

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF
RULE 5.6 OF THE RULES OF
PROFESSIONAL CONDUCT
(APPENDIX TO SDCL 16-18)

RULE 98-18

A hearing having been held on February 20, 1998, at Pierre, South Dakota, relating to the amendment of Rule 5.6 of the Rules of Professional Conduct (Appendix to SDCL 16-18), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that said rule (Appendix to SDCL 16-18) be and it is hereby amended to read in its entirety as follows:

Rule 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 rights 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.

COMMENT:

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.

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

RULE 98-18

Rule 5.6 does not apply to prohibit restrictions that may be included in the terms of sale of a law practice pursuant to Rule 1.17 and Rule 5.4(a)(3).

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1998.

DATED at Pierre, South Dakota, this 10th day of March, 1998.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 10 1998


Clerk