

Rule 5.6: Restrictions on Right to Practice

1. Current Kentucky Rule with Official Comments:

SCR 3.130(5.6) Restrictions on right to practice

A lawyer shall not participate in offering or making:

(a) A partnership or employment agreement that restricts the right 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.

Supreme Court Commentary

[1] An agreement restricting the right of partners or associates to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

2. Proposed Kentucky Rule with Official Comments:

SCR 3.130(5.6) Restrictions on right to practice

A lawyer shall not participate in offering or making:

(a) A a partnership or, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

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

~~Supreme Court Commentary~~ Comment

[1] An agreement restricting the right of ~~partners or associates~~ lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the

freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling ~~a claim~~ any controversy on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

3. Discussion and Explanation of Recommendation:

a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.

The proposed KRPC 5.6 is identical to MR 5.6 except for Comment [2] in which the Committee substituted “any controversy” for the MR words “a claim”. The ABA Reporter’s Explanation of Changes to MR 5.6 expresses the Committee’s view. It is adopted by the Committee for purposes of explaining recommended changes and is quoted below.

- ABA Reporter's Explanation of Changes -- Model Rule 5.6

TEXT:

1. Paragraph (a): Add references to shareholders, operating and other similar types of agreements

The reference to a partnership agreement is underinclusive because lawyers also practice in professional corporations and professional limited liability companies.

2. Paragraph (b): Substitute "client controversy" for "controversy between private parties"

This change clarifies that the Rule applies to settlements not only between purely private parties, but also between a private party and the government. See ABA Ethics Opinion 394.

COMMENT:

[1] “[P]artners and associates” has been replaced with “lawyers” in recognition that lawyers associate together in organizations other than traditional law firm partnerships.

b. Detailed discussion of reason for variance from ABA Model Rule (if any).

In Comment [2] the Committee substituted “any controversy” for the MR words “a claim”. The intention is to make the prohibition all inclusive by making it clear that it applies to all controversies, not just claims.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.