

Tuesday, November 16, 2021 (classes 22 of 30!!)

Today:

Session I—1101: Ethics & prof'l responsibility continued!

Session II—1103: Proprietor v. Consumer papers *including* venue!

Now: Complete handout, "Ethical Billing Practices"!

For next class (Th. Nov. 18):

1101: Read Sussman v. Grado case, post response on OL, read first half of M&M ch. 9! (Legal Writing)

1103: First draft summons due by email **8am**, read C&W ch. 14 (Complaints) *and* CPLR §§ listed on OL!

For Tu. Nov. 23:

• 1101: Read the rest of M&M ch. 9!

• 1103: First draft verified complaint *and* times to meet due 8am! *and* read C&W ch. 6 (Statute of Limitations)!

Th. Nov. 25: *NO classes at all!!* Happy Thanksgiving!

Tu. Nov. 30: *NO class for us!* – individual meetings this week!

Th. Dec. 2: *YES class for everyone!* 😊

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1101: Ethics and professional responsibility!! *continued!*

Paralegal ethical duties!! *Honesty plus . . . the "3 C's"!*

- **C**ompetence → *be good!* Be knowledgeable and thorough in performing your job.
- **C**onfidentiality → *be quiet!* Includes attorney-client privilege.
- **C**onflicts of interest → *be careful!* Conflicts arise when an attorney's representation of one client can injure the interests of another client.

Plus . . . AVOID Unauthorized Practice of Law!! ☹️

Attorney ethics!!

Ethical rules governing attorneys are determined by:

- bar associations *and*
- state legislatures *and*
- state courts . . . *all together!* 😊

Attorney ethical rules in NY = NY Rules of Professional Conduct! They have the force of LAW. ***Obey them.***

Some key rules regarding \$\$ → Attorneys must NOT:

- mix firm \$ and client \$ in the same account!
- charge (higher) paralegal billing rates when paralegals do (less-costly) clerical work!!
- double bill!

. . . *lots more.*

Hypothetical! Attorney Angela has an hourly fee arrangement with each of her clients. On Monday, she spent **three hours** in court (10am-1pm) for a motion hearing in **client Collins'** case. The motion was scheduled for

10am, but at 10:15am, the judge's clerk informed Angela that the judge had been called away, and Angela should come back at 12:30pm. Angela stayed at the courthouse. To pass the time, she spent **one hour** reading documents for **client Lee's** case (10:30-11:30am), and a **half-hour** talking to the clerk for the judge in **client Rodriguez's** case (11:30-12 noon). From **noon to 12:30pm**, Angela reviewed notes in preparation for **Collins'** motion hearing, and from **12:30-1pm** she participated in the hearing.

When Angela sent out her monthly bills, she charged:

- **client Collins** for **three hours** (10am-1pm, when she was in the courthouse for Collins' case);
- **client Lee** for **one hour** (10:30-11:30am reading documents)
- **client Rodriguez** for **one-half hour** (11:30am-12 noon talking to clerk in Rodriguez's case).

?? Did Angela bill her clients properly? No!!

Attorney-client privilege:

- Attorney (and staff) may not reveal certain info regarding representation of a client, even in court! *Unless client consents.*
- Includes:
 - client's communications with attorney/staff regarding a legal matter in which client is involved
 - "work product" = info regarding attorney's legal strategy → *including paralegal memos!*
- Lasts forever! *Can cause conflicts of interest.* ☹

Hypothetical: Princess Paralegal is researching a case for her firm's client. She finds a case that perfectly supports the client's position. She stops there and gives the case to supervising attorney. Had Princess followed up on her research and "validated" the case, she would have learned that the decision was recently overruled by an appellate court. **What ethical rule did Princess violate? Competence!!** ☹

Hypothetical: Legal assistants Leonardo and Leticia are eating dinner in a local restaurant. They are discussing a well-known client's case and his poor financial condition. They do not know that their server works days in a bank where the client maintains his accounts. The server overhears their conversation. **What ethical rule have Leonardo and Leticia violated? Confidentiality!!** ☹

Hypothetical: Lawyer LaTonya assigns a new client's case to Paralegal Patrick. In reviewing the file, Patrick realizes that the case requires LaTonya to sue her former client. **What should Patrick do? Tell LaTonya there is a potential conflict of interest!!** ☹

Consequences to attorneys for violating legal ethics include:

- disciplinary proceedings before state governing body, *potential* reprimand, suspension or disbarment
- lose job, business, reputation
- sued for malpractice

Consequences to paralegals for violating legal ethics include:

- lose job, business, reputation
- statutory violations: UPL, business laws
- personal liability for damages
- lose certification (per NALA, NFPA Codes of Ethics)

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1103: Proprietor v. Consumer papers!

Homework questions!!

Which subsection of CPLR R. 3016 applies to Mr. Proprietor's case? **R. 3016(f)**

- What does that subsection require or permit Mr. Proprietor to do? **Permits him to file a verified complaint listing the items and costs of his claim.**
- What does that subsection require or permit Ms. Consumer to do? **If Mr. P files a verified complaint as described, it requires Ms. C to respond with a verified answer with certain information, including the specific items she disputes.**

What is a "verification" of a pleading? **See CPLR § 3020.**

In what New York trial court (such as Supreme, Family, Civil, or Surrogate's) should Mr. Proprietor's case be commenced? **NYC Civil Court because the amount in controversy is less than \$25,000.**

What county is the proper place of trial (venue) for this case? **Queens County, per CPLR §503(f).**

Venue!! → CPLR Article 5

- "place of trial" → county
- We refer to "proper" venue; where venue "lies"
- usually based on residence of parties *OR* where events occurred! (§ 503)

Let's try it!! P and D were in a car accident in Staten Island. Under CPLR § 503(a), where is venue proper if, when P commences action against D:

- P lives in Brooklyn and D lives in Queens? **Kings, Queens, or Richmond County**
- P lives in Brooklyn and D lives in New Jersey? **Kings or Richmond County**
- P lives in Hawaii and D lives in New Jersey? **Any county in NY that P chooses!**

What specific forms should we follow in Proprietor v. Consumer?

- **Summons: C&W Form B** (*Summons Served With Complaint in an Action Based on a Consumer Credit Transaction*)
- **Complaint: C&W Form F or G** (*Complaint for Goods Sold, Delivered & Accepted with Itemization OR With Schedule Annexed*) → your choice!
- **Verification: C&W Form O** (*Verification by a Party*) → must be notarized!

Per CPLR R. 305(a), a summons must include:

- basis of venue (county in which case is filed)
 - *if P's residence, then include P's address*
- index number: *You can use 987654/2021 or something similar!! Your choice!*
- date of filing: *How about Nov. 18, 2021 or something similar? Your choice!*

PLUS in consumer credit transaction cases (like ours!):

- **"CONSUMER CREDIT TRANSACTION"** at top
- county where D lives → *if D is purchaser, borrower or debtor, lives in NY*
- county where transaction took place—*if in NY*