

Washington State Bar Association
Preadmission Education Program
ETHICS

Conflicts checks are mandatory, but
what happens when a conflict is not
caught?

Conflict & Confidentiality Questions

RPC 1.7; 1.8; 1.9; 1.10; 5.1
In re Marriage of Wixom, 332 P.3d
1063, 182 Wn.App. 881 (Wash.App.
Div. 3 2014)

Conflict & Confidentiality

What can you tell the court about your client when she/he is unavailable because of other confidential proceedings, e.g. juvenile, mental health, etc.?

Conflict & Confidentiality

RPC 1.6,
Keep confidential especially if it reflects adversely on your client.

Conflict & Confidentiality

What can you tell the Court when your client is not paying you and you want to withdraw?

Conflict & Confidentiality

See Advisory Opinion 201701;
RPC 1.6

Conflict & Confidentiality

If a party comes to you for representation against an existing client and you feel that you can represent both parties with informed consent and a waiver, how do you get the waiver without revealing confidential information?

Conflict & Confidentiality

See RPC 1.6, comment 17; 1.0A(e);
1.7., comments 8 and 17
In re Marriage of Wixom, 332 P.3d
1063, 182 Wn.App. 881 (Wash.App.
Div. 3 2014)

Conflict & Confidentiality

Your client wants to have a friend present during your meetings for support. The issues being discussed are very emotional for the client. What do you do?

Conflict & Confidentiality

See RPC 1.2; 1.6; 4.3 and the difference between privilege and confidentiality

Conflict & Confidentiality

Is it OK to disclose information about a client as long as the information is not privileged? If the information is in the court file or in the local news?

Conflict & Confidentiality

See RPC 1.6, comment 3

Conflict & Confidentiality

If there is nothing happening,
is it really necessary
to communicate with the client?

Communication

See RPC 1.4
*In re Disciplinary Proceeding Against
Van Camp*, 257 P.3d 599, 171 Wn.2d
781 (Wash. 2011)

Communication

Once you get a sense that your client
has diminished capacity,
how or what are ways
to confirm this?
If confirmed, how do you handle it?

Communication

RPC 1.14; 1.6

Communication

What steps can you take when
opposing counsel is not responding
to your communication regarding
scheduling, pretrial conference,
mediation, etc.?

Communication

RPC 1.0A; 4.2

See Ethics FAQ on this topic:

https://www.wsba.org/docs/default-source/resources-services/ethics/ethics-faqs/faq-4-2_wsba-ltrhd.pdf?sfvrsn=86fe06f1_9 (Can I

Communicate Directly With the Adverse party When Their Attorney Isn't Responding) ;

Engstrom v. Goodman, 271 P.3d 959, 166 Wn.App. 905 (Wash.App. Div. 1 2012);
Matson v. Okita, 68256-3-1

Communication

How do you communicate to a judge when your client is asking you to say things not allowed by law or the Rules of Professional Conduct, or both?

Communication

See Ethics FAQ on this topic:

<https://www.wsba.org/for-legal-professionals/ethics/ethics-faqs#perjury> (What Should I do if I Learn My Client Committed Perjury);
RPC 3.3; 1.6; 1.16; 1.2

Communication

If you have a competent bookkeeper,
do you really need to pay detailed
attention to your trust account?

Trust Accounts

See RPC 5.3; 1.15A; 1.15B
477-6, *In re Disciplinary Proceeding
against Trejo*, 185 P.3d 1160, 163
Wn.2d 701 (Wash. 2008)

Trust Accounts

When a third party pays the advance
fee deposit for the client, what fee
agreements should be in place and
whom should be provided
any refund?

Trust Accounts

See also RPC 1.8 (f); 1.4; and 1.15A

Trust Accounts

Settlement proceeds are deposited into your trust account.

- You have a very clear fee agreement for payment of an hourly rate and you sent your client monthly statements.
- Client fell behind in payments with the understanding that any amount owing would be deducted from any settlement obtained.
- Your client disputes the reasonableness of the amount of time you spent on the case and the outstanding balance.

Trust Accounts

See RPC 1.5; 1.15A(g);

In re Disciplinary Proceeding Against Kagele, 72 P.3d 1067, 149 Wn.2d 793 (Wash. 2003)

Trust Accounts

Your legal assistant accidentally pays for office supplies out of your trust account rather than your general account, but quickly replaces the money. No one other than you and your legal assistant are aware of the mistake and there was no adverse effect to any client.
What do you do?

Trust Accounts

Required self reports to the Bar:
ELC 9.2(a); ELC 9.4(a);
ELC 7.1(b); ELC 15.4(d)

Trust Accounts

What do you do when your client is using social media to abuse the justice process?

For example:

- commenting on jurors
- commenting on current trial
- live streaming court proceedings
- capturing court pictures to later publish on social media.

Social Media/Advertising

Consider
RPC 8.4(a) and (d)
1.2(b) and (d)
3.5
3.6
1.6
1.16(b)(4)
“privilege issues”

Social Media/Advertising

How do you communicate in social media when rulings are adverse to your client?

Social Media/Advertising

RPC 1.6
Civility and Professionalism

Social Media/Advertising

What is the best professionalism and civility advice or tip you would give to your new lawyer self?

Civility and Professionalism