The Ethics Rules: Lost and Found

The question of whether Minnesota attorneys can assert certain defenses, such as occurred in "Adams Rib," for which a lawyer who was arbitrarily disciplined for sex should change, has been a topic of debate. The Minnesota Rules of Professional Conduct (MRPC) require that a lawyer who is disciplined for sex should be able to assert the defense of "lost and found" in such a case. The MRPC defines "lost and found" as a defense that is available to a lawyer who has been arbitrarily disciplined for sex. The MRPC states that a lawyer who is arbitrarily disciplined for sex should be able to assert the defense of "lost and found." The MRPC also states that a lawyer who is arbitrarily disciplined for sex should be able to assert the defense of "lost and found." The MRPC also states that a lawyer who is arbitrarily disciplined for sex should be able to assert the defense of "lost and found." The MRPC also states that a lawyer who is arbitrarily disciplined for sex should be able to assert the defense of "lost and found." The MRPC also states that a lawyer who is arbitrarily disciplined for sex should be able to assert the defense of "lost and found."
The rules governing lawyers' conduct are not static. They evolve and change over time. Rules also may vary from jurisdiction to jurisdiction.

Other members of a lawyer's firm. Thus an exception previously been replaced by a recommendation, contained in a Comment that the Supreme Court has not formally adopted.

This change does not prevent the Director's Office from interpreting Rule 1.7 as preventing separation of appearances on both sides in many circumstances, especially in a criminal prosecution. Thus, even with the elimination of Rule 1.8(b), the Comment to Rule 1.7 clearly indicates that opposing counsel is not considered a criminal matter, such as in the Tacon-Hopkins movie, still would be improper. Counsel should not even be sought in such an unlikely situation. In contrast, however, under the new Comment, sibling lawyers handling opposite sides in a civil matter is far more plausible than before.

OTHERS ELIMINATED

Other Rules eliminated in the October amendments include specific portions of Rule 1.5(a) — fee splitting, 1.10 — implied confliects of interest, 2.2 — lawyer as interested (eliminated altogether), 4.2 — communications with represented party, and 7.1 and 7.2 — lawyer advertising requirements (some of which involved moving portions to a Comment).

An additional example from this group is the former requirement previously contained in Rule 7.2(f) that the substance of the communications, whether oral or written, must appear on any envelope and within any letter, recorded or electronic communication, be given to individual counsel.

Along with the additions to and subtractions from the Rules, the Opinion of the Lawyers Professional Responsibility Board may be considered to be part of the body of opinion, with a responsibility to such individuals.

Several former Board Opinions have been incorporated into portions of the Rules or as part of a Comment to a Rule. Other Opinions have been repealed while a few remain in effect. A complete listing of the status of all Lawyers Board Opinions is set out in the attached sidebar.

The rules governing lawyers' conduct are not static. They evolve and change over time. Rules also may vary from jurisdiction to jurisdiction. Certainly some true ethical norms do not, and should not, ever change: it is wrong to lie, steal or commit acts of fraud under any comprehensive set of normative standards. Other types of rules of conduct, however, have changed over time, reflecting changes in societal values, changes in the way law is practiced, or occasionally in response to unconstitutional challenges. Some rules have been "flat" in this process while others merely have "bowed" a new home.

STATUS OF LAWYERS BOARD OPINIONS:

Opinion No. 4: Law Firm. Admitted and still in effect.

Opinion No. 24: Defense of Criminal Cases by a County Attorney. Repealed. Incorporated into Comment 1 of Rule 1.11, MLRC.


Opinion No. 51: Failure to Comply with Fee Arbitration. Repealed. Incorporated into Rule 8.4(f), MLRC.

Opinion No. 61: Defense of Criminal Cases by Municipal Attorneys. Repealed. Incorporated into Comment 1 of Rule 1.11, MLRC.

Opinion No. 7: Professional Incurred indebtedness. Repealed.

Opinion No. 8: Guidelines for Services by Nonlawyers still in effect.

Opinion No. 9: Maintenance of Books and Records. Repealed. Incorporated into Rule 1.15(I), as Appendix 1 to the MLRC.


Opinion No. 11: Attorney Lien. Repealed. Incorporated into Rule 1.16(b), MLRC.

Opinion No. 12: Trust Account Signature. Repealed. Incorporated into Rule 1.15(I), MLRC.

Opinion No. 13: Copying Costs of Client Files, Duplicates and Property still in effect. Also incorporated into Rules 1.16(d) and (l), MLRC.

Opinion No. 14: Attorney Lien on Horticultural Property. Repealed. Incorporated into Rule 1.15(I) and (c), MLRC.

Opinion No. 15: Advancement of Payments and Nondeductible Retainers. Repealed. Incorporated into Rules 1.15(I) and (c), MLRC.

Opinion No. 16: Interest on Attorney Fees. Repealed.

Opinion No. 17: Accepting Contingencies from Court Reporting and Other Services still in effect.


Opinion No. 19: Using Technology to Communicate Confidential Information still in effect.

www.mlbar.org

August 2006 • Bar MBAR of Minnesota 13