Recent Developments in Legal Ethics

UNIVERSITY OF KANSAS SCHOOL OF LAW

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Road Map

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Introduction

American Bar Association (ABA) Model Rules – adopted in 1983
ABA Ethics 2000 Commission - 2004
ABA Ethics 20/20 Commission
Kansas Ethics 20/20 Commission
Proposed Amendments submitted to Kansas Supreme Court
Amended Rules effective March 1, 2014

Technology Update

Terminology updated
- Rule 1.0(O) – “Writing” or “Written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio, or videorecording and email. A “signed” writing includes an electronic sound, symbol, or process…

Rules affected
- Rule 1.2 (c); 1.5(b) and (d); 1.7(b)(4); 1.8; 1.9
- Rule 4.4 adds ESI (including metadata); plus comment

Comments added or amended
- Rule 1.0, Comment (1) – “Confirmed in writing”
- Rule 1.0, Comment (9) – “Screened”
- Rule 1.1, Comment (8)
- Rule 1.3, Comment (3)
- Comments to Conflicts of Interests rules
- Rule 1.18, Comment (2)
- Rules 7.2 and 7.3 add comments
The Prospective Client

Rule 1.18 – Duties to Prospective Client (formerly Rule 1.17)

◦ Language of rule has not changed

◦ Comments 2 and 4 added

◦ Comments address pesky matter of savvy clients consulting with lawyers or law firms for purpose of disqualification of the lawyer or law firm

Outsourcing

Outsourcing Legal Services

Rules implicated:

◦ Rule 1.1 - Competence
◦ Rule 1.2 – Scope of Representation
◦ Rule 1.5 - Fees
◦ Rule 5.3 – Non-Lawyer Assistance

Comments added to Rule 1.1
Confidentiality

Rule 1.6 amended to add:
- (b)(2) and (b)(5) allow limited disclosure of confidential information in relation to law firm mergers or individual attorney change of employment
- (c) requires reasonable steps to protect against inadvertent disclosure of confidential information

Comments added to Rule 1.6
- Comments 8, 21 and 25 address the firm merger or attorney lateral move
- Comments 26 and 27 address preserving confidentiality

Multi-Jurisdictional Practice*

Rule 5.5 – Unauthorized practice of law; Multijurisdictional Practice of Law
- Amendments allow a lawyer admitted to practice in another jurisdiction, who is not disbarred or suspended in any jurisdiction to provide legal services in Kansas on temporary basis subject to limitations
- Amendments allow a lawyer licensed in another jurisdiction to provide legal services for the lawyer’s employer or organizational affiliate
- Same rules apply to foreign lawyer

- See Comments
Sale of a Law Practice

New Rule 1.17 – Sale of Law Practice
Adopts ABA Model Rule concerning sale of law practice
A lawyer or firm may buy or sell a law practice if:
◦ Seller must give up the practice (or the area of practice);
◦ The entire practice or area of practice must be sold;
◦ Written notice must be given to clients, including notifying them of their right to take their business elsewhere (consent will be presumed if client does not object within 90 days); and
◦ Client fees will not be increased due to sale

◦ See Comments and KBA Ethics Opinion 93-14

Advertising

Rule 7.1 – Communications Concerning a Lawyer’s Services
◦ Language of rule unchanged
◦ Added Comment 2

Rule 7.2 – Advertising
◦ Language of rule unchanged
◦ See Comment 1 for Rule 7.1

◦ See also Comment 2 to Rule 1.18 (duties owed to prospective clients)