

## OPINION 515

July 1996

### Question

May a Texas attorney enter into an arrangement with a contract lawyer placement agency under which the agency will seek to place the attorney with law firms or corporate legal departments for work on short-term legal projects?

### Facts

An attorney licensed to practice law in Texas proposes to enter into a contractual arrangement with an agency that is a for-profit corporation not owned entirely by attorneys licensed to practice law in the state of Texas. Under the arrangement, the attorney will be placed by the agency with law firms or legal departments of corporations that desire to employ the attorney on a temporary or short-term basis. The attorney's contractual arrangement with the agency will provide for compensation to the attorney by the agency at an hourly rate that is not to be disclosed to the agency's clients and that will be lower than the per-hour rate paid by the agency's client to the agency for the attorney's services. The attorney agrees with the agency that he or she will comply with all requirements of the Texas Disciplinary Rules of Professional Conduct (the "disciplinary rules") as well as the guidelines set forth in the American Bar Association Formal Opinion 88-356 (1988) (concerning temporary lawyers and placement agencies). The agency will not receive information about the nature of the attorney's work for agency clients other than the clients' identities and the dates and hours of the attorney's work. The attorney will not have information as to the identity or legal affairs of agency clients for which the attorney is not working. Under the contract with the agency, for one year after completing an assignment for an agency client, the attorney will be prohibited from communicating with the agency client directly or indirectly and from performing legal services for the agency client unless the attorney notifies the agency within 48 hours.

### Discussion

On the facts stated, the attorney will not be an employee of the placement agency since the agency will not have the power to direct the work of the attorney. It is assumed in this opinion that the attorney's performance of legal services will be subject to the supervision and control of the agency's client, which will be either a law firm or a corporate legal department, and that therefore the attorney will be an employee of the law firm (or corporate legal department) [FN1] that contracts with the agency for the attorney's services. [FN2]

For purposes of applying conflict of interest rules, the attorney's relationship with the agency will not be considered since the agency will not be the employer of the attorney. The analysis of Ethics [Opinion 508](#) (TBJ, September 1995, page 864) will therefore not be applicable since that opinion dealt with attorneys that were legally the employees of a staff leasing company that provided attorneys to different law firms under employee leasing arrangements.

The attorney, acting as a temporary employee of a law firm, will be subject personally to the requirements of [DR 1.05](#) with respect to protecting confidential client information and to the requirements of [DRs 1.06](#) and [1.09](#) with respect to conflicts of interest. For purposes of these rules, the clients of the attorney will be the law firm's clients for which the attorney performs legal services. In the case of a corporate legal department, the client will be the corporation. If the attorney's work with the firm is sufficiently extensive that he or she is "associated with" the firm (or corporate legal department)

for which he or she is temporarily employed, then the attorney would be limited by conflicts affecting the firm and the firm would be limited by conflicts affecting the attorney as set forth in DRs 1.06(f) and 1.09(b) and (c). For a discussion of factors to be considered on the question of whether a temporary lawyer is "associated with" a law firm, see ABA Formal Opinion 88-356 (1988).

Since an attorney placed by the agency is employed by a law firm or corporate legal department, the compensation paid to the attorney by the law firm or legal department is not a legal fee paid by the attorney's client for purposes of applying the disciplinary rules with respect to reasonableness of legal fees and fee splitting. This is true when the employer is a corporate legal department since the corporation is the corporate legal department's client and the corporate legal department (viewed as the equivalent of a law firm) is responsible for compensating the attorney. Thus, even though under the arrangement between the attorney and the agency a portion of the agency client's payments for the attorney's services will go to the agency, the amounts in which the agency will share will be employment compensation to the attorney from the law firm or corporate legal department and not legal fees paid to the attorney by the attorney's client. Hence the prohibitions of [DR 5.04](#) against a lawyer's sharing legal fees with a non-lawyer or practicing law in a firm that is owned or controlled by nonlawyers will not apply to the attorney-agency relationship.[FN3]

The proposed arrangement under which the lawyer would be contractually bound not to perform services directly for an agency client for one year after completing an assignment for an agency client, except if the agency is given notice of the performance of such services within 48 hours, constitutes a contractual provision that would restrict the attorney's right to practice law. Although the described provision merely requires notification to the agency, the provision is a significant restriction on the attorney's right to practice law because the notification requirement would necessarily be part of contractual relationships between agency clients and the agency that would be designed to prevent agency clients from hiring agency attorneys directly. Consequently the notification requirement or any similar requirement (including any requirement for the attorney to pay a fee after ceasing to be employed through the agency) that would have the likely effect of restricting the attorney from working directly for agency clients after ceasing to be employed through the agency would constitute a contractual provision in violation of [DR 5.06](#), which provides:

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....

If this rule were violated by the attorney's arrangement with the agency, there would also be a violation of the rule by any Texas attorneys who control the agency as well as by any Texas attorneys who employ the attorney through the agency while being aware of the restrictive arrangement.

## Conclusion

Under the disciplinary rules, a lawyer may participate in an arrangement with a contract lawyer placement agency so long as: (1) the attorney safeguards all confidential client information; (2) the attorney and law firm comply with all applicable conflict of interest requirements; (3) the attorney is supervised by the law firm or corporate legal department to the extent that all legal fees paid by the client are fees to the law firm for the law firm's legal services (or are fees deemed paid by a corporation for the services of its legal department) and are not fees for the unsupervised legal services of the attorney; and (4) the attorney is not part of any agreement that would operate to restrict the attorney's right to practice law directly with or for a law firm or corporate legal department without the participation of the agency.

[FN1] For purposes of the disciplinary rules, a legal department of a corporation is treated as a law firm. See Disciplinary Rules — [Terminology](#) — "firm" or "law firm."

[FN2] If the attorney were not supervised by the employing firm but were instead to provide legal services as an independent contractor, the arrangement would become subject to several other requirements of the disciplinary rules, including prohibitions against soliciting clients and against sharing legal fees with non-lawyers. These prohibitions would generally make it impossible for an attorney to enter into such an arrangement while complying with all applicable disciplinary rules. For purposes of this opinion, it is assumed that there is sufficient supervision and control of the attorney that the attorney is properly viewed as a temporary employee of the agency client and is not viewed as providing legal services directly to the client or clients of the employing law firm (or directly to a corporation rather than to the corporation's legal department).

[FN3] The result would be entirely different if the attorney were performing services as an independent contractor and not as an employee of a law firm or corporate legal department. In the latter case, the compensation to the attorney would be fees for legal services rendered and the attorney could not share this compensation with the agency without violating [DR 5.04\(a\)](#).