her departure from Agribusiness Corp., CEO obtained other counsel and was dismissed from the case by surrounding landowners pursuant to an “undisclosed settlement.” While you did not negotiate the settlement, CEO did discuss with you what terms she would want/agree to.

- Are you able to share this information with Agribusiness Corp.?
- Are you able to use this information to help resolve the litigation with the landowners on behalf of Agribusiness Corp.?

Duties to Former Clients

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

RULE 1.9 DUTIES TO FORMER CLIENTS

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.



Don't Bet the Farm on Bogus Bug Spray



2

The Situation



A few weeks ago Little Farmer came to your office to seek legal advice on a new business venture in Washington. He explained that he has been selling produce treated with Tox-In—a dangerous pesticide illegally imported from Old McDonald’s Farm in Narnia.

Tox-In is banned in the U.S., because it contains high levels of arsenic, which cause headaches, dizziness, and seizures—although no deaths have yet been reported.

Adapted from Geyer, Leon & Stephen Guardipee, “To Disclose Or Not To Disclose: When Rule 1.6 Can Make You Sick—Ethics and Duties Down on the Farm,” Drake Journal of Agricultural Law, Vol. 20.1 (2015).

The Situation (cont.)

To protect against its side effects, Little Farmer waters down the solution of before spraying, so it will be less noxious. Even after diluting it, Little Farmer explains that Tox-In is both extremely cheap and extremely effective.

As a result of his use of Tox-In, Little Farmer's produce is blooming, and his business is booming!



Adapted from Geyer, Leon & Stephen Guardipee, "To Disclose Or Not To Disclose: When Rule 1.6 Can Make You Sick—Ethics and Duties Down on the Farm," *Drake Journal of Agricultural Law*, Vol. 20.1 (2015).

The Situation (cont.)

Little Farmer has been selling his vegetables treated with Tox-In at a roadside produce stand across the state line in Washington, because he admits that he does not want his friends or family eating the contaminated produce. In addition, he believes that the state line insulates him from potential criminal and civil consequences if someone should get sick from his produce.



Adapted from Geyer, Leon & Stephen Guardipee, "To Disclose Or Not To Disclose: When Rule 1.6 Can Make You Sick—Ethics and Duties Down on the Farm," *Drake Journal of Agricultural Law*, Vol. 20.1 (2015).

Confidentiality & Exceptions



Obligation to Society?



Adapted from Geyer, Leon & Stephen Guardipee, "To Disclose Or Not To Disclose: When Rule 1.6 Can Make You Sick—Ethics and Duties Down on the Farm," *Drake Journal of Agricultural Law*, Vol. 20.1 (2015).

Little Farmer wants advice on the best way to expand into other nearby states, and how best to protect himself from liability. He has contracted with a trucking company to transport his produce across the country.

- What course of action would you take?
- What are the possible consequences of your failure to act?
- Do you have a duty to act against the client's interest and in the interest of society?
- What, if anything, Little Farmer shared with you can you disclose?

Duty of Confidence & Loyalty

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (b) A lawyer **may** reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime; [or]
 - (2) to prevent reasonably certain death or substantial bodily harm.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

- (c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.



Corporate Responsibility



A New Development

Upon further discussions with Little Farmer, you learn that he is actually under contract with AgriGrow Co. (a company to whom you act as outside general counsel) and is using Tox-In that they provided to him at their specific direction and instruction.

- How, if at all, does this change your response or advice?
- What are your obligations to your organizational client?



Duty of Confidence & Loyalty

RULE 1.13 ORGANIZATION AS CLIENT

(b) If a lawyer for an organization knows that ... [a] person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or **a violation of law which reasonably might be imputed to the organization**, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. ...



RULE 1.13 ORGANIZATION AS CLIENT

(c) ... [I]f

- (1) despite the lawyer's efforts ... the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and
- (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial **injury to the organization**, then the lawyer **may reveal** information relating to the representation **whether or not Rule 1.6 permits such disclosure**, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

Corporate Responsibility



A corporate agent, "through whose act, default, or omission the corporation committed a crime, was himself guilty individually of that crime."

U.S. v. Park, 421 U.S. 658, 95 S. Ct. 1903, 44 L. Ed. 2d 489 (1975)

You Can Hit the Hay ... But Not the Hay Truck!



3

The Situation

Your client, Urban Farmer, moved from Big City to Rural Ranch and now operates a “leisure” farm to receive a break on his property taxes. She contracts with Rent-a-Hand (a temp service) to provide seasonal workers to plant, tend, and harvest her crops as well as feed and manage her livestock.



The Situation (cont.)



Farmhand Fred is responsible for caring for the cattle, and needs to bring in a bale of hay from the field to feed the animals, but he is not certified to operate Urban Farmer's tractor or hay baler. While the hay helpers are on break (taking a snooze), Fred decides to go ahead and get the hay himself (as he has done many times before). This time, however, he loses control of the tractor and strikes Urban Farmer's truck, injuring himself and damaging the truck.

The Situation (cont.)

The doctor determines that Fred has serious injuries, and the insurer for Rent-a-Hand brings a suit against Urban Farmer to recover for Fred's expenses.

Fred also separately sues for tort claims, insisting that the breaks failed on Urban Farmer's tractor, causing the injury and the other property damage.

Urban Farmer hires you to defend him and counter-sue for negligence claims against Fred and Rent-a-Hand.



Communications with Represented & Third Parties



Investigation of Events



Your client tells you that Tomato Tim, another Rent-a-Hand worker who is not a supervisor, witnessed the accident.

- Can you call Tim and interview him ex parte about the accident?

Communication with Third-Parties

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person; [or]
- (b) the lawyer is authorized by law or by court order to do so... .

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client ... with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, [where] the interests of such a person ... have a reasonable possibility of being in conflict with the interests of the client

RULE 1.13 ORGANIZATION AS A CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.



Investigation of Events

What if Tim was the one who serviced the tractor before Fred drove it and might be responsible for the brake failure?



What if Tim may be responsible and works directly for Urban Farmer?



Communication with Third-Parties

RULE 4.2 Communication with Person Represented by Counsel

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client ... with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, [where] the interests of such a person ... have a reasonable possibility of being in conflict with the interests of the client

Upjohn Co. v. United States, 449 U.S. 383 (1981)

RULE 1.13 ORGANIZATION AS A CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

OSB Formal Ethics Op. 2005-85

A lawyer who represents an entity, such as a corporation or partnership, generally represents that entity only and not its employees, shareholders, or owners.



Additional Fact



One of the directors of Rent-a-Hand reaches out to you and wants to discuss the case.

- Can you speak with the director?
- What if it is a former director that no longer works for the company?

Determining Representation

RULE 1.13 ORGANIZATION AS A CLIENT

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In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person; [or]
- (b) the lawyer is authorized by law or by court order to do so...

OSB Formal Ethics Op. 2005-85

A lawyer who represents an entity, such as a corporation or partnership, generally represents that entity only and not its employees, shareholders, or owners.

OSB Formal Ethics Op. 2005-80

A lawyer may talk to former employee of opposing party about the facts of a dispute without the permission of opposing counsel.



Further Development

Urban Farmer takes it upon herself to contact both the current employees, as well as the officers and directors of Rent-a-Hand and gets some of them to consent to an interview and give her statements, which she then provides to you.

- Are you permitted to use the statements?



Use of Questionably Obtained Information

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

RULE 1.13 ORGANIZATION AS A CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

RULE 8.4 MISCONDUCT

- (a) It is professional misconduct for a lawyer to:
- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.



Slightly Different Twist



Assume that Urban Farmer employs all her farm workers directly (rather than through an agency) and Fred just filed a lawsuit against the farm for his injuries in connection with the tractor/truck accident. You suspect that plaintiff's counsel or an investigator will surreptitiously attempt to contact your client's other employee workers.

- May you send a memorandum to all current farm workers "directing" them not to talk with the plaintiff's lawyer?



RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS

- (a) In representing a client or the lawyer's own interests, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

- (f) advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for purposes of making the person unavailable as a witness therein.

RULE 8.4 MISCONDUCT

- (a) It is professional misconduct for a lawyer to:
- (4) engage in conduct that is prejudicial to the administration of justice.



Just Asking Nicely

- May you send a memorandum to all current farm workers “requesting” them not to talk with the plaintiff’s lawyer if she calls them?



RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

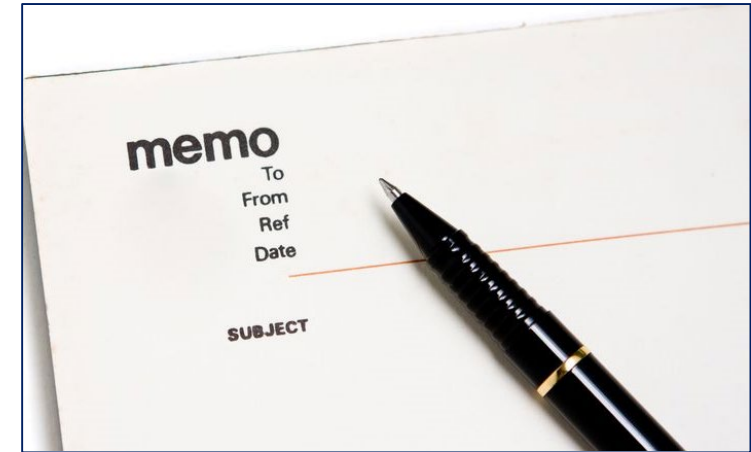
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- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (4) engage in conduct that is prejudicial to the administration of justice.



- What about a request to former employees?



But Remember...

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client ... with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

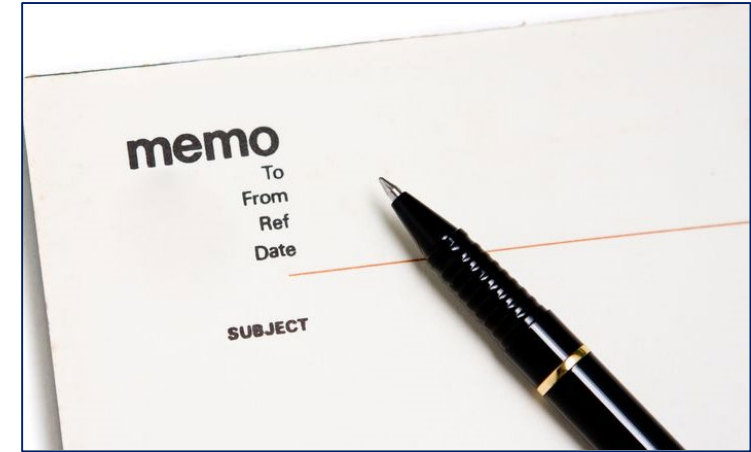
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Upjohn Co. v. United States, 449 U.S. 383 (1981)



Just want to let them know their rights

- May you advise the workers that they are not required to talk to the plaintiff's lawyer if the lawyer calls them?



But Again Remember...

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client ... with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, [where] the interests of such a person ... have a reasonable possibility of being in conflict with the interests of the client

Upjohn Co. v. United States, 449 U.S. 383 (1981)



Professionalism



Civility Still Matters

Nov. 1, 2023

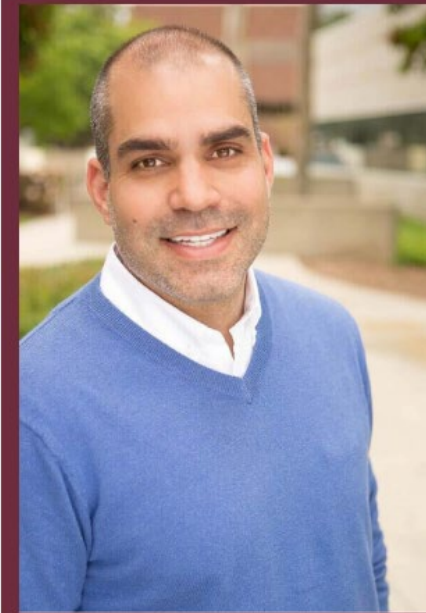
Jerky behavior in *Snoeck v. Exakttime* sparks negative lodestar multiplier

We agree a trial court may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees. The record before us amply supports the trial court's finding that plaintiff's counsel was repeatedly, and apparently intentionally, uncivil to defense counsel—and to the court—throughout this litigation.

\$1.45 million to \$686,795

Perry's Work Has Been Recognized by Judges, Peers, and Opponents

Photo credit: <https://smithriddles.com/who-we-are/>



Perry G. Smith

Partner



Danielle N. Riddles

Partner

No harm—no foul?



“We didn’t do anything bad,
we’re just mean people.”



James C. Mosser | Nicolas Mosser



Photo credit: www.mosserlaw.com/our-firm/attorneys/

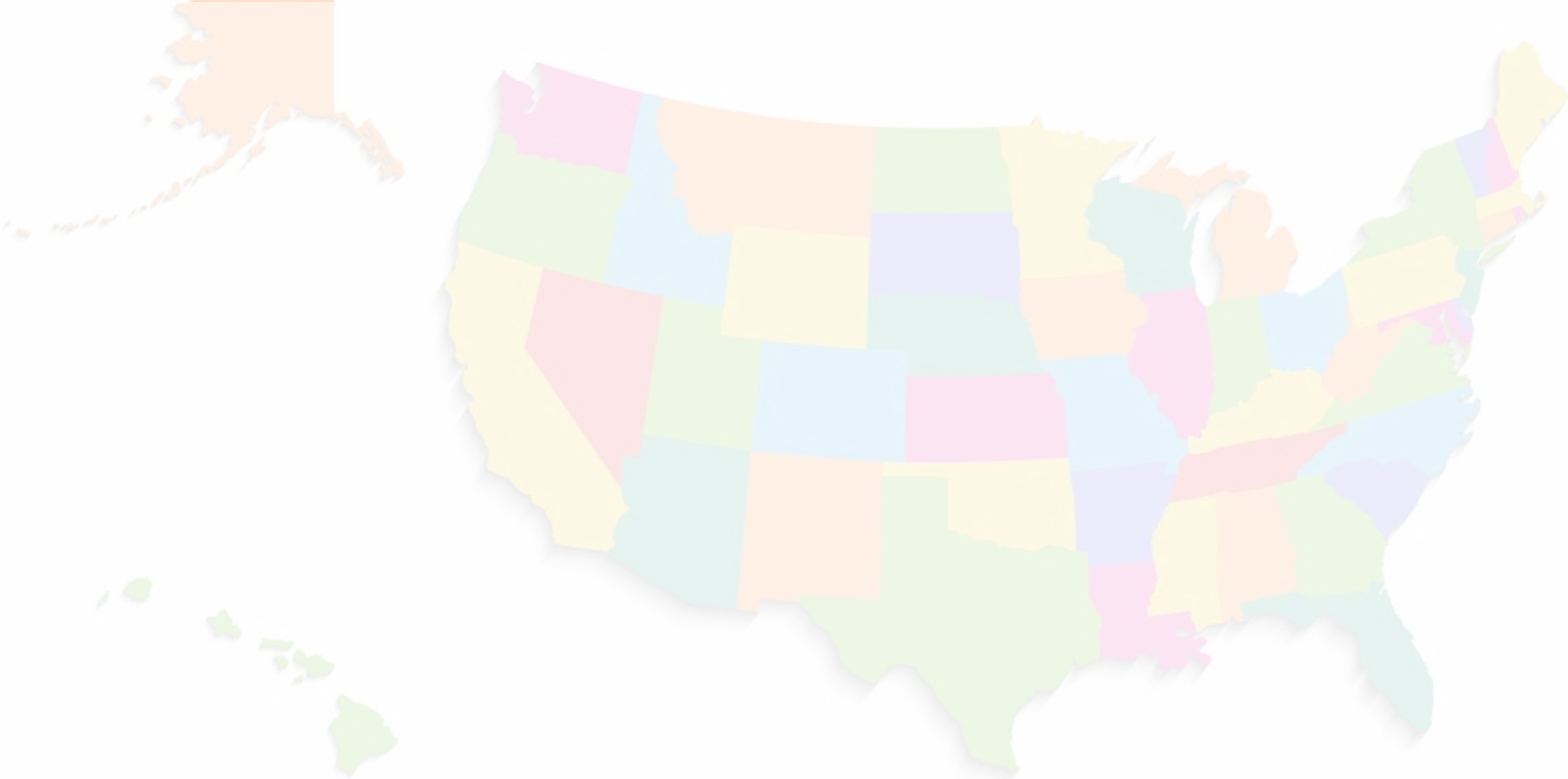
Lessons to be Learned



Questions?



Questions for you



Contact

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<https://www.buchalter.com/industry-specialty/professional-responsibility-practice-group/#overview>

Buchalter