

Oregon Women Lawyers

“Legal Ethics for Contract Lawyers”

Dayna E. Underhill, Holland & Knight LLP

Trisha Thompson, Holland & Knight LLP

October 25, 2019

Scope – Who Are You?

» Transactional lawyers

- » Drafting contracts
- » Audits and reviews
- » In-house work
- » Ghost writing
- » Client contact

» Litigators

- » Brief writing
- » Court appearances
- » Document review
- » Client contact

» Where are you coming from?

- » New to Oregon
- » Coming back into the practice of law
- » Transitioning out of firms or public practice
- » Transitioning into retirement
- » Solos looking to supplement income
- » Part time lawyers

Agenda

»Our Goal Is to Cover Issues That You Say Matter to You:

- » Unauthorized Practice of Law (UPL)
- » Referral Sources
- » Billing and Accounting
- » Advertising
- » Conflicts
- » Client Disputes
- » Confidentiality and Privilege

»We may not get to everything!



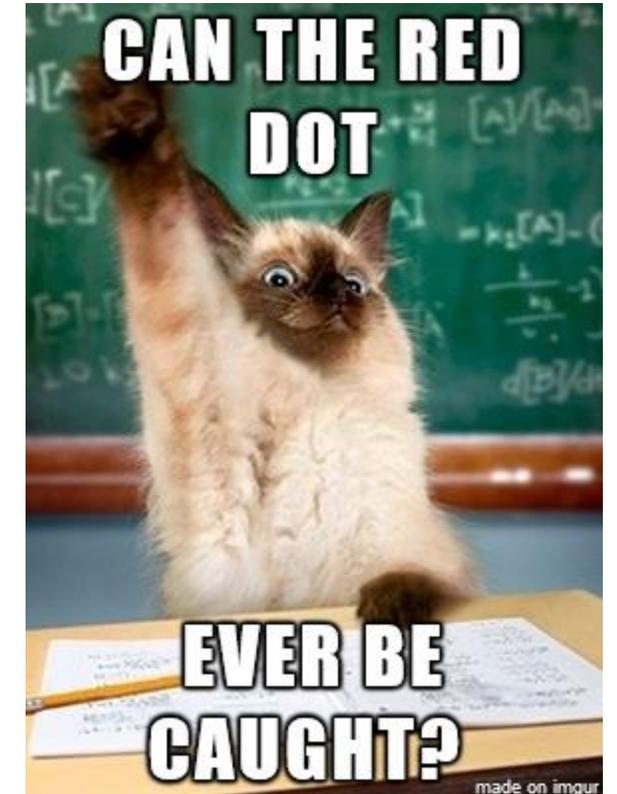
Ground Rules

» Ask questions

» We all get more out of an interactive presentation!

» Someone else did this once....

» If you have a specific question, phrase it in a hypothetical to be on the safe side.



Starting with a Hypothetical:

Xena is licensed only in Oregon. She regularly works as a contract attorney, providing research and writing assistance on projects for other Oregon lawyers. She is contacted about research and writing projects for a firm based in Vancouver, WA; lawyers at that firm are licensed in both Oregon and Washington.



- May Xena work on projects related to Oregon cases for this firm?
- May Xena work on projects related to Washington cases for this firm?
- What if Xena is licensed in Connecticut only but is living in Oregon?

UPL

»What can a lawyer licensed in another state do and not do in Oregon?

- » Is there any difference if they have or have not filed a reciprocity application and are just waiting for approval?
- » Took the Oregon State Bar exam and waiting for results?
- » Licensed in another jurisdiction and not looking to obtain Oregon license? (For example, military spouses or WA lawyers)
- » In-house corporate work

»What work can an OR freelancer do for a WA attorney/law firm if they don't have a WA license and are not appearing in court?

- » Research?
- » Draft pleadings/write motions?
- » Advise on federal-only matters?
- » Interview witnesses?

What is the “practice of law”?

- » Where is the line on practicing law/work that needs a license and work that doesn't?
- » What would be considered paralegal work (no license required) and what would be legal work?
 - » Another example: is in-house work with businesses involving HR consulting or labor relations coordination “the practice of law”?



Sources of Work/Advertising

» **Can an Oregon licensed lawyer take work through freelancing websites like Upwork or Fiverr?**

» What about with websites that connect clients to contract attorneys like Upcounsel?

» **Any ethical issues when working through an employment agency like Special Counsel?**

» **When is it allowable for a contract lawyer to hold themselves out as part of a firm they're working with?**

» For example, if hired by Firm A and contacting witnesses to interview?

» UPL-related issues

Billing and Accounting Issues

» Trust accounting: when does it apply if working with lawyers?

» For example, if I do project work with a lawyer and get paid/charge on a flat fee, can I charge a deposit/earned on receipt or a retainer? What needs to be kept in trust?

» What are the ethical considerations to be aware of when payment involves a portion of a contingent fee?

» Any ethical considerations involved in accepting credit cards?

» Which account should I put the payment in?



Conflicts

» **If I do a defined project for a firm on one case, what are my conflicts?**

» Does it matter if the contractor has access to firm records? Email? Internal systems and documents?

» **When a lawyer transitions from firm life to contract lawyer, are all of former law firm's clients "former clients" for conflicts purposes, or just clients in matters she worked on in former employment?**

» Screening

» Imputation rule

» **Best practices for analyzing conflicts when doing "non-lawyer" work.**

» I sometimes review the work product of other lawyers. I advise my law firm clients / lawyers that either I need to run a conflict check or they need to redact person/entity-identifying information. Is this approach overly cautious?

» What about graphic design work, such as designing AV materials for trial, etc.?

Client Disputes: Bad Clients Can Be Big Trouble for Good Lawyers

»Accounts Receivable

- » Are they yours or the firm's?
- » Writing time off
- » Client relations

»Cost of a Collections Lawsuit

- » Roughly 20 cents on the dollar
- » What is the better use of our money?



**“If an invoice is due in 30 days, we pay it in 60 days.
If it’s due in 60 days, we pay it in 90 days. If it’s
due in 90 days, then they probably don’t
need the money anyway.”**

Confidentiality & Privilege

- »Any duty of confidentiality about revealing the ultimate client if the contract lawyer's client is the lawyer?
- »How do I make sure the ultimate client's privilege is preserved?

AUDIT SERVICE WHITE COLLAR LAWYER CRISIS MANAGEMENT ADVISING LAWYERS
DISCIPLINARY DEFENSE LAWYER MOBILITY APPEALS **REGULATION**
LAWYER ETHICS
FIDUCIARY DUTY CONCERNS COMPLEX LITIGATION LAW FIRM MERGERS ETHICS ADVICE
LAWYER DISCIPLINARY DEFENSE **RISK MANAGEMENT** COMPLEX LITIGATION
BAR COMPLIANCE
CRISIS MANAGEMENT LAW FIRM ORGANIZATION LAWYER DISSOCIATION



ANY
QUESTIONS
?