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District of Columbia Professional Responsibility Highlights

March – April 2005

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

Lawfulness of Reduction of Payments to Departing Law Firm Partners

The D.C. Bar's Legal Ethics Committee recently issued an opinion addressing a thorny issue that sometimes arises when partners leave law firms to practice elsewhere – under what circumstances may the departing partner's interest in law firm income and capital be reduced by reason of the lawyer's departure? The Legal Ethics Committee's opinion interpreted Rule of Professional Conduct 5.6 (a), prohibiting partnership agreements that "restrict the right of a lawyer to practice after termination of the [partnership] relationship." Case law in other jurisdictions has held that financial disincentives applied to departing partners can violate this rule. In the case before the Committee, an agreement among partners of Law Firm A that was merging with Law Firm B would have terminated payments to the Law Firm A partners from pre-merger accounts receivable of that firm if its partners did not remain with the merged firm for two years. The Legal Ethics Committee stated that such an arrangement, although not a direct prohibition on continued law practice, violated Rule 5.6(a) because of the disincentive it created for the affected partner to practice elsewhere. D.C. Legal Ethics Committee Opinion No. 325, www.dcbar.org/for_lawyers/ethics/legal_ethics/opinions.

Financial disincentives applied to resigning law firm partners may be unethical

D.C. Bar's Multi-Disciplinary Partnership Proposal Rejected

In a recent letter to the President of the D.C. Bar, the District of Columbia Court of Appeals rejected the Bar's 2002 proposal to the Court to amend D.C.'s professional responsibility rules to permit lawyers to form partnerships and share fees with non-lawyer professionals. The Bar's proposal, which was the product of two years of work by a select committee, would have amended the Rules of Professional Conduct in ways that would have permitted lawyers, accountants and other professional service providers to form multidisciplinary business entities to offer both legal and non-legal services to clients, and would have established special protections for confidential information and special rules to avoid conflicts of interest. The Court based its decision to reject the Bar's recommendation on concern for the safeguarding of client confidences and attorney-client privilege, and on concern for avoidance of conflicts of interest. The Court also noted the absence of sufficient evidence that multi-disciplinary law firms were needed to respond to the needs of clients.

Proposed Amendments to District of Columbia Rules of Professional Conduct

The Board of Governors of the D.C. Bar is currently evaluating changes to the Rules of Professional Conduct as recommended by the

Bar's Rules of Professional Conduct Review Committee. The Committee's report to the Board (www.dcbar.org/for_lawyers/news), was based on extensive changes made by the ABA to the Model Rules of Professional Conduct. Among the more notable of the Committee's recommendations: enlargement of a lawyer's ability to disclose a client's fraudulent conduct, where the crime-fraud exception would apply to the client's communications to the lawyer; requiring lawyers to return inadvertently disclosed privileged material to the sender; and repeal of the D.C. Bar's unique rule authorizing paid intermediaries to solicit clients for a lawyer. Several controversial ABA changes were not included in the Committee's recommendations, including expanded grounds for disclosing client wrongdoing, and requiring conflicts waivers to be in writing.

Comments on the Committee's report can be made by members of the Bar and the general public by April 8th. The Board of Governors expects to submit its recommended changes to the Rules of Professional Conduct to the District of Columbia Court of Appeals later this year.

Recent Malpractice Case Involving Representation of Deadlocked Small Corporation

The Circuit Court for Prince George's County, Maryland recently overturned a $17 million jury verdict against a Washington, DC law firm that had represented a corporation owned by two 50 percent shareholders. The jury had agreed with the claims of one of the shareholders that the law firm breached duties to him when it took certain actions at the request of the other shareholder (who was CEO of the corporation), which had the effect of depriving the plaintiff of the value of his interest in the corporation. The court, in granting the law firm's motion for judgment and applying District of Columbia substantive law, held that the law firm represented only the corporation and owed no duties to its individual shareholders, *Ahan v. Grammas, et al.*, No. 02-09937, www.courts.state.md.us/businesstech/opinions.

Ahan illustrates the risks to lawyers in representing a small corporation whose owners are in conflict

Although the outcome (so far, as the case is on appeal) was favorable for the law firm, the case illustrates the risks when a lawyer represents a small corporation whose owners may not understand or appreciate the relationship of corporate counsel to them. Clearly written engagement letters, and avoidance of conduct by corporate counsel which might create the impression that counsel is representing the owners also, are good preventative steps in situations like those presented in *Ahan*.

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