Lawyering in the 21st Century

Researching Legal Ethics
Refresher on How to Research Efficiently

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1. **Start with secondary materials to build a good foundation and to find leads to primary law.**
2. **Move to the middle tier for primary authority, the building blocks of your research.**
3. **Use KeyCite to top off your research.**

You may begin your Westlaw research now. Link directly to the indicated Westlaw database by selecting the desired area on the Westlaw Research Pyramid.
Researching Legal Ethics

• Key Research Sources
  – OK State Ethics Rules
    • Title 5 of OK Statutes, mandatory/primary law, based on ABA Rules
  – OK Case Law (mandatory)
    • Specific database of OK ethics cases in Westlaw
  – Annotated ABA Model Rules of Professional Conduct – references to key cases
  – ABA and OK State Advisory Opinions
    • See OBA web site for full-text of opinions
Researching Legal Ethics

• Key Secondary Sources
  – ABA/BNA Lawyer’s Manual on Professional Conduct
  – Restatement of the Law Governing Lawyers
  – Law Review Articles, ALR Annotations
  – Treatises Listed in Prof. Maute’s Syllabus
    • Rotunda, Legal Ethics
    • The Law of Lawyering, looseleaf in print
    • Wolfram, Modern Legal Ethics
  – Books on Legal Ethics in Library Catalog
In Oklahoma, am I allowed to continue representing a client with whom I have begun a romantic relationship?
ABA/BNA Lawyer’s Manual on Professional Conduct

Secondary Source
ABA/BNA Lawyer’s Manual

• Available Online at Law Library’s Website
• Available in Print in Reserve Room
• Provides full-text
  – ABA Rules of Conduct
  – Links to Individual State Ethics Rules
  – Other Ethical Rules (Judicial Conduct, etc.)
  – References to Cases
  – Full-Text of ABA Opinions and Summaries of State Opinions
ABA/BNA Lawyer’s Manual

• Editorial Analysis
  – Provides detailed analysis and discussion of how rules are being applied and interpreted
  – Compares and contrasts different state applications of specific rules

• Current Awareness
  – Contains a weekly newsletter describing developments in legal ethics, malpractice and other professional issues.
Welcome to the Donald E. Pray Law Library at the University of Oklahoma College of Law. We invite you to use our many resources and services, and we hope that you will visit the Library often. Our mission is to support the teaching and research needs of the Law Center’s faculty and students and to serve the scholarly and informational needs of the University, the legal community, and the public. The Law Library strives to provide all our patrons with access to a rich collection of research materials in both print and electronic formats. We welcome your comments and suggestions to help us improve the services we offer.

The recently expanded Donald E. Pray Law Library was completed in 2002. The new Law Library provides an exciting setting for legal research and study. It features the Chapman Great Reading Room, a rare books room, two computer labs, and a total of 50 computer workstations which provide access to a wealth of online resources. A wireless network is also available to law students throughout the Law Library, and network connections and power outlets are available at every seat.

The core of the Law Library’s resources remains its nearly 350,000 volumes and vellum equivalents, and more than 4,000 active serial titles. The Law Library also has access to a large collection of legal and legal-related databases and other online resources. The Law Library is a participant in the Federal Depository Program, which seeks to make available a wide range of government information to our students, faculty, and the public.

The Native American Collection of the Law Library is one of the nation’s largest collections of legal, historical, and cultural materials relating to Native Peoples and has reputation for excellence. In
Editorial Analysis
By Subject

Current Awareness

News & Analysis on developments in legal ethics, malpractice and other professional issues.

- Most Recent Issue
- All Issues

Highlights

Mandatory Fee Arbitration Clauses Remain Unenforceable in California

Public policy still forbids lawyers to include in a retention agreement a provision requiring clients to submit all prospective fee disputes to binding arbitration, the California Court of Appeal, Fourth District, decided. The court finds unpersuasive a 2004 opinion in which three supreme court justices argued that the law has changed on this subject. Page 30

Fee-Sharing Rule Governs Agreement to Divide Fees With Departing Lawyer

A law firm’s agreement to split fees in ongoing cases that a departing lawyer takes with him must comply with the ethics rule that governs fee-sharing agreements between lawyers in different firms, according to the Missouri Court of Appeals, Southern District. Page 31

Out-of-State Lawyer May Represent Clients in Arbitration Matters

A lawyer who is not licensed in a state where the arbitration will take place may represent a client in that state if he has a local attorney to assist with the representation or if the forum court deems it advisable. Page 32

- ETHICS OPINIONS
  - Full text of ABA opinions and summaries of ethics opinions issued by state and local bar associations.
  - ABA Ethics Opinions
  - State Ethics Opinions
  - Index
  - Search Opinions

Related Links

- Opinion Links - Full text of state ethics opinions available online, provided by state bar associations.

- ETHICS RULES
  - ABA Model Rules & Standards
  - Links to State Ethics Rules
  - State Variations of ABA Rules

FAVORITE DOCUMENTS

We have selected documents to display. For help with this feature, view the Help file.
Your search returned 3 documents.

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Query: sexual relations with client

Your search returned 3 documents.

Practice Guides Index

C
  CONFLICTS OF INTEREST
CONFLICTS OF INTEREST

Adverse interest. See ADVERSE INTEREST

Adverse representation. See ADVERSE REPRESENTATION

Aggregate settlements. Law, Man, Prof. Conduct 51:372

Bibliography. Law, Man, Prof. Conduct 51:372

Business transactions with client. See BUSINESS TRANSACTIONS WITH CLIENT

Current clients; specific rules. Model Rule (1.8), Law, Man, Prof. Conduct 01:126

Disqualification. See DISQUALIFICATION

Fees, payment by nonclient. Law, Man, Prof. Conduct 51:901 et seq.

Former clients. See FORMER CLIENTS

Former government lawyers. See FORMER GOVERNMENT LAWYERS

General rule, Model Rule (1.7), Law, Man, Prof. Conduct 01:119

Gifts from clients. Law, Man, Prof. Conduct 51:601 et seq.
Sexual relations with client, Law, Man, Prof, Conduct 91:416

Sharing office space, Law, Man, Prof, Conduct 91:603
Sexual Relations With Client

The subject of sexual relations between lawyers and clients warrants special attention. The idea that sex between consenting adults is a private matter has lost much of its force when it comes to lawyer-client sexual relations. In quite a few jurisdictions, a lawyer's sexual relationship with a client is viewed as inherently improper unless it began before the attorney-client relationship did.

Some states have adopted disciplinary rules that forbid or restrict sexual relationships between lawyers and their clients. Even in the absence of a specific rule on point, courts of lawyers have been disciplined for having a sexual relationship with a client. In Rhode Island, a client's ex-wife has been disciplined for having a sexual relationship with a lawyer who represented her in a divorce. In Idaho, a lawyer was disbarred for having a sexual relationship with a client who later became the lawyer's partner.

In every jurisdiction, the advice to an attorney attracted to a client is the same: Think before you act! Even in a state that has no specific prohibition, a lawyer may be accused of lusting after a client, of indulging personal desires to the client's detriment. If a relationship with a client becomes intimate, the safest course is to withdraw from the attorney-client relationship.

Disciplinary cases in this area tend to involve lawyer's sexual relationships with individual clients, not corporate situations. These cases have involved consensual relationships between lawyers and corporate clients. As discussed below, however, Model Rule 1.8(a)(7) and ethics rules in some states take the position that it is improper for lawyers to engage in sexual relations with a corporate client's representative who directs or instructs them in the representation.

* Model Rule 1.8(a)(7), adopted by the ABA in 2002 on the recommendation of its Ethics 2000 Commission. Effective rules are in force in 26 States. See the Codes of Ethics in these states. For Rules of Professional Conduct in the other 24 States, see the subjects marked with penultimate asterisks below.
State Rules. More than a dozen states have adopted rules on the subject of sex with clients. Some have banned lawyers from starting sexual relationships with a client during the representation, while others proscribe sexual intimacy to the extent that it interferes with or exploits the lawyer-client relationship. For example:

- Arizona has adopted Model Rule 1.8(i).
- California Rule of Professional Conduct 3-120 forbids lawyers to demand sexual favors from clients or to coerce clients into having sexual relations. These restrictions do not apply to sexual relations between lawyers and their spouses or to consensual sexual relationships predating the attorney-client relationship. Moreover, a lawyer who has sexual relations with a client of the lawyer’s firm but does not personally represent that client is not subject to discipline solely because of the relationship. A California statute, Cal. Bus. & Prof. Code § 6106.9, codifies similar restrictions.
- Delaware has adopted Model Rule 1.8(i).
- Iowa’s DR 5-101(B) prohibits a lawyer from engaging in sexual relations with a client, or a representative of the client, unless the sexual relationship predates the attorney-client relationship or the lawyer and client are married. Even in those situations, the lawyer must withdraw from the representation if there is any reasonable possibility that the representation of the client may be impaired or that the client will be harmed. E.g., Iowa Sup. Ct. Bd. of Professional Ethics & Conduct v. Runkel, 625 N.W.2d 711, 17 Law. Man. Prof. Conduct 250 (Iowa 2001) (lawyer who engaged in long-term affair with client suspended indefinitely with no possibility of

No discussion of Oklahoma Rule 1.8.
Possibly because Oklahoma hasn’t adopted new rule you

Ethics opinions. A dozen years before the adoption of Model Rule 1.6(b), the ABA’s ethics committee made clear that sexual relationships between lawyers and clients create a significant risk of unprofessional conduct. In ABA Formal Ethics Op. 92-364 (1992), the committee concluded that lawyers’ fiduciary obligations to clients require that they neither take advantage of their dominant position over the client nor exploit the dependent position of the client. “This fundamental principle of fiduciary obligation is recognized in both the Model Rules and the Model Code,” the committee said. “Rule 1.8(b) and DR 4-101(A)(2) both provide that a lawyer may not use client confidences to the disadvantage of the client. Both Model Rule 1.7(b) and DR 5-101 prohibit a lawyer from representing a client when the representation may be limited by the lawyer’s own interests.”

Similarly, an Oklahoma ethics opinion advised that despite the lack of any specific rule on point, a lawyer who begins a sexual relationship with a client during the attorney-client relationship runs a significant risk of violating ethics rules. The ethics committee said that the lawyer must determine whether in the specific circumstances the conduct (1) jeopardizes the lawyer’s ability to competently represent the client; (2) involves exploitation of the lawyer’s fiduciary relationship with the client; (3) interferes with the lawyer’s independent professional judgment; (4) creates a conflict of interest between the lawyer and client; (5) jeopardizes the attorney-client privilege; or (6) is prejudicial to the administration of justice. A sexual relationship that predominates the lawyer-client relationship may raise the same questions, the committee said, particularly if the client is an organization and the relationship is with one of its representatives. Oklahoma Ethics Op. 311 (1996).

See also Pennsylvania Ethics Op. 97-100 (1997) (lawyer may not demand that client or client’s representative

Law Review Articles Discussing Issue

Oklahoma Ethics Opinion
ABA/BNA Lawyer’s Manual only contains summaries of Oklahoma cases.

Opinion 311 (10/16/98) Sexual relations; Competence; Independent professional judgment; Conflicts of interest; Misconduct.

If a lawyer engages in sexual relations with a client when no consensual sexual relationship preceded the lawyer-client relationship, there is a significant probability that the conduct will result in a violation of one or more of the ethics rules. Although the rules do not expressly prohibit sexual relations between the lawyer and client or require withdrawal from the representation prior to engaging in such conduct, the lawyer must determine whether in the specific circumstances such conduct: (1) jeopardizes the lawyer’s ability to competently represent the client; (2) involves exploitation of the lawyer’s fiduciary relationship with the client; (3) interferes with the lawyer’s independent professional judgment; (4) creates a conflict of interest between the lawyer and client; (5) jeopardizes the attorney-client privilege; or (6) is prejudicial to the administration of justice. A consensual sexual relationship that predates the lawyer-client relationship may raise the same ethical questions, particularly if the client is an organization and the relationship is with one of its representatives. Rules 1.7, 1.8, 2.1, 8.4.

OKLAHOMA BAR ASSOCIATION

Opinions are issued by the Legal Ethics Committee of the Oklahoma Bar Association. Internet:
http://www.okbar.org/ethics
Check ABA Model Rules of Conduct – Rule 1.8(j)

Available on ABA Website,
Available in ABA/BNA Lawyer’s Manual,
but Westlaw has annotations
to case law. Try Westlaw first.
incorporate the ABA Ethics Commission’s recommendations in its own, it declined against adopting Model Rule 1.8(i).


* Ethics Opinions. A dozen years before the adoption of Model Rule 1.8(i), the ABA’s ethics committee made clear that sexual relationships between lawyers and clients create a significant risk of unprofessional conduct. In ABA Formal Ethics Op. 92-384 (1992), the committee concluded that imposition of fiduciary obligations to clients require that they rather than take advantage of their dominant position over the client nor exploit the dependent position of the client. “This fundamental principle of fiduciary obligation is recognized in both the Model Rules and the Model Code,” the committee said. “Rule 1.8(c) and DR 4-102(A)(6) both provide that a lawyer may not use client confidences to the disadvantage of the client. Both Model Rule 1.7(b) and DR 5-101 prevent a lawyer from representing a client when the representation may be limited by the lawyer’s own interests.”

Similarly, an Oklahoma ethics opinion advised that despite the lack of any specific rule on point, a lawyer who begins a sexual relationship with a client during the attorney-client relationship runs a significant risk of violating ethics rules. The ethics committee said that the lawyer must determine whether in the specific circumstances the conduct (1) jeopardizes the lawyer’s ability to competently represent the client; (2) involves exploitation of the lawyer’s fiduciary relationship with the client; (3) interferes with the lawyer’s independent professional judgment; (4) creates a conflict of interest between the lawyer and client; (5) jeopardizes the attorney-client privilege; or (6) is prejudicial to the administration of justice. A sexual relationship that predates the lawyer-client relationship may raise the same questions; the committee said, particularly if the client is an organization and the relationship is with one of its representatives. Oklahoma Ethics Op. 311 (1998).

See also Pennsylvania Ethics Op. 97-100 (1997) (lawyer may not demand that client or client’s representative
(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer’s legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client; for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer’s legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client’s business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities’ services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2)
Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predicate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions
Annotated ABA Model Rules on Westlaw

Also available in print at the circulation desk – Reserve Room

References to Key Cases
Find by Citation

Selected Databases

ABA Annotated Model Rules of Professional Conduct (ABA-AMRPC)

The citation format for ABA Annotated Model Rules of Professional Conduct is shown below.

Ann. Mod. Rules Prof. Cond. Rule 1.8

Example: Ann. Mod. Rules Prof. Cond. Rule 1.8

FOR EDUCATIONAL USE ONLY

Ann. Mod. Rules Prof. Cond. Rule 1.8

American Bar Association
Annotated Model Rules of Professional Conduct, 5th Edition
June 2003

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

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(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an
ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the
client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood
by the client;
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity
to seek the advice of independent legal counsel on the transaction; and
(3) the client gives informed consent, in writing signed by the client, to the essential terms of the
transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the
client in the transaction.
(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the
client unless the client gives informed consent, except as permitted or required by these Rules.
(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare
on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial
gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this
litigation the lawyer is conducting for a client, except that the lawyer may:
(1) acquire a lien authorized by law to secure the lawyer's fees or expenses; and
(2) contract with a client for a reasonable contingent fee.
Subsection (j): Sexual Relations with Clients
Any Oklahoma cases where courts applied Rule 1.8(j)? No
Has Oklahoma Adopted This Rule?

Oklahoma Bar Association Website
www.okbar.org
Oklahoma Supreme Court Network
www.oscn.net
Ethics & Professionalism

The Oklahoma Bar Association is dedicated to upholding the long-standing traditions of professionalism and civility within the legal system. Through this page, you can access information about our Ethics Counsel program, Ethics Opinions from the OBA, our General Counsel's office, Mandatory CLE requirements and reporting, and the Interest on Lawyers' Trust Account (IOLTA) requirements.
Proposed Changes Not Enacted Yet
Title 5. Attorneys and the State Bar

Chapter 1

Registration of Out-of-State Attorneys Act

§ 5.1. Persons Who May Not Practice as an Attorney - Affix

Reload
Current Rule Does Not Explicitly Prohibit Sex with Client, but Check Proposed Rule

Oklahoma has not Adopted the “new” Rule 1.8 yet.
Check Proposed Changes to Oklahoma Rules
Oklahoma Rules of Professional Conduct

A subcommittee of the OBA’s Rules of Professional Conduct Committee has engaged in a comprehensive review of the Oklahoma Rules of Professional Conduct. This project was prompted by extensive updates to the ADA's Model Rules of Professional Conduct. The committee has adopted and recommended changes to Oklahoma's current rules and encourages public comment either at the hearings or in writing. You may submit any written commentary to Rules Committee, Oklahoma Bar Association, P.O. Box 5035, Oklahoma City, OK 73102.
the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Rule 1.8—Adopted ABA version with changes on 3/11/05, 4/15/05, and 6/17/05; Comment—adopted Maute's version on 5/20/05, also adopted Oklahoma Modification section.

CLIENT-LAWYER RELATIONSHIP

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless: (1) a consensual sexual relationship existed between them when the client-lawyer relationship commenced and (2) the relationship does not result in a violation of Rule 1.7(a)(2).

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing
Client-Lawyer Sexual Relationship

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer
Find Case Law Relating to the Topic

Westlaw
State Ethics Cases Database
Search for cases involving a sexual relationship with a client.
State, ex rel. Oklahoma Bar Ass'n v. Anderson
169 P.3d 526
Okla., 2007
Feb 22, 2008 (Approx. 6 pages)

FOR EDUCATIONAL USE ONLY

STATE of Oklahoma, ex rel. OKLAHOMA BAR ASSOCIATION, Complainant,

Phillip John ANDERSON, Respondent.
No. SCMD 4775.

Background: The Bar Association filed a complaint against attorney for violation of the Rules of Professional Conduct.

Holdings: The Supreme Court, Watt, C.J., held that:
(1) attorney's conduct in engaging in sexual relationship with a vulnerable client violated the professional rules, and
(2) suspension from the practice of law for one year, plus costs of disciplinary proceedings, was warranted.

Suspension ordered.

Tayler, J., filed a dissenting opinion.

Opala, J., filed an opinion dissenting in part.
In an attorney disciplinary case the Supreme Court’s review of the record is de novo, in which it conducts a non-deferential, full-scale examination of all relevant facts; the recommendations of the trial panel are neither binding nor persuasive.

Attorney’s conduct in engaging in sexual relationship with a vulnerable client violated the professional rules that prohibited a lawyer from engaging in conduct that was prejudicial to the administration of justice or from committing any act that was contrary to the prescribed standards of conduct which would reasonably be found to bring discredit upon the legal profession. Rules of Prof. Conduct, Rules 2.1, 8.4(d), 5 O.S.A. Ch. 1, App. 3-A; Disciplinary Proceedings Rule 1.1, 5 O.S.A. Ch. 1, App. 1-A.


In an attorney disciplinary case the Supreme Court's review of the record is de novo, in which it conducts a non-preferential, plenary examination of all relevant facts; the recommendations of the trial panel are neither binding nor persuasive.

Attorney's conduct in engaging in sexual relationship with a vulnerable client violated the professional rules that prohibited a lawyer from engaging in conduct that was prejudicial to the administration of justice or from committing any act that was contrary to the standards of conduct which would reasonably be found to bring discredit upon the legal profession. Rules of Prof.Conduct, Rules 2.1, 4.4(d), 5 O.S.A. Ch. 1, App. 3-A; Disciplinary Proceedings Rule 1.2, 5 O.S.A. Ch. 1, App. 1-A.
Corporate client's representative was not a "third person," for purposes of attorney disciplinary rule governing the making a statement to a third person. Rules of Prof. Conduct, Rule 4.3, 5 O.S.A. Ch. 1, App. 3-A.

See publication Words and Phrases for other judicial constructions and definitions.

(Cited 4 times for this legal issue) State ex rel. Oklahoma Bar Ass'n v. Cummings, 863 P.2d 1164 (Okla., 1993)

Lawyer may not take money or property entrusted to him for specific purpose and apply it to attorney fee claim; but any money or property otherwise coming into lawyer's hands and upon which valid attorney's lien has been impressed is free from that restriction. Disciplinary Proceedings Rule 1.4(b), 5 O.S.A. Ch. 1, App. 3-A.

(Cited 3 times for this legal issue) State ex rel. Oklahoma Bar Ass'n v. Roven, 914 P.2d 1046
Custom Digest

455(4)(4)
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communication with clients, as well as rules prohibiting violation of rules of professional conduct. Rules of Prof. Conduct, Rules 1.1, 1.3, 1.4, 8.4, 5 O.S.A. Ch. 1, App. 3-A.

[cited 1 time for this legal issue]
State ex rel. Oklahoma Bar Ass'n v. Groshan, 83 P.3d 69
Okla. 2003

A lawyer's ethical advances toward a client take advantage of attorney-client relationship and constitute professional misconduct that will result in disciplinary action against the attorney when the matter is brought to the attention of the bar association.

[cited 1 time for this legal issue]
State ex rel. Oklahoma Bar Ass'n v. Scooges, 75 P.3d 621
Okla. 2003

Attorney's statements to client filing discrimination claim that 180 days must elapse between filing with S.E.C.C., Human Rights Commission and filing suit, later telling clients that they could proceed without right-to-sue letter, and then subsequently stating that he was waiting for 180-day period to end to file suit, were not misrepresentations under professional responsibility rules; statements concerned attorney's understanding of specific area of law, and evidence was not clear and convincing that attorney's statements were for purpose of causing clients to act or refrain from acting in some manner that would either benefit attorney or fulfill some other improper motive. Rules of Prof. Conduct, Rule 8.4(e), 5 O.S.A. Ch. 1, App. 3-A.

[cited 1 time for this legal issue]
State ex rel. Oklahoma Bar Ass'n v. McGee, 48 P.3d 767
Oklahoma 2002

Fundamental principle in the attorney-client relationship is that the lawyer maintain confidentiality of information relating to the representation; this principle applies not merely to matters communicated in
Get the Full-Text of Oklahoma Ethics Opinion No. 311 and Search for Other Opinions

Oklahoma Bar Association Website
http://www.okbar.org/ethics
Ethics & Professionalism

The Oklahoma Bar Association is dedicated to upholding the longstanding traditions of professionalism and civility within the legal system. Through this page, you can access information about our Ethics Counsel program, Ethics Opinions from the OBA, our General Counsel's office, Mandatory CLE requirements and reporting, and the interest on Lawyers' Trust Account (IOLTA) requirements.
Ethics Opinions

The Legal Ethics Committee of the Oklahoma Bar Association prepares advisory opinions for approval and issuance by the OBA’s Board of Governors. The Committee makes every attempt to conduct thorough research in preparation of an advisory opinion. Nevertheless, members should conduct their own research regarding specific ethical issues and to determine whether an opinion has superseded by caselaw or authority.

Legal ethics opinions are intended as a guide to responsible professional behavior. Advisory opinions shall only have such force and effect as they are given by the Supreme Court of the State of Oklahoma and shall not be construed as anything but advisory in nature. The OBA disclaims any liability in connection with the issuance of any of its opinions.

All Ethics Opinions, with a search mechanism, are hereby available in this one resource. To Search for a specific ethics opinion, type in an ethics number or keyword in the box below.
Search results for '311 or 311 or 311.htm'

Match: All  Format: Long  Sort by: Score

Refine search: 311  Search

Documents 1 - 3 of 3 matches. More stars indicate a better match.

Oklahoma Bar Association


Oklahoma Bar Association

... 1952 Justice of the Peace, Midwest City, Oklahoma, Dear Sir: Richard Roe, assignee for Dr. Doakes In the Matter of the v. Claim of John City, 530.00 311 E. Main St., Midwest City, Okla. Please have a constable or deputy sheriff verify the above address at once. Then notify me, so I can send you the... http://www.okbar.org/ethics/159.htm 01/29/06, 18197 bytes

Oklahoma Bar Association

Search Ethics Opinions Diversion Program Ethics Online Lawyer's Creed Complaint Form Standards of
Ethics Opinion No. 311

Adopted October 18, 1996

INQUIRY: Will a lawyer who engages in sexual relations with a client violate the Rules of Professional Conduct “Rules” if the lawyer has no pre-existing consensual sexual relationship with the client?

ABSTRACT: By engaging in sexual relations with a client, when no consensual sexual relationship preceded the lawyer/client relationship, a lawyer will more likely than not violate one or more of the Rules.

OPINION

The Oklahoma Bar Association Legal Ethics Committee was asked to determine whether a lawyer, who engages in sexual relations with a client when no consensual sexual relationship preceded the lawyer/client relationship, violates the Rules. In our opinion, there is a significant probability that such conduct will result in a violation of one or more of the Rules.

The Rules do not expressly prohibit sexual relations between a lawyer and a client or require withdrawal from representation prior to a lawyer engaging in sexual relations with a client. However, the Rules apply to specific circumstances in connection with a determination as to whether a lawyer acted ethically by engaging in sexual relations with a client. Such conduct may: (i) jeopardize the lawyer’s ability to competently represent the client; (ii) involve unfair exploitation of the lawyer’s fiduciary relationship with the client; (iii) compromise the lawyer’s exercise of independent professional judgment in the rendering of candid advice during the representation; (iv) create a conflict between the interests of the lawyer and the interests of the client; (v) jeopardize the lawyer-client privilege with respect to confidences imparted; and (vi) be prejudicial to the administration of justice.
Case Law

The Court has relied upon one or more of the rules discussed in this opinion to discipline lawyers for use of sexually explicit language with a client\(^1\), offensive touching of a client\(^2\), and unwanted sexual advances towards a client.\(^2\)

1. "Sexual relations" means: (a) one or more acts of sexual intercourse; or (b) touching a sexual or other intimate part of another person or causing or permitting such person to touch a sexual or other intimate part of the lawyer for the purpose of arousing or gratifying the sexual desire of either or both parties.

2. "Client" includes, during the course of a lawyer-client relationship: (a) an individual who is a client, and (b) a client representative who acts on behalf of an individual or an organizational client (client representative) (e.g., trustee, guardian, employee, shareholder, officer, or agent).

3. "Sexual relationship" means an established course of sexual relations.

4. In addition, it is our opinion that, in cases where a consensual sexual relationship precedes the lawyer-client relationship, the lawyer should strictly scrutinize his or her behavior for conflicts of interest to determine if harm may result to the client or to the representation. A consensual sexual relationship which precedes a lawyer-client relationship may, in some circumstances, raise the same ethical problems addressed in this advisory opinion. When the client is an individual, who has no client representative, or an organization acting through its sole principal, with no other representative, the likelihood of a violation resulting from sexual relations during the course of the lawyer-client relationship is considerably less when a sexual relationship precedes the lawyer-client relationship. See State of Oklahoma ex rel. Oklahoma Bar Association v. Andrews, 1936 OK 25 (April 14, 1936) (attorney who represented his spouse was not disciplined for an alleged conflict of interest for representing his wife in a post-divorce dispute concerning visitation and custody rights of his step-daughter's biological father, but was disciplined for harassing a witness who gave adverse testimony). In the case of a pre-existing consensual relationship with a client's representative, where the representative is not the sole principal of an organizational client, the potential for an ethical violation is high, because the lawyer's personal interests may impair his ability to represent the client or may cause harm to the client. In such a circumstance, the lawyer should withdraw from the representation, cease the sexual relationship, or make disclosure of the sexual relationship, in the case of an individual client, to the individual or, in the case of an organization, to higher, responsible authority, and proceed with the representation only with consent of the client. See Rule 1.13. Even with disclosure by the lawyer and consent by the client, the lawyer may ethically proceed with the representation only in the event he or she reasonably believes the representation will not be adversely affected. Rule 1.7(b)(1).
Search for Other Oklahoma Ethics Opinions
The Legal Ethics Committee of the Oklahoma Bar Association prepares advisory opinions for approval and issuance by the OBA's Board of Governors. The Committee makes every attempt to conduct thorough research in preparation of an advisory opinion. Nevertheless, members should conduct their own research regarding specific ethical issues and to determine whether an opinion has superseded or become authority.

Legal ethics opinions are intended as a guide to responsible professional behavior. Advisory opinions shall only have such force and effect as they are given by the Supreme Court of the State of Oklahoma and shall not be construed as anything but advisory in nature. The OBA disclaims any liability in connection with the issuance of any of its opinions.

All Ethics Opinions, with a search mechanism, are hereby available in this one resource. To Search for a specific ethics opinion, type in an ethics number or keyword in the box below.

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... legal system. The very nature of our adversary system of justice requires respect for the law, the public, the courts, administrative agencies, our clients and each other. While the Rules of Professional Conduct establish the minimum standards a lawyer must meet to avoid discipline, the following standards establish the minimum standards a lawyer must meet to avoid discipline, the following Standards 
[http://www.okbar.org/ethics/standards.htm](http://www.okbar.org/ethics/standards.htm) 01/29/96, 51165 bytes

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... requested the OBA Legal Ethics and Unauthorized Practice Committee to restate the opinion.] INQUIRY May a lawyer engage in a sexual relationship with a client, or a client's representative, during the time when the lawyer is engaged in an ongoing attorney/client relationship? [322] 
[http://www.okbar.org/ethics/308.htm](http://www.okbar.org/ethics/308.htm) 01/29/96, 25932 bytes

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... defense which defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided [372] 
[http://www.okbar.org/ethics/hammons.htm](http://www.okbar.org/ethics/hammons.htm) 01/29/96, 43934 bytes
Ethics Opinion No. 308

Adopted December 8, 1994; Withdrawn March 17, 1995

[The Board withdrew the following Legal Ethics Opinion No. 308 and requested the OBA Legal Ethics and Unauthorized Practice Committee to restate the opinion.]

INQUIRY

May a lawyer engage in a sexual relationship with a client, or a client's representative, during the time the lawyer is engaged in an ongoing attorney/client relationship?

OPINION

The Oklahoma Bar Association Legal Ethics Committee was asked to determine whether a lawyer, who engages in a sexual relationship with his client, or client's representative, during his professional attorney/client employment, is unethical. We find that such conduct is unethical, except in the situation involving a spouse.

The Rules of Professional Conduct do not specifically prohibit a sexual relationship between an attorney and client, or require withdrawal from representation once a lawyer becomes sexually involved with a client. However, the general rules pertaining to the attorney/client relationship apply to the specific circumstances in determining whether the lawyer has acted unethically by becoming sexually involved or by not withdrawing from representation once a sexual relationship with a client develops. The general fear is that an intimate relationship with a client may compromise the attorney's exercise of independent professional judgment in the rendering of candid advice during the representation.

Providing Competent Representation:
Answer: There is Oklahoma case law, Oklahoma advisory opinions, proposed Oklahoma rules, and specific ABA Rules of Professional Conduct stating that the conduct is unethical.
Comparing Different State Rules of Conduct

Cornell’s Legal Information Institute
www.law.cornell.edu/ethics
American Legal Ethics Library

Comments & Context

Scope of the American Legal Ethics Library

This digital library contains both the codes or rules setting standards for the professional conduct of lawyers and commentary on the law governing lawyers, organized on a state by state basis.

Major law firms and legal academics, working on a pro bono basis, are contributing narratives on the law of lawyering of their states. As of Jan. 2006 the library includes narratives from 22 jurisdictions, including most of those with the largest lawyer populations. It also includes the codes of professional responsibility for those jurisdictions, numerous other states, and the European Community. There are several additional states for which narratives are in progress. More jurisdictions will be added as they are completed.

The American Bar Association's ethics materials are included in the library to permit the rules of a particular state to be compared with the ABA model provisions, including the extensive 2002 revisions, and with related provisions in other states.

Sponsorship, Authorship, and Editorial Coordination

Ways to access material

- Listing by jurisdiction
- Listing by topic
- Special Collection of Material on Multidisciplinary Practice
I. CLIENT-LAWYER RELATIONSHIP

1.1 Rule 1.1 Competence
   1.1:100 Comparative Analysis
      * Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, ME, MI, MN, OH, PA, RI, SC, TX
      * Jurisdictions with Rules Based on Model Code: HI, OR, NY
   1.1:200 Disciplinary Standard of Competence
      * Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, ME, MI, MN, OH, PA, RI, SC, TX
      * Jurisdictions with Rules Based on Model Code: HI, OR, NY
   1.1:300 Malpractice Liability
      * Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, ME, MI, MN, OH, PA, RI, SC, TX
      * Jurisdictions with Rules Based on Model Code: HI, OR, NY
   1.1:400 Liability to Certain Non-Clients
      * Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, ME, MI, MN, OH, PA, RI, SC, TX
      * Jurisdictions with Rules Based on Model Code: HI, OR, NY
   1.1:500 Defenses and Exceptions to Liability
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      * Jurisdictions with Rules Based on Model Code: HI, OR, NY
7.3: 500 Solicitation by Prepaid and Group Legal Services Plans
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Other: CA

7.4: 400 Communication of Fields of Practice
7.4: 100 Comparative Analysis
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Other: CA

7.4: 200 Regulation of Claims of Certification and Specialization
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- Jurisdictions with Rules Based on Model Code: OH, OR, NV

7.5: 500 Firm Names and Letterheads
7.5: 100 Comparative Analysis
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Jurisdictions with Rules Based on Model Code: OH, OR, NV
- Other: CA

7.5: 200 Firm Names and Trade Names
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Jurisdictions with Rules Based on Model Code: OH, OR, NV
- Other: CA

7.5: 300 Law Firms with Offices in More Than One Jurisdiction
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Jurisdictions with Rules Based on Model Code: OH, OR, NV
- Other: CA

7.5: 400 Use of the Name of a Public Official
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Jurisdictions with Rules Based on Model Code: OH, OR, NV
- Other: CA

7.5: 500 Misleading Designation as Partnership, etc.
- Jurisdictions with Rules Based on Model Rules: AR, AZ, CO, CT, DC, FL, IL, KY, LA, MD, MI, NJ, NM, OH, PA, RI, SC, TX
- Jurisdictions with Rules Based on Model Code: OH, OR, NV
- Other: CA

VIII. MAINTAINING THE INTEGRITY OF THE PROFESSION
7.4:200  Regulation of Claims of Certification and Specialization

- Primary Texas References: TX Rules 7.01, 7.04(a), (b) & (c), and 7.05(a)
- Background References: ABA Model Rule 7.01, Other Jurisdictions

For a general treatment of this subject, see section 7.4:101.

7.5  Rule 7.5 Firm Names and Letterheads

7.6:100  Comparative Analysis of Texas Rule

- Primary Texas References: TX Rule 7.01
- Background References: ABA Model Rule 7.5, Other Jurisdictions
- Commentary:

7.5:101  Model Rule Comparison

Model Rule 7.5, "Firm Names and Letterheads," finds a general parallel in Texas Rule 7.01 of the same name, but the language of the respective rules are not identical. Paragraphs (a) through (d) of Texas Rule 7.01 roughly relate to the corresponding paragraphs of Model Rule 7.5, but the language is not always the same. Texas Rule 7.01 adds paragraphs (e) and (f).

As of November 1998, Texas lawyers were considering a referendum to amend certain of the Texas Rules. The text of the current version of the rule is appended to this narrative. If the rule is amended, the narrative will be updated in due course to address important changes in the rule, if any.

7.5:102  Model Code Comparison

For Model Code analogues to Model Rule 7.5, see DR. 2-102(R), (C), and (D).

7.6:200  Firm Names and Trade Names
(e) A lawyer shall not advertise in the public media that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:


(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Article 3200, Revised Statutes, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind or information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement.

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, [area of specialization];--Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified [area of specialization] [name of certifying organization]," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and are in excess of the level of training and competence generally required for admission to the Bar and.
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- All Federal (USCA)
- All States (ST-AVP-ALL)
- Statutes by State
- Additional materials
- 50 State Surveys (SUMPS)

#### Administrative Materials
- Code of Federal Regulations (CFR)
- Federal Register (FR)
- State Administrative Codes (SEC-AADQ)
- Additional materials

#### Briefs
- All briefs (BRIEF-ALL)
- Supreme Court Briefs (SCT-BRIEF-ALL)

### Secondary Sources

#### Black's Law Dictionary (BLACKS)
- American Jurisprudence (Am Jur) (AMJUR)
- Am Jur Proof of Facts (AMJUR-PROOF)
- American Law Reports - ALR (ALR)
- Journals and Law Reviews (JLR)
- Restatements
- Additional materials

#### Forms
- All Forms (FORMS-ALL)
- Am Jur Legal Forms (AMJUR-LF)
- Am Jur Pleading and Practice Forms (AMJUR-PFP)
- National Pleading and Practice Forms (NPPF)
- West's Federal Forms (WESTFORMS)
- West's Legal Forms (WESTLF)
- Additional materials

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- New York Times (NYT)
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- Additional materials
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- 7th Annual Rocky Mountain Regional Legal Writing Conference - Pollman, Rab, Stinson, Whitney
- ABA Standing Committee on Armed Forces Law - Howell
- ABA-LSWD 14th Circuit - Figueiras, Ramani
- Association of Legal Writing Directors-Denver 2007 - Guerra
- Basic Rules of Grammar (Full Year 2006-2007) - Blaxins
- Clinic Demo Page - Family Law - Gruenberg, Guerra