<table>
<thead>
<tr>
<th>Conflicts of Interest</th>
<th>Client Disclosures</th>
<th>Potpourri</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boilerplate Language</td>
<td>Coffee Talk</td>
<td>I’ll Take Half</td>
</tr>
<tr>
<td>Advance Conflicts Waiver</td>
<td>Job Interview Disclosure</td>
<td>Free Wifi!</td>
</tr>
<tr>
<td>Government – Before &amp; After</td>
<td>When the FBI Calls</td>
<td>Border Trouble</td>
</tr>
<tr>
<td>Be Careful What You Like</td>
<td>How Was Your Day?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What Is Informed Consent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Representative Matters</td>
<td></td>
</tr>
</tbody>
</table>
Can a firm use its standard engagement letter, including its standard conflicts of interest waiver, or must the firm personalize each waiver based on the facts and circumstances of the engagement?
ADVANCE CONFLICTS WAIVERS

Mary, a lawyer in the New York office of a large firm, represents Widget Corporation in tax planning matters. Widget signed a waiver of all past, current, and future conflicts of interest. Widget filed a suit against Gadget Corporation for breach of contract.

John, a lawyer in that same firm’s California office, is retained by Gadget to defend against the breach of contract litigation. Gadget also signed a similar conflict waiver.

Can the firm continue to represent Widget and/or Gadget?
Edward was an attorney at the IRS in the Offer in Compromise department. After leaving the IRS, he became a solo practitioner, submitting OICs on behalf of clients. He takes over a case from a different attorney and realizes that his office rejected a prior submission from this taxpayer.

Can he continue representing the taxpayer?
BE CAREFUL WHAT YOU LIKE

On Tina’s personal Facebook, she “likes” the page for her local bank. Subsequently, Tina’s client wants to bring a lawsuit against that bank.

Has Tina stated a position about the bank by liking its page on Facebook that will prevent Tina from accepting the case?
Tony is waiting in line to buy coffee and sees that the person in front of him is playing a game on a smartphone. Tony says, “Isn’t that app great! I represent them!”

Was it proper for Tony to namedrop his client?
Harry is interviewing for a job at a law firm. During the interview, Harry mentions that he just helped a famous singer avoid substantial penalties during a tax audit.

Was Harry allowed to name his client in the job interview?

Would the answer be different if he merely mentioned the name of his client, without describing the representation?
An attorney at a law firm is nominated for a confirmable position. As part of the vetting process, the FBI calls another attorney at the law firm.

What can the attorney disclose to the FBI about the nominee’s work at the firm?
HOW WAS YOUR DAY?

When Christina arrives home from work, her husband asks, “how was your day?” Christina responds, “I had a marathon conference call on the Smith transaction” and describes what happened on the call.

Did Christina violate an ethical rule?
WHAT IS INFORMED CONSENT?

In preparing a defense strategy, a client tells his lawyer that media coverage might be helpful and authorizes the lawyer to be interviewed on the morning TV show. After the interview airs, a reporter from a national newspaper calls the lawyer and asks questions about the topic covered in the TV interview.

Is the lawyer allowed to provide a comment to the newspaper reporter?

What is sufficient informed consent necessary for the lawyer to do the TV show? Does the lawyer need to be competent about public relations risks to advise the client of the risks of media coverage?
After winning a multi-million dollar tax refund case for her client, Amanda posts about the trial victory on her firm’s website. She includes the name of the client and a link to the judge’s opinion. Amanda did not ask the client for permission before posting online.

Is Amanda allowed to post about the trial on her website?

Would it be different if Amanda did not include the name of the client?
“I’LL TAKE HALF”

Celina is litigation solo practitioner. A client asks her for help with a tax audit. As Celina does not practice tax law, she calls her friend Linda, a tax solo practitioner. Celina says, “I have this case to refer to you. For the referral, I’ll take half of all fees collected.”

Can Celina and Linda agree to this referral fee arrangement?
Henry, a senior partner with a law firm, is travelling on business. Henry needs to connect his laptop to a wifi network in order to edit a client memorandum.

Can Henry connect to his hotel’s free wifi?
BORDER TROUBLE

When traveling back to the US from Canada, a lawyer is told by a border patrol agent that he must log into his laptop and hand it over to the agent for inspection. The lawyer complies with the agent’s request.

Has the lawyer violated an ethical duties to his clients?

Must the lawyer tell his clients about turning over his laptop to the border agent?

What could the lawyer do differently in the future?
RULE 1.7 CONFLICTS OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.
RULE 1.9 DUTIES OF FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.
RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER & CURRENT GOVERNMENT OFFICERS & EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
Sheppard represented a government agency in various employment matters. The representation was “on and off” for years. Sheppard was also engaged to represent a business in a *qui tam* action. The government agency was one of the parties in the *qui tam* action. Both parties signed advance conflict waivers. Sheppard did not alert the business that it also represented the government agency.

The California Supreme Court held that in order for an advance conflicts of interest waiver to be effective, a client must know of any current conflicts when signing the waiver.
ii. Avoiding the creation of conflicts of interest

Consideration must also be given to avoid the acquisition of uninvited information through social media sites that could create actual or perceived conflicts of interest for the lawyer or the lawyer's firm. Caution should be exercised when stating positions on issues, as those stated positions could be adverse to an interest of a client, thus inadvertently creating a conflict. Rule 1.7(b)(4) states that an attorney shall not represent a client with respect to a matter if "the lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by . . . the lawyer's own financial, business, property or personal interests," unless the conflict is resolved in accordance with Rule 1.7(c). Content of social media posts made by attorneys may contain evidence of such conflicts.

Moreover, online communications and interactions with people who are unknown to the lawyer may unintentionally cause the development of relationships with persons or parties who may have interests that are adverse to those of existing clients.
"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
 RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
RULE 1.6 CONFIDENTIALITY OF INFORMATION

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(7) to detect and resolve conflicts of interest arising from the lawyer’s *change of employment* or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
NEW YORK MODEL RULES OF PROFESSIONAL CONDUCT 1.6, COMMENT 3

The confidentiality duty applies not only to matters communicated in confidence by the client, which are protected by the attorney-client privilege, but also to all information gained during and relating to the representation, whatever its source. The confidentiality duty, for example, prohibits a lawyer from volunteering confidential information to a friend or to any other person except in compliance with the provisions of this Rule.
Specific information that identifies current or former clients or the scope of their matters also may be disclosed [on the lawyer’s website], as long as the clients or former clients give informed consent as required by Rules 1.6 (current clients) and 1.9 (former clients).
A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
RULE 1.5 FEES

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.
A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
RULE 7.3 SOLICITATION OF CLIENTS

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
A lawyer should understand and use electronic security measures to safeguard client communications and information. A lawyer has a variety of options to safeguard communications including, for example, using secure internet access methods to communicate, access and store client information (such as through secure Wi-Fi, the use of a Virtual Private Network, or another secure internet portal), using unique complex passwords, changed periodically, implementing firewalls and anti-Malware/AntiSpyware/Antivirus software on all devices upon which client confidential information is transmitted or stored, and applying all necessary security patches and updates to operational and communications software.
NEW YORK CITY BAR FORMAL OPINION 2017-5: AN ATTORNEY’S ETHICAL DUTIES REGARDING U.S. BORDER SEARCHES OF ELECTRONIC DEVICES CONTAINING CLIENTS’ CONFIDENTIAL INFORMATION

Under the New York Rules of Professional Conduct (the “Rules”), a New York lawyer has certain ethical obligations when crossing the U.S. border with confidential client information. Before crossing the border, the Rules require a lawyer to take reasonable steps to avoid disclosing confidential information in the event a border agent seeks to search the attorney’s electronic device. The “reasonableness” standard does not imply that particular protective measures must invariably be adopted in all circumstances to safeguard clients’ confidential information... Additionally, under Rule 1.6(b)(6), the lawyer may not disclose a client’s confidential information in response to a claim of lawful authority unless doing so is “reasonably necessary” to comply with a border agent’s claim of lawful authority. This includes first making reasonable efforts to assert the attorney-client privilege and to otherwise avert or limit the disclosure of confidential information. Finally, if the attorney discloses clients’ confidential information to a third party during a border search, the attorney must inform affected clients about such disclosures pursuant to Rule 1.4.