

**PRACTICES**

Business Law  
Employment Law  
General Litigation & Trial  
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Health Law  
Insurance Coverage  
Professional Responsibility  
Real Estate  
Tax Law  
Trusts & Estates

**PROFESSIONAL  
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# Professional Responsibility

## Overview

Chaired by [Arthur D. Burger](#), a former member of the American Bar Association Committee on Ethics and Professional Responsibility and a nationally recognized leader in the field of legal ethics and the law governing lawyers, Jackson & Campbell, P.C.'s Professional Responsibility Practice Group has represented distinguished law firms and attorneys for 20 years and has a Tier 1 Regional Ranking for Ethics and Professional Responsibility Law by U.S. News – Best Lawyers®. The Practice Group serves as outside counsel to many law firms and represents clients in litigation as well as providing advice and counsel on issues related to legal ethics and professional responsibility.

The scope of the Practice Group's litigation matters include: defense of suits alleging legal malpractice and breaches of fiduciary duties, internal law firm disputes and break ups, disciplinary investigations and proceedings, and motions to disqualify. Additionally, the Practice Group advises law firms and lawyer clients on conflicts of interest, how best to handle disgruntled or uncooperative clients, and preventative risk management practices.

Members of the Practice Group also serve as expert witnesses.

Common subject matters addressed by the group include:

## CONFLICTS OF INTEREST

For many law firms, potential conflicts of interest are the most common source of concern. Questions may arise such as whether the representation of a former client is substantially related to a new matter; a particular advance waiver is likely to be enforceable; an affiliate of a corporate client should be treated the same as that corporate client; a new matter is likely to be directly adverse to another client; allowing a new attorney to join the firm will create conflicts; indirect economic harm to another client creates a prohibited representation; and when and how to properly obtain informed consent. It also includes advice on prophylactic measures to reduce the risks and limitations caused by such circumstances.

## MOTIONS TO DISQUALIFY

Allegations regarding conflicts of interest can lead to motions to disqualify law firms from serving as counsel in particular matters. Such motions present challenges as how to best

**PROFESSIONAL RESPONSIBILITY (CONTINUED)**

respond, assessing whether a conflict of interest actually exists, marshalling facts to dispute the allegations, developing legal arguments, dealing with equitable issues, determining the firm's duties to the client, assessing confidentiality concerns, addressing risk factors, and litigation strategy.

**DEFENDING SUITS ALLEGING LEGAL MALPRACTICE OR BREACH OF FIDUCIARY DUTIES**

Law firms and lawyers are attractive targets for suits alleging malpractice or breach of fiduciary duties when clients incur a loss. When a suit alleges intentional wrongdoing, questions of insurance coverage may arise. Often, a plaintiff will be required to prove a case within a case in order to prevail, and defenses may be available regarding causation, the applicable standard of care, judgmental immunity, and proximate cause, all of which call for experienced and knowledgeable counsel.

**MOTIONS TO WITHDRAW AS COUNSEL**

On occasion, the pressure of a case can lead to a break-down of confidence and communication between a client and a law firm, rendering it unwise for the firm to continue with the representation, a withdrawal may be necessary, if it can be properly be accomplished. If the matter is in litigation and the client is unwilling to secure new counsel, a motion to withdraw may become necessary. These situations are fraught with danger and careful consideration is required of the firm's duties to the client, including issues of confidentiality, the likely perception of the circumstances of the situation by the court, and non-withdrawal options to resolve or mitigate the client dispute.

**BAR DISCIPLINARY PROCEEDINGS**

Dissatisfied clients and angry adversaries sometimes present complaints of unethical conduct to the disciplinary counsel of a state's bar. While such complaints are very often frivolous, lawyers who are the target of such allegations have a duty to cooperate with the investigation and lawyers are wise to obtain independent representation by experienced counsel to assist them. Such cases cannot go forward unless there is clear and convincing evidence that the lawyer violated one or more of the Rules of Professional Conduct. In the overwhelming majority of instances, such matters are dismissed at the investigation stage and no formal proceedings are instituted. In other instances, the matter may be put to rest with a diversion agreement. In a small percentage of instances the complaint will lead to formal proceedings, which can lead to a range of disciplinary sanctions.

PROFESSIONAL RESPONSIBILITY (CONTINUED)

**LEGAL ETHICS ADVICE**

As a matter of prudent risk management, firms should seek professional assistance in ensuring that they have in place an effective set of preventative procedures that are likely to reduce complaints regarding compliance with their professional duties as lawyers. This should include a review of retainer agreements, procedures for screening new cases for potential conflicts of interest, due diligence in taking on new clients, a review of the firm's website and marketing practices and proper training and supervision of the firm's associates and non-lawyer employees.