New York State Bar Association

Committee on Professional Ethics

Opinion 804 – 11/29/06

Topic: Conflict of interest; attorneys for legal services corporation with separate private practices.

Digest: Attorney for small legal services corporation may not represent a private client as respondent in a legal proceeding in which petitioner is represented by legal services corporation.

Code: Definition 2; DR 1-104(A); DR 5-105(D)

QUESTION

1. May an attorney for a small legal services corporation represent in a private practice a respondent in a Family Court proceeding in which the petitioner is represented by the legal services corporation?

OPINION

2. The inquirer, a private practitioner, joined with a small group of lawyers to form a qualified legal services corporation. The corporation provides legal assistance and representation to persons charged with a crime or who are entitled to counsel pursuant to certain provisions of the Family Court Act, the Correction Law or the Surrogate's Court Procedure Act and who are financially unable to obtain counsel. The legal services corporation provides such services under a county plan for representation adopted in accordance with Article 18-B of the County Law. The lawyers who formed the corporation all provide indigent legal services on behalf of the corporation. The inquirer states that in providing such services the lawyers do not consult with each other or otherwise discuss cases handled by them on behalf of the corporation. At the same time, each of them receives a *pro rata* share of the fees paid by the county to the corporation, and each of these same lawyers maintains a separate private practice of law.

3. This Committee has long held that the legal staff of a small legal services corporation is like a law firm and that the possibility of disqualifying conflicts must be evaluated on that basis.[1] These holdings are consistent with the definition of a law firm found in the Code: "'Law firm' includes, but is not limited to . . . a qualified legal assistance organization."[2]

4. In this case, the lawyers involved are the legal staff of the legal services corporation, and are thus like a law firm. As such, where, as in this case, one of them would be disqualified from representing a party in a matter because of the concurrent representation of another party in the same matter with a differing interest, all of them would be vicariously disqualified, absent informed consent.[3] Thus, no one of them could in his or her private practice represent the respondent in a family court proceeding in which the petitioner is represented by the legal services corporation or vice versa. The rule exists not only to protect the confidences and secrets of clients but also to recognize the fact, and the expectation of the public, that lawyers in a law firm -- including lawyers in a legal services office -- have a real and substantial connection, including a financial interest, that aligns their interests.[4]

5. In this case, moreover, consent of the parties would not cure the conflict, because two lawyers from the same "law firm" would be representing opposing parties in a single litigation.[5]

CONCLUSION

6. An attorney for a legal services corporation may not, in his or her private practice, represent the respondent in a Family Court proceeding in which the petitioner is represented by another of the corporation's attorneys acting in the name of the legal services corporation.

(37-05)

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[1] *See*, *e.g.*, N.Y. State 605 (1989) (public defender and legal aid offices); N.Y. State 490 (1978) (legal staff of legal service organization); N.Y. State 102 (1969) (legal aid societies).

[2] Code, Definitions 2. In *People* v. *Wilkins*, 28 N.Y.2d 53, 56, 268 N.E.2d 756, 757, 320 N.Y.S.2d 8, 10 (1971), the Court of Appeals stated that the inference that information flows freely among members of a law partnership did not apply to "a large public-defense organization such as the Legal Aid Society." *Wilkins* involved a petition to vacate a conviction based on claimed ineffective assistance of counsel arising out of an asserted conflict. The Court relied heavily on the absence of trial taint or any evidence of prejudice to the convicted defendant. Our holdings, on the other hand, address prospective disqualification under applicable ethical standards. We note as well that *Wilkins* was decided well before the 1999 amendments to the definition of "law firm" in the Code, which added the reference to "a qualified legal assistance organization."

[3] DR 5-105(D); N.Y. State 605 (1989); *People* v. *Mattison*, 67 N.Y.2d 462, 494 N.E.2d 1374, 503 N.Y.S.2d 709 (1986); *Cardinale* v. *Golinello,* 43 N.Y.2d 288, 372 N.E.2d 26, 401 N.Y.S.2d 191 (1977).

[4] *See also* DR 1-104(A) (law firm shall make reasonable efforts to ensure that all lawyers in firm conform to disciplinary rules).

[5] N.Y. City 2001-2.