‘Tis the Season: Ethics in January

Ethics Conundrums for IP Attorneys

Topics

- ***Candor***
- ***Communication***
- ***Fees***
- ***Competence***
- ***Advertising***

Duty of Candor

- ***FL BAR RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL***

  (a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:

  (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

  (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

  (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

  (4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

Duty of Candor

- **USPTO - § 11.303 Candor toward the tribunal.**
  - (a) A practitioner shall not knowingly:
    - (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner;
    - (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel in an *inter partes* proceeding, or fail to disclose such authority in an *ex parte* proceeding before the Office if such authority is not otherwise disclosed; or
    - (3) Offer evidence that the practitioner knows to be false. If a practitioner, the practitioner's client, or a witness called by the practitioner, has offered material evidence and the practitioner comes to know of its falsity, the practitioner shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A practitioner may refuse to offer evidence that the practitioner reasonably believes is false.

Duty of Candor

- **USPTO - § 11.303 Candor toward the tribunal. (cont'd)**
  - (b) A practitioner who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
  - (c) The duties stated in paragraphs (a) and (b) of this section continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by § 11.106 [practitioner's responsibilities regarding maintaining confidentiality of information].
  - (d) In an *ex parte* proceeding, a practitioner shall inform the tribunal of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse.
  - (e) In a proceeding before the Office, a practitioner shall disclose to the Office information necessary to comply with applicable duty of disclosure provisions.

Duty of Candor

- ***Intellect Wireless Inc. v. HTC Corp. et al.* (N.D. Ill.)**
  - In 2013, Fed. Cir. Found patents in suit (caller ID technology) unenforceable because inventor Henderson engaged in "pattern of deceit" at USPTO, including filing a false declaration (claimed actual reduction to practice in the original Rule 131 declaration in order to overcome a prior art reference)
    - Henderson's Patent attorney (Robert K. Tendler) was suspended by USPTO for 4 years in January 2014
  - Niro Haller represented Intellect Wireless in infringement suit over patents, court held that firm and attorneys were joint and severally liable for HTC's fees after patents declared unenforceable due to inequitable conduct
  - Judge said decision to hold Niro attorneys personally liable was due in part to fact that they did not produce all documents requested by HTC after winning the case, but also Judge found that Henderson had revealed false statements to Niro at least as early as 2009

Duty of Candor

- **Intellect Wireless (cont'd)**
  - Lesson learned:
    - FL - (4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
    - USPTO - (b) A practitioner who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Communication

- ***FL BAR RULE 4-1.4 COMMUNICATION***

  (a) Informing Client of Status of Representation. A lawyer shall:

  (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;

  (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

  (3) keep the client reasonably informed about the status of the matter;

  (4) promptly comply with reasonable requests for information; and

  (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

  (b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Communication

- **USPTO - § 11.104 Communication.**
  - (a) A practitioner shall:
    - (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct;
    - (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
    - (3) Keep the client reasonably informed about the status of the matter;
    - (4) Promptly comply with reasonable requests for information from the client; and
    - (5) Consult with the client about any relevant limitation on the practitioner's conduct when the practitioner knows that the client expects assistance not permitted by the USPTO Rules of Professional Conduct or other law.
  - (b) A practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Communication

- **Jaoa v. Xanboo**
  - Inventor Jaoa sued Xanboo (an AT&T subsidiary) for patent infringement, was represented by Olivio et al.
  - Olivio admitted in a sworn declaration that he accidentally agreed to a settlement offer for $315k due to a miscommunication while negotiating with Xanboo's counsel via email
  - Olivio allegedly accepted the settlement without consulting Joao, and did not notify him about the settlement until weeks later
  - When Jaoa balked, became target of 3rd party complaint filed against him by Xanboo for breaching settlement agreement, so he agreed for fear of personal litigation, and then sued Olivio for malpractice

Communication

- **Jaoa v. Xanboo (Cont'd)**
  - Lesson learned:
    - FL – "promptly inform the client of any decision or circumstance with respect to which the client's informed consent"
    - USPTO – "Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct"

Fees

- ***FL BAR RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES***
  - **(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs …**
  - **(b) Factors to Be Considered in Determining Reasonable Fees and Costs …**
  - **(c) Consideration of All Factors …**
  - **(d) Enforceability of Fee Contracts.** Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

Fees

- ***FL BAR RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES (CONT'D)***
  - **(e) Duty to Communicate Basis or Rate of Fee or Costs to Client.** When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

    The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

Fees

- ***FL BAR RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES (CONT'D)***
  - **(f) Contingent Fees.** As to contingent fees:
    - (1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
    - (2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

Fees

- **USPTO - § 11.105 Fees.**
  - (a) A practitioner shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include …
  - (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the practitioner will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Fees

- **USPTO - § 11.105 Fees. (cont'd)**
  - (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the practitioner shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

Fees

- **Phillips v. Duane Morris LLP**
  - Phillips sues AWH Corp. for patent infringement (steel wall fabrication systems for prisons)
  - Phillips loses at trial, and before 3-judge panel at CAFC, but wins en banc claim construction ruling (inventor vs. dictionary definition)
  - On remand, Phillips gets $1.8 mil. jury verdict, Duane Morris comes on board to assist with final resolution
  - In meantime, judge issues JMOL of no infringement
  - Eventually settles for $2.5 mil., Phillips sues Duane Morris claiming malpractice in seeking a stay before JMOL, and that he was duped into paying $250k fee award (10% contingency), because no contractual right to contingency (and was not informed that they incurred less than half that amount)

Fees

- **Phillips v. Duane Morris LLP (cont'd)**
  - Lessons learned:
    - All fee agreements in writing, especially where contingencies are involved
    - Provide accounting after a contingency matter is concluded
    - Consider specifying in contingency fee agreement that actual time/ money spent in obtaining judgment is irrelevant

Competence

- ***FL BAR - RULE 4-1.1 COMPETENCE***

  A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

- **USPTO - § 11.101 Competence.**

  A practitioner shall provide competent representation to a client. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Competence

- ***Protostorm v. Antonelli Terry***
  - Antonelli was sued for malpractice for failing to properly file a patent application for Protostorm for email technology
    - $7M compensatory damages, $1M punitive damages
  - Judge subsequently issued order with temporary spending restrictions and accountability measures for Antonelli, which set conditions on Antonelli's spending outside of operating expenses such as salaries and rent
  - Antonelli filed a motion for JMOL that related patents are invalid in view of Alice decision and subsequent rulings

Competence

- ***Protostorm v. Antonelli Terry (cont'd)***
  - Lesson learned:
    - Docket, docket, docket …

Competence

- ***FL BAR RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS***
  - **(a) Use of Titles by Nonlawyer Assistants.** A person who uses the title of paralegal, legal assistant, or other similar term when offering or providing services to the public must work for or under the direction or supervision of a lawyer or law firm.
  - **(b) Supervisory Responsibility.** With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:
    - (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
    - (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

Competence

- ***FL BAR RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS (cont'd)***
  - **(b) Supervisory Responsibility.** With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

    …
    - (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
      - (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
      - (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
  - **(c) Ultimate Responsibility of Lawyer.** Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.

Competence

- **USPTO - § 11.503 Responsibilities regarding non-practitioner assistance.**
  - With respect to a non-practitioner assistant employed or retained by or associated with a practitioner:
    - (a) A practitioner who is a partner, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the practitioner;
    - (b) A practitioner having direct supervisory authority over the non-practitioner assistant shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the practitioner; and

Competence

- **§ 11.503 Responsibilities regarding non-practitioner assistance. (cont'd)**

  …

  - (c) A practitioner shall be responsible for conduct of such a person that would be a violation of the USPTO Rules of Professional Conduct if engaged in by a practitioner if:
    - (1) The practitioner orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
    - (2) The practitioner is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Competence

- **In the Matter of Tracy W. Druce**
  - Druce (of Novak Druce) was suspended from practice before USPTO for 2 years (plus two years probation) for inadequately supervising his assistant who fabricated USPTO emails and forged signatures
  - Non-attorney assistant forged Druce's signature, fabricated email confirmations to USPTO, and backdated certificates of mailing with false information
  - Assistant admitted in a declaration that he engaged in these actions without Druce's knowledge

Competence

- **In the Matter of Tracy W. Druce (cont'd)**
  - Lessons learned:
    - Be careful with electronic signatures
    - Two-attorney verification
    - Trust your instincts

Competence

- **Lyons v. Kinsel et al.**
  - Lyons sues Nike for patent infringement for US 5,513,448 (“Athletic shoe with compression indicators and replaceable spring cassette”)
  - Infringement expert was found by court to be unqualified, and court granted summary judgment to Nike for non-infringement
  - Lyons sues all of the attorneys who touched the case for $8M+ , including lawyers who filed in TX, those who got involved after case removed to OR, and the lawyer who referred the inventor to litigation counsel ($8M+ was the amount the damages expert said the case was worth)

Competence

- **Lyons v. Kinsel et al. (cont'd)**
  - So who could be disciplined for a bad expert?
    - Trial counsel?
    - Local counsel??
    - Referring counsel???

Competence

- **Two-Way Media LLC v. AT&T Inc.**
  - Texas jury found AT&T's U-Verse infringed two of TWM's patents in March 2013
  - In November 2013, judge denied AT&T's post trial motions and set a 30 day deadline to appeal, but electronic docket notice only referenced motions to seal ("ministerial" issues), so no one at Sidley Austin or AT&T read them carefully enough to realize this also included a decision on the substantive motions and a deadline for appeal
  - When Sidley/AT&T realized in January 2014 what had happened, they requested more time to appeal and judge said NO
    - Attorneys can't rely on electronic docket notices sent by court and must read every order issued
    - … and it was "particularly alarming" they missed the deadline given the amount of $$$ at stake ($40M judgment)

Competence

- **Two-Way Media LLC v. AT&T Inc. (cont'd)**
  - Sidley/AT&T appealed denial of extension to CAFC
    - Sidley/AT&T's argument: "[the court is] supposed to put the substance of the order in the notice. When a court affirmatively misleads with the note, that's a case of excusable neglect"
  - CAFC jumps all over Sidley/AT&T like a bounce house
    - Sidley/AT&T could have checked docket online easily at any point during 52 day period, and competent counsel has an obligation to read every order that comes down from the bench (Judge Dyk opinion)
    - "I can't imaging that at least a paralegal wouldn't open and read every attachment from the court" (Judge Wallach)
    - Judge O'Malley reiterated that it's even easier to keep track of case developments in federal court now with electronic case dockets since firms no longer have to send runners down to the courthouse

Competence

- **Two-Way Media LLC v. AT&T Inc. (cont'd)**
  - CAFC jumps all over Sidley/AT&T like a bounce house (cont'd)
    - Judge Wallach continues:
      - It is reasonable to expect that every order issued from the bench will be read by counsel
      - While no one is perfect, when he was an attorney he always tried to meet that impossible standard – "I strove, and I felt obligated to come as close to perfection as I could" and "It's why I agonized over runners and secretaries and looked over their shoulders"
    - And not to be left out, TWM's counsel said he read the entire order within five minutes of getting the docket notification – "it is unfathomable that people would not read these"

Competence

- **Two-Way Media LLC v. AT&T Inc. (cont'd)**
  - Lessons learned:
    - CAFC judges are impossibly perfect, they had it much harder in their day than you do, and they will be loathe to excuse your honest mistakes
    - No matter what the court clerk does, it is always your fault
    - That nightmare you had in law school where you wake up thinking you missed an exam, and that you now have about missing an appeal deadline, it wasn't just a dream.
  - So, what to do?
    - Consider having staff/docket clerk read all incoming from court/ USPTO
    - Consider docketing regular USPTO/court update checks, especially when decisions are imminent

Advertising

- ***FL BAR RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS***

  A lawyer may not engage in deceptive or inherently misleading advertising.

  - **(a) Deceptive and Inherently Misleading Advertisements.** An advertisement is deceptive or inherently misleading if it:
    - (1) contains a material statement that is factually or legally inaccurate;
    - (2) omits information that is necessary to prevent the information supplied from being misleading; or
    - (3) implies the existence of a material nonexistent fact.

Advertising

- ***FL BAR RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS***

- **(b) Examples of Deceptive and Inherently Misleading Advertisements.** Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:
  - (1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;
  - (2) references to past results unless such information is objectively verifiable, subject to rule 4-7.14;
  - (3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;
  - (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
  - (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";

Advertising

- ***FL BAR RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS***
  - **(b) Examples of Deceptive and Inherently Misleading Advertisements (cont'd)**
    - (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [. . . .]";
    - (7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;

Advertising

- ***FL BAR RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS***
  - **(b) Examples of Deceptive and Inherently Misleading Advertisements (cont'd)**
  - (8) a testimonial:
    - (A) regarding matters on which the person making the testimonial is unqualified to evaluate;(B) that is not the actual experience of the person making the testimonial;
    - (C) that is not representative of what clients of that lawyer or law firm generally experience;
    - (D) that has been written or drafted by the lawyer;
    - (E) in exchange for which the person making the testimonial has been given something of value; or
    - (F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

Advertising

- ***FL BAR RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS***
  - **(b) Examples of Deceptive and Inherently Misleading Advertisements (cont'd)**
    - (9) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or
    - (10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge…."

Advertising

- **USPTO - § 11.702 Advertising.**
  - (a) Subject to the requirements of §§ 11.701 and 11.703, a practitioner may advertise services through written, recorded or electronic communication, including public media.
  - (b) A practitioner shall not give anything of value to a person for recommending the practitioner's services except that a practitioner may:
    - (1) Pay the reasonable costs of advertisements or communications permitted by this section;
    - (2) [Reserved]
    - (3) Pay for a law practice in accordance with § 11.117; and
    - (4) Refer clients to another practitioner or a non-practitioner professional pursuant to an agreement not otherwise prohibited under the USPTO Rules of Professional Conduct that provides for the other person to refer clients or customers to the practitioner, if:
      - (i) The reciprocal referral agreement is not exclusive, and
      - (ii) The client is informed of the existence and nature of the agreement.
  - (c) Any communication made pursuant to this section shall include the name and office address of at least one practitioner or law firm responsible for its content.

Advertising

- **Rader Email Flap**
  - Judge Rader of CAFC emailed Edward Reines of Weil Gotshal in March 2014 (the day after Reines had argued two cases before CAFC), Rader told Reines that during lunch another CAFC judge had said she was “really impressed” with Reines’ performance and that other judges had said so as well
  - Rader also added “I not only do not mind, but encourage you to let others see this message,” which Reins promptly did by forwarding to over 70 individuals including clients and potential clients
  - Federal Circuit publicly reprimanded Reines, saying his email amounted to an implicit, rather than explicit, statement that he had influence with the judges on the court

Rules Links

- FL BAR
  - http://www.floridabar.org/divexe/rrtfb.nsf/FV?Openview&Start=1&Expand=4.2#4.2
- USPTO
  - https://www.federalregister.gov/articles/2013/04/03/2013-07382/changes-to-representation-of-others-before-the-united-states-patent-and-trademark-office#sec-11-101