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ETHICS IN THE OIL PATCH

John C. Everett
WHO IS THE CLIENT
AND
WHAT DIFFERENCE DOES IT MAKE?

"I am a professional, I told myself. A professional. The word has meaning for me as few others in my vocabulary do. There is a standard of performance you must maintain. It is the best you are able to give and then more - and to maintain that at a level of consistency. No excuses for the demands of your ego or the extremes of your emotions. It is an inner thing. I have held myself to that standard for 22 years. It is my proudest achievement."  A Zen Way of Baseball, Sadaharu Oh.

"You are a lying son-of-a-bitch." Attorney exchange in deposition in Washington County Case No. E-95-1022.

First Rule of Civility – Lincoln Inn of Court (1275)

"Objection can be made against an advocate because he is deaf or dumb or blind or of permanently unsound mind or a slave or a woman or has undergone a sex change (unless he was forcibly deprived of his parts or subject to enemy outrage) or has committed a capital crime or has been guilty of contempt of court or has hired out to fight toothed beasts in the arena."

"The meek shall inherit the earth but not the mineral rights." J. Paul Getty

WHO IS THE CLIENT?

I. Model Rules of Professional Conduct

SCOPE:

"Furthermore for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client/lawyer relationship exists." and

"Whether a client/lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact."
II. Proposed Rules of Evidence 503

(a) Definition. As used in this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either publicly or privately, who has rendered professional legal services by a lawyer, or who consults a lawyer with a view toward obtaining professional legal services from him.

(2) A "lawyer" is a person authorized or reasonably believed by the client to be authorized to practice law in any state or nation.

III. Cases

*Loftin v. Loftin,* 745 S.W.2d 635 (1988)

"Our rationale has not always been the same, but a careful reading of our cases discloses that under the facts, they have all been decided correctly . . . " Hon. Melvin Mayfield

*Bauer v. Bosely,* 802 F.2d 1058 (1986)

The staff legal assistant to the clerk of the St. Louis City Court has as attorney/client relationship with the clerk only and may be fired for reasons of political patronage.

*Radian Burners v. American Gas Association,* 320 F.2d 314 (7th Cir. cert. denied 375 U. S. 929) (1963)

Corporations can be clients.

See, *Diversified Industries v. Meredith,* 572 F.2 596 (8th Cir. 1997) for the scope of the attorney/client relationship between corporations and attorneys.

*The Bieter Company,* Petitioner, 16 F.3d 929 (8th Cir. 1994) independent consultant of a corporate client may be the client for privilege purposes.

*Macawber Engineering v. Robson & Mider,* 47 F.3d 2053 (9th Cir. 1995) "mail drop" lawyers have limited attorney/client relationship. They are not responsible for the negligence of the lead law firm.
In Re: Spivey Chevrolet, 204 B.R. 32 (AR 1996) There is no attorney/client relationship between a bankrupt company and a law firm which did research on how to avoid bankruptcy. In order to claim the attorney/client relationship the client must show:

(1) Confidential information was submitted to the attorney in the reasonable belief that the lawyer was acting as his attorney;

(2) The relationship is both contractual and consensual and court must consider both subjective and objective factors;

(3) A significant factor is specifically how the alleged client's case was discussed;

(4) If confidential information is revealed, there is an implied attorney/client relationship which arises even if the attorney is not retained;

(5) Neither payment of fees nor source of the fee matters.

In Re: Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir. 1997) The Hillary Clinton Case and the doctrine of "common purpose"

WHY IT MAKES A DIFFERENCE

Rule 4.1 Model Rules

"In the course of representing a client a lawyer not knowingly:

(a) Make a false statement of material fact to a third person or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6

See, Texas Oil & Gas v. Hawkins Oil & Gas Inc., 282 Ark. 268, 668 S.W.2d 16 (1984)