

Ethical, Business and Issue Considerations in Accepting New Clients

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Hypothetical

- You received a phone call from Fast Jet.
- They are a fixed base operator (like a automobile service station that provides all services that aircraft need at an airport) at Centennial Airport in suburban Denver and at Colorado Springs Airport.
- They want to hire the firm to represent them in a dispute with the City of Colorado Springs concerning the airport's regulation of FBOs. Basically, they think that the City imposes an unreasonable surcharge on fuel sales that makes it difficult for them to sell fuel since aircraft owners can get fuel much cheaper at other airports in nearby towns.
- They want us to represent them in a challenge to the City's fee but have not decided whether the venue for the challenge should be an administrative challenge through the FAA's Part 16 procedures, a state court suit or a federal court suit;
- The defendant would be the City of Colorado Springs.
- They want you to know that even though Fast Jet will be our client, they expect us to work closely with the American Association of FBOs, an industry group that has a long history of litigation against airports and is currently the plaintiff in a class action suit against Las Vegas McCarran International Airport over their fuel surcharge.
- The Association may well pay some of our fees.



Evaluating Potential Client

Matrix For Considering Conflict Issues

Relationship	RPC 1.7: Conflicts with Current Clients	RPC 1.8: Current Clients (Specific Rules)	RPC 1.9: Former Clients	Issue Problems	Business Concerns
Fast Jet					
Centennial Airport					
Colorado Springs Aiport					
American Association of FBOs					
McCarran Airport					
Fast Jet and Centennial Airport					
Fast Jet and Colo. Spgs Airport					
Fast Jet and Amer Assn FBOs					
Fast Jet and McCarran Airport					
Amer Assn FBOs and McCarran Airport					
Amer Assn FBOs and other firm clients					
Fast Jet and other firm clients					

Colorado Rules of Professional Conduct

RPC 1.7 – Current clients

- Concurrent conflicts
- Concurrent conflict exists is the representation will be directly adverse to another client
- Significant risk that representation will be limited by responsibilities to another client, former client, third person, lawyer's personal interest
- Exceptions (most not applicable here) if representation does not involve claim by one client against another of the lawyer's clients in the same litigation and there is informed consent

Colorado Rules of Professional Conduct

RPC 1.8 – Current clients

- Cannot use information related to representation of client to disadvantage of the client w/o informed consent
- No compensation for representing a client from a third party w/o client's informed consent, no interference with independence of relationship or client-lawyer relationship, etc.

Colorado Rules of Professional Conduct

RPC 1.9 – Former clients

- Cannot represent a client if previously represented another client in substantially related matter in which former client's interests are materially adverse w/o former client's informed consent
- Applies to firm, not just lawyer
- Cannot use information from former representation to disadvantage of former client

Fast Jet – RPC Issues

- No current client conflicts under 1.7
 - No current clients are adverse
 - Independent judgment issue must be considered
- Serious risks under 1.8
 - Know a lot about fuel fees from existing clients (confidences?)
- Fee arrangement presents 1.8 risk
 - What does ‘work closely’ mean
- Rule 1.9 problems
 - Colorado Springs (confidences?)
 - Centennial (probably not)
 - Broad based attack on fees could be adverse to existing or former (1.7, 1.9)
 - Forum might make a difference (adversity could be different)
- No formal problem with AAFBO position
 - Not client, not substantially similar matter
 - Deal separately with fee issue
- Las Vegas, other airports not RPC issue
 - Except 1.7 independent judgment



Issues for our type of practice

- Definitions (1.9)
 - “substantially related matter”
 - “matter”
 - “adverse”
- Changes in client position (mid-representation conflicts) (1.7)
- Material limitation without direct adversity (1.7)
- Organizational client vs individual client

Fast Jet – Business Considerations

- CONFLICTS vs *conflicts*
 - Alienating existing, future clients
 - RPC sets the minimum – does not substitute for business judgement
- Representation within an industry
 - Gain industry knowledge (inherent)
 - Understand issues of interest/concern
 - Risk of RPC conflicts
- Unintended future conflicts (1.9)
- Relations with existing clients
 - McCarran
 - Other airports with similar fuel fee arrangements
- Future work
 - Former clients come back (!)
 - Is bird in the hand is worth two in the bush?
- Industry adversaries - examples
 - Labor/management
 - Creditors/debtors
 - Airports/airlines

Fast Jet – Business Judgment

- Fee arrangement complexities
 - Uncertainties, loyalties (beyond RPC)
- Should you even seek consent?
 - Loyalty
 - Need to know the client and predict reaction
- Significance of matter
 - Risks of conflicts vs rewards from work
- Is this matter good for other clients (business judgment even w/o RPC issue)
 - Consider inadvertently ‘pulling your punches’
- Localities
 - Word of mouth - geography

Opening New Client Matter

- Ethical review (RPC)
- Business review
 - Fees (rates)
 - Payment arrangements
- Precedents
 - Lobbying
 - Effect on future clients