

**STATE BAR OF NEVADA  
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 6  
September 24, 1987**

**QUESTION** - May a practicing lawyer operate a collateral business through which he places temporary secretarial and clerical help in other law offices?

**ANSWER** - A lawyer should not operate such a collateral business unless he devises and adopts measures to ensure that:

1. The lawyer does not place temporary help in offices with which he has matters pending;
2. The employees clearly understand they must preserve client confidences and avoid working on matters they have worked on for the lawyer or in other law offices; and
3. The lawyers who use the temporary secretarial service are told that the owner/operator of the service is himself an active lawyer.

**AUTHORITIES RELIED ON**

Nevada Rules of Professional Conduct (Supreme Court Rules) 156, 187, 203(1) (1987)

**DISCUSSION**

Lay employees who move from office to office, whether permanent, part-time, or temporary, present a threat to client confidences. Nevada Supreme Court Rule 156(1) (1987) [hereinafter "SCR", entitled "Confidentiality of Information," states the general rule:

A lawyer shall not reveal information relating to the representation of a client....

By its terms, SCR 156(1) does not apply to nonlawyer assistants. It is made applicable to their conduct, however, by SCR 187 and 203(1).

SCR 187 establishes a duty of supervision in the lawyer who employs nonlawyer assistants. It provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

1. A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
2. A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
3. A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
  - (a) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (b) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action.

Under SCR 187, "partners and those who supervise nonlegal assistants, such as secretaries and paraprofessionals, must take steps to see that breaches of confidentiality 'incompatible with [SCR 156(1)] do not occur through the actions of such personnel." G. Hazard & W. Hodes, *The Law of Lawyering* 464 (1986) [hereinafter "Hazard & Hodes"].

SCR 187 addresses the duty of the lawyer who first hires or exposes a lay employee to client confidences. SCR 203(1) complements SCR 187 by imposing a duty on the lawyer who hires another lawyer's employee to prevent the employee from betraying the first lawyer's client confidences. Thus, SCR 203(1) establishes it as "professional misconduct" for a lawyer to "[v]iolate or attempt to violate the

rules of professional misconduct, knowingly assist or induce another to do so, or do so through the acts of another." Under this rule, a lawyer may not hire another lawyer's lay employee unless he takes reasonable steps to ensure that the employee honors the other lawyer's duty of confidentiality to his clients. See Florida

Bar Professional Ethics Comm., Op. 86-5 (Aug. 1, 1986); Virginia State Bar Comm. on Legal Ethics, Op. 745 (Dec. 4, 1985); cf. Hazard & Hodes, *supra* p. 2, at 570 [illustrative case (a)].

There is nothing per se improper, under the principles just stated, in a lawyer operating a collateral business through which he places temporary secretarial and clerical help in other law offices so long as the lawyer does not place temporary help in offices against which the lawyer has adversary matters pending and adequately instructs the employees in their duty of confidentiality to the clients on whose files they work. See Oregon State Bar Legal Ethics Comm., Op. 226 (June 2, 1972) (lawyer may permit employees to work part-time for other firms so long as they do not work in offices against which the lawyer has cases pending); New York State Bar Ass'n Comm. on Professional Ethics, Op. 386 (Apr. 24, 1975) (to like effect). The lawyer conducting the business must carefully instruct each employee the rules of professional conduct, including the duty of confidentiality. SCR 187; see Florida Bar Professional Ethics Comm., Op. 86-4 (Aug. 1, 1986) (lawyer whose lay employee leaves to go to work for firm against whom lawyer occasionally litigates must instruct the departing employee in the duty of confidentiality); Wisconsin State Bar Comm. on Professional Ethics, Op. E-86-15 (Dec. 12, 1986) (to like effect). The lawyer who hires the temporary help must also take care to prevent "leaking" of confidences by such employees. SCR 203(1); see Tennessee Supreme Court Board of Professional Responsibility Ethics Comm., Op. 85-F-99 (Sept. 12, 1985) (a lawyer who leases employees from an employment agency must exercise "reasonable care" to prevent disclosure by them of confidential information and instruct the leased employees in their duty of confidentiality).

The real problem with the hypothetical before the Committee is the possibility that the lawyer will place temporary clerical or secretarial help in offices against which he has adversary matters pending. Other state ethics committees have addressed the related question of whether a firm may hire a departing nonlawyer employee of another firm when the firms have adversary matters pending and given varying responses, depending on whether client consent has been sought and obtained and on such additional factors as the access the employee had to confidential information, the relationship between the information and the issues in the case, the nature of the employee's duties, the risk of inadvertent disclosure, and the feasibility of instituting a "Chinese Wall" or other method of separating the employee from the matter. For a general discussion see Philadelphia Bar Ass'n Professional Guidance Comm., Op. 80-77 (1980); see also Florida Bar Professional Ethics Comm., Op. No. 86-5 (Aug. 1, 1986) (it is not improper to hire a secretary from a firm against which the hiring firm has pending matters, so long as the first firm's clients are advised and consent); Michigan Bar Association Op. C10-798 (July 9, 1982, (to like effect provided client consent is obtained and a "Chinese Wall" established); New York State Bar Ass'n Comm. on Professional Ethics, Op. 422 (Nov. 6, 1975) (a lawyer may hire a secretary who worked at another firm against which the hiring lawyer has adversary matters pending provided he prohibits the secretary from divulging confidential information). But see Oregon State Bar Legal Ethics Comm., Op. 435 (Jan. 1980) (lawyer who hires secretary of firm against whom he has matter pending must withdraw where secretary worked on the matter previously and had access to confidential information); Vermont Bar Ass'n Com. On Professional Responsibility, Op. 79-28 (Feb. 1980) (a paralegal employee who has worked extensively on a case and is privy to confidential information concerning it cannot be hired by opposing counsel without creating an intolerable appearance of impropriety which will require the law firm to withdraw unless another solution is reached).

This case does not involve employees leaving one firm to work for another but employees working simultaneously for more than one lawyer and moving from office to office on a short-term, temporary basis. Addressing part-time employees who work for more than one firm, both the New York and Oregon State Bar Associations have concluded that it "is improper for a lawyer to employ a part-time secretary if he knows she will continue her employment at another law firm with which he has periodic adversarial matters." New York State Bar Ass'n Comm. on Professional Ethics, Op. 386 (Apr. 24, 1975; Oregon State

Bar Legal Ethics Comm., Op. 226 (June 2, 1972); see also ABA Comm. on Professional Ethics, Op. 692 (Feb. 25, 1964) (a law firm engaged in criminal practice may not employ as a secretary in a confidential capacity the wife of a police detective, when the possible result is that the police would thereby gain access to confidential information otherwise not available to them). The duty of confidentiality is too important to be subjected to the risk that a lay employee's divided loyalties to simultaneous employers will lead to its breach, whether intentional or inadvertent. In the case of temporary or short term employees, moreover, the time does not permit consultation with clients, erection of Chinese Walls, or implementation of the other screening measures that can make tolerable the employment by one firm of another firm's former confidential employee. See also Tennessee Supreme Court Board of Professional Responsibility Ethics Comm., Op. 85-F-99 (Sept. 12, 1985) (in approving a "leased" employee arrangement, the Committee emphasized that the employees were to be leased on a long-term basis, which would permit the leasing lawyer time to counsel the employees as to their duty of confidentiality).

The temporary employees involved in the inquiry to this Committee present the same, even more acute problem of divided or confused loyalties as the part-time employees addressed in the New York and Oregon Bar Association Opinions. The lawyer who employs them is not a mere passive investor in an independently managed temporary secretarial agency; he owns and operates the business, side-by-side with his law practice. The inquiry to this Committee does not state whether the temporary employees also work for the lawyer in connection with his law practice, but even if they do not, the risk of inadvertent or intentional disclosure of confidential information is too great on the facts before the Committee to permit the lawyer to place temporary personnel in offices against which he has adversary matters pending.

To comply with his ethical obligations, the lawyer in question should maintain careful records of those lawyers against whom he has cases pending and decline to place temporary help in their offices. He should also inform lawyers who use his temporary help service that he is a lawyer, so they may exercise their own independent judgment regarding the propriety of using his employees.

Temporary employees frequently move from office to office. In view of this fact, both the lawyer operating the employment agency and the lawyers who use his services have a heightened duty to admonish the temporary employees not to disclose any confidential information, and to avoid exposing them to files regarding which they have pre-existing confidential knowledge.

*This opinion is issued by the Standing Committee on Ethics of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.*