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Attorney News - October 2016



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- **Follow the Disciplinary Board on Twitter**

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Supreme Court Amends Rule 1.17 to Broaden Sale of Law Practice Requirements

On September 23, 2016, the Supreme Court of Pennsylvania **adopted amendments** to **Rule 1.17** of the Pennsylvania Rules of Professional Conduct, which governs sale of a law practice. The changes were published at **46 Pa.B. 6291** (October 8, 2016), and take effect October 23, 2016.

The amendments make the following changes:

- Sale of an area of practice, as opposed to the entire practice, is now permitted.
- The selling lawyer must still cease practice in the area of the sale, but the rule is amended to provide that the selling lawyer may assist the purchaser in the orderly transition of active client matters for a reasonable period after the closing without a fee.
- The selling lawyer must give written notice to each of the seller's clients. Previously the rule was not specific about who was to give notice, but the amendment clarifies this is the responsibility of the seller.
- If written notice cannot be given to a client, transfer of representation of that client to the purchaser will now require the approval of the court with jurisdiction over the matter.

Changes to the comments describe situations in which the prohibition on continuing practice by the seller does not apply. Unanticipated changes in circumstances can remove the prohibition. For instance, if a lawyer sells a practice in order to become a judge, and then is defeated in a retention election, the seller would be allowed to resume the practice of law. A lawyer who takes employment on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business, may also continue practicing in the area in the course of that employment.

The comments are also amended to state that the written notice to clients provided by the seller must make clear that the client has 60 days to decide whether to consent to the transfer or make other arrangements. If notice is given, and the client does not respond within the 60 day period, the parties may presume client consent to the sale.

Road Rage Rap Runs Respondent off Rails

A retired lawyer was suspended by the Supreme Court for two years following a conviction of assault arising out of a road rage incident in Maryland.

Cesar Alvarez-Moreno, who lives in the District of Columbia, was convicted of second-degree assault, a misdemeanor, following an incident in which he assaulted an individual who was attempting to leave his vehicle, and continued to beat the man even as other motorists honked their horns and yelled at him to stop. The man sustained a gash to the head, blackened eyes, and broken ribs. Alvarez-Moreno received a four-year prison sentence with all but six months suspended. He completed probation and paid restitution.

As aggravating factors, the Hearing Committee found that he had been convicted of three crimes in the Seventies, two involving violence. In addition, he continued to assert his innocence, claiming the other

motorist had instigated the fight, and that he was “railroaded” due to prosecutorial and judicial misconduct. The Hearing Committee recommended disbarment.

On review, the Disciplinary Board concluded that disbarment was too harsh, and cited cases in which attorneys received suspensions for cases of assault. The Disciplinary Board discounted the prior convictions as aggravating factors as they occurred more than 40 years ago, before Alvarez-Moreno was admitted to the practice of law. The Disciplinary Board recommended a suspension for two years. The Supreme Court agreed and imposed a two-year suspension.

From General Counsel to Bank Robber

A disbarred former Carbon County attorney **pleaded guilty to charges related to a bank robbery** in the Schuylkill County Court of Common Pleas. He was sentenced to 10 to 36 months in a state correctional institution, followed by 12 months on probation.

Steven M. Cormier, now of Walnutport, Northampton County, was formerly general counsel at firetruck maker Kovatch Mobile Equipment Corporation, of Nesquehoning. He fell on economic hard times after losing his job. This led him to an October 15, 2015 incident at the Wells Fargo Bank office at Fairlane Village mall, near Pottsville. Armed with a toy gun, he warned a teller that “things would get ugly” if she did not fill a bag with money. He was arrested with approximately \$16,000 moments later.

Cormier resigned from the bar and **consented to disbarment** in March 2016.

Tip of the Month: Contacting Government Officials

Suppose you are representing a client in a dispute with a government agency. The agency is represented by counsel, perhaps the Attorney General’s Office or the local solicitor or municipal counsel.

Rule 4.2 of the Rules of Professional Conduct prohibits a lawyer from communicating directly with a represented party about the subject of the representation without the consent of counsel, or as authorized by law. Does this prohibit you from petitioning the government agency on policy matters the way any other citizen would be allowed to do?

In 1997, the ABA Standing Committee on Ethics and Professional Responsibility addressed the question in **Formal Opinion 97-408**, Communication with Government Agency Represented by Counsel (1997). The Committee noted that the “authorized by law” exception arises out of the preservation of the First Amendment’s protection of the right to petition the government in controversies with government officials. The Committee concluded that a lawyer representing a client before an agency may contact the agency when two conditions are satisfied:

1. The officials to be contacted are in a position to take or recommend action in the matter and the substance of the communication relates to policy issues including settlement; and
2. The communicating lawyer gives opposing counsel advance notice of the impending communication so that they can give appropriate advice to their clients as to how to respond to the inquiry.

The ABA opinion has generally been adopted and followed in state bar ethics opinions. It is important that the right to communicate with government officials recognized by the ABA pertains to matters of policy, not the particulars of cases.

Comment 5 to Rule 4.2 echoes this analysis, stating, “Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government.” Also, the fact of representation does not prohibit the lawyer from communicating about other matters unrelated to the representation. Comment 4 states, “the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter.”

Supreme Court Committee Opportunities

The Supreme Court will begin accepting applications for the following boards and committees in November:

- Juvenile Court Procedural Rules Committee – applications due Nov. 30
- Interbranch Commission for Gender, Racial and Ethnic Fairness – applications due Nov. 15

More information [here](#). Download an application for boards and committees [here](#).

ABA Offers Resources for Lawyers in Transition

The country in general and the legal profession in particular are getting older on the average. Many lawyers are reaching an age when they will begin a transition out of the active practice of law. The American Bar Association has assembled a **set of materials** to assist lawyers contemplating transition to life after active practice.

Topics available include:

- **Data on the aging of the bar;**
- **Information on succession planning;**
- Information on **intervention and assistance for lawyers with cognitive impairments;**
- Information on **lawyer regulation issues** raised by the aging of the bar;
- **Practice opportunities for transitioning lawyers;** and
- **Mutual enhancement opportunities** for senior lawyers interested in assisting younger lawyers new to the practice of law.

Let Us Know

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The Disciplinary Board of the Supreme Court of Pennsylvania
PA Judicial Center
601 Commonwealth Ave., Suite 5600
P.O. Box 62625
Harrisburg, PA 17106-2625
(717) 231-3380

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