/* The final section on attorney's ethical rules. */

Comment

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. The public's need to know about legal services can be fulfilled in part through advertising which provides the public with useful, factual information about legal rights and needs and the availability and terms of legal services from a particular lawyer or law firm. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Nevertheless, certain types of advertising by lawyers create the risk of practices that are misleading or overreaching and can create unwarranted expectations by laymen untrained in the law. Such advertising can also adversely affect the public's confidence and trust in our judicial system.

In order to balance the public's need for useful information, the state's need to ensure a system by which justice will be administered fairly and properly, as well as the state's need to regulate and monitor the advertising practices of lawyers, and a lawyer's right to advertise the availability of the lawyer's services to the public, this rule permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment, and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other factual information that might invite the attention of those seeking legal assistance.

Television is now one of the most powerful media for conveying information to the public, a blanket prohibition against television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. However, the unique characteristics of electronic media, including the pervasiveness of television and radio, the ease with which these media are abused, and the passiveness of the viewer or listener, make the electronic media especially subject to regulation in the public interest. Therefore, greater restrictions on the manner of television and radio advertising are justified that might be appropriate for advertisements in the other media. To prevent abuses, including potential interferences with the fair and proper administration of justice and the creation of incorrect public perceptions or assumptions about the manner in which our legal system works, and to promote the public's confidence in the legal profession and this country's system of justice while not interfering with the free flow of useful information to prospective users of legal services, it is necessary also

to restrict the techniques used in television and radio advertising.

Paragraphs (b) and (e) of this rule are designed to ensure that the advertising is not misleading and does not create unreasonable or unrealistic expectations about the results the lawyer may be able to obtain in any particular case, and to encourage a focus on providing useful information to the public about legal rights and needs and the availability and terms of legal services. Thus, the rule allows all lawyer advertisements in which the lawyer personally appears to explain a legal right, the services the lawyer is available to perform, and the lawyer's background and experience.

The prohibition in paragraph (b) against any background sound other than instrumental music precludes, for example, the sound of sirens or car crashes and the use of jingles. Paragraph 4-7.1(d) forbids use of testimonials or endorsements from clients or anyone else. Paragraph (e) prohibits dramatizations in any advertisement, including those appearing on the electronic media. This is intended to preclude the use of scenes creating suspense, scenes containing exaggerations or situations calling for legal services, scenes creating consumer problems through characterization and dialogue ending with the lawyer solving the problem, and the audio or video portrayal of an event or situation. While informational illustrations may attract attention to the advertisement and help potential clients to understand the advertisement, self-laudatory illustrations are inherently misleading and thus prohibited. As an example, a drawing of a fist, to suggest the lawyer's ability to achieve results, would not be informational and would be barred.

Regardless of medium, a lawyer's advertisement should provide only useful, factual information presented in a nonsensational manner. Advertisements utilizing slogans or jingles, or oversized electronic and neon signs or sound trucks, fail to meet these standards and diminish public confidence in the legal system.

/* Which is not binding since it is only in a comment. */

The disclosure required by paragraph (d) of this rule is designed to encourage the informed selection of a lawyer. As provided in rule 4-7.3, a prospective client is entitled to know the experience and qualifications of any lawyer seeking to represent the prospective client. The required disclosure would be ineffective if it appeared in an advertisement so briefly or minutely as to be overlooked or ignored. This in print advertisements, the type size used for the disclosure must be sufficient to cause the disclosure to be conspicuous; in recorded advertisements the disclosure must be spoken at a speed that allows comprehension by the average listener. This rule does not specify the exact type size to be used for the disclosure or the exact speed at which the disclosure may be spoken; good faith and common sense should

serve as adequate guides for any lawyer.

Neither this rule nor rule 4-7.4 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

This rule applies to advertisements and written communications directed at prospective clients and concerning a lawyer's or law firm's availability to provide legal services. The rule does not apply to communications between lawyers, including brochures used for recruitment purposes.

Paying others to recommend a lawyer

A lawyer is allowed to pay for advertising permitted by this rule, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under it auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.8. Paragraph (q) does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

Paying others to recommend a lawyer

A lawyer is allowed to pay for advertising permitted by this rule, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.8. Paragraph (q) does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.3 LEGAL SERVICE INFORMATION

(a) Each lawyer or law firm that advertises his, her, or its availability to provide legal services shall be available in written form for delivery to any potential client:

(1) A factual statement detailing the background, training and experience of each lawyer or law firm.

(2) If the lawyer or law firm claims special expertise in the representation of clients in special matters or publicly limits the lawyer's or

law firm's practice to special types of cases or clients, the written information shall set forth the factual details of the lawyer's experience, expertise, background, and training is such matters.

(b) A lawyer or law firm that advertises services by written communication not involving solicitation, as defined in rule 4-7.4, shall enclose with each such written communication the information described in paragraph (a) of this rule.

(c) Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm shall promptly furnish (by mail if requested) the written information described in paragraph (a).

(2) The lawyer or law firm may furnish such additional factual information regarding the lawyer or law firm deemed valuable to assist the client.

(3) If it is believed that the client is in need of services which will require that the client read and sign a copy of the "Statement of Client's Rights" as required by these rules, then a copy of such statement shall be furnished contemporaneously with the above information.

(4) If the information furnished to the client includes a fee contract, the top of each page of the contract shall be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

(d) A copy of all information furnished to clients by reason of this rule shall be retained by the lawyer or law firm for a period of three years after last regular use of the information.

(e) If the lawyer or law firm advertises its services pursuant to rule 4.7.2, the advertisement shall contain the disclosure set forth in rule 4-7.2(d) unless exempt by the terms of that rule. This disclosure need not appear in written communications under rule 4-7.4, which must be accompanied by a copy of the statement of qualifications and experience described in paragraph (a) of this rule.

(f) An factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this rule shall not:

(1) Be directly or impliedly false or misleading;

(2) Be potentially false or misleading;

(3) Fail to disclose material information necessary to prevent the information supplied from being actually or potentially false or misleading;

(4) Be unsubstantiated in fact; or

(5) Be unfair or deceptive.

(g) Upon reasonable request a lawyer shall promptly provide proof that any statement or claim made in any advertisement or written communication, as well as the information furnished to a prospective client as authorized or required by these rules, is in compliance with paragraph (f) above.

(h) A statement and any information furnished to a prospective client, as authorized by paragraph (a) of this rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

/* This section is again different state by state. */

Comment

Consumer and potential clients have a right to receive factual, objective information from lawyers who are advertising their availability to hand legal matters. The rule provides that potential clients may request such information and be given an opportunity to review that information without being required to come to a lawyer's office to obtain it. Selection of appropriate counsel is based upon a number of factors. However, selection can be enhanced by potential clients having factual information at their disposal for review and comparison.

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit

employees or agents of the lawyer to solicit in the lawyer's behalf. A lawyer shall not enter into an agreement for, change, or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

(b) Written Communication.

(1) A lawyer shall not send, or knowingly permit to be sent, on behalf of himself, his firm, his partner, an associate, or any other lawyer affiliated with him or his firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

a. The written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than thirty days prior to the mailing of the communication;

b. The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

c. It has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

d. The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

e. The communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim or is improper under rule 4-7.1; or

f. The lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(2) Written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

a. Each page of such written communications shall be plainly marked "advertisement" in red ink, and plainly marked "advertisement" in red ink, and the lower left corner of the face of the envelope containing a written communication likewise shall carry a prominent, red "advertisement" mark.

If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark in red ink shall appear on the address panel of the brochure or pamphlet. Brochures solicited by clients or prospective clients need not contain the "advertisement" mark.

b. A copy of each such written communication and a sample of the envelopes in which the communications are enclosed shall be filed with the Standing Committee on Advertising either prior to or concurrently with the mailing of the communication to a prospective client, as provided in rule 4.7.5. The lawyer also shall retain a copy of each written communication for three years. If written communications identical in content are sent to two or more prospective clients, the lawyer to two or more prospective clients, the lawyer may comply with this requirement by filing a single copy together with a list of the names and addresses of persons to whom the written communication was sent, retaining the same information. If the lawyer periodically sends the identical communication to additional prospective clients, lists of the additional names and addresses shall be filed with the committee not less frequently than monthly.

c. Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery.

d. No reference shall be made in the communication to the communication having received any kind of approval from The Florida bar.

e. Every written communication shall be accompanied by a written statement of the lawyer or law firm's qualifications conforming to the requirements of rule 4-7.3.

f. If a contract for representation is mailed with the written communication, the top of each page of the contract shall be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

g. The first sentence of any written communication concerning a specific matter shall be: "If you have already retained a lawyer for this matter, please disregard this letter."

h. Written communications shall be on letter sized paper rather than legal-sized paper and shall not be made to resemble legal pleadings or other legal documents. This provision does not preclude the mailing of brochures and pamphlets.

i. If a lawyer other than the lawyer whose name or signature appears

on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the client.

j. Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication.

k. A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

/* Again a section which is different state to state. */
Comment

There is a potential for abuse inherent in direct solicitation by a lawyer of prospective clients known to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services and may have an impaired capacity for reason, judgment, and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of prospective for abuse inherent in direct solicitation of prospective clients justifies the thirty-day restriction, particularly since lawyer advertising permitted under rule 4-7.2 offers a alternative means of communicating necessary information to those who may be in need of legal services.

Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

The use of general advertising to transmit information from lawyer to prospective client, rather than direct private contact, will help to assure that the information flows cleanly as well as freely. Advertising is out in public view, thus subject to scrutiny by those who know the lawyer. This informal review is itself likely to help guard against statements and claims that might

constitute false or misleading communications in violation of rule 4-7.1. Direct private communications from a lawyer to a prospective client are not subject to such third-party scrutiny and consequently are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

Direct written communications seeking employment by specific prospective clients generally present less potential for abuse or over-reaching than in-person solicitation and are therefore not prohibited for most types of legal matters, but are subject to reasonable restrictions, as set forth in this rule, designed to minimize or preclude abuse and overreaching an to ensure lawyer accountability if such should occur. This rule allows targeted mail solicitation of potential plaintiffs or claimants in personal injury and wrongful death causes of action or other causes of action which relate to an accident, disaster, death or injury, but only if mailed at least thirty days after the incident. This restriction is reasonably required by the sensitized state of the potential clients, who may be either injured or grieving the loss of a family member, and the abuses which experience has shown exist in this type of solicitation.

Letters of solicitation and their envelopes should be clearly marked "advertisement." This will avoid the recipient perceiving that he or she needs to open the envelope because it is from a lawyer or law firm, only to find he or she is being solicited for legal services. With the envelope and letter marked "advertisement," the recipient can choose to read the solicitation, or not to read it, without fear of legal repercussions.

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding his or her particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if he does not.

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or his or her firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if the choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating

with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under rule 4-7.2.

RULE 4-7.6 COMMUNICATION OF FIELDS OF PRACTICE

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(a) A lawyer admitted to engage in patent practice before the United States patent and trademark office may use the designation "patent attorney" or a substantially similar designation.

/* Again a non-standard section. */

RULE 4-7.7 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates rule 4-7.1.

(b) A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rule 4-7.1. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by paragraph (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) The name of a lawyer holding a public office shall be used in the name of a law firm, or in communications on it behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an omissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6.

Comment

The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This rule is subject to the provisions of the fifth amendment of the United States Constitution and the corresponding provisions of Florida's Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure or comply with this rule.

A lawyer representing an applicant for admission to the bar, or

representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

RULE 4-8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Florida's Code of Judicial Conduct.

Comment

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

False statements or statements made with reckless disregard for truth or falsity concerning potential jurors, jurors serving in pending cases or jurors who served in concluded cases undermine the impartiality of future jurors who may fear to execute their duty if their decisions are ridiculed. Lawyers may not make false statements or any statement made with the intent to ridicule or harass jurors.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encourage to continue traditional efforts to defend judges and courts unjustly criticized.

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by rule 4-1.6.

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4-1.6. However a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(a) Violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer's

honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official; or

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4-1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, or agent and officer, director, or manager of a corporation or other organization.

RULE 4-8.5 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See rule 4-5.5.

If the Rules of Professional Conduct in the two (2) jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.

Where the lawyer is licensed to practice law in two (2) jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

RULE 4-8.6 PROFESSIONAL SERVICE CORPORATIONS

(a) Lawyers may practice law in the form of professional service corporations organized under Florida Statutes, only if when such corporations are organized all shareholders are legally qualified to render legal services in this state, and while such corporation and all shareholders, officers, directors, agents and employees comply with the provisions of the Professional Service Corporation Act.

/* Again a section with is not consistent between states. */

(b) No professional service corporation may engage in the practice of law in the or render advice or interpretations of Florida law except through officers, directors, agents or employees who are qualified to render legal services in this state.

(c) No person shall serve as a director or executive officer of a professional service corporation engaged in the practice of law unless such person is legally qualified to render legal services in this state. For purposes of this rule the term "executive officer" shall include the president, vice-president or any other officer who performs a policy making function.

(d) A lawyer who, while acting as a shareholder, officer, director, agent or employee of a professional service corporation engaged in the practice of law in Florida, violates or sanctions the violation of the Professional Service Corporation Act or the Rules Regulating The Florida Bar shall be subject to disciplinary action.

(e) Whenever a shareholder of a professional service corporation becomes legally disqualified to render legal services in this state, said shareholder shall sever all employment with and financial interests in such corporation immediately. For purposes of the rule the term "legally disqualified" shall not include suspension from the practice of law for a period of time less than ninety-one (91) days. Severance of employment and financial interests required by this rule shall not preclude the shareholder from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder was legally qualified to render legal services in this state. This provision shall not prohibit payment to an existing profit sharing or pension plan to the extent permitted in rule 4-5.4(a)(3), or as required by applicable law.

(f) Whenever the sole shareholder of a professional service corporation becomes legally disqualified to render legal services in this state, the professional service corporation shall cease the rendition of legal services. No legal services may be rendered for the professional service corporation by any officer, director, agent or employee of the professional service corporation until the sole shareholder is legally qualified to render legal services in this state.

(g) Whenever a shareholder of a professional service corporation becomes legally disqualified to render legal services in this state, the professional service corporation shall take steps to achieve the immediate removal of the shareholder from the professional service corporation.

Employment by and financial interests in a professional service corporation

This rule and the statute require termination of employment of a shareholder when the shareholder is "legally disqualified" to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder cannot personally render the same type of services. Continued employment in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with nonlawyers and this rule continues the application of that type of prohibition. However, nothing in this rule or the statue prohibits payment to the disqualified shareholder for legal services rendered

while the shareholder was qualified to render same, even though payment for the legal services is not received until the shareholder is legally disqualified.

Similarly this rule and the statute require the severance of "financial interests" of a legally disqualified shareholder. The same reasons apply to severance of financial interests as those which apply to severance of employment.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services. Hence, any suspension of less than 91 days, including dues delinquency suspensions, is excluded from the definition of the term. These temporary impediments to the practice of law are such that with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services. Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

However, the exclusion of such suspensions from the definition of the term does not authorize the payment to the disqualified shareholder of compensation based on fees for legal services rendered during the time when the shareholder is not personally qualified to render such services. Continuing the employment of a shareholder during the term of a suspension of less than 91 days requires the professional service corporation to take steps to avoid the practice of law by the shareholder, the ability of the shareholder to control the actions of members of the bar qualified to render legal services and payment of compensation to the shareholder based on legal services rendered while the shareholder is not personally qualified to render same. Mere characterization of continued compensation, which is the same or similar to that the disqualified shareholder received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

Profit sharing or pension plans

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statue may abridge such payments. However, if permitted under applicable law the amount paid to the plan for a disqualified shareholder shall not include payments based on legal services rendered while the shareholder was not personally qualified to render legal services.