

Potential Ethics Topics

- 1) **Conflicts of Interest** – between spouses that use the same estate planning attorney? Among other family members? May an estate planning attorney draft an estate plan for multiple generations of the same family? What waivers may need to be signed?
- 2) **Diminished Capacity** – Is the ABA’s guide and worksheet for assessing capacity a good tool to use? What other factors should the attorney consider? Need a doctor’s written opinion?
- 3) **Clients Residing in a state where the attorney is not licensed** – What nexus of facts are necessary for an estate planning attorney to draft an estate plan for a client who lives in another state, but has property in Idaho as well? What if the client has residences in multiple states (a “snowbird” for example)?
- 4) **Undue Influence** – Best practice to establish and document the absence of undue influence during estate planning? And can an estate planning attorney testify later about the absence of undue influence in a post-death trial or deposition?
- 5) **Attorneys Distinguishing themselves as executors or as attorney for the executor** – When, if ever, is it appropriate for the attorney that drafts a will, trust, or POA also serve as the nominated fiduciary therein?
- 6) **Signing as a witness on a will.** – May an attorney notarize a document he or she drafted for a client (not notarizing their own signature – just notarizing the signatures of the client and any witnesses)?
- 7) **Confidentiality** – What information of a deceased estate planning client may be revealed and to whom? Must a written consent be signed by the client prior to death for this to be ethical? What must the waiver include? Can an estate planning attorney testify in a trial or deposition as to the testamentary wishes of their deceased client?
- 8) **Guardianship** – When an attorney is being appointed as Guardian ad Litem in a guardianship/conservatorship, are there ethics issues if the attorney has previously represented the alleged Ward in some capacity? In general, how does an attorney appointed as GAL both serve his/her duties to the Court (to report and give opinions about what is in the alleged Ward’s best interest) while also serving as the attorney advocate for the alleged Ward (presumably with all the requisite attorney-client loyalty and confidentiality duties that come along with that attorney-client role)?