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VIA EMAIL AND U.S. MAIL
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Attorney Timothy J. Pierce
State Bar of Wisconsin
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RE: Rule Petition 15-04, In the Matter of the Petition to Modify SCR 20:1.9(c)

Dear Mr. Pierce:

Following the hearing on this petition today, the Court asked me to forward to you our proposed language clarifying the scope of SCR 20:1.9(c). It is my understanding that the Court asked the State Bar's Standing Committee on Professional Ethics to consider the language that I proposed to address the Committee's concerns while still addressing the First Amendment and other problems that led to the need for the petition.

Subsection (c)(1) deals with information that would disadvantage a former client and balances the rights of the client and the lawyer by allowing the use of such information so long as it is "generally known." I proposed the following language to provide the objective standard required by Due Process and the First Amendment for what constitutes information that is "generally known." At the same time, my proposal addresses the concerns raised by the Committee and others that the Petition's original clarifying language which also permitted the use of damaging information that previously "has been disclosed in a public forum" was insufficiently protective of the former client. My proposal excludes that language. Under my proposal, this section would read:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require

with respect to a client, or when the information has become generally known. “Generally known” information is information that is publicly available at the time the attorney uses it.

Subsection (c)(2) deals with information that would *not* disadvantage a former client and thus cannot justify as restrictive a limitation on its use. As reflected in the choice to use the word “reveal” in the existing rule rather than “use,” the rule already is limited to banning actions which make public that which was previously hidden, thus fully protecting client confidences while not interfering with the attorney’s First Amendment rights to discuss information already in the public realm. The Committee’s original submission to the Court did not really address this subsection, only raising its concerns regarding uses of information that could disadvantage a former client as addressed in Subsection (c)(1).

Although it should be unnecessary given the rule’s language, my proposed amendment makes the limited scope of Subsection (c)(2) clear:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

* * *

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client. Information that is publicly available or has been disclosed in a public forum has already been revealed.

Because the substance of my proposed clarification to Subsection (c)(2) should already be clear from the rule’s use of the term “reveal,” it may be appropriate to simply include the clarifying language in the Comments rather than by amending the rule itself. Although my preference would be to clarify the rule itself, the problem might be solved with an addition to the Comments such as the following:

Subsection (c)(2) provides that a lawyer shall not “reveal information relating to the representation” except as otherwise authorized or required by these rules. Unlike Subsection (c)(1), this provision addresses the circumstance in which the lawyer’s actions do *not* disadvantage the former client.

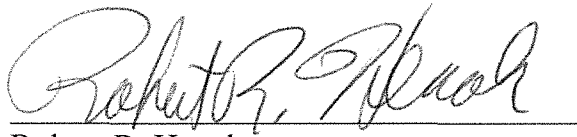
HENAK LAW OFFICE, S.C.
Attorney Timothy J. Pierce
February 23, 2016
Page 3

The term “reveal” is used in its ordinary and accepted meaning as connoting the act of making something known that was previously hidden. Under this subsection, therefore, the lawyer may not make public any private or non-public information from whatever source relating to the representation unless the lawyer’s actions are authorized by some other rule. However, because information that is publicly available or has been disclosed in a public forum has already been revealed, the lawyer’s discussion or use of such information does not violate this rule.

I trust that these proposals will satisfy your concerns. If you require any additional information or if you would like me to meet with the Committee to further address your concerns, please let me know and I will be glad to oblige.

Sincerely,

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