STATE OF MINNESOTA

IN SUPREME COURT

C8-84-1650

PROMULGATION OF AMENDMENTS TO
THE RULES OF PROFESSIONAL CONDUCT **ORDER**

WHEREAS, the Minnesota State Bar Association filed a petition with this Court that recommended amendments to the Rules of Professional Conduct, and

WHEREAS, the Supreme Court held a hearing on the proposed amendments on November 15, 1995, and

WHEREAS, the Supreme Court has reviewed the proposed amendments and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Rules of Professional Conduct are hereby prescribed and promulgated for the regulation of the legal profession in the State of Minnesota.
2. The inclusion of comments is made for convenience and does not reflect court approval of the comments made therein.
3. The amendments shall be effective January 1, 1996.

DATED: December 11, 1995

BY THE COURT:

A.M. Keith
Chief Justice

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.17 SALE OF LAW PRACTICE

(a) A lawyer shall not sell or buy a law practice unless:

(1) The seller sells the practice as an entirety, as defined in paragraph (c) of this Rule, to a lawyer or firm of lawyers licensed to practice law in Minnesota;

(2) The seller sends a written notification that complies with paragraph (d) of this Rule to all clients whose files are currently active and all clients whose inactive files will be taken over by the buying lawyer or firm of lawyers.

(b) The buying lawyer or firm of lawyers shall not increase the fees charged to clients by reason of the sale for a period of at least one year from the date of the sale. The buying lawyer or firm of lawyers shall honor all existing fee agreements for at least one year from the date of the sale and shall continue to completion, on the same terms agreed to by the selling lawyer and the client, any matters that the selling lawyer has agreed to do on a *pro bono publico* basis or for a reduced fee.

(c) For purposes of this Rule, a practice is sold as an entirety if the buying lawyer or firm of lawyers assumes responsibility for at least all of the currently active files except those that deal with matters that the buying lawyer or firm of lawyers would not be competent to handle, those that the buying lawyer or firm of lawyers would be barred from handling because of a conflict of interest, or those from which the selling lawyer is denied permission to withdraw by a tribunal in a matter subject to Rule 1.16(c).

(d) The written notification that the seller lawyer must send pursuant to paragraph (a)(2) of this Rule must include at a minimum:

(1) A statement that the law practice of the selling lawyer has been sold to the buying lawyer or law firm;

(2) A summary of the buying lawyer's or law firm's professional background, including education and experience and the length of time that the buying lawyer or members of the buying law firm has been in practice;

(3) A statement that the client has the right to continue to retain the buying lawyer under the same fee arrangement as the client had with the selling

lawyer or to have the client's complete file sent to the client or to another lawyer of the client's choice.

(e) If the written notification described in paragraph (d) has actually reached the client through personal service or by certified mail, the notification may include a provision that states that if the client does not respond to the buying lawyer by ninety days from the date that the client receives the notification, the client's silence shall be deemed to be the client's waiver of confidentiality and the client's consent to the buying lawyer's representing the client in the matter that was the subject of the selling lawyer's representation. The client's failure to respond within that time shall be such a waiver and consent.

(f) The transaction may include a promise by the selling lawyer that the selling lawyer will not engage in the practice of law for a reasonable period of time within a reasonable geographic area and will not advertise for or solicit clients within that area for that time.

(g) The selling lawyer shall retain responsibility for the proper management and disposition of all inactive files that are not transferred as part of the sale of the law practice.

(h) For purposes of this Rule, the term "lawyer" means an individual lawyer or a law firm that buys or sells a law practice.

Comment

[1] A representative of a deceased, disabled or disappeared lawyer may sell the lawyer's law practice under the same restrictions as imposed by this Rule. See Rule 5.4(a)(4).

[2] Rule 1.6 on Confidentiality of Information limits the amount and type of information that the selling lawyer may give to the potential buying lawyer during negotiations. Before the prospective buyer could see the client files the selling lawyer would be required to obtain from the affected client a waiver of confidentiality.

[3] The selling lawyer should consider extending malpractice insurance for some reasonable period of time following the sale to insure against losses arising from errors that might come to light after the sale.

Rule 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a)

* * *

(4) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

Rule 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

[An additional comment is added].

Comment

[3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Rule 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

~~A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons or limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.~~

A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect the civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

Every practicing lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. All practicing lawyers should aspire to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer than 50 hours but during the course of a legal career, each lawyer should aspire to render on average of 50 hours of service per year. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually be furnished to the disadvantaged without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means and otherwise contributing legal talents. The variety of these activities should facilitate participation by government attorneys, even when restrictions exist on their engaging in the outside practice of law.

Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless cannot afford counsel. legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities

described in paragraphs (a)(1) and (2), to the extent that any hours of service remain unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono attorney to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

Paragraph (b)(2) covers instances in which attorneys agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Rule 7.2 ADVERTISING AND WRITTEN COMMUNICATION

* * *

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule, ~~and~~ may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization~~.~~, and may pay for a law practice that is sold in accordance with Rule 1.17.

Rule 7.4 COMMUNICATION OF FIELDS OF PRACTICE

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not use any false, fraudulent, misleading or deceptive statement, claim or designation in describing the lawyer's or the lawyer's firm's practice or in indicating its nature or limitations.

(b) ~~Except as provided in this rule,~~ A lawyer shall not state ~~or imply~~ that the lawyer is a specialist in a field of law unless the lawyer is currently certified or approved as a specialist in that field by an organization that ~~a board or other entity which~~ is approved by the State Board of Legal Certification. ~~Among the criteria to be considered by the Board in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists shall be the requirement that the board or entity certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such qualification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competency, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.~~

(c) A lawyer shall not state that the lawyer is a certified specialist if the lawyer's certification has terminated, or if the statement is otherwise contrary to the terms of such certification.

(d) 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;

(e) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.