

Using Outside Help

Giving Proper Notice to Ensure Your Clients Understand Who is Working on Their Cases

Can a lawyer contract with outside lawyers to assist a client? How about with non-lawyers?

Ethical considerations with regard to using legal research companies, and as to outsourcing, have been discussed previously, but recent resolutions from the Pennsylvania Bar Association Legal Ethics and Professional Responsibility Committee (which will be submitted to the Supreme Court of Pennsylvania for consideration in amending the Pennsylvania Rules of Professional Conduct, and which track to ABA Model Rules amendments adopted August 2012) give an opportunity to address some of these issues again.

Rule of Professional Conduct 1.1 requires a lawyer to provide competent representation to a client. That means having the legal knowledge, skill, thoroughness and preparation reasonably necessary under the circumstances.

To accomplish that, generally speaking a lawyer can engage outside help. The other lawyer has to be appropriately supervised by the initial lawyer, and has to do a conflicts search, and will be subject to the full panoply of rules, such as confidentiality.

The Pennsylvania Bar committee has suggested adding language to the Comment of R.1.1, to the following extent:

A lawyer seeking to contract with lawyers outside the lawyer's own firm must first reasonably believe that the other lawyer's services will contribute to the competent and ethical representation of the client.

Then the lawyer should get informed consent from the client to the retention of the other lawyer's services.

The lawyers should continue to consult with each other, and must define the scope of their respective representations. When



making allocations of responsibility they must take into account any additional obligations such as to specific courts.

Parenthetically, those suggested changes address the need to take into account a lawyer's duties to keep abreast of relevant technology (implied by meaning electronic filing, email, social media, etc.), both their benefits and risks.

Use of non-lawyers also involves managerial responsibilities. The lawyer must ensure that the non-lawyer's conduct is compatible with the professional obligations of the lawyer. There must be direct supervisory authority utilized and problems must be promptly remedied.

Examples of non-lawyer services are investigative or paralegal services, document management, printing and scanning, and Internet information storage. Again, concerns that have to be addressed are competence, confidentiality, communication, professional independence and the unauthorized practice of law.

Specifically with regard to

confidentiality, the committee recommends an addition to R.1.6 requiring a lawyer to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Hence, contractual and other safeguards and security measures should be implemented as to the work done by outside lawyers or non-lawyers.

Allocation of responsibility is also implicated, to some extent dependent upon whether the lawyer or the client engages the "outsider."

So, the bottom line is that outside lawyers and non-lawyers may be brought in to help with a client matter, so long as care is taken to follow the Rules and proper notice is given to your client. ■

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