

The WRIT

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Wednesday, March 11, 2020

The Opioid Crisis ~ Presented by Jim Keller, Esq.

12:00 p.m. - 1:00 p.m. ~ 1 Hour CLE Credit ~ Harrah's Convention Center

On December 1, 2019, I became the National Heroin and Opioid Coordinator for Organized Crime Drug Enforcement Task Forces Executive Office (acronym is OCDETF, pronounced Oh-seh-deft), which is an arm of the Office of the Deputy Attorney General. Prior to that, I was an Assistant United States Attorney for the State and District of Nevada for 12+ years (August 2007 to December 2019) in the Criminal Division, serving, as it relates to this presentation, as the U.S. Attorney's Office Heroin/Opioid Point of Contact, Lead Task Force Attorney, and Opioid Coordinator for the Northern Nevada region of the United States Attorney's Office. Previously, I served as an Assistant U.S. Attorney in the Northern District of California (San Francisco and Oakland offices) from 2004-2007, and as a Litigation Associate at Mayer Brown LLP in New York City from 2001-2004. I began my legal career in 1997 as an Assistant District Attorney in Bronx County, New York, where I got my feet wet doing trials and spent several evenings watching the Yankees win their way to the World Series in 1998, 1999,

and 2000. [Yes I remain a die-hard Yankee fan.]

Topics to be covered:

1. The epidemic – More than 70,000 overdose deaths in the U.S. in 2017, more than automobile accident fatalities for the entire nation that year. Did you know 68% of those overdose deaths involved opioids?
2. Why opioids can be so dangerous (addictive features, cocktail with other drugs, often lead to heroin use).
3. Advances in the fight against the opioid epidemic: Narcan, education as to addiction, state statutes regarding prescription monitoring program data, drug treatment.
4. The new front-line of the epidemic: fentanyl, including "counterfeit fentanyl":
 - a. 2 MG of fentanyl is considered a lethal dose
 - b. Counterfeit fentanyl are pills that look like and are stamped "M-30" like oxycodone, but are actually laced with fentanyl. They are disconcerting because users are not knowing what they are taking, or how strong

- c. Fentanyl seen laced in other drugs (heroin with fentanyl, methamphetamine with fentanyl)
- d. Dark web has become an avenue for purchasing and distribution of these pills
5. What you can do to help

Jim Keller is an Assistant United States Attorney with the United States Attorney's Office, District of Nevada since August 2007. Jim is the Opioid Coordinator and OCDETF Attorney prosecuting, disrupting, and dismantling organizations trafficking, diverting, or illegally prescribing opioids and other narcotics in partnership with federal, state, and local agencies. Jim received his Juris Doctor, cum laude, in 1997 from The George Washington University Law School.



RSVP by March 9, 2020. \$25 per person for members and \$30 for non-members. Register online at www.wcbar.org or call 786-4494.

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MILLENNIAL MINUTE

By Kelci Binau, McDonald Carano

What's Wrong with Giving Advice?

“Oh, you’re an attorney? I have a quick legal question for you, it shouldn’t take too long.” Whether asked by a family member, a friend, or a friend of a friend, there is no doubt you have found yourself in this situation. Typically, someone close to you who trusts and looks up to you is in a bind and seeking some legal advice. The context of the conversation is generally unlike your typical meeting room, and more akin to a weekend BBQ, your daughter’s soccer game, or a UNR sporting event. Sometimes, the question is within your wheelhouse; other times, you haven’t analyzed a similar issue since law school.

Offering off-the-cuff legal advice can be tempting, especially when you have tried to say no and the requester insists that they will be grateful for “whatever information you can provide.” However, before providing free, out-of-office legal advice, there are a few things you should keep in mind.

First, consider the Nevada Rules of Professional Conduct (NRPC). The Nevada Revised Statutes (NRS) define “client” as “a person...who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.” NRS 49.045. In the situation above, the requestor is consulting you, the attorney, for legal advice; therefore, depending on how you respond, a client-lawyer relationship may exist.

In connection with the client-lawyer relationship is the duty of confidentiality. Unlike most duties, the duty of confidentiality attaches even before the lawyer has agreed to render legal services. The duty of confidentiality attaches when the lawyer is still considering whether a client-lawyer relationship shall be established. See NRPC 1.18. Therefore, even before you have responded to the requestor, you owe her or him a duty to keep all learned information pertaining to the matter confidential.

Next, you should consider the conflict of interest rules. Typically, before entering into an agreement to offer legal advice, lawyers run a conflict check to rule out or

receive waivers of any potential conflicts with current or past clients. See NRPC 1.7-1.11. In the above situation, you do not have the opportunity to confidently clear a conflict check prior to potentially initiating a client-lawyer relationship. If you act impetuously, you run the risk of putting yourself at risk for violating the NRPC. *Id.*

If you violate the NRPC, you could find yourself facing State Bar disciplinary proceedings. See NRPC 1.0A. Although, the disciplinary assessment of a lawyer’s conduct and the severity of the discipline depends on all the circumstances, such as willfulness, seriousness of the violation and previous violations, you do not want to put your professional career at risk for some small talk at your local college basketball game. *Id.*

If a client-lawyer relationship exists, you must keep in mind the duty of competence. As an attorney, you must provide “competent representation” to your client. NRPC 1.1. “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” *Id.* Characteristically, after you engage with a client, you thoroughly research and study a client’s issue(s) before advising them. When asked for off-the-cuff legal advice, you typically do not have the time nor the resources to adequately research and prepare a response. Depending on your response and how knowledgeable you are on a topic, you could find yourself in violation of the duty of competence.

Attorney malpractice occurs where an attorney fails to exercise the duty of competence, and thereby causes damage to a client. Far too often, family and friends believe because we are attorneys, we have a knowledge of the “law” generally, and that we can easily answer any legal question. Little do they know, one practice group to the next is like trying to understand French when you only speak English. Your drive and interest in “helping” out a friend may end up being anything but helpful. Off-the-cuff, unresearched and unprepared legal advice, when relied on,

can lead to major malpractice issues. You do not want to find yourself having an intimate conversation about your law firm’s malpractice policy with the managing partner because of a conversation over the nacho cheese dip at last year’s Superbowl party.

The next time you are at the gym or a friend texts you for legal advice, think twice before responding. Play it safe and respond that you are happy to set up a meeting to discuss the issue in your office, or that your law firm has a strict policy that its attorneys cannot offer legal advice without a conflict check and a signed engagement letter. Furthermore, if you have no intention of representing the person, you have the responsibility to clearly communicate that no client-lawyer relationship exists. The initial awkward moment or feeling like you have “let a friend down” shall quickly pass; a disciplinary action or malpractice suit may not.

If a friend insists that you represent them and you believe you can do so and still comply with the NRPC, run a conflict check and execute an engagement letter. Treat the relationship as you would any other client-lawyer relationship and discuss goals and clearly structure boundaries and fees. A wise man once said, “don’t take a case for a friend, unless you are prepared to lose both.”

Kelci Binau is an Associate with McDonald Carano in the firm’s Business Entities & Transactions and Real Estate & Land Use practice groups.

