

Board of Professional Responsibility of the Supreme Court of Tennessee

TN Eth. Op. 85-F-99

Formal Ethics Opinion Number 85-F-99

September 12, 1985 (Approx. 1 page)

TN Eth. Op. 85-F-99, 1985 WL 285088 (Tenn.Bd.Prof.Resp.)

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Inquiry is made concerning the propriety of leasing non-lawyer staff personnel from a third party lessor/employer.

The lessor would be the employer and the non-lawyer staff personnel would be the employees of the lessor, and not employees of the law firm. The law firm would enter into a master lease agreement with the lessor/employer, which in turn would enter into an employment agreement with the individual staff members. The law firm would pay the lessor an amount to include salaries, and other benefits. The lessor would have the classical rights and responsibilities of an employer, such as paying the employee, giving holidays and vacations, performing performance evaluations and making employment and dismissal decisions. The lessor expects to place personnel for long terms, rather than short terms.

Under Ethical Consideration 4-1, the preservation of confidences and secrets of clients facilitates the full development of facts essential to proper representation and also encourages laymen to seek early legal assistance. These considerations should not be detrimentally affected by the leasing of office personnel, either in fact, or in the eyes of a layman. Laymen will probably not in fact know if a secretary is a full-time employee of the law firm, or part-time, or temporary, or leased, or shared. This is not to say that the layman has been deceived, but that he or she implicitly has general knowledge of the various arrangements professional people use to staff their offices.

Ethical Consideration 4-2 recognizes the fact that it is common knowledge that certain non-lawyers, such as secretaries, are exposed to confidential professional information in the normal operation of a law office. For instances, it is probably common knowledge that law offices have often, and for a long time, relied on very short term office personnel placed by various temporary service employment agencies. Thus, the fact that a law firm may instead rely on longer term office personnel placed by a non-temporary lessor should fall squarely with this Ethical Consideration.

Ethical Consideration 4-3 recognizes that it is not improper for a lawyer to give limited information to outside agencies for legitimate purposes, including bookkeeping and accounting, two of the very purposes that the proposed lease arrangement might be expected to cover. Leased employees might be expected to perform duties of bookkeeping or accounting, in addition to secretarial or receptionist, for instance.

Although, the individual bookkeeper would still not be a law firm employee, he or she would be much more closely associated with the firm than a bookkeeper at an outside agency, which is ethically appropriate.

Ethical Consideration 4-5 provides that a lawyer should be diligent to prevent misuse of client secrets and confidences. The lawyer's duty should be no less, nor no more difficult under the proposed leasing arrangement. The lawyer's ability to counsel longer term leased personnel concerning client secrets and confidences maybe easier than counselling temporary personnel or shared personnel.

*2 Finally, under the mandatory Disciplinary Rule 4-101(D), a lawyer is implicitly allowed to utilize others, other than employees, but must exercise reasonable care to prevent disclosure. Thus nothing in the Rule specifies whose services the lawyer must utilize in operating his office, but that, whatever arrangement he or she utilizes, is subject to the same duty if reasonable care to prevent disclosure.

In Formal Ethics Opinion 84-F-70, the Board stated that an attorney could share a receptionist/typist, with a corporate client.

There is no impropriety in a law firm leasing non-lawyer staff personnel from a third party lessor/employer provided the law firm exercises reasonable care to prevent the leased personnel from disclosing or using the confidences or secrets of a client.

Approved and adopted by the Board

Ethics Committee:

Jerry Colley, Chairman

William R. Willis

O. B. Hofstetter, Jr.

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