Opinion No. 91-12
November 22, 1991

Topic: Restrictions on right to practice in attorney's employment contract

Digest: Attorney's contract of employment with firm that precludes him for a period of three years from his termination date from calling upon, servicing or soliciting clients that dealt with the firm while he was employed violates Rule 5.6 prohibitions against restricting the right of an attorney to practice after terminating employment with a firm.

Ref.: Illinois Rules of Professional Conduct, Rule 5.6

FACTS
An attorney signed an employment contract with a firm requiring him, in case of termination of employment, among other things, to turn over to the firm any personal notes and reproductions relating to the business and to refrain for a period of three years following termination from calling upon, servicing, or soliciting clients that dealt with the firm during the term of his employment.

QUESTION
Does this agreement violate the provisions of Rule 5.6(a) restrictions on Right to Practice?
**OPINION**

Rule 5.6 provides:

A lawyer shall not participate in offering or making:

a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

The agreement does not appear to be an agreement concerning benefits upon retirement or to be part of a settlement of a controversy between private parties. The Committee is of the opinion therefore that the agreement violates Rule 5.6(a) in restricting the rights of a lawyer to practice after terminating his employment.

Moreover, to the extent that this agreement allows the firm to prevent the attorney from doing work for clients despite the clients' wishes that the attorney do such work, it would appear to be void as contrary to public policy in that it deprives clients of the right to be represented by counsel of their choice. *Corti v. Fleisher*, 93 Ill.App.3d 517, 49 Ill.Dec. 74, 417 N.E.2d 764 (Ill.App. 1st Dist. 1981).

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