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Practice Settings that Raise Ethical Issues for Agricultural Lawyers

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PRACTICE SETTINGS THAT RAISE ETHICAL ISSUES FOR AGRICULTURAL LAWYERS

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I. INTRODUCTION 407
II. MODEL RULES AND PRACTICE SETTINGS TO WHICH THEY APPLY 410
A. Situation #1 410
1. Competence as a Rule of Professional Conduct 411
2. The Trend Towards Specialization 412
3. Diligence and Promptness 413
4. Competence and Professional Malpractice 413
5. Applying Model Rule 1.1 to Situation #1 416
B. Situation #2 417
1. Establishing the Attorney-Client Relationship 417
2. The Obligation to Communicate with a Client Under Model Rule 1.4 419
3. Rule 1.5 Mandates Attorney's Fees to be Reasonable 419
4. Terminating the Attorney-Client Relationship Under Model Rule 1.16 422
5. Applying Model Rules 1.4, 1.5 and 1.6 to Situation #2 424
C. Situation #3 425
1. Difficulties Inherent in Multiple Representation ... 426
2. Ethical Problems Presented by Representation of a Partnership 428
3. Applying the Model Rules to Situation #3 430
III. CONCLUSION 432

I. INTRODUCTION

The problems and issues in agricultural law are as diverse as

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any other area of law. Agricultural attorneys are called upon to create entities, render opinions, and provide advice on complex issues. The training and experience needed by an agricultural attorney ranges from narrow areas of the law commonly found only in a specialized law practice to broad areas of the law found in a general practice setting. An agricultural attorney may be presented with complex issues involving psychology, business administration, engineering, or physical and social sciences.

Agricultural law presents two types of challenges. The first challenge entails the understanding of complex legal issues. One commentator has described the first challenge as a mixture of theoretical issues and practical issues.[1] The theoretical issues include those unique to agriculture, such as special use valuation of property subject to estate taxes,[2] chapter 12 of the Bankruptcy Code,[3] and the Packers and Stockyards Act.[4] These areas require familiarity with specialized statutory rules and regulations that nonagricultural lawyers seldom encounter. Of great significance to the everyday business and family lives of agricultural producers, these issues raise questions which range from contracts and torts to property law.

The second challenge facing an agricultural attorney arises from the practice of law in a rural setting and involves resolution of professional responsibility issues. Attorneys located in rural areas serve their agricultural clients well because these attorneys are familiar with their clients and their needs.[5] Agricultural law clients are primarily individuals, not businesses or corporations.[6] Thus, the attorney-client relationship is akin to a friendship[7] because most are acquainted through community or social activities.[8]

Personal reputation plays a pivotal role in a country law practice. An attorney's clients are his source of public opin-

1. DONALD L. UCHTMANN ET AL., AGRICULTURAL LAW: PRINCIPLES AND CASES 2 (1981).

2. MINN. STAT. §§ 291.005-.47 (1990 & Supp. 1991).

3. 11 U.S.C. §§ 1201-1231 (1979 & Supp. 1992).

4. 7 U.S.C. §§ 181-231 (1980 & Supp. 1992).

5. Donald D. Landon, *Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice*, 1985 AM. B. FOUND. RES. J. 81, 85 (Winter 1985).

6. *Id.* at 89.

7. *Id.* at 94.

8. *Id.* at 85.

ion.[9] Advertising is "by word of mouth."[10] The familiarity of small town practice breeds client possessiveness which complicates an attorney's work.[11] Failure to understand the separation of the attorney's professional and private roles may result in client suspicion about his attorney's friendliness toward the opposing party.[12] The attorney's approach to these situations is a classic example of "impression management" because of the constant appraisal by clients and community.[13]

The challenges faced by agricultural attorneys are the basis for this discussion of ethical issues. Ethical issues arise and require attention in any law practice. Several state bar associations require professional responsibility courses as part of mandatory continuing education requirements.[14] The American Agricultural Law Association mandates that its educational programs devote a portion of each program to ethics and professional responsibility.

The purpose of this article is to raise awareness of the issues and ethical considerations arising in certain practical situations. In the following sections, several important rules from the ABA Model Rules of Professional Conduct[15] are highlighted by hypothetical situations commonly faced by agricultural attorneys. Following each situation is an analysis of the professional responsibility issues which are raised and which must be considered. This article is intended to clarify the ethical issues raised by each situation and the necessary resolution within the framework provided by the Model Rules.

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9. *Id.* at 89.

10. Landon, *supra* note 5, at 98.

11. *Id.* at 110.

12. *Id.* at 94. Attorneys in rural settings often work with each other on a regular basis. As a result, they are friendly towards one another. *Id.* at 94-95.

13. *Id.* at 99.

14. *See generally Mandatory Continuing Legal Education (MCLE)*, ISSUES UPDATE 1992 (ABA Div. for Bar Serv.), June 5, 1992, at 13. As of June 5, 1992, thirty-seven states required from eight to fifteen hours of continuing legal education courses each year. Three states have specified requirements that apply only to newly-admitted lawyers. *Id.*

Training in ethics is a component of many of these mandatory requirements. For example, Pennsylvania attorneys have a five hour requirement in legal ethics and professionalism; New Hampshire requires that two of the twelve required hours be devoted to the study of legal ethics, professionalism, malpractice prevention, substance abuse or attorney-client disputes. *Id.*

15. MODEL RULES OF PROFESSIONAL CONDUCT (1983) (amended 1993).

II. Model Rules and Practice Settings to which They Apply

A. Situation #1

A two person law firm has been given an opportunity to represent a client who employs a Florida based crew leader. The crew leader provides a crew of migrant farm workers to harvest the crop on the client's farm. Farm labor is hard to find in the area, and this is an excellent opportunity for the client to hire enough workers to harvest the crop at an ideal time. The crew leader and crew will live in facilities provided by the client.

At the first meeting with the client, one of the partners was asked to provide advice on labor law applicable to farm labor. The client has had several labor problems and is presently involved with the United States Department of Labor regarding disputed violations stemming from a recent inspection of the client's farm.

Following the first meeting, the client mentioned that she is interested in having someone review her estate plan. She also wanted to discuss an accident her husband recently had while working with a new piece of equipment. It has been some time since an attorney had reviewed the estate plan. The property has since risen steadily in value with a present net value of nearly two million dollars. Several of the client's children are interested in continuing the farm business, while others are primarily interested in the cash proceeds from the sale of the business.

The client's husband was recently hospitalized for several weeks as a result of injuries he received when a farm machine came apart during operation. He has partially recovered from his injuries but will never regain complete use of one leg or sight in his left eye. The husband had been an official in the National Football League before the accident. His injuries and the resulting disability forced retirement from that position.

The opportunity to represent this client would be of real benefit to the firm. In the past few years, real estate title work, mortgage financing, municipal representation and estate administration have been the firm's main emphasis. Having the chance to represent a client of substantial wealth would give the firm visibility as well as substantial fees to support continuing growth. The partners are uneasy about undertaking the estate planning and labor law aspects of the client's affairs, but

the client has stated that she wants one firm to represent all her interests. The partners are willing and able to learn some new areas of the law. After all, how hard could it be?

The foregoing situation raises at least four professional responsibility questions. First, the competency of the law firm to represent the client must be established. Second, the issue of increased specialization in the practice of law is raised. Third, the law firm must consider the duties of diligence and promptness owed to their existing clients. Finally, the firm must consider the possibility of professional malpractice arising from their decisions.

1. Competence as a Rule of Professional Conduct

The law has long recognized that an attorney must provide legal services competently. However, lawyer competence was not explicitly required as an ethical requirement until the American Bar Association adopted the Model Code of Professional Responsibility in 1969. The Code included two disciplinary rules relating to competence and addressed the issues of neglect and adequate preparation.[16]

Since that time, the American Bar Association Model Rules of Professional Conduct have expanded the ethical obligation of competence and clearly elaborated the concept's preeminent position. Model Rule 1.1 identifies the requisite elements of competent representation as the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[17] This formulation resembles the elements of competence most commonly cited as the standard of care in malpractice cases: skill, knowledge, care, diligence and capacity.[18]

The American Law Institute-American Bar Association Committee on Continuing Professional Education additionally has provided another respected and widely-used definition of competence:

> Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of

16. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 6-101(A)(3) and 6-101(A)(2) (1981).

17. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (1993).

18. *See generally* RONALD E. MALLEN AND JEFFREY M. SMITH, LEGAL MALPRACTICE § 15.3 (1989); CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 5.1 (1986).

law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally, and physically capable. Legal incompetence is measured by the extent to which an attorney fails to maintain these qualities.[19]

2. *The Trend Towards Specialization*

One of the obvious consequences of the increasing complexity of the law is the difficulty in maintaining competence in multiple areas of practice. As a result, many attorneys limit their practice to one or two areas of law. While this de facto specialization has been a trend for several years, the impetus toward official recognition and regulation of specialization by attorneys came from the 1990 decision of the United States Supreme Court in *Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*.[20] In *Peel*, the Supreme Court clearly acknowledged that states may not categorically prohibit attorneys from advertising specialty certifications by bona fide private organizations.[21]

To conform with the *Peel* decision, the American Bar Association amended the Model Rules in August 1992 to permit attorneys to advertise their specialist certifications.[22] Under the revised Model Rule 7.4, an attorney must provide a disclaimer if certification is from an organization not approved by the appropriate regulatory authority.[23] As of January 1992, fifteen states have enacted programs to recognize various legal specialties.[24]

Simultaneous with the amendment to Rule 7.4, the ABA

19. Robert E. O'Malley, *A Model Peer Review System; Excerpts from Discussion Draft*, 504 ALI-ABA 105 (April 15, 1980).

20. 496 U.S. 91 (1990).

21. *Id.* at 106-11.

22. *See* 8 ABA/BNA Lawyer's Manual on Professional Conduct No. 15 at 262 (Aug. 26, 1992) (amending Model Rule 7.4, which covers communication of fields of practice and certifications).

23. *Id.*

24. 21 ABA/BNA Lawyers' Manual on Professional Conduct 4001 (Jan. 29, 1992). The 15 states are Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, South Carolina, Texas, and Utah. *Id.*

House of Delegates passed a resolution requiring the ABA to establish standards for accrediting private organizations which certify attorneys as specialists.[25] With input from state bar representatives, such standards and procedures are now in the formulation stages.[26]

3. Diligence and Promptness

The duties of diligence and promptness are implicit in the Model Rule's prohibition of neglect. Model Rule 1.3 outlines these requirements stating that: "[a] lawyer shall act with reasonable diligence and promptness in representing a client."[27] Similarly, Model Rule 3.2 requires the lawyer to provide adequate representation.[28] Under Model Rule 3.2, "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."[29] Not only must the attorney be competent to handle the client's legal needs and possess the necessary knowledge and skills, but he must use those capabilities diligently and expeditiously to achieve the client's objectives.

4. Competence and Professional Malpractice

In examining the relationship between competence and malpractice, it is important to recognize the interests protected by these concepts. Professional liability examines a single relationship between an attorney and a client who is complaining of the quality of legal services provided. While the outcome of the dispute may significantly affect the profession through adverse publicity and loss of public faith and confidence, the main issue in a professional malpractice suit focuses on the attorney-client relationship. The purpose of personal liability is protection of client interests. In contrast, the Model Rules of Professional Conduct are designed to protect much broader interests.

The objectives of the Model Rules include a wide range of considerations, including the public image of the profession.[30]

25. 8 ABA/BNA, *supra* note 22, at 262.
26. 21 ABA/BNA, *supra* note 24, at 4003.
27. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.3 (1993).
28. For complete text of Rule 1.1, see *infra* note 42.
29. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.2 (1993).
30. In the preamble to the Model Rules, the functions of an attorney are described as an advisor, a negotiator, an advocate, an intermediary, and an evaluator.

As members of a profession, who have sworn to support, obey and defend the laws and legal institutions created under our state and federal constitutions,[31] attorneys have an obligation to practice in a way that conforms to these standards. The main reason for having both a rule of discipline and a tort law remedy is to insure public trust and confidence in the profession and the legal system itself.[32] The Model Rules recognize that the Bar has a responsibility to ensure that the public interest is properly served. The Preamble to the Model Rules clearly states:

> The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.
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> . . .
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> The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.[33]

The Scope of the Model Rules furthers the relationship between the Rules and professional malpractice by stating:

> Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the

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MODEL RULES OF PROFESSIONAL CONDUCT Preamble ¶ 2 (1993). In all of these areas, the Rules require a lawyer to be competent, prompt and diligent. *Id.*

31. *See, e.g.*, 42 PA. CONS. STAT. § 2522 (1981) (requiring an attorney's oath).

32. 1 GEOFFREY C. HAZARD, JR. AND W. WILLIAM HODES, THE LAW OF LAWYERING, § 1.1:102 (2d ed. 1990 & Supp. 1992).

33. MODEL RULES OF PROFESSIONAL CONDUCT Preamble ¶¶ 9, 11 (1993).

> purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.[34]

The courts have taken a more independent approach to resolving the question of whether the standards of professional conduct are relevant in determining malpratice liability. In *Lipton v. Boesky*,[35] the Michigan Court of Appeals noted that the "Code of Professional Responsibility is a standard of practice for attorneys which expresses . . . the standards of professional conduct expected of lawyers in their relationships with the public, the legal system and the legal profession."[36] In the court's opinion, "[h]olding a specific client unable to rely on the same standards in his professional relations with his own attorney would be patently unfair."[37] Therefore, the court held that "as with statutes, a violation of the Code is rebuttable evidence of malpractice."[38]

In *Woodruff v. Tomlin*,[39] the United States Court of Appeals for the Sixth Circuit noted that the Tennessee Code of Professional Responsibility "does not undertake to define standards for civil liability of lawyers for professional conduct. . . . Nevertheless, it certainly constitutes some evidence of the standards required of attorneys."[40]

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34. MODEL RULES OF PROFESSIONAL CONDUCT Scope ¶ 6 (1993).

35. 313 N.W.2d 163 (Mich. Ct. App. 1981).

36. *Id.* at 166. Defendant counsel was charged with several separate instances of malpractice, including failure to oppose a motion for summary judgment against a client who was represented by defendant counsel, where counsel had petitioned to withdraw. *Id.* at 164. The motion for summary judgment was heard at the same time as defendant counsel's motion to withdraw. *Id.* The court first granted the motion for summary judgment, then the motion to withdraw. *Id.* Defendant counsel argued that since plaintiff appeared at the hearing on both motions with new counsel, he was no longer obligated to represent the plaintiff's interests. *Id.*

37. *Id.* at 166-67.

38. *Id.* at 167.

39. 616 F.2d 924 (6th Cir. 1980).

40. Woodruff v. Tomlin, 616 F.2d 924, 936 (6th Cir. 1980) (quoting 5A Tenn. Code Ann. p. 89 (1978)). Defendant counsel represented the plaintiff who was injured in an automobile accident while a passenger in a car driven by her sister. *Id.* at 927. Plaintiff alleged that the defendant was negligent in conducting the investiga-

These cases make it clear that courts may consider the Model Rules to resolve professional liability disputes.[41] As such, counsel must be knowledgeable of both the requirements and the obligations imposed by the Rules.

5. *Applying Model Rule 1.1 to Situation #1*

The opportunity presented to the partners in representation of these clients is like many opportunities that arise in a law practice. There is potential for significant benefits and professional opportunity. The opportunity requires the partners to devote time to legal education on issues that are not familiar. Model Rule 1.1 applies to the attorney whose client has a dilemma in legal areas not clearly understood by the attorney.[42]

Because competence is a necessary ingredient in the attorney-client relationship, an attorney should not move toward representation in unfamiliar areas until the attorney's competence is assured.[43] If the attorney does not take time to gain competence, the attorney cannot proceed in the case. On the other hand, if the attorney takes the time to gain competence the attorney may have to forego professional obligations owed to other clients. If time away from the matters of other clients causes delays, the partners have multiplied their ethical problems rather than solved them. In this context, the rela-

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tion, in trial preparation, and in the trial itself. *Id.* at 928. Defendant counsel was also representing the driver of the car in a suit to recover damages. *Id.* at 927. He also served as local counsel for the insurance company that provided insurance coverage for the vehicle. Defendant counsel represented the plaintiff, the driver of the vehicle and the vehicle's owner in a suit brought by other persons for personal injuries and property damage as a result of the accident. *Id.* In the suit against defendant counsel, plaintiff alleged that counsel was in an inextricable conflict of interest situation that created an absolute duty for him to withdraw as counsel for the passenger if he continued to represent the driver, the vehicle owner and the insurance carrier. *Id.* at 928. Plaintiff asserted that defendant counsel violated the Tennessee Code of Professional Responsibility by failing to disclose the possible effects of the multiple representation and by failing to advise plaintiff that as an injured passenger she had a potential claim against the driver who was also represented by defendant counsel. *Id.* at 935.

41. *See generally* W. R. HABEEB, ANNOTATION, *Malpractice: Liability of Attorneys Representing Conflicting Interests*, 28 A.L.R.3D 389 (1969 and Supp. 1992) (discussing the relationship between conflicts of interest and professional malpractice).

42. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (1993). Model Rule 1.1 provides:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

43. *Id.*

tionship between competence and diligence is clear. The cost to the partners in undertaking representation in unfamiliar areas is an increased risk of ethical violations to other clients. In such situations, any benefit to the partnership may well be outweighed by potential damage to other clients.

B. Situation #2

After agreeing to represent the client in situation number 1, the partnership wrestles with how to calculate its fees for various services and how to describe those fees to the client. After several weeks of activity, the partnership finds itself in over its head and unable to conduct a thorough and complete defense of the labor law violations facing its client. A farmworker advocacy group has recently filed suit against the client, alleging several technical violations of law. As a result, the client faces significant damages as well as attorney's fees and costs. In conducting the defense, the partnership has trouble developing an effective strategy for the client. The firm then decides that the client's interests would best be served by withdrawing as counsel and being replaced by more knowledgeable attorneys. The partners have met several times to discuss the problem, but they have not raised the issue with the client.

The second hypothetical situation raises four new professional responsibility concerns. First, the facts raise issues regarding the creation of an attorney-client relationship. Second, the facts address the issue of appropriate communication by an attorney to a client. Third, the appropriate fee schedule for attorney services must be evaluated. Finally, the issue of when an attorney-client relationship is terminated must be considered.

1. Establishing the Attorney-Client Relationship

The initial question in any discussion of professional responsibility must first focus on whether the parties have entered into an attorney-client relationship. The Scope of the Model Rules provides that "principles of substantive law external to the Rules themselves, [such as contract law principles] determine whether a client-lawyer relationship exists."[44]

44. MODEL RULES OF PROFESSIONAL CONDUCT Scope ¶ 3 (1993).

In general, the attorney-client relationship arises when the client has requested and the attorney has agreed to provide legal services.[45] The intent of the parties is critical in this determination. Intent may be determined from express or implied conduct which creates the expectation that professional services will be rendered.[46] The attorney has the responsibility to determine whether an attorney-client relationship exists in a given situation.[47]

Unusual situations may give rise to attorney-client relationships.[48] If a client approaches an attorney seeking advice which the attorney willingly provides, an attorney-client relationship exists between them.[49] Some ethical duties may attach even earlier. For example, the duty of confidentiality under Rule 1.6 attaches when the attorney agrees to consider representation of the client.[50] Even questions posed in casual conversation or at social functions may become the basis of a professional responsibility case. An attorney must be mindful that as others seek to draw on her knowledge and experience, the propriety and quality of the advice given may later be the subject of inquiry. The attorney must use the expertise that her experience provides to evaluate whether an attorney-client relationship exists.

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45. *Id.*

46. *See* Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686, 693 (1980).

47. MODEL RULES OF PROFESSIONAL CONDUCT Preamble ¶ 11 (1993).

48. *See, e.g., Togstad*, 291 N.W.2d 686. Plaintiff consulted defendant counsel about a potential medical malpractice claim against a physician who treated her husband. *Id.* at 690. Consultation with the defendant counsel took place fourteen months after the medical treatment. *Id.* After discussing the facts of the case the plaintiff, defendant counsel informed plaintiff that he did not believe she had a viable cause of action. *Id.* He further stated he would discuss it with his partners. *Id.* No fee arrangements were discussed, no medical authorizations were requested, and no bill was presented to the client. *Id.* When the plaintiff did not hear from defendant counsel, she assumed that she did not have a case. *Id.* Plaintiff testified that in her conversations with defendant counsel he did not advise her to seek other counsel or explain that the statute of limitations was two years. *Id.* After the statute of limitations had expired, plaintiff conferred with other counsel who concluded that plaintiff had had a meritorious claim against the physician. *Id.* Plaintiff then charged defendant counsel with legal malpractice for failing to take reasonable steps to evaluate the case before refusing to pursue the case and for failing to advise plaintiff of the two year statute of limitations. *Id.* When asked why she did not confer with other counsel until after the two year statute of limitations had run, plaintiff responded that she had relied on defendant counsel's indication that she had no colorable claim. *Id.*

49. MODEL RULES OF PROFESSIONAL CONDUCT Scope ¶ 3 (1993).

50. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 cmt. 2 (1993).

2. *The Obligation to Communicate with a Client Under Model Rule 1.4*

One of the most frequent complaints a client has about his attorney is the failure of the attorney to provide regular updates to the client.[51] The attorney is the client's primary source of information. Failure to give adequate information or to respond to client calls and letters creates immediate client suspicion about the quality of the attorney's services.[52] Keeping an open line of communication is the easiest way to avoid this problem.

The Model Rules require the attorney to maintain an open line of communication with the client, to respond to reasonable requests for information, and to explain matters so the client can make informed decisions.[53] The Rules impose a duty to promptly inform the client of new developments and to give sufficient information to enable the client to understand the significance of those developments and their implications.[54] Providing periodic updates to the client is a valuable way to express interest and concern to the client. Such client contact not only fulfills the attorney's professional responsibility but also is a good business practice.

3. *Reasonable Attorney's Fees: Model Rule 1.5*

Under Rule 1.5(a),[55] the agricultural attorney should observe that by directing that fees be reasonable, the Model

51. Failure to communicate is frequently involved in charges of an attorney's failure to zealously pursue a client's claim and in cases of fraud. HAZARD, *supra* note 32, § 1.4:102 at 84.

52. *Id.*

53. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4 (1993) reads as follows: (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

54. *Id.*

55. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5 (1993). That rule reads as follows:

Rules impliedly prohibit unreasonable fees.[56] This directive does not permit an unreasonable fee even where a client agrees to pay according to specified terms.[57] If this had been the drafters' intent, language specifically allowing for a contractual override provision would have been inserted into the rule. The absence of such language suggests an absolute intent to prohibit unreasonable fees.

Model Rule 1.5 also lists factors used to determine the reasonableness of a fee.[58] The list does not refer to the client's ability to pay. The factors listed in the rule include the time required for the case and its urgency, the complexity of the legal issue, the attorney's experience level, the impact on other employment opportunities, customary fees in the locality for similar services, the amount involved in the case and the results obtained, the relationship with the client, and the basis of the fee.[59] The Model Rules' goal of maintaining attorney integrity and honesty and fair-dealing would not be served by setting fee schedules based on a client's ability to pay.[60]

A review of the factors listed in Rule 1.5(a) provides a practical approach to the question of reasonable fees.[61] While the Model Rules focus considerably on the amount of time a representation may require, one factor is devoted solely to the legal community's customary fee for similar services. While mini-

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(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

56. HAZARD, *supra* note 32, § 1.5:201, at 107.

57. *Id.*, § 1.5:101, at 94.

58. *See supra* note 55 for the full text of Rule 1.5.

59. *See supra* note 55 for the full text of Rule 1.5.

60. *See supra* text accompanying note 33.

61. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(a) (1993).

mum fee schedules within the bar are prohibited,[62] the cost of similar legal services is a permissible consideration in fee structuring.

Another factor focuses on the prior professional relationship between the attorney and the client. Standing alone, this factor may seem to add little toward improving the relationship between the attorney and the client, but when coupled with Model Rule 1.5(b), its need is obvious. When an attorney has had several prior opportunities to provide service to a client, a personal and professional relationship has formed. Because different types of legal services require different fee structures, regular clients may gain a broad understanding of the cost of legal services and how such costs are calculated. Because new clients do not have this advantage, the attorney must provide this information to the client.

Rules 1.4 and 1.5(b) are ideally suited to complement each other. Since an attorney has an obligation to keep a client informed about representation in a particular matter under Rule 1.4, an excellent start to that relationship may be a frank discussion with the client concerning the cost of the representation at the initial interview. Engagement letters are a popular method used to improve client relations. Attorneys can easily incorporate fee schedules into the letter. Thus, engagement letters can improve client relations and ensure that professional responsibility standards are upheld.

Even though the rule leaves the method of client communication to the attorney's discretion, clearly the rule prefers written communication.[63] Some states require that the fee schedule be provided to the client in writing.[64] Whether local rules require the communication to be in writing or leave the issue to the attorney's discretion, it is best to use the written word.

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62. *See generally* Goldfarb v. Virginia State Bar, 421 U.S. 773, 781 (1975) (prohibiting a fixed, rigid price floor which required no individualized information to set legal fees).

63. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(b) (1993).

64. *See, e.g.*, PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT Rule 1.5(b) (1988), which provides: "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation."

4. *Terminating the Attorney-Client Relationship Under Model Rule 1.16*

When evaluating an attorney's competence, there is an implicit obligation for the attorney to decline representation, in areas where the attorney lacks competence.[65] In addition, the attorney is expected to inform his client if the legal problem is beyond his ability.[66] Too often, however, the decision to represent a client is made with the optimistic expectation that the necessary education can be easily and quickly obtained, thereby allowing the representation to proceed. It may not be clear until a later time that the decision to proceed was in error. At that point, what are the attorney's options?

Model Rule 1.16 provides two options: The attorney may decline representation at the outset or later withdraw from the case.[67] Withdrawal may be necessary in three situations. First,

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65. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16 (1993). Rule 1.16 reads as follows:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
(1) the representation will result in violation of the rules of professional conduct or other law;
(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
(3) the lawyer is discharged.
(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
(2) the client has used the lawyer's services to perpetrate a crime or fraud;
(3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(6) other good cause for withdrawal exists.
(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for the employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

66. *Id.*

67. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16 (1993).

an attorney must withdraw when it is clear that continued representation will result in violation of the Model Rules.[68] Second, when the attorney is not physically or mentally competent to continue the representation, the attorney must withdraw.[69] Finally, withdrawal is mandated when the client discharges the attorney.[70]

The first two situations provide difficult questions for an attorney. A lucrative representation may cloud an attorney's perspective and the attorney may be inappropriately convinced that the decision to continue a representation is sound and correct. An objective evaluation of the same situation will often result in a much different conclusion. The result may be a loss of representation and a potential sanction under the Rules of Professional Conduct.

The third withdrawal situation of Model Rule 1.16(a) recognizes the power that clients have to control the attorney-client relationship. Under the Rules, clients retain the right to terminate the relationship at any time and for any reason, or for no reason at all.[71]

Rule 1.16(b) provides additional situations where withdrawal from representation may be necessary, provided that withdrawal may be accomplished without material adverse effect on the client's interests.[72] The distinction raised in this section is an important one in understanding the latitude provided to attorneys who want to "fire" their clients. The first half of the distinction allows withdrawal where there will be no material impact on the client. Under these circumstances, the rule does not require the attorney to show good cause or any cause for the withdrawal.[73]

The second half of the distinction allows withdrawal even if there is an adverse effect on the client. Such withdrawals are permitted where justified by the client's adverse or detrimental conduct.[74] Such conduct may make the attorney's job of rep-

68. *Id.*

69. *Id.*

70. *Id.*

71. *See* HAZARD, *supra* note 32, § 1.16:206, at 475.

72. *See supra* note 65.

73. *Id.* Courts, however, may choose to disagree with that conclusion. *See* Lipton v. Boesky, 313 N.W.2d 163, 167 (1981) (holding that at a minimum counsel must have good cause to withdraw).

74. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16(b) (1993). The cli-

resenting the client unreasonably difficult and perhaps impossible.[75]

Rule 1.16(c) recognizes the interests of the court in withdrawal situations. Under that subsection, a court may choose to order counsel to continue representation even though good cause may exist for withdrawal.[76] The court may be influenced by consideration of the cost and delay associated with finding replacement counsel for the unrepresented litigant. Timing the decision to withdraw may also be a factor for a court anxious to move its cases through the system.[77]

Rule 1.16(d) also affirms an attorney's obligation to protect the client's interests despite withdrawal from representation. To protect those interests, the rule describes several specific steps which counsel must take.[78] These steps are not onerous in their own right and do not impose a significant burden on counsel who is withdrawing from representation.

5. *Applying Model Rules 1.4, 1.5 and 1.16 to Situation #2*

In deciding to represent the client, an engagement letter explaining the attorney's understanding of representation serves several important purposes. First, the letter ensures a common understanding of the scope and objectives of the representation. Second, the letter describes the fee schedule which will apply to the representation. If fees were not discussed at the initial interview, the engagement letter provides clear understanding to the client. Any objections to the fee arrangement can be resolved early, thus avoiding problems after the case is closed. In selecting a proper fee arrangement, the factors listed in Rule 1.5(a) can be particularly helpful to an attorney embarking in a new area of the law.[79] The attorney is likely unfamiliar with the amount of time required to become competent in the legal area presented.[80] While a fee based on time alone is likely the most cost-effective way to address such

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ent's conduct may be fraudulent, consist of criminal acts, or be unwarranted and constitute unreasonable interference with the case. *Id.*

75. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16 (1993).

76. *Id.*

77. *See* HAZARD, *supra* note 32, § 1.16:206, at 475; *see also* § 1.16:401, at 483.

78. *See supra* note 65 for the full text of Model Rule 1.16.

79. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(a) (1993).

80. *Id.*

an undertaking, many clients will resist paying fees to educate their attorney.

If a case involves a contingent fee agreement, Model Rule 1.5(c) requires that the agreement be in writing.[81] The document must include the method used to determine the fee, including the percentage or percentages that accrue to the attorney in the event of settlement, trial, and appeal.[82] The agreement should account for litigation expenses and specifically state whether they are to be deducted from the recovery before or after the contingent fee is calculated.

When an attorney concludes that the representation is beyond his or her ability, prompt and effective action must be taken to fulfill her responsibilities to the client.[83] The attorney must explain the situation to ensure that the client has sufficient information to make informed future decisions.

The attorney's paramount professional responsibility in this situation is withdrawal without material adverse effects to the client. Transferring representation to qualified counsel requires coordination of previously scheduled matters. The transfer must allow new counsel adequate time to prepare for trial without the need for court delay.

C. Situation #3

For several years a law firm has represented members of a business and agricultural community. One member of the firm owns a partial interest in an abstract and title insurance company that operates in the county. The attorney is one of several attorneys whom local banks consult for legal work in mortgage and lien enforcement transactions. Her work for local banks has resulted in several estate planning and administration referrals.

A prominent farm and business operator recently called the attorney's office to discuss a new business venture. The name sounded somewhat familiar to the attorney. A few hours later she remembered the client was connected with an environmental representation in which she was involved. The matter concerned a water well on agricultural property which was

81. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(c) (1993).
82. *Id.*
83. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16 (1993), *supra* at note 65.

William Mitchell Law Review, Vol. 19, Iss. 2 [1993], Art. 6

contaminated with a chemical commonly found in industrial solvents. The source of the contamination was a mystery because no manufacturing facilities in the surrounding area used the chemical. People involved with the investigation suspected that the chemicals were illegally dumped on nearby property. Eventually, the chemicals entered the groundwater. The source of the contamination was never found.

At the initial office conference with the new client, the client describes a new business venture. He proposes the creation of a partnership comprised of seven partners. He will be one of the principal partners. When he names the other six partners, the attorney notices that two of the partners were defendants in previous litigation she pursued on behalf of another client. The earlier litigation involved a commercial dispute arising from the operation of another business.

The client is authorized by the other partners to retain counsel for the partnership and to begin drafting the partnership agreement. He believes this law firm is ideally suited to perform the work necessary to form and maintain the partnership.

The situation raises two important issues: multiple representation and representation of a partnership.

1. Difficulties Inherent in Multiple Representation

When an attorney represents multiple clients having a common objective and no apparent conflicting interests, the attorney's role includes giving advice on relevant legal considerations, suggesting alternative ways of meeting common objectives, and drafting the documents necessary to accomplish those objectives. The above situation illustrates how multiple representation is involved in formation of a partnership or corporation. These types of representation are governed by Model Rule 2.2. Rule 2.2 provides that an attorney must ensure that each client is informed of and consents to the risks and advantages involved in multiple representation.[84]

84. MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.2 (1993). The rule reads as follows:

(a) A lawyer may act as intermediary between clients if:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved on

Multiple representations often involve a potential conflict. Each client must be aware of the effect of joint representation on the attorney's ability to protect an individual client's confidential information and other legal interests.

If the attorney is acting as an intermediary in multiple representation situations, she must be aware of the principle known as the "joint confidences" or the "co-client" rule.[85] The rule provides that neither the attorney-client privilege nor the confidentiality obligation of the attorney attaches between and among joint clients with respect to all matters relating to the joint representation.[86] In effect, the co-client rule means that if one of the clients discloses to the attorney that he has done or intends to do something that might adversely affect the interests of the other clients, the attorney is required to disclose the information to the other clients.[87]

To decrease the likelihood of inter-client confidentiality conflicts, the attorney should explain the implications of common representation to the joint clients.[88] The attorney should advise from the beginning that any disclosed secrets of the co-

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terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interest of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so request, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

85. *See, e.g.*, Wortham & Van Liew v. Superior Ct., 233 Cal. Rptr. 725 (1987). In *Wortham*, the attorney for a partnership, in an action by one partner to dissolve the partnership, refused to disclose information about the partnership, asserting the attorney-client privilege. *Id.* at 726. The court compelled the testimony, holding that under the California Joint Client Rule of Evidence, the attorney must divulge all partnership information to all partners. *Id.* at 727-28.

86. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.2, cmt. 6 (1993). This provision may be restricted by client instructions under Rule 1.6.

87. *Id.* In a common representation, the attorney is required to keep each client informed and maintain confidentiality of information relating to the representation.

88. MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.2(a)(1) (1993). *See also* MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.2 cmt. 8 (1993). The comment provides "the lawyer is required to consult with the clients on the implications of [acting as an intermediary], and [should] proceed only upon consent based on such a consultation." *Id.*

clients, relevant to the common enterprise, will be disclosed by the attorney to the other co-clients.[89] Refusal to agree to this disclosure, may indicate that group harmony is tenuous. The attorney should probably reconsider her role as an intermediary.[90]

An attorney must also recognize that Model Rule 2.2(a)(2) permits multiple representation only if "there is little risk of material prejudice to the interest[s] of any of the clients if the contemplated resolution is unsuccessful."[91] Thus, if unsuccessful resolution of the matter would cause material harm to one of the clients, multiple representation is prohibited.

Where an attorney agrees to joint representation, she should help her clients reach an agreement on outstanding issues. She should not, however, seek to impose the terms of an agreement on any one of the clients. In particular, she should avoid advancing the interests of one client to the detriment of another.

2. *Ethical Problems Presented by Representation of a Partnership*

An attorney's ethical duties flow from the attorney-client relationship. As a result, proper identification of the client in any representation is vital to an analysis of ethical obligations. When an attorney is retained to represent a partnership, the partnership is the client.[92] Also, individual partners may or

89. *Id.*

90. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.2 cmt. 4 (1993). The Comment provides that if the relationship between the parties has assumed definite antagonism, the client's interests cannot be fairly represented by intermediation. *Compare* MCCORMICK ON EVIDENCE § 91, at 128 (4th ed. 1992) (stating "it will often happen that the two original clients will fall out between themselves and become engaged in a controversy. . . .") *with* FED. R. CRIM. P. 44(c) (stating "[u]nless it appears that there is good cause to believe no conflict of interest is likely to arise [due to joint representation], the court shall take such measures as may be appropriate to protect each defendant's right to [separate] counsel.").

91. *See* text of Rule 2.2(a)(2), *supra* note 84.

92. ABA Standing Comm. on Ethics and Professional Responsibility, Formal Op. 91-361 (1991). That opinion provides:

> A partnership is an organization within the meaning of Rule 1.13. Generally, a lawyer who represents a partnership represents the entity rather than the individual partners. Confidential information received by the lawyer while representing the partnership is "information relating to the representation" of the partnership that normally may not be withheld from the individual partners.

may not be clients, depending on the facts in a particular situation.

Model Rule 1.13 governs representation of a partnership, and provides that "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."[93] But, because it is permissible under Rule 1.13(e)[94] to represent both an organization and one or more of its representatives or owners, the lawyer who undertakes such dual representation ultimately faces the difficulties inherent in multiple representation.

The obligations and limitations of Model Rule 1.7 must also be considered in this type of situation. Rule 1.7 prohibits representation of concurrent opposing clients.[95] Thus, the partnership's attorney may not represent the interests of one partner in matters connected to the partnership without the informed consent of the partnership and all other adverse partners. Even though an attorney undertakes representation of a partnership, the attorney does not enter into an attorney-client relationship with each member of the partnership.

Whether or not a partnership is a legal entity depends on the law of the relevant jurisdiction. Security Bank v. Klicker, 418 N.W.2d 27 (1987) ("a [general] partnership may be considered a legal entity if the parties dealing with it treat it as one"). *Id.* at 31. *See generally* WOLFRAM supra note 18, § 8.3.5.

93. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.13 (1993).

94. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.13(e) (1993). Rule 1.13(e) provides:

> A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

95. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7 (1993). Rule 1.7 states:

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
>
> (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
>
> (2) each client consents after consultation.
>
> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.13(c) expressly recognizes the provisions set forth in Rule 1.7. MODEL RULE OF PROFESSIONAL CONDUCT Rule 1.13(c) (1993).

Thus, the attorney would not be barred from representing another client on a matter adverse to one of the partners' interests unrelated to the partnership's affairs. Overall, care must be taken to avoid the creation of an attorney-client relationship with individual partners.[96]

3. *Applying the Model Rules to Situation #3*

In this situation, the client seeks your assistance in creating a partnership with six other partners. He will be one of the principal partners and is authorized by the other partners to retain counsel for the partnership and to begin drafting the partnership agreement.

Subject to the requirements of Model Rule 2.2, an attorney may represent several co-clients in forming a business. However, each co-client must give consent and each co-client must maintain identical interests in the partnership. The attorney may represent the individual partners in valuation of their respective contributions to the partnership. However, once the partnership is in existence as a legal entity, the attorney may act as counsel only for the partnership. The partnership, not the individual partners, is the client.

It is the attorney's responsibility to determine if the contemplated partnership arrangement is a legal entity under the laws of the relevant jurisdiction. If so, the attorney is bound by Rule 1.13(d).[97] If the attorney clarifies from the beginning that her role is as counsel to the partnership and not to the individual partners, the potential for misunderstanding will be significantly reduced.

The fact that the attorney's firm often does work for local banks presents a potential conflict. If the forming partners, for example, obtain financing from a bank which the attorney represents on a regular basis, and a controversy arises between the bank and the partnership, a conflict may arise under either

96. *See, e.g.*, Margulies v. Upchurch, 696 P.2d 1195 (Utah 1985) (recognizing that a limited partnership is an entity like a corporation but holding that limited partners reasonably believed partnership's lawyer represented them individually as well).

97. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.13(d) (1993). That rule provides:

> In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Rule 1.7 or Rule 1.9.[98] Rule 1.9 prohibits representation against a former client in a matter "substantially related" to the prior matter where the clients' interests are "materially adverse" unless there is informed consent of the prior client.[99] The net result may be the loss of either or both of the clients. In addition to the conflict of interest, the attorney may also suffer the loss of client good-will and business.

The attorney's ownership interest in the abstract and title insurance company in the county raises an issue of the ethical propriety of an attorney providing services to non-clients through an ancillary business.[100] Since the business is separate from the law practice and operated apart from the law practice, no concerns arise regarding safeguarding confidentiality of client files or information. However, use of the abstract and title service as a "feeder" to solicit clients for the law practice, (or vice versa) would be improper.[101]

The attorney's prior representation of another client in a separate matter against two of the forming partners does not pose an immediate conflict. This prior representation should, however, be disclosed to these individuals. Prior representation is a material fact which may affect the client's decision to retain the lawyer as counsel for the partnership. No other information regarding the prior representation should be disclosed. Model Rules 1.6 and 1.9 prohibit the disclosure of any confidential information regarding the prior representation to these two individuals.

The attorney's role in the water contamination dispute involving property adjacent to that of the client is also an issue. Simultaneous representation becomes a concern only if the environmental matter is ongoing. Assuming the environmental dispute has concluded, then the only professional responsibility issues relate to past representation. Model Rules 1.6 and

98. *See supra* note 95. *See also* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.9 (1993).

99. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.9 (1993). *See generally* HAZARD, *supra* note 32, § 1.9:100-402, at 287-313.

100. MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.7 (1991). This Rule was adopted by the ABA House of Delegates in August 1991 and rescinded by the House in August 1992, per Report 10D. 8 ABA/BNA Lawyer's Manual on Professional Conduct No. 15, at 261 (Aug. 26, 1992).

101. *See* MARYLAND STATE BAR ASSN. COMM. ON ETHICS OP. 84-76 (1984). An attorney who owns a title company may solicit other attorneys to use the title company in handling client settlements only if "handling" excludes any legal business.

1.9 apply, prohibiting the use of former representation information to the detriment of the former client.

The environmental issue does not appear to be related to the formation and representation of the partnership. If the environmental dispute should reappear and the former client asks the lawyer to take a position adverse to the new client, the attorney should decline that representation. While the partnership, not the individual, is the client, and the subject matter is unrelated, the working relationship of the attorney with the partnership may substantially affect her relationship with the other client.

III. Conclusion

All practitioners must have a working knowledge of ethical rules and the situations they address. Ethical violations can have a tremendous effect on an attorney's practice. Violations are frequent in the complex area of conflicts of interest and even inadvertent transgressions may be costly. The rules stress the need to maintain the integrity of the profession.

Agricultural law practice, with its close juxtaposition of personal and professional relationships, makes conflicts of interest a common occurrence. An attorney cannot realistically avoid all hints of conflicts because of the frequent interrelationship between present and former clients. Strong personal and professional pressures are placed upon attorneys and law firms to garner new clients and retain old ones. Practitioners must strike a balance between the obligation to maintain high ethical standards and the practicalities of maintaining a viable law practice. Professional responsibility can be promoted through an understanding of and adherence to the ethical rules.