

CAALAC FALL 2021 CONFERENCE ETHICS PRESENTATION

Moderated by:

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ETHICS CUP OF JOE: A PRACTICAL DISCUSSION ABOUT EVERYDAY ETHICS FOR CITY ATTORNEYS



AGENDA

- ▶ Preliminary Comments
- ▶ Introduction of Panelists
- ▶ (Potential) Topics
- ▶ How to Participate

PRELIMINARY COMMENTS

- ▶ Ethics Rules that Apply to City Attorneys*
 - ▶ Divided Loyalties
 - ▶ Political Reform Act (conflicts/reporting)
 - ▶ 1090
 - ▶ Common Law Conflicts

MORE PRELIMINARY COMMENTS

- ▶ Ethics Rules that Apply to City Attorneys*
 - ▶ Professional Credentials
 - ▶ B&P Code 6000-6243
 - ▶ State Bar Rules of Professional Conduct (“government attorney” provisions)

STILL MORE PRELIMINARY COMMENTS

- ▶ Ethics Rules that Apply to City Attorneys*
 - ▶ Touchy-feely (but not in that way)
 - ▶ AB 1234 – “floor, not the ceiling”
 - ▶ Definitions of ethics?
 - ▶ Shakespeare

DRAMATIS PERSONAE

- ▶ Amy Albano
- ▶ City Attorney,
Burbank



DRAMATIS PERSONAE

- ▶ Michele Bagneris
- ▶ City Attorney,
Pasadena



DRAMATIS PERSONAE

- ▶ Michelle Kenyon
- ▶ City Attorney,
Rhonert Park,
Calistoga,
Piedmont, Pacifica
and Moraga



DRAMATIS PERSONAE

- ▶ Eric Vail
- ▶ City Attorney,
Rialto and
Cathedral City



DRAMATIS PERSONAE

- ▶ Joe Montes
- ▶ City Attorney,
Alhambra,
San Marino and
Santa Clarita



DRAMATIS PERSONAE



(POTENTIAL) TOPICS

- ▶ Who's the Client (Rule 1.13)
- ▶ Report Up Obligations (Rule 1.13)
- ▶ Confidential Information of client (Rule 1.6)
- ▶ Advisor/scope of advice (Rule 2.1)
- ▶ Assisting, Soliciting or Inducing Violations (Rule 1.2.1)

(POTENTIAL) TOPICS

- ▶ Litigation (Rule 3.1)
- ▶ Trial Publicity (Rule 3.6)
- ▶ Lawyer as witness (Rule 3.7)
- ▶ Prosecutor (Rule 3.8 and 3.10)
- ▶ Supervisor obligations (Rule 5.1 through 5.3)
- ▶ Ex parte in admin hearing (Rule 3.5)

(POTENTIAL) TOPICS

- ▶ Contact with represented person (Rule 4.2)
- ▶ Sex with Client (Rule 1.8.10)
- ▶ Conflicts with new hires (Rule 1.9 and 1.11)
- ▶ Competence (technology) (Rule 1.1)
- ▶ Hiring outside Counsel (Rule 8.4.1)

AND FINALLY...

▶ RIGHT vs. WRONG

HOW TO PARTICIPATE

- ▶ Please use the Chat feature
 - ▶ We'll try to answer the questions we think are interesting...

A FINAL CAVEAT

- ▶ Every response has an implied “I know an attorney who...”
 - ▶ No actions should be ascribed to any panelist
 - ▶ No city should be assumed for any story
 - ▶ No animals were harmed in the making of this production

WHO'S THE CLIENT

- ▶ Rule 1.13 (Organization as Client)
 - ▶ The City
 - ▶ “Duly authorized directors, officers, employees, members, shareholders or other constituents”
 - ▶ Public, electeds, employees

REPORT UP OBLIGATIONS

- ▶ Rule 1.13 (Organization as Client)
 - ▶ Report up, but not out
 - ▶ Constituent violating law and
 - ▶ Action likely to substantially injure organization
 - ▶ “Governmental entity” exclusion(?)

CONFIDENTIAL INFORMATION

- ▶ Rule 1.6 (Confidential information of a client)
 - ▶ No whistleblower protection
 - ▶ Grand juries?
 - ▶ Who's the client?

ADVISOR

- ▶ Rule 2.1 (Advisor)

- ▶ Scope of advice can include moral, economic, social and political factors

ASSISTING VIOLATIONS

- ▶ Rule 1.2.1 (Assisting, Soliciting or Inducing Violations)
 - ▶ Cannabis Rule
 - ▶ Other “violations”

LITIGATION

- ▶ Rule 3.1 (Meritorious Claims and Contentions)
 - ▶ Meritorious claim v. zealous representation

TRIAL PUBLICITY

- ▶ Rule 3.6 (Trial Publicity)
 - ▶ Limitation on statements that lawyer knows or reasonably should know has substantial likelihood of prejudicing

LAWYER AS WITNESS

- ▶ Rule 3.7 (Lawyer as Witness)
 - ▶ Must get permission from the boss

PROSECUTOR

- ▶ Rules 3.8* (Special Responsibilities of a Prosecutor) and 3.10 (Threatening Criminal, Administrative, or Disciplinary Charges)
 - ▶ Discipline for poor supervision
 - ▶ Release/dismissal agreements OK

SUPERVISOR OBLIGATIONS

▶ Rules 5.1-5.3

- ▶ Duty to take steps to ensure compliance with rules by subordinates
- ▶ Duty to cure potential violations
- ▶ Duty to question supervisors

EX PARTE IN ADMIN HEARING

- ▶ Rule 3.5 (Contact with Judges, Officials, Employees and Jurors)
 - ▶ Unrepresented can communicate with “adjudicatory” body

CONTACT WITH REPRESENTED PERSON

- ▶ Rule 4.2 (Communication with a Represented Person)
 - ▶ “Public Officials” can be contacted by outside lawyers
 - ▶ For employees, depends upon involvement in matter

SEX WITH CLIENT

- ▶ Rule 1.8.10 (Sexual Relations with Current Client)
 - ▶ Applies to “assigners of work”

CONFLICTS WITH NEW HIRES

- ▶ Rules 1.9 (Duties to Former Clients) and 1.11 (Special Conflicts of Interest for Former and Current Government Officials and Employees)
 - ▶ Ethical walls
 - ▶ Private to private
 - ▶ Government to private
 - ▶ Unclear private to government

COMPETENCE

- ▶ Rule 1.1* (Competence)
 - ▶ Applies to technology (?!)

HIRING OUTSIDE COUNSEL

- ▶ Rule 8.4.1 (Prohibited Discrimination, Harassment and Retaliation)
 - ▶ No harassment, discrimination
 - ▶ Practices/policies re outside counsel

RIGHT VS. WRONG

- ▶ What do you do when you disagree?

FINALE

▶ Thank you!