

## PRACTICES

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

## PROFESSIONAL RESPONSIBILITY MEMBERS

### Arthur D. Burger

aburger@jackscamp.com  
202.457.1606

### William E. Davis

wdavis@jackscamp.com  
202.457.1674

### Nicholas S. McConnell

nmconnell@jackscamp.com  
202.457.1628

### James P. Schaller

jschaller@jackscamp.com  
202.457.1630

# 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, Jackson & Campbell, P.C.'s Professional Responsibility Practice Group has represented distinguished law firms and attorneys for nearly 20 years. The Practice Group serves as outside counsel to many law firms and represents clients in litigation as well as providing advice and assistance on matters related to legal ethics and the law governing lawyers.

The scope of the Practice Group's litigation matters include: defense of suits in federal and state courts alleging legal malpractice, breaches of fiduciary duties, arbitration proceedings relating to internal law firm disputes and break ups, disciplinary investigations and proceedings, and motions to disqualify. The scope of matters for which the Practice Group provides advice and counsel to its law firm and lawyer clients includes discrete ethical quandaries or potential claims that arise, such as complex questions as to potential conflicts of interest, and routine prophylactic advice regarding 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, issues regarding potential conflicts of interest are the most common source of concern. Questions can arise as to whether a representation of a former client is "substantially related" to a new matter, whether an advance waiver is effective, whether an *affiliate* of a corporate client is owed the same duties as that corporate client, when and how to properly obtain "informed consent," whether a new matter is likely to be "directly adverse" to another

## PROFESSIONAL RESPONSIBILITY (CONTINUED)

client, and whether indirect potential economic harm to another client creates a prohibited representation. Law firms should also adopt prophylactic measures to reduce the risks and limitations caused by conflicts of interest. Conflicts of interests should also be considered whenever one or more lawyers from another firm make a lateral move to join a firm.

## 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 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 on their claim and complex issues may arise regarding causation, the applicable standard of care, judgmental immunity and damages. A central component in defending such matters is to seek early dismissal or summary judgment based on issues of law that can be adjudicated by the court.

## 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. 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, issues of confidentiality, the practicalities of prevailing on such a motion under the existing circumstances, and other options to address the cause of the client dispute.

## BAR DISCIPLINARY PROCEEDINGS

Dissatisfied clients, and occasionally frustrated adversaries, sometimes present complaints of unethical conduct to a disciplinary counsel and, provided that the allegations are not insufficient on their face, the disciplinary counsel are legally obligated to conduct a confidential investigation. While such complaints are 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 take place. In other instances, the matter may be put to rest

**PROFESSIONAL RESPONSIBILITY (CONTINUED)**

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.

**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 procedures that are likely to reduce complaints regarding compliance with their ethical duties. This should include a review of retainer agreements, 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.