



CLASS 11

Professional Responsibility and Legal Ethics

Transactions Between Attorney and Client

- **Concern:** Attorney will use position as trusted fiduciary to take advantage of the client
- **Rules:**
- Attorney may ONLY do business with a client if
 - terms are fair and reasonable (**objective standard**)
 - client is fully informed about the facts and circumstances of the transaction
 - client is advised, in writing, to seek outside counsel to make sure the deal is fair
 - the client consents in writing, to the deal, in spite of the confidential relationship
- Attorney may not use confidential information to get a better deal, unless the client consents
- Legal representative may NOT solicit a gift (e.g., in a will) from a client unless the parties are related



Other Rules Regarding Transactions in Rule 1.8

- **Media Rights**

- Because of the First Amendment, you can't just say "No lawyer can speak to the media about a case"
- Attorney can't "sell" the story of the representation until the representation is over
- Even after the representation is over, the attorney must not disclose any client confidences to anyone

- **Lending Money to a Client**

(these rules don't apply to "pro bono" representation)

- Attorney cannot lend the client the money to finance the litigation
- The attorney may not pay court costs unless the client is indigent
- Attorney may, however, advance court costs to the client, as long as the client is to pay it back



Other Rules Regarding Transactions in Rule 1.8 (cont.)

- **Accepting payment from a third person**
 - **PROHIBITED**, unless:
 - the client gives informed consent; **and**
 - there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; **and**
 - no confidential information is disclosed to the third party



QUIZ TIME!



Other Sources of Conflicts of Interest and Prohibited Activities

- Attorney cannot make the client sign an agreement to waive the right to sue for malpractice
- Attorney cannot acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that:
 - the lawyer may acquire a lien authorized by law to secure the lawyer's fee or expenses
- Attorney may not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced
- An attorney may not face off against an opposing attorney who is a close relative



A Case Study in Conflicts: The API Case

Westinghouse Electric Corp. v. Kerr-McGee Corp. (7th Cir. 1978)

◦ **Facts:**

- Kirkland and Ellis (law firm) had offices in D.C. and Chicago.
- In the mid 1970s, Congress was investigating the oil association "API"
- API hired Kirkland D.C. Office to help them defend against the Congressional inquiry
- Kirkland (D.C.) issued a report saying that the industry was competitive (no anti-trust issues)
- The same day, Kirkland (Chicago) sued several API members for antitrust violations



A Case Study in Conflicts: The API Case (cont.)

- **Issues:**

- Was Kirkland (D.C.) "lawyer" for API so that conflicts rules apply?
- If so, was a "screen" between the D.C. and Chicago offices enough to allow both representations?

- **Court's answers:**

- A "representation" is not confined to a legal proceeding. Hiring a firm to do a public relations campaign is a representation. The conflicts rules apply.
- The wall is not enough because of the size and the importance of the cases; the risk of improper sharing of information is too great.

