



Facilitator's Guide Real Estate Case Study

The Joint Venture

Opening Paragraph

At 1 p.m. on Wednesday March 26, 2014, Sarah Greene hung up the phone after speaking to Peter Kovacs, the principal of her client, Renaissance Building Corporation. Pursuant to a joint venture agreement that Sarah drafted, two of her client's properties were being transferred that day to a nominee that would hold registered title for Renaissance and two other companies. Peter had just instructed Sarah not to disclose the existence of an enforcement charge she discovered had been filed against Renaissance the previous day. He assured her that he would use the purchase funds to pay the enforcement charge amount within a couple of weeks. Uncertain about how to proceed, Sarah told Peter that she would call him back within the hour with her response.

Objectives

1. This case is intended for a study group discussion session on professional responsibility in Real Estate Law.
2. Participants will be expected to put themselves in the position of the lawyer in the case and to identify and analyze the legal, professional and personal challenges she faces.
3. Participants will also be expected to develop alternatives and an action plan for resolving the issues in accordance with the lawyer's professional obligations under the *Code of Professional Conduct*.

References

- Duty to Avoid Conflicts of Interest, Commentary, subrule 2.04(1)
- Dishonesty, Fraud by Client, subrule 2.02(7)
- When the Client is an Organization, subrule 2.02(3)
- Dishonesty, Fraud, etc. when Client an Organization, subrule 2.02(8)
- Independent Legal Advice and Independent Legal Representation, rule 2.04(27)
- Joint Retainers, subrule 2.04(5)-(9)
- Communications, subrule 6.02(9)
- Obligatory Withdrawal, subrule 2.07(7)

Suggested Discussion Questions

Assume you are the lawyer in this case, and answer the following questions with reference to the relevant *Code of Professional Conduct*:

1. Do you have a conflict of interest in this situation? If so, what is the nature of the conflict or conflicts?
2. Do you have a joint retainer with Renaissance, Northern and Jarvis? If so, what are your obligations?
3. Are Northern and Jarvis unrepresented parties? If so, what are your professional responsibilities to them?
4. Would you rely on Jane, as in-house counsel for Northern, to make decisions regarding the joint venture on behalf of the company? Why or why not?
5. Should you have included a clause in the joint venture agreement which contained an acknowledgement that Northern and Jarvis had
 - a) been advised to obtain independent legal advice (ILA);
 - b) obtained ILA; or
 - c) waived the opportunity to obtain ILA?
6. What is the difference between ILA and ILR (independent legal representation)?
7. Would you rely on David's instructions as the principal of Jarvis? Why or why not?
8. How would you handle Peter's request not to disclose the existence of the enforcement charge to Jane or David?
9. Do you have an obligation to advise both Northern and Jarvis of the enforcement charge?