

ETHICS ADVISORY OPINION
23-05

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

SC Rules of Professional Conduct: 1.6, 1.8(b), 5.3, and 5.5.

Facts: Lawyer is in the process of starting a new law practice. One area of law that Lawyer intends to practice is elder law, and Lawyer is interested in hiring a social worker to assist with elder law cases, as is allowed in other jurisdictions. The social worker would serve as an Elder Care Coordinator and would assist Lawyer in developing a life care plan for the elder law client. Generally, the social worker would locate and coordinate needed care and community services and offer family education. The social worker would identify and recommend local programs such as those related to transportation and keep the client informed regarding the availability, quality, and cost of resources in the community.

Question Presented: Do the South Carolina Rules of Professional Conduct preclude a lawyer or law office from hiring a social worker to assist with elder law cases?

Summary: A lawyer may employ a social worker provided the lawyer adequately informs the social worker of the professional obligations of the lawyer, has measures in place that provide reasonable assurance that the social worker's conduct is compatible with those obligations, and supervises and is responsible for the work of the social worker. In addition, if a potential conflict exists between the social worker's obligations as a social worker and the Rules of Professional Conduct, the lawyer should inform the client of the social worker's potentially conflicting duties and allow the client to make an informed decision whether to consent to the social worker assisting with the client's case. However, if the lawyer knows or reasonably should know that there is information in the lawyer's file that will trigger disclosure by the social worker, the lawyer cannot allow the social worker to have access to that information.

Opinion:

The South Carolina Rules of Professional Conduct allow a lawyer to employ, retain, or associate nonlawyers provided that (1) the nonlawyers do not engage in the unauthorized practice of law, and (2) the lawyer makes reasonable efforts to ensure that nonlawyers in the firm and nonlawyers outside the firm engaged by the firm act in a manner consistent with the professional obligations of the lawyer.¹ See Rules 5.3 and 5.5.

¹ In Opinion 96-13, this Committee said "[a] lawyer may employ the services of an independent paralegal assistance service provided the lawyer adequately supervises the work of the paralegals

Rule 5.3, Comment [2] states in part:

A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

See also Rule 5.3, Comment [4] (similar obligation regarding nonlawyers outside the firm used by lawyer).

The Committee would call Lawyer's attention to the need to research any potential issues that may arise with the employment of a social worker. For example, if the person hired as a social worker by Lawyer is a mandated reporter of suspected abuse or neglect of a child, under S.C. Code Section 63-7-310, or of a vulnerable adult, under Section 43-35-25, that statutory mandate may conflict with the duty of confidentiality under Rule 1.6.² Therefore, in addition to ensuring the social worker is informed of the ethical duties imposed by the Rule 1.6 and the other Rules, Lawyer should, under Rule 1.8(b), inform the client of the social worker's potentially conflicting duties and allow the client to make an informed decision whether to consent to the social worker assisting with the client's case. *See* Kan. Atty. Gen. Op. No. 01-28. However, if Lawyer knows or reasonably should know that there is information in the Lawyer's file that will trigger disclosure by the social worker, Lawyer cannot allow the social worker to have access to that information.

and remains responsible for their work product. In billing for the paralegal organization's services, the lawyer should comply with his fiduciary duty to disclose to his clients the basis of his fee and expenses.”

² While the Committee does not answer questions of substantive law, it does strongly urge inquirers to research the substantive law relevant to their ethics inquiries. Here, without comment, the Committee would simply call inquirer's attention to state law addressing (1) whether the attorney-client privilege extends to communications between a client and a non-lawyer retained to assist with a case, and (2) the impact of the attorney-client privilege on the requirement that a mandatory reporter report abuse or neglect of a child or abuse, neglect, or exploitation of a vulnerable adult. *See, e.g., State v. Smith*, 286 S.C. 406, 334 S.E.2d 277 (1985), *overruled on other grounds, State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Hitopoulos*, 279 S.C. 549, 309 S.E.2d 747 (1983); and S.C. Code Sections 43-35-50 and 63-7-420.