

Supervising Non-Lawyers Hired from another Law Firm

BY LAZAR EMANUEL

The New State Bar Association has issued Formal Opinion 774 (March 23, 2004) defining a law firm's responsibility on hiring a secretary, paralegal or other nonlawyer who has worked at another law firm.

Generally, it is advisable that the law firm remind the nonlawyer to protect the confidentiality of information relating to clients of the other firm. As expressed in NYSBA Opinion 422 (1975), a lawyer may hire a secretary who had worked at a currently opposing law firm, "provided he cautions the secretary not to divulge any confidential information and will not permit the secretary to do so." In training the new secretary, the lawyer might instruct the secretary not to accept any work assignment on which the secretary worked while at the former firm.

Also, lawyers in the new firm should be instructed not to solicit or listen to confidential information imparted by the new hire.

Under DR 5105(E), a law firm is required to keep contemporaneous records of prior engagements and to have a policy implementing a system for checking conflicts. In NYSBA Opinion 720 (1999), law firms were advised to include in this system "information about the representation of lawyers who join the firm." This same requirement does not apply to nonlawyers who are hired from another firm. "DR 5105(E) does not require law firms to search for conflicts that may be created when nonlawyers join the firm laterally." However, because DR 4104(C) requires adequate supervision of nonlawyers, there may be circumstances in which a firm should check for conflicts in a nonlawyer (example: hiring a litigation paralegal who worked for a solo practitioner who is now opposing counsel in a matter that was pending when the paralegal left).

If the new hire does possess confidential information belonging to the former firm, the new firm has a duty not to exploit it. A lawyer may not take advantage of an offer from a new hire to provide harmful information about the opposing party. NYSBA Opinion 700 (1998). A lawyer has a duty "to refrain from encouraging a breach of client confidentiality by opposing counsel's staff.

The greater the responsibilities of the new hire at the former firm, the more likely it is that ethical problems will arise at the new firm. It may be necessary, for example, to screen a secretary who acquired substantial information about a matter while at the former firm. Occasionally, even a screen will be inadequate. In those instances, the new firm may consider obtaining the consent of the former firm, withdrawing from the matter in conflict, or terminating the nonlawyer.