

A summary of important recent developments in laws affecting lawyers and law firms in the District of Columbia.

## Special Report on Amendments to the District of Columbia Rules of Professional Conduct

**On August 1, 2006**, the District of Columbia Court of Appeals announced the adoption of various amendments to the D.C. Rules of Professional Conduct. The Court was acting on recommendations of the Board of Governors of the Bar, following its receipt of a detailed study of recent changes to the ABA Model Rules of Professional Conduct conducted by a special committee of the Bar. The amendments become effective on February 1, 2007.

For law firms in the District of Columbia, the principal changes effected by the amendments are these:

### Conflicts of Interest

**Conflict waivers** – The Court accepted the Board of Governors' recommendation that the District of Columbia not adopt the ABA Model Rule requirement that conflict waivers be in writing. While it is obviously good practice to record a conflict waiver, at least in a communication from the lawyer to the client confirming the client's oral waiver, oral conflict waivers continue to be ethical in the District of Columbia.

**Imputed disqualification** - Rule 1.10 has been amended in two important respects. First, an imputed disqualification of an entire law firm does not occur if the conflict of interest of one of its lawyers is based on a personal interest of the lawyer, such as the lawyer's family relationships or personal financial investments. In such a circumstance, the conflict of interest obligation applies to the affected lawyer only.

Second, after a client leaves a firm and all of the lawyers who possessed confidential information about that client

have left the firm, the firm may represent a client adverse to the former client, even in the same matter in which the departed firm lawyers represented the former client at the firm. This change in the Rule will have its most obvious application when a lawyer or group of lawyers leaves a firm with a client or clients, and leaves no lawyer behind who worked for those clients. In such a situation, the firm may accept representations adverse to the former clients on any matter.

**Special conflicts rules for pro bono representations** – A new ethics provision, Rule 6.5, was added to address conflict of interest issues faced by lawyers in private practice who volunteer for short-term legal assistance work at non-profit legal clinics. Under the new rule, the general conflict of interest prohibitions concerning current clients (Rule 1.7), former clients (Rule 1.9), and imputation of conflicts (Rule 1.10) apply only if the lawyer performing the short-term legal assistance knows that such representation is prohibited under conflict of interest rules. For example, if a lawyer

who works in a law firm volunteers at a legal clinic for low-income renters, that lawyer could provide short-term legal assistance to a tenant who has a claim against a landlord who is a client of the lawyer's firm, if

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the lawyer does not know of that law firm representation at the time the short-term legal services are provided to the tenant. Without Rule 6.5, such a representation would be prohibited without disclosures and conflict waivers by the affected parties.

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## Advertising and Marketing by Lawyers

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For some years, the D.C. Rules of Professional Conduct included a unique provision permitting a lawyer to pay another person for client referrals. The provision, adopted before advertising by lawyers was as common as it is now, was thought to assist in making legal services available to those in the community who might not know how to retain a lawyer. With lawyer advertising and outreach to low income groups now common, and because of reported abuses by paid intermediaries for lawyers, this provision has been repealed. Payments by a lawyer to others for client referral will, under the amended rule, be unethical.

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## Confidentiality

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Several changes were made in Rules relating to the treatment of client confidences.

**Disclosure** - Amendments to Rule 1.6, requiring the protection of client confidences and secrets, will permit a lawyer to disclose confidential information when the client has used or is using the lawyer's services to further a crime or fraud, and the disclosure is necessary to prevent, mitigate or rectify substantial financial harm to another person. Another amendment to Rule 1.6 will permit a lawyer to disclose confidential information to secure legal advice about the lawyer's compliance with legal obligations.

**Organizational Clients** - Rule 1.13, concerning organizational clients, was amended by placing in the text of the Rule a current comment to the Rule requiring a lawyer for an organization to report serious wrongdoing by organizational personnel "up the ladder" in the

organization until the organization acts to remedy the wrongful conduct. This obligation is similar to that imposed on securities lawyers under the SEC's Sarbanes-Oxley rules, except that Rule 1.13 does not include the authorization in the Sarbanes-Oxley rules for the lawyer's reporting misconduct information to persons outside the organization when the organization's most senior management authority refuses to act to correct the misconduct.

**Inadvertent Disclosure** - A provision added to Rule 4.4 (Respect for Rights of Third Persons) partially codifies D.C. Legal Ethics Opinion 318, concerning a lawyer's receipt of inadvertently disclosed documents, such as a mis-addressed e-mail. Under the amended rule, when a lawyer receives a document which the lawyer knows, before reading it, was inadvertently sent, the lawyer should not read the document and should inform the sending party of its receipt and abide by the sending party's instructions concerning disposition of the document. Note that this ethics rule amendment has no direct effect on whether the inadvertently disclosed document retains any privileged status it may have enjoyed before its inadvertent disclosure. Such a question is one for the law of evidence, not ethics law.

**Prospective Clients** - Rule 1.18, concerning duties to prospective clients, is new. It is modeled after ABA Model Rule 1.18, and incorporates principles found in other provisions of the current D.C. Rules. Under the new Rule 1.18, information received by a lawyer from a person seeking the lawyer's assistance (a prospective client) is subject to the same confidentiality obligations as information received from a client. If that lawyer received confidential information from the prospective client, the lawyer is prohibited from accepting an engagement adverse to the prospective client in the same or substantially related matter, but that prohibition is not imputed to other lawyers in the lawyer's firm who have not received such confidential information, if the lawyer who received the confidential information is screened from the matter.

The full text of the new Rules of Professional Conduct can be found at [www.dcbbar.org/new\\_rules/index.cfm](http://www.dcbbar.org/new_rules/index.cfm).



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