



Committee on Professional Ethics

Opinion 914 (3/23/12)

Topic: Conflicts among members of a Legal Aid Conflicts Panel

Digest: Members of a panel of lawyers established to provide legal assistance to indigent clients when the Legal Aid Society has a conflict are not members of the same firm for purpose of conflict analysis as long as the panel members are independently engaged by, and independently render legal services to, their indigent clients.

Rules: 1.0(h), 1.6(a), (b), 1.7, 1.8(f), 10

FACTS

1. The inquirer practices in a county that has an agreement with the Legal Aid Society to provide legal assistance to indigent clients in criminal and Family Court matters. The lawyer is a member of a Legal Aid Conflicts Panel, an entity formed to provide legal representation to indigents when the Legal Aid Society has a conflict preventing the Society from having one of its staff attorneys undertake the representation.

QUESTION

2. Is a conflict that disqualifies a member of the Conflicts Panel imputed to, and thereby disqualify, all members of the Panel?

OPINION

3. When acting as a “qualified legal assistance organization,” the Legal Aid Society falls within the definition of “law firm” under the Rules of Professional Conduct. As a result, absent some exception, a conflict infecting any one attorney-employee of the Legal Aid Society is imputed to all others in the same office. Rules 1.0(h), 1.7, 1.10. To meet the needs of indigent clients when the Legal Aid Society has a conflict, the county has established a Legal Aid Conflicts Panel comprised of “supervising attorneys as well as additional contract attorneys.” The contract attorneys are paid a set salary to handle all representations in particular courts.

4. The issue here is whether the Legal Aid Conflicts Panel constitutes a “law firm” under the Rules. Rule 1.0(h) defines “law firm” to include, but not to be limited to, “a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.” We do not think that Legal Aid Conflicts Panels, as we understand their composition, share the

characteristics of these other affiliations that prompt the Rules to treat the latter as one for conflicts purposes.

5. The characteristics of conventional law firms, government and corporate legal departments, qualified legal organizations, and the like are several. All the lawyers practicing together in such entities are ordinarily thought to represent the client(s) that each lawyer in the group represents. The client has an attorney-client relationship not just with an individual lawyer but with the partnership, office, or organization of which the individual lawyer is a part. Each lawyer in the firm owes the same fiduciary duty to the entity's client(s) as any other lawyer. The sharing of a client's confidential information within the partnership, office, or organization is presumed. The lawyers typically work together in one or more common locations, in which client files are maintained. These factors, among others, are strong indicia that lawyers practicing together comprise a "law firm."

6. We understand Legal Aid Conflicts Panels to operate very differently. In N.Y. State 643 (1993), we addressed a series of questions about Legal Aid Conflicts Panels, including the propriety of establishing them, the rules on insuring them, and the maintenance of their files. In that instance, the county had a contract with the local bar association to provide counsel for indigent clients in conjunction with a qualified legal assistance organization. This joint project formed a Conflicts Panel to handle representations when the project had a conflict. We described our understanding of the Panels this way:

In representing eligible clients referred to them, conflicts panel lawyers would represent their clients independently from the project and its lawyers. Conflicts panel lawyers would not discuss client confidences or secrets with the project's lawyers, *see* DR 4-101(B), although conflicts panel lawyers would convey anonymous statistical information about the referred matters to the project to satisfy the project's reporting requirements. *See* ABA 334 ¶ 3 (1974); EC 4-3. Neither the project nor its lawyers would exercise any supervision or control over the legal services provided by conflicts panel volunteers. *See* DR 5-107(B). The assigned conflicts panel lawyer would keep the file pertaining to the representation in the lawyer's own office so long as the matter is active; when the representation is completed, the file would be stored at the bar association headquarters.

7. Although the citations to the old Code of Professional Responsibility are now stale, the principles remain the same in the Rules of Professional Conduct. Conflicts Panel lawyers represent their clients independently from the Legal Aid Society and its lawyers. Conflicts Panel lawyers may not discuss client confidences or secrets with the Society's lawyers, *see* Rule 1.6(a), although Conflicts Panel lawyers may convey anonymous statistical information about the referred matters to the Society to satisfy the Society's reporting requirements. *See* ABA 334 ¶ 3 (1974); Rule 1.6(b)(6). Neither the Society nor its lawyers may exercise any supervision or control over the legal services provided by Conflicts Panel lawyers. *See* Rule 1.8(f). The assigned Conflicts Panel lawyer should keep the file pertaining to the representation in the lawyer's own office so long as the matter is active, and provide for secure storage thereafter.

8. Based on these circumstances, we concluded in N.Y. State 643 that, “so long as conflicts panel volunteers are independently engaged by, and independently render legal services to, their indigent clients, there is no reason to regard conflicts panel lawyers as being part of the same law firm either *with one another* or with the project itself for conflict of interest purposes.” (Emphasis added.)

9. The only difference between the facts set out in N.Y. State 643 and those presented here is that the former referred to Panel members as “volunteers” – suggesting that they were not paid – whereas in the inquiry the Panel members are under a contract that pays them a salary. This difference does not matter as long as the Panel lawyers act independently of the Society (and the county) in keeping with Rule 1.8(f). The Rule provides that a lawyer may not accept compensation for representing a client from one other than the client unless (a) the client consents, (b) there is no interference with the exercise of the lawyer’s independent professional judgment on the client’s behalf, and (c) the lawyer maintains the confidentiality of the client’s confidential information. This same Rule governs the day-to-day workings of the Legal Aid Society employees, who are usually salaried employees representing indigent clients under government contract. We see no reason why paying the conflicts counsel should alter the analysis that they are independent contractors who do not become a “law firm” within the meaning of the Rules merely by serving on the Conflicts Panel.

CONCLUSION

10. As long as members of a Legal Aid Conflicts Panel act as independent counsel to their assigned indigents, the Panel does not qualify as a “law firm” within the meaning of Rule 1.0(h), and hence a conflict disabling one member of the Panel would not be imputed to other Panel members for conflicts purposes.

(11-11)