

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 22nd day of December, 2021.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective February 20, 2022.

On October 1, 2021, came the Virginia State Bar, by Jay B. Myerson, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Rule 1.8, Part Six, Section II of the Rules of Court, be amended. The petition is approved and Rule 1.8 is amended to read as follows:

### **RULE 1.8. Conflict of Interest: Prohibited Transactions.**

\* \* \*

(b) A lawyer shall not use information protected under Rule 1.6 for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

\* \* \*

#### COMMENT

##### ***Transactions Between Client and Lawyer***

[1] Rule 1.8(a) states the general principle that all 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. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, 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] Use of information protected by Rule 1.6 for the advantage of the lawyer or a third person or to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client or third party make such a purchase. Paragraph (b) prohibits the use of a client's confidential information for the advantage of the lawyer or a third party or to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules. *See* Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b). Paragraph (b) does not limit an attorney's use of information obtained independently outside the attorney-client relationship.

[3-5] ABA Model Rule Comments not adopted.

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Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six, Section II of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective February 20, 2022.

A Copy,

Teste:



Clerk