

Prohibited Transactions

We have completed *Rule 1.17 Conflict of Interest: General Rule*. Now, let's turn to *Rule 1.8 Conflict of Interest: Prohibited Transactions*. This Rule has numerous subparagraphs, but I will try to complete it in two parts.

RULE 1.8 Conflict of Interest: Prohibited Transactions

(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 to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

COMMENT:

Army lawyers will strictly adhere to [Army] standards of conduct regulations in all dealings with clients. **[My Comment: This should actually refer to "Federal and DoD standards of conduct laws and regulations." As discussed in my commentary to PCR #00-11, there is overlap here with the conflict of interest laws (18 U.S.C. Sections 203, 205, 208 and 209), the Standards of Ethical Conduct (5 C.F.R. Part 2635), and the DoD Joint Ethics Regulation (DoD 5500.7-R).]** Such regulations generally prohibit entering into business transactions with clients, deriving financial benefit from representation of clients, and accepting gifts from clients or other entities for the performance of official duties. This rule does not authorize conduct otherwise prohibited by such [laws and] regulations. **[My Comment: Again, like I said in PCR #00-11, when dealing with conflict of interest issues, we need to read both sets of rules together, and apply the stricter standard.]** An Army lawyer will not make any referrals of legal or other business to any private civilian lawyer or enterprise with whom the Army lawyer has any present or expected direct or indirect personal interest. Special care will be taken to avoid

giving preferential treatment to reserve judge advocates or other government lawyers in their private capacities.

As a general principle, all business transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. [**My Comment:** Outside the corporate world and family-type situations, I can't imagine when engaging in a business transaction with a client would be appropriate -- probably "never" for the Army lawyer.] Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. [**My Comment:** See the related Standards of Ethical Conduct Rule at 5 C.F.R. Sec. 2635.703.]

Mike Wentink