

OPINION 508

October 1994

Facts

A law firm proposes to enter into an arrangement with an employee leasing company owned by non-lawyers to permit members of the law firm and its employees to obtain better health and other insurance benefits at a cost savings to the law firm.

The leasing company will enter into similar arrangements with other law firms and parties in an adverse position to clients of the law firm.

The leasing company will hire, fire, discipline and otherwise deal with employees leased to the law firm only as directed to do so by the law firm. The salaries to be paid to the employees leased to a law firm will be determined by that law firm. Each pay period, the law firm will pay the leasing company an amount sufficient to pay all salaries, taxes and benefits, plus an amount agreed upon as a fee for the services provided by the leasing company.

The leasing company will have no involvement in, relationship to, or control over the conduct or affairs of the law firm's practice. Clients of a law firm will not be made aware of the arrangement between the law firm and the leasing company. Fees to be charged by a law firm to its clients will be determined by that law firm.

A law firm will have no control over the activities of the leasing company, except as directly related to those persons employed by the leasing company and leased to a law firm.

Questions

1. Does such a leasing arrangement constitute an impermissible division or sharing of fees with non-lawyers?
2. Does such a leasing arrangement constitute the unauthorized practice of law through a non-lawyer owned entity?
3. Does such a leasing arrangement cause a potential conflict of interest prohibited by the disciplinary rules?

Discussion

[DR 1.04\(f\)](#) prohibits a division or agreement for division of a fee between lawyers who are not in the same firm except under the circumstances provided therein. Under the facts stated, leasing company will be paid a previously agreed upon fee which is not dependent upon the billings or earnings of the law firm or the fee charged to or collected from any client. No division or agreement for division of a fee between lawyers is involved under the employee leasing arrangement described above so the arrangement does not violate DR 1.04.

Under the facts stated, the leasing company will provide no legal services and will not have any control over the services rendered by a law firm. The employee leasing company will employ attorneys and lease them to law firms but will be directed in the performance of their work by the law firms to whom they are leased. The answer to the second question is "No."

A potential conflict of interest may exist between lawyers employed by the leasing firm who are leased to different law firms. Under the facts stated, one law firm may represent clients whose interests are adverse to clients of another law firm leasing lawyers from the same employee leasing company. The arrangement probably would lead to violations of [DR 1.06](#).

In analyzing the arrangement, the Ethic's Committee views the ethical responsibilities and consequences of the lawyers employed by the employee leasing company to be the same as if Lawyer A of Law Firm ABC is employed by Law Firm DEF to assist DEF in representing Client Jones, a client of DEF.

Lawyer A could not accept such employment by DEF if any member of ABC is prohibited by DR 1.06 from representing Client Jones. Likewise, it would be improper for a lawyer who is employed by a leasing company to perform work for a client whose interest is adverse to that of the client of another lawyer who is employed by the same leasing company, even though those lawyers are "leased" to separate law firms.

To avoid conflicts of interest, a law firm should be able to determine internally, from its own records and by consultation between members of that firm, whether a conflict of interest exists. Under the arrangement described above, a law firm leasing lawyers from the employee leasing company necessarily would have to consult and exchange information with each other law firm leasing lawyers from the same company to insure that no conflict exists.

The disclosure of confidential and privileged information about a client (even the fact that a person is a client of a law firm may be confidential and privileged) likely would be necessary to eliminate any conflict or potential conflict of interest.

Conclusion

Because of the potential for conflicts of interest between clients of different law firms to whom lawyer employees are leased by the employee leasing company, the employee leasing arrangement described above is not permissible.