



News

Anthony Davis Discusses Lessons from Recent Conflict of Interest Cases

January 9, 2019

Anthony Davis' most recent authored article in his regular Professional Responsibility column in the *New York Law Journal* is titled "Some Lessons from Recent Conflicts Cases." Although the cases were decided by courts outside New York, the article shows how they have relevance and significance for New York lawyers.

Davis begins his analysis with the most important decision in this area: *Shepherd, Mullin, Richter & Hampton v. J-M Manufacturing Co.*, 6 Cal. 5th 59 (2018). He notes that this case has several important lessons:

1. Advance waivers of potential future conflicts are permissible in appropriate circumstances, subject to compliance with applicable rules of professional conduct.
2. Client sophistication may be considered in determining whether its consent is informed.
3. An advance waiver can never be used to support the argument the client had given informed consent when the conflict actually existed, but had not been explicitly disclosed at the time of the conflicting engagement.

The other cases Davis discusses deal with the "hot potato" doctrine and illustrate the importance of clearly articulating the scope of a representation in an engagement letter and timely drafting and sending termination letters closing the file and ending the representation.

[Read the full article \(PDF\)](#)

Read "[Some Lessons from Recent Conflicts Cases](#)" on the *New York Law Journal* website (*subscription may be required*)