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*Administrative Law Controls On Attorney Practice- A Look At the
Securities and Exchange Commission's Lawyer Conduct Rules*

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Abstract by Caroline Katz

Administrative agencies may regulate the practice of law before them, which is what the SEC has done with Rule 102(e) and its predecessors. While many other agencies regulate attorney conduct, this article focuses on the SEC's role in regulating attorney conduct before it and the administrative solutions to what constitutes proper representation before the SEC.

The SEC has the authority to seek temporary or permanent injunctive relief when they believe that a person has engaged, or is about to engage, in practices that constitute a violation. Rule 102 applies to all professionals who practice before the SEC (primarily lawyers and accountants). "Practice" includes administrative hearings or representation in connection with SEC investigations and transaction of business with the SEC among other things. Rule 102(e) gives the SEC authority to deny someone the right to practice before it (after there has been notice and opportunity to be heard) if it finds that the "person lacks the qualifications necessary to represent others, lacks sufficient character or integrity, has engaged in improper professional conduct, or has willfully violated or aided and abetted any violation of the federal securities law or the accompanying rules and regulations." (This list is not exclusive).

Lawyers play an important role in SEC practice because of their unique position to unknowingly facilitate securities fraud. While Rule 102(e)'s main purpose was to protect the integrity of the administrative process, Sarbanes-Oxley also showed concern for investor protection. Two situations governing the type of actions the SEC can take against lawyers include attorneys who violate the securities laws or knowingly aid and abet a client's violation may be pursued in the same manner as any other violator of securities laws, and the special role of attorneys may be relevant in considering their due diligence obligations.

Sarbanes-Oxley is partly influenced by the provision in the ABA's Model Rules of Professional Conduct which states that an attorney who is representing a corporation and is made aware of serious wrongdoing must take certain steps to correct the problem, including reporting the violation to someone in a position of authority within the corporation. Therefore, a main feature of Sarbanes-Oxley is that it requires the SEC to impose obligations to report wrongdoings within the corporation. Some of these obligations include the noisy withdrawal requirement, and the "climbing-the-ladder" or "up-the-ladder" requirement.

In conclusion, the SEC's rules are likely to have an impact on lawyer conduct, especially since the mere existence of a rule, no matter how vague, reminds lawyers of the responsibilities and liabilities they shoulder when practicing before the SEC.