A Lucky to have a job, and he understood supervising him. Besides, Andrew felt responsible for the ethical errors of the attorneys certain that he couldn't be held responsible for the ethical errors of the attorneys practicing. Regardless, Andrew was managing attorneys, most of whom were following the rules of the jurisdiction in which they were practicing. According to recent Mandatory Course training, Andrew vaguely recalled from his recent Mandatory Course training that the D.C. Rules prohibited these types of non-adversarial employment contracts. As such, the Legal Ethics Committee has recently taken the opportunity through Legal Ethics Opinion 368 to remind D.C. Bar members how Rule 5.6 and Rule 8.5 impact employment agreements.

Liquidated Damages
Pursuant to Rule 5.6(a),

A Lawyer shall not participate in offering or making:

A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

In Opinion 368, the Legal Ethics Committee concludes that an employment contract that imposes liquidated damages on a lawyer who after departure competes with his or her former firm violates Rule 5.6(a). The committee reaches this conclusion in light of Neuman v. Akman, prior committee opinions, and clarifying language added in 2007 to Comment [2] of Rule 5.6.

At the heart of Rule 5.6 is the fundamental premise that limitations on a lawyer’s practice (outside of those inherent in the Rules of Professional Conduct) are bad for lawyers and clients alike, since a smaller pool of available attorneys necessarily limits clients’ choice of counsel. In a niche area of law, for example, it is not difficult to imagine a situation where clients would be effectively denied representation when the conflicts rules and confidentiality limitations combine with restrictions on the right to practice. Significantly, this rule also protects lawyer mobility, which is of particular importance for less experienced lawyers facing an extraordinarily tight job market and enormous loan obligations.

Does this mean that there are no circumstances in which a firm may impose financial liabilities on a departing lawyer? Probably not. For example, the firm’s attempt to recover the costs of relocating Andrew from Florida to the District of Columbia would likely not be construed as a “substantial financial penalty” under Comment [2], and it would certainly be a stretch to view it as a restriction on Andrew’s right to practice following his departure from the firm.

Professional Associations
Opinion 368 also addresses the provisions of the hypothetical employment contract which would impose a financial penalty on Andrew for associating with other former firm partners or employees after leaving the firm and finds such provisions clearly violate Rule 5.6(a). Here, the committee’s reasoning was largely an extension of that set forth in Opinion 181, where the committee found unethical an employment contract that was described as “perpetually prohibit[ing] any interference” by a departed lawyer “with the firm’s relationships with its lawyers/employees.”
Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE CHARLES P. MURDTER. Bar No. 375905. February 24, 2015. The Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Murdter for a period of six months, with all but 60 days of the suspension stayed, and that he be placed on probation for a period of one year, subject to conditions. Murdter failed to file appellate briefs, following his appointment by the D.C. Court of Appeals to represent defendants under the Criminal Justice Act, and pleaded guilty to criminal contempt for failing to obey the court’s orders in two of those five matters. Murdter violated Rules 1.1(a) (competent representation), 1.1(b) (skill and care), 1.3(a) (diligence and zeal), 1.3(b)(1) (intentional failure to seek client’s lawful objectives), 1.3(c) (reasonable promptness), 3.4(c) (knowingly disobeying the obligations under the rules of a tribunal), and 8.4(d) (serious interference with the administration of justice).

IN RE TODD L. TREADWAY. Bar No. 479233. February 12, 2015. The D.C. Court of Appeals disbarred Treadway by consent, effective immediately.

IN RE BRIAN J. BENNER. Bar No. 446757. February 5, 2015. In a reciprocal matter from Michigan, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Benner. At the time that he consented to disbarment in Michigan, Benner faced charges alleging misappropriation of settlement proceeds in a personal injury matter.

IN RE SCOTT J. BLOCH. Bar No. 984264. February 5, 2015. In a reciprocal matter from California, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Bloch for continued on page 46

Choice of Law

Finally, the Legal Ethics Committee turned to the difficult question of which jurisdiction’s rules apply to the conduct at issue. Choice of law questions are notoriously complex, particularly with respect to problems similar to our hypothetical, especially complex, particularly with respect to the issues. Choice of law questions are notoriously complex, particularly with respect to problems similar to our hypothetical, especially complex, particularly with respect to the issues.

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Speaking of Ethics  
continued from page 15

a period of one year, stayed in favor of a 30-day suspension, nunc pro tunc to December 15, 2014, to be followed by a two-year probationary period. The California discipline was based upon Bloch’s misdemeanor criminal conviction for depredation of government property.

IN RE EMERSON V. BRIGGS III. Bar No. 446158. February 5, 2015. In a reciprocal matter from New York, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Briggs, nunc pro tunc to December 28, 2012. The New York discipline was based upon Briggs’s felony conviction for receipt of child pornography.

IN RE ALLEN BRUFSKY. Bar No. 64956. February 5, 2015. In a reciprocal matter from Florida, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Brufsky. In Florida, Brufsky was found to have made knowing false statements to a tribunal and disbarred. In Virginia, Duncan was found to have violated Rules relating to conflicts of interest and dishonesty through gross negligence. In New Jersey, Stolz was found to have violated Rules relating to fad, dishonesty through gross negligence.

IN RE DALE E. DUNCAN. Bar No. 370591. February 5, 2015. In a reciprocal matter from Virginia, the D.C. Court of Appeals imposed functionally identical reciprocal discipline and disbarred Duncan. In Virginia, Duncan was found to have engaged in conduct involving conflicts of interest and dishonesty through concurrent representation of a financial institution and a borrower in proceedings that resulted in a nonprofit corporation having its property foreclosed upon. In addition to American and Georgetown, teams from American and George Washington College of Law students Luke Karamyalil and Ronny Valdes outdueled a team from Georgetown University Law Center in the final round of oral arguments to win the 2015 D.C. Moot Court Competition.

IN RE MARK R. GALBRAITH. Bar No. 475507. February 26, 2015. Galbraith was suspended on an interim basis based upon discipline imposed in Florida.

IN RE BRIAN W. SHAUGHNESSY. Bar No. 89946. January 16, 2015. Bar Counsel issued Shaughnessy an informal admonition for failing to maintain complete records of entrusted funds deposited in and withdrawn from his trust account, and for failing to provide one of his clients a writing setting forth the basis or rate of the fee that he actually charged, as well as the scope of the representation. Rules 1.15(a) and 1.5(b).

The Office of Bar Counsel compiled the foregoing summaries of disciplinary actions. Informal Admonitions issued by Bar Counsel and Reports and Recommendations issued by the Board on Professional Responsibility are posted at www.dcattribuynerdiscipline.org. Most board recommendations as to discipline are not final until considered by the court. Court opinions are printed in the Atlantic Reporter and also are available online for decisions issued since August 1998. To obtain a copy of a recent slip opinion, visit www.dccourts.gov/internet/opinionlocator.jsf.

Legal Beat  
continued from page 19

IN RE JARED E. STOLZ. Bar No. 489626. February 5, 2015. In a reciprocal matter from New Jersey, the D.C. Court of Appeals imposed identical reciprocal discipline and suspend Stolz for three months, with fitness. In New Jersey, Stolz was found to have violated Rules relating to making false statements to a tribunal and making false statements to a third party.

IN RE OSCAR J. ESTEVEZ. Bar No. 460593. February 10, 2015. Estevez was suspended on an interim basis based upon discipline imposed in Maryland.

IN RE CHARLES J. BROIDA. Bar No. 178954. February 10, 2015. Broida was suspended on an interim basis based upon discipline imposed in Maryland.

IN RE OSCAR J. ESTEVEZ. Bar No. 460593. February 10, 2015. Estevez was suspended on an interim basis based upon discipline imposed in Virginia.

IN RE BRIAN W. SHAUGHNESSY. Bar No. 89946. January 16, 2015. Bar Counsel issued Shaughnessy an informal admonition for failing to maintain complete records of entrusted funds deposited in and withdrawn from his trust account, and for failing to provide one of his clients a writing setting forth the basis or rate of the fee that he actually charged, as well as the scope of the representation. Rules 1.15(a) and 1.5(b).

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American University Team Wins 2015 D.C. Cup Moot Court Clash
On March 6 American University Washington College of Law students Luke Karamyalil and Ronny Valdes outdueled a team from Georgetown University Law Center in the final round of oral arguments to win the 2015 D.C. Moot Court Competition.

During the final round of the competition, teams from American and Georgetown argued their cases before D.C. Court of Appeals Associate Judge Vanessa Ruiz, D.C. Court of Appeals Senior Judge John M. Steadman, and D.C. Bar President Brigida Benitez.

Making oral arguments in front of all three was “unbelievable,” Karamyalil said. “The final round was so much more fun because we were going up in front of two judges and [a] D.C. Bar president.”

Awards also were presented to Karamyalil and Valdes for Best Brief and to Georgetown’s Logan Dwyer for Best Oral Argument.

Valdes joined the Moot Court Honor Society at American and competed in the D.C. Cup because of his desire to make “high-level arguments and take a lot of the skills that [he has] learned so far in law school and apply them,” he said.

In addition to American and Georgetown, teams from The Catholic University of America Columbus School of Law, The George Washington University Law School, Howard University School of Law, and the University of the District of Columbia David A. Clarke School of Law took part in the competition.—D.O.