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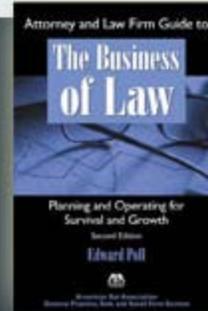
Week of **October 13, 2009**

A Question of Ethics

A reporter recently called me to ask for comment on a news item that I found shocking. It concerned a St. Louis law firm that sued one of its former associates, alleging that the attorney secretly signed up and hid clients from the firm and prevented it from collecting possibly millions in attorneys' fees. It has been years since I've heard of someone attempting to commit fraud like this, but in today's economic conditions, with more lawyers more frightened than ever about their futures, it may not be the last such incident.

Such conduct can potentially involve a host of ethical lapses: the theft of property, breach of duty of loyalty to the employer, moral turpitude and more. Interestingly, none of these are specifically singled out in the ABA's Rule of Professional Conduct 8.4, which governs misconduct. However, the ABA's commentary on that rule is highly instructive:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.



*Attorney and
Law Firm
Guide to
The Business
of Law*

Do you want to:

- Be more successful by design than by accident?
- Be more profitable?
- Attract more clients?
- Have your clients pay on time?
- Have greater control of your practice?
- Have greater peace of mind?

If your answer is yes to any one of these questions, you must read this book. I have simplified the mystical process of operating a law practice so anyone can be more effective with his or her clients and become more profitable.

This expanded edition adds 27 new chapters on marketing, personnel issues, technology, time management, clients' trust accounting, opening a new office, and changing from one practice to another. As I say in my Preface to the Second Edition, "When we lawyers act in a more business-like manner, we tend to be more effective in the delivery of our services." The many ready-to-use forms and charts are available on a disk in Word Perfect, Excel, and Quattro Pro formats.

From this it's just a short step to the recent announcement that Florida's Bar Board of Bar Examiners, through its Character and Fitness Commission, will examine applicants' Facebook and MySpace websites under certain circumstances, such as when the Bar is notified of previous evidence of substance abuse. The fact is that no one is invisible on the Internet. Social networking sites are public and no permission is required to review such public pronouncements, whether for initial application to the Bar or even license recertification. And this does not even take into account what an opposing counsel might do with the information.

From fraud in client billing to a flippant reference about drug or alcohol use on a personal web page might seem like quite a stretch, but all come under the heading of moral turpitude. Is it so far from this to "temporarily borrowing" from client trust funds to pay a bill?

Personal Commentary

Jeffrey Immelt, chairman and CEO of GE, said in an interview with Charlie Rose that "This (our financial crisis) is more than just a cycle... for my generation. This country will come out on the other side looking differently..." This is a set point.

Today, I'm doing a presentation about law firm business models with Immelt's comment in mind. How has your practice changed over the last year? What are you doing to equip yourself for the next year? These are questions that I continue to ask myself as well.

Best wishes,

Ed Poll

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