
From: Brooke Schumm <schummb@danmclaw.com>
Sent: Monday, October 29, 2012 10:15 AM
To: Ethics Rules Comments
Subject: Comment

To whom it may concern and the Chief of OED:

Thanks for your presentation at the AIPLA. It motivated me to comment. I commend the Office on the comparison copy between the proposed rules and the ABA rules and dragging us into the modern age.

I am a member of the Attorney Peer Review Commission of Maryland. My comments are strictly my own and not made in any official capacity, and may not be those any disciplinary authority would make here.

The one suggestion I would make that needs to be considered relates to a practitioner's ownership in a patent in 11.108(i)(3). In these modern times, the old days of the inventor and patent attorney being co-owners are less likely: more likely is that the patent is assigned to an LLC and the patent is owned by the LLC and the LLC is owned by the inventor and patent attorney for tax and liability reasons. The LLC may also have the member interest owned by a corporation at times.

May I suggest the addition to proposed rule 11.108(i)(3):

(i) A practitioner shall not acquire a proprietary interest in the cause of action, subject matter of litigation, or a proceeding before the Office which the practitioner is conducting for a client, except that the practitioner may:

(1) Acquire a lien authorized by law to secure the practitioner's fee or expenses;

(2) Contract with a client for a reasonable contingent fee in a civil case; and

(3) In a patent case or a proceeding before the Office, take an interest in the patent as part or all of his or her fee, or accept an interest in an entity that directly or indirectly owns the patent as part or all of his or her fee.

I also think some explanation as to why all of ABA Rules 6.1 to 6.5 are out might be in order. Certain parts of those rules are designed to avoid implication of adverse interest and the like.

There is also a reference to partner which I see under the definition includes shareholders. However, you might want to recheck 11.501, 11.117(b) and 11.503 with an eye to insuring that the situation of where a person is a principal of a firm, but not necessarily an owner or shareholder is covered. Basically, the Office needs to insure that the practitioner is not absolved of responsibility to insure compliance with the Office Rules merely because the status, even as an associate does not technically fall within the rule.

If you have any questions, you can of course call and discuss or send me an e-mail in reply. I will leave my e-mail off so it is not so blatantly public.

/s//Brooke Schumm III/

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