

Ethics Opinion 2022-03

Question Presented: May a law firm employ a non-lawyer to assist parties with resolving disputes as a “neutral” if the law firm already represents other clients adverse to the non-lawyer’s clients?

Short Answer: Yes, but the law firm should restrict the non-lawyer’s access to lawyers’ files and vice-versa.

Rules Implicated: 1.7 and 1.10

FACTS

Law Firm provides some services on a pro bono or reduced-fee basis. Law Firm applied for and received a grant enabling the firm to hire a non-lawyer social worker to serve as a mediator for housing disputes. Local landlords or tenants are able to contact the social worker, who then acts as a “neutral” in trying to help the parties resolve their disputes on a non-binding basis. If the dispute is not resolved, the parties are free to seek their usual legal remedies without the social worker’s further involvement.

Law Firm is concerned about what to do if a landlord or tenant seeks the social worker’s services when the Law Firm is already representing a different party adverse to the landlord or tenant. For example, it is possible the Law Firm represents one spouse in a divorce action, and the other spouse will seek the social worker’s services in a landlord/tenant dispute. During the course of the mediation of that dispute, the social worker may learn confidential information that the Law Firm’s existing client could use to the legal client’s advantage. Law Firm inquires whether this is a conflict of interest, and what Law Firm must do to avoid conflicts.

ANALYSIS

Rule 1.7 prohibits lawyers from representing a client in a matter that will result in the lawyer being simultaneously adverse to a different client, even in an unrelated matter. Rule 1.10(a) extends this prohibition to other lawyers in the same firm. Law Firm here appears concerned that Law Firm’s existing representation of clients in legal matters may be deemed to conflict with the Law Firm’s social worker’s provision of “neutral” services to parties who are already adverse to the Law Firm’s existing clients.

Rule 1.10(a) applies only to “lawyers,” stating “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9.” The social worker is not a “lawyer,” so Rule 1.10 on its face would not appear to apply. This is bolstered by Comment 4 to Rule 1.10, which states

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the

person became a lawyer, for example, work that the person did as a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

Law Firm will not have a conflict solely because a person who engages the Law Firm's social worker is adverse to a different person whom the Law Firm already represents in a different legal matter. However, the Law Firm should ensure that the social worker does not have any access to the Law Firm's legal files, and that its lawyers do not have any access to the social worker's mediation files.