RECENT SIGNIFICANT ETHICS CASES AND ARTICLES

This is a continuation of The Journal of the Legal Profession’s yearly survey and report of recent legal ethics opinions and cases. The purpose of this series is to point out important and noteworthy cases involving questions of legal ethics which have been decided within the past year. Although regulation of legal ethics is traditionally a matter of state concern, through these opinions, a practitioner can get some feeling for how various jurisdictions have interpreted ethical rules in certain case situations.

I. This is the only formal opinion since December 31, 1984.


II. Vicarious Liability - Partnership

Roach v. Mead, No. 532368 (Or. Sup. Ct. filed July 29, 1986) (The law partner borrowed $20,000 from a client without advising the client about the legal effects of an unsecured loan and a usurious interest rate. The client believed that investment advice was part of the partnership’s legal services. The court held that the partner was not acting outside the scope of the partnership and that an attorney may be held vicariously liable for the negligence of a law partner in providing services that the client believes to be part of the business of the law partnership).

III. Client Perjury

U.S. v. Henkel, No. 85-2008 (7th Cir. filed Aug. 26, 1986) (An attorney may seek to withdraw for undisclosed “professional” reasons prior to a client testifying. The request for withdrawal indicated, due to the particular circumstances, that the defendant intended to commit perjury. The court held that the attorney-client privilege was not violated where the reason for withdrawal became devious and that the withdrawal did not violate the defendant’s
right to counsel).

IV. Where Representation Would be Adverse to Former Client

*Behunin v. Dow Chemical Co.*, No. 86-R-281 (D. Colo. filed Aug. 21, 1986) (A law firm that had to withdraw from a products liability suit as the plaintiff's counsel because it had formerly represented the defendant in a totally unrelated situation, may properly turn over its work product to new counsel. Whether the harm to the adverse party is mitigated by allowing the work product to be turned over should be determined by a case to case analysis).

V. Where Attorney's Interest is Adverse to the Client

*U.S. v. Ellison*, No. 85-1930 (7th Cir. filed Aug. 21, 1986) (The attorney had advised the criminal defendant to plead guilty in order to avoid causing trouble with the federal prosecutors with whom the attorney would have a continuing relationship. At the hearing on defendant's motion to withdraw his guilty plea, the attorney's representation was a conflict of interest and ineffective assistance of counsel under the sixth amendment).

VI. Suspension for Lawyer Misconduct

*Gershenfeld v. Sup. Ct. of Pa.*, No. 86-3473 (E.D. Pa. filed Aug. 19, 1986) (The Pennsylvania Supreme Court had emergency power to suspend an attorney without an adversarial hearing while full disposition of the issues might not be resolved for up to two years. The Court held that the due process clause of the fourteenth amendment was violated and that an attorney is deprived of a property right when he is not given a hearing prior to suspension. Due process also requires that a prompt postsuspension hearing be given with a final decree following soon thereafter).

VII. Attorney's Authority to Settle

*Edwards v. Born, Inc.*, No. 85-3312 (3d Cir. filed June 11, 1986) (An attorney may have the power to settle a client's case without the client's presence on grounds of express actual authority, implied actual authority or apparent authority).

Recent Informal Opinions

These titles come out of ABA/BNA Lawyer's Manual on Pro-
fessional Conduct.


Recent Law Review Articles


Blank, Conflicts and Ethics, 6 PROB. L.J. 277 (1985).


Constitutional law—attorney advertising—targeted mailings—a blanket prohibition of direct mail solicitations to targeted

Denniston, When Your Client Lies, 6 CAL. LAW. 55 (1986).


Hauser, A Deal is a Deal is a Deal, 74 ILL. B.J. 176 (Dec. 1986).

Haynsworth, Disciplinary Actions by the South Carolina Supreme Court and the Board of Commissioners on Grievances and Discipline: Lawyers Beware, 36 S.C. L.REV. 309 (Spring 1985).


Kaminski & Sharpnack, "... to preserve inviolate the secrets of my client...", 28 RES GESTAE 480 (Mar. 1985).


Kuhn, Disclosure Versus Confidentiality, 29 CATH. LAW. 356 (1985).


Levinson, To a Young Lawyer: Thoughts on Disobedience, 50 Mo. L. REV. 483 (Summer 1985).


Maher, Crashes and Disasters Test the Limits of Lawyerly Restraint, 5 CAL. LAW. 38 (1985).


Manson, Preserving the Client's Confidences—The Lawyer's Dilemma, 59 FLA. B.J. 13 (June 1985).

Marie, Competency and the Legal Profession: The Current


McPike, How to Reform Errant Lawyers, 24 JUDGES’ J. 22 (Spring 1985).


Miller & Warren, Conflicts of Interest and Ethical Issues for the Inside and Outside Counsel, 40 BUS. LAW. 631 (Feb. 1985).


Patterson, An Analysis of Conflicts of Interest Problems, 37 MERCER L. REV. 569 (Winter 1986).


Rakestraw, Rule 1.6—Saga of Misunderstanding, Conflicting
Rhode, Moral Character as a Professional Credential, 94 YALE L.J. 491 (Jan. 1985).
Sterling, Ethical Problems in Bankruptcy, 14 COLO. LAW. 2147 (Dec. 1985).
The Disciplinary Dilemma Confronting Attorneys Seeking to Counsel Civil Disobedients, 23 DUQ. L. REV. 715 (Spring 1985).
Tiedemann, The Outer Limits of Florida Appellate Advocacy, 60 FLA. B.J. 11 (1986).


Word, Risk and Knowledge in Interspousal Conflicts of Interest: The Search for Competent Counsel Through Model Rule 1.8(i), 7 Whittier L. Rev. 943 (1985).