speaking of ethics

By Hope C. Todd

Groundbreaking Rules or Breaking Ground Rules?

Mick Wiggins

Question: Lateral Lead Lawyer has represented Little Company for many years at Prestigious & Established, LLP. Up & Coming, LLP represents Big Company in Big vs. Little. *May Lateral Lead join Up & Coming?*

Answer (Choose One):

A. No. The imputation of conflicts rule (Rule 1.10) will prevent Up & Coming from representing Big if Lateral Lead joins the firm.

B. Yes, but only if Lateral Lead is screened from any participation in Big vs. Little *AND certain notifications and certifications are provided to Little by Up & Coming.*

C. Yes, but only if Little gives informed consent (and who are we kidding)?

In February 2009 the American Bar Association (ABA), after much impassioned debate, deliberation, negotiation, and compromise, amended Rule 1.10 (Imputation of Conflicts of Interest: General Rule) of the Model Rules of Professional Conduct to permit a lawyer—without client consent—to move from Law Firm A to Law Firm B, even where the lawyer personally represented Client X while at Firm A, and Firm B continues to represent Client Y *in the same matter* [*X v. Y*].

Under the amended Model Rule, such a lateral move requires: (1) the lawyer switching firms be promptly and effectively screened from the matter in which the lawyer participated at the prior firm,[1] and (2) certain mandatory notifications and certifications be given to the lawyer's former client. Thus, under the ABA Model Rules, B is the correct answer to the above question.

Members of the D.C. Bar may properly ask why they should care about the ABA Model Rules, which apply to no one.[2] However, if there is such a thing as the universal language of legal ethics, the ABA Model Rules is it. They are taught in virtually every American law school, no doubt in large part because it is far more manageable to teach and learn a single set of model rules than 50-plus sets of actual rules,[3] but also because the Model Rules provide a uniform standard of professional conduct—though the various states' ethics rules are far from uniform.

A brief refresher: The Model Rules[4] were adopted, and are amended, by the ABA House of Delegates, a body of lawyers from around the country who represent the diversity of the legal profession. Although each jurisdiction reserves the right to adopt, modify, or reject outright the Model Rules through the promulgation of individual state ethics rules, the existence of model standards of professional ethics, which began more than 100 years ago, continues to have a profound impact on the development and implementation of legal ethics rules countrywide. In all, when substantive changes to the Model Rules are adopted, lawyers are well-advised to pay attention.

Not surprisingly, the national debates that accompany the adoption of amendments to the Model Rules often play out at the local level with various degrees of conviction and persuasion. Also not surprisingly, the Model Rules follow as often as they lead. To the extent that the Model Rules reflect a consensus within the profession, a Model Rule may only garner sufficient votes to be adopted after a similar rule, policy position, or practice has been implemented and found workable in a good number of individual jurisdictions.

Thus, for some of you reading this column and practicing in other jurisdictions, the change in Model Rule 1.10 may reflect little change from your governing ethics rules. At least 24 jurisdictions already have in place some variation of a conflict imputation rule that permits lateral lawyers to be screened without client consent. For others, however, including District of Columbia practitioners, the amendment to Model Rule 1.10 constitutes a wide departure from the conflict imputation rule currently governing lawyers who move between private law firms.[5] Under the D.C. Rules of Professional Conduct, the answer to the hypothetical at the start of this column is A. But, of course, you already knew that!

The D.C. Bar Rules of Professional Conduct Review Committee[6] is considering whether to recommend changes to D.C. Rule 1.10 in light of amendments to Model Rule 1.10. Any specific recommendation will be made available to the membership for public comment through notice on the Bar's Web site and in *Washington Lawyer* magazine. As always, the Bar welcomes and encourages comment on any proposed amendments to the D.C. Rules. Whether passions will run as high here as they did on the ABA House floor remains to be seen. At the ABA, individuals and organizations made compelling arguments both for and against amending the rule, and the final vote was close: 226 to 191.

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Notes

1 "'Screened' denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." ABA Model Rule 1.0(k).

2 Except as adopted by a specific tribunal.

3 The risk inherent in this pedagogical approach is that lawyers must learn the ethics rules of the jurisdiction/s in which they ultimately practice. The D.C. Rules of Professional Conduct may be found at www.dcbar.org/ethics.

4 The Model Rules of Professional Conduct is the successor to the Model Code of Professional Responsibility, which was adopted in 1969. The ABA adopted the Model Rules in 1983. Widespread revisions were effected to the Model Rules in 2002 and 2003 as a result of the Ethics 2000 Commission and the Task Force on Corporate Responsibility, respectively.

5 However, the concept of screening lawyers in the District of Columbia is far from new. For example, screening lawyers who leave government service for private practice has been required and available in the District for many years. *See Revolving Door* 445 A.2d 615 (D.C. App. 1982); *see also* D.C. Rule 1.11 and D.C. Bar Legal Ethics Comm. Op. 279 (1998).

6 The Rules Review Committee is charged with regularly reviewing the D.C. Rules and recommending changes to the Bar's Board of Governors, which, in turn, may recommend rule amendments to the District of Columbia Court of Appeals for adoption.

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE JAMES Q. BUTLER. Bar No. 490014. October 16, 2009. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Butler by consent.

Reciprocal Matters

IN RE DESMOND P. FITZGERALD. Bar No. 461613. October 26 2009. In a reciprocal matter from Massachusetts, the Board on Professional Responsibility reprimanded FitzGerald, at the direction of the D.C. Court of Appeals, as identical reciprocal discipline.

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE DENISE R. STANLEY. Bar No. 431677. October 29, 2009. The D.C. Court of Appeals reinstated Stanley. The court furthered ordered that prior to practicing law in the District of Columbia, Stanley shall complete the Mandatory Course on the D.C. Rules on Professional Conduct and District of Columbia Practice.

Reciprocal Matters

IN RE DESMOND P. FITZGERALD. Bar No. 461613. October 22, 2009. In a reciprocal matter from Massachusetts, the D.C. Court of Appeals instructed the Board on Professional Responsibility to impose identical reciprocal discipline and reprimand FitzGerald. The Board of Bar Overseers of the Supreme Judicial Court of Massachusetts entered an Order of Public Reprimand against FitzGerald for violating Massachusetts Rules of Professional Conduct pertaining to competence, diligence, failure to reasonably explain the matter to client, conflict of interest, and failure to withdraw as counsel while representing a client in an immigration matter.

IN RE RICHARD J. HAAS. Bar No. 955039. October 1, 2009. In a reciprocal matter from New York, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Haas for three years with fitness.

IN RE HENRY J. USCINSKI. Bar No. 412779. October 1, 2009. In a case involving two parallel disciplinary proceedings—one arising as a reciprocal disciplinary matter that originated in New York, the other arising as a result of Uscinski's criminal conviction—the D.C. Court of Appeals imposed identical reciprocal discipline and remanded this matter to the Board on Professional Responsibility, with instructions to remand it to the Hearing Committee for a determination as to whether or not Uscinski was convicted of an offense involving moral turpitude on the facts. The Supreme Court of the State of New York, Appellate Division, Second Judicial Department, suspended Uscinski for five years, with the equivalent of a fitness requirement. The findings of misconduct by the New York Court are based on the facts underlying Uscinski's conviction of tax evasion.

Interim Suspensions by the District of Columbia Court of Appeals

IN RE IDUS J. DANIEL JR. Bar No. 405077. October 27, 2009. Daniel was suspended on an interim basis based upon the Board on Professional Responsibility's August 3, 2009, recommendation of a one-year suspension, nunc pro tunc to October 15, 2009, pursuant to D.C. Bar Rule XI, § 9(g).

Disciplinary Actions Taken by Other Jurisdictions

In accordance with D.C. Bar Rule XI, § 11(c), the D.C. Court of Appeals has ordered public notice of the following nonsuspensory and nonprobationary disciplinary sanctions imposed on D.C. attorneys by other jurisdictions. To obtain copies of these decisions, visit www.dcbar.org/discipline and search by individual names.

IN RE JAMES L. LINDON. Bar No. 465777. On August 31, 2009, the State of Michigan Attorney Discipline Board reprimanded Lindon.

IN RE MICHAEL D. REINER. Bar No. 395402. On August 28, 2009, the Superior Court Judicial District of Litchfield, Connecticut, reprimanded Reiner.

IN RE JOSEPH CORNELIUS RUDDY JR. Bar No. 195230. On October 6, 2009, the Court of Appeals of Maryland reprimanded Ruddy.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE AMAKO NK AHAGHOTU. Bar No. 352237. October 15, 2009. Bar Counsel issued Ahaghotu an informal admonition for failing to notify and pay a third-party medical provider in a timely manner, in connection with several clients, because of a failure to supervise the employees to whom he delegated the accounting functions in his office. Rules 1.15(b) and 5.3(b).

IN RE ARAGAW MEHARI. Bar No. 431595. October 15, 2009. Bar Counsel issued Mehari an informal admonition for failing to timely file a Notice of Appeal while representing a client in an immigration matter. Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c).

The Office of Bar Counsel compiled the foregoing summaries of disciplinary actions. Informal Admonitions issued by Bar Counsel and Reports and Recommendations issued by the Board on Professional Responsibility are posted on the D.C. Bar Web site at www.dcbar.org/discipline. Most board recommendations as to discipline are not final until considered by the court. Court opinions are printed in the Atlantic Reporter *and also are available online for decisions issued since August 1998. To obtain a copy of a recent slip opinion, visit www.dcappeals.gov/dccourts/appeals/opinions_mojs.jsp.*

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