

Ethics



With a Broad Brush

Ethics with a Broad Brush

What's Been Going On This Year?

What's the Buzz??

- Advertising
- Fees
- Civility
- Bar Activities

One or Two Eureka! Moments of Mine



And....

- What's on Your Mind??



Advertising

- *In Re Wells*

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26969>

- August 22, 2011

Amendments to Advertising Rules

<http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2011-08-22-01>

Wells

- "worked in the legal environment for over twenty years" (admitted to Bar about 7)
- experience of his associates on website:
 - two associates admitted for less than one year
 - Website referred to "numerous trained and experienced attorneys," "thoroughly familiar with the local court system", "highly skilled", possessing "wide-ranging knowledge", and having a "deep personal knowledge of the courts, judges, and other courthouse personnel."

No Lawyer Name, Just Firm Name

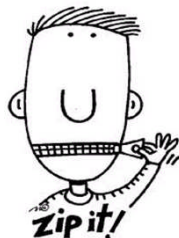
- Rule says: "any communication made pursuant to this Rule shall include the name and office address of at least one lawyer responsible for its content"
- SCRPC 7.2(d)

"Hablamos Espanol"/ "Se habla Espanol"

Implies that the Lawyer Speaks Spanish

If You Can't Factually Substantiate...

Then....



The New Rules

- Amended by Ct Order dated August 22, 2011



THE HIGHLIGHTS...

7.2(f)
Ban on self-laudatory
communications lifted

BUT...

- Still can't compare one lawyer's services to another's, unless you can factually substantiate.

Testimonials and Endorsements

- Are now allowed with certain limitations



- Must state that it is a testimonial or endorsement
- Must disclose if a payment is made
- Must disclose if the endorser is not an actual client
- Must clearly and conspicuously state that results Lawyer may achieve for one client in a matter are not necessarily indicative of similar results for other clients.

RULE 7.2 (a)

- Ads must be predominantly informational.
- Facts must predominate and

- should include only a minimal amount of content designed to attract attention to and create interest in the communication



Do you have to file the ad?

- NO, but you have to keep a copy, along with...
 - Advertisements – when and where disseminated
 - Solicitations – also keep record of how you knew person needed legal services and factual bases for all statements

“ADVERTISING MATERIAL”

- Envelope = Subject Line



Some other changes:

- Mandatory Language content on solicitations changed slightly
- Term “unfair” deleted from Rule 7.1
- Be sure to look at Rule 7.2, Comment 4...

Switching Gears...





FEES

In Re Halford

- Used word “unearned” when discussing non-refundable flat fees
- Suggested that flat/non-refundable fees can’t be deposited into Operating Account

Bar’s Response:

- PR Committee formed subcommittee to address two issues:

When is a fee earned, pursuant to Rule 1.5 (fee rule) and Rule 1.15(safekeeping property)?

What do the terms “non-refundable”, “flat” and “retainer” really mean?

Court’s Proposal

- Would amend 1.5 and 1.15 in the following manner:
 - Will clarify what most ethics counsel have been advising
 - Will allow flat and non-refundable to be deposited into operating if client agrees in writing to...

- Nature and scope of services
- Amount
- Will not be held in trust until earned
- Client can terminate
- Funds still subject to refund if services not performed

And, No Surprise Here....

- All Funds Must Be Reasonable

QUICK REVIEW OF REASONABLE

- 8 Factors in Rule 1.5
 1. Time and labor required and the novelty and difficulty of the questions involved and the skill requisite to form the service properly”
 2. Likelihood that he acceptance of the particular employment will preclude other employment by the lawyer
 3. Fee customarily charged in the locality for similar legal services

- 4. amount involved and results obtained
- Time limitations imposed by the client or by the circumstances
- Nature and length of the professional relationship with the client
- Experience, reputation and ability of the lawyer or lawyers performing the service
- And...

- Whether the fee is fixed or contingent.



Don't forget to look at the Comments to Rule 1.5, particularly 1, 2 and 3

New Disciplinary Opinions Re: Fees

Don't Bill a client for the time you spend in mediation trying to resolve a fee dispute
In re Nwangaza (9 month suspension)

Don't let client work off fee in your office, help her defraud Medicaid, sexually harass her, discuss her face with friends and when she quits and threatens to sue you, report her to Medicaid for the fraud, resulting in her arrest and PTI.
In re Poff (6 Month suspension)

Ethics Advisory Opinions
Re: Fees

- 11-05
- <http://www.scbarr.org/MemberResources/EthicsAdvisoryOpinions/OpinionView/ArticleId/980/Ethics-Advisory-Opinion-11-03.aspx>
- Lawyer would like to offer to the general public, probably through one or more charities or religious organizations, that he will prepare powers of attorney for no compensation to the lawyer. Lawyer will instead require that each power-of-attorney client make a contribution to the charity or religious organization involved of \$25 or more\$25 donation

Ethics Advisory Committee Said..

**Not a fee sharing issue
nor is it a referral fee**

"First, the amount of the donation is unspecified by Lawyer and possibly unknown to Lawyer, beyond the \$25 minimum. \$25 is not reflective of a legal fee for even a simple power of attorney, considering that Lawyer will meet with each client individually regarding competency and powers of attorney generally, then meet again to complete and execute each document. (ctd)

...Finally, there appears to be no direct or indirect benefit to Lawyer from the \$25 other than the marketing of his practice. Under the facts of this inquiry, the Committee does not believe the donations equate to fees for purposes of Rule 5.4. Even if it is a "fee," in the Committee's view, it does not violate Rule 5.4 because the facts do not suggest any encroachment on Lawyer's independent judgment."

Opinion 11-09

- The use of “daily deal” websites to sell vouchers to be redeemed for discounted legal services does not violate the Rule 5.4(a) prohibition on sharing of legal fees, but the attorney is cautioned that the use of such websites must be in compliance with Rules 7.1 and 7.2 and could lead to violations of several other rules if logistical issues are not appropriately addressed.

AKA the “Groupon Case”

- It’s a CDB... an advertising cost, Just like a 3% -5% Percentage cost passed on to the Client when they use a credit card.



Civility

- In re White
- Representing a church. Letter to opposing party, town manager. Copied to opposing party and counsel.

“You have been sent a letter by purported Town Manager. The letter is false. You notice (manager) has no Order. He also has no brains and it is questionable if he has a soul. ... We will continue to defend you against the Town's insane [sic]. As they continue to have to pay for damages they pigheadedly cause the church. You will also be entitled to damages if you want to pursue them.

First graders know about freedom of religion. The pagans of Atlantic Beach think they are above God and the Federal law. They do not seem to be able to learn. People like them in S.C. tried to defy Federal law before with similar lack of success.”

- Town manager received a copy, delivered the letter to the Town Council, and three council members thereafter filed a disciplinary complaint against Respondent. ODC instituted formal charges against Respondent as a result of his conduct.

Result

- 90 day suspension
- Unconstitutionality defense was rejected.
 “To the extent Respondent argues the contents of his letter are protected by the United States Constitution by the First Amendment provisions for freedom of speech and freedom of religion, we conclude these rights do not prevent disciplinary action for an attorney’s misconduct that is violative of the professional standards set by the courts.”
- <http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26939>

In re Anonymous

- Domestic Matter
- Sent e-mail to opposing counsel, accusing counsel’s daughter of drug involvement
- I have a client who is a drug dealer on . . . Street down town [sic]. He informed me that your daughter, [redacted] was detained for buying cocaine and heroine [sic]. She is, or was, a teenager, right? This happened at night in a known high crime/drug area, where alos [sic] many shootings take place. Lucky for her and the two other teens, they weren't charged. Does this make you and [redacted] bad parents? This incident is far worse than the allegations your client is making.

- Letter of Caution - Court found mitigation in Lawyer’s sincere acknowledgement of misconduct and remorse
- Again, unconstitutionality defense re civility clause rejected by Court
- <http://www.sccourts.org/opinions/HTMLFiles/SC/26964.html>

PR Committee

- Definition of Client File
- Lawyers Departing Law Firms
- Fee Rule mentioned earlier
- Succession Planning

While we are on the subject.....



Succession Planning is a
GOOD IDEA



Start Small and Keep Taking Steps



Step 1....

- Pick a Person
Executor? PR? Another Lawyer?

Start to create " the File"

- passwords
- bank info
- insurance info
- family lawyer info

ETC.



Blogging

- Va Case.
- In re Hunter
- Blogger who was lawyer crossed line into advertising when, in course of his blogging, he mentioned similar cases he had won in the past

Social Media – Boundaries?



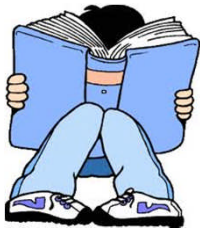
What are your responsibilities?

- To control your client's use
- To investigate your opponent
- To investigate your own client
- What about client's children?
- What about your own use? Who do you "friend"?? Do you post photos?
- What about You Tube?

Interesting Stories

- Criminal Case - D. In Jail
- Girlfriend Living with D's Mama
- Traceable jewelry and Cash
- D. Ajdudicated Indigent

Jill's Suggestion:



UPL Committee

- Notarios
- Real Estate Closings (esp. vacation properties)
- Notaries Public
 - Statewide Sems with Sec. of State

Working on a Plan...

- Civil Causes of Action (legislative step)
- Deputizing Private Attorneys to Assist in Crim. Prosecution: Permitted under Current Legislation
- UTP Actions through AG's office
- Other Ideas....

What's on Your Minds???



BREATHE....



Happy Holidays

Drive Carefully!!
