
From: Liao, Jason G.
Sent: Monday, December 17, 2012 11:49 AM
To: Ethics Rules Comments
Subject: Comment for Professional Conduct Rule Harmonization

I am a Primary Examiner, who also holds a JD from the Maurer School of Law, and is a member of Phi Delta Phi.

Firstly, I generally agree with this harmonization proposal.

Secondly, one of the stated goals of this harmonization effort is to adopt the precedence of existing case law. (Supplementary Information: "By adopting professional conduct rules ... the USPTO both would provide attorneys with consistent professional conduct standards, and would provide practitioners with large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules of Professional Conduct.") However, it is important to note that not all states have adopted all of the Model Rules. Even if two states have adopted the same rule, that particular rule may be applied differently. Presenting a "default jurisdiction" of case law may permit practitioners to familiarize themselves with the expected ethical practice required of them.

For example, in some states, evidence that a legal practitioner has not read the cases he or she has cited on the legal record may result in disciplinary action under Candor Toward the Tribunal (11.303). In others states, this may not hold true. In the past, some practitioners have mentioned, off the record, that they either did not read a case that they cited (instead, blindly copying it from another response) or merely read a "partner's memo" regarding the highlights. Without knowing which body of case law will be used to determine how Rule 11.303 will be applied, it is ambiguous whether those actions would be cause for disciplinary action under the new rules.

By presenting a default jurisdiction of case law is being relied upon, practitioners and their firms can arrange their prosecution practice accordingly.

Thirdly, many current employees of the USPTO have patent agent registration numbers. These "registered employees" may be made aware of ethical violations with outside practitioners through the normal course of their duties. Clarity as to whether USPTO employees with registration numbers are considered practitioners, especially with regards to Rule 11.803, would be useful.

Thank you for the consideration of these comments,

-Jason Liao