

The Supreme Court of Texas  
Professional Ethics Committee

\*1 Opinion Number 551  
May 2004

## QUESTION PRESENTED

Is it permissible under the Texas Disciplinary Rules of Professional Conduct to require a lawyer who was employed as a lawyer by a city to comply with a provision of the city's Ethics Code that prohibits all former city employees from representing unrelated persons before the city for compensation for a period of two years after termination of employment with the city?

## STATEMENT OF FACTS

A city in Texas (the "City") has an ethics code (the "Ethics Code") that is intended to apply to all City employees. The Ethics Code includes provisions imposing a duty of continuing confidentiality and generally prohibiting representation at any time of non-family members against the City in matters as to which the employee participated while a City employee. The Ethics Code also includes a provision (the "Two-Year Prohibition") that prohibits a former City official or employee from representing for compensation any person, group or entity, other than himself and certain members of the employee's family, before the City with respect to any matter for a period of two years. The City has employed and continues to employ lawyers as full-time employees of the City.

Lawyer A had been employed as a lawyer by the City. Within two years after Lawyer A left employment with the City, Lawyer A proposed to represent an unrelated client before the City with respect to legal matters that were wholly unrelated to matters that Lawyer A had handled for the City. Lawyer B, who is currently employed by the City as a lawyer, sought to enforce the Two-Year Prohibition to prevent Lawyer A from representing his client before the City.

## DISCUSSION

[Rule 1.10 of the Texas Disciplinary Rules of Professional Conduct](#) specifically deals with successive government and private employment of lawyers. [Rule 1.10\(a\)](#) prohibits a lawyer from representing a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee unless the appropriate government agency consents after consultation. However, [Rule 1.10](#) does not include a requirement comparable to or in conflict with the Two-Year Prohibition of the City's Ethics Code. Therefore, compliance with or enforcement of the Two-Year Prohibition would not violate [Rule 1.10](#).

Rule 5.06 of the Texas Disciplinary Rules or Professional Conduct prohibits certain agreements relating to a lawyer's employment that would restrict the lawyer's right to practice law:

"Rule 5.06 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 suit or controversy, except that as part of the settlement of a disciplinary proceeding against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice."

\*2 Application of the Two-Year Prohibition of the City's Ethics Code does not violate Rule 5.06 because the Two-Year Prohibition is not part of a partnership or employment agreement but is, instead, part of a set of rules applicable to all employees of the City. The fact that a lawyer employed by the City is subject to the City's Ethics Code does not make the City's Ethics Code a part of the lawyer's employment agreement for purposes of applying the requirements of Rule 5.06.

## CONCLUSION

It is permissible under the Texas Disciplinary Rules of Professional Conduct for a lawyer who was formerly employed as a lawyer by a city to be required to comply with a provision of a city's ethics code that prohibits all former city employees from representing before the city for compensation any unrelated person for a period of two years after termination of employment with the city.