

Ethics Committee of the Colorado Bar Association

Ethics Opinion 105: Opinion on Temporary Lawyers, May 22, 1999

A temporary lawyer represents the client of the firm or lawyer that hires him or her, and the Colorado Rules of Professional Conduct apply to that attorney-client relationship.

Conflicts of Interest. The proscriptions regarding conflicts of interest apply to the temporary lawyer regardless of the extent of the representation of the client. Conflicts of interest of either the temporary or hiring lawyer may be imputed depending on whether the temporary lawyer is associated with the hiring lawyer or firm. This is determined based on the circumstances surrounding the engagement. Whether such an association exists depends on the degree to which the temporary lawyer or the firm has access to information regarding each other's other clients. Both the hiring firm and the temporary lawyer have a responsibility to identify actual or potential conflicts of interest prior to the engagement and to take appropriate measures to insure against imputed disqualification. These responsibilities may not be delegated to a placement agency.

Division of Fees and Disclosure. The financial arrangement between the temporary lawyer and the hiring firm may constitute a division of fees if the temporary lawyer's compensation is directly tied to or dependent on the client's payment of fees to the hiring firm. However, if the temporary lawyer is entitled to payment of fees irrespective of the client's payment to the hiring firm, the arrangement does not constitute a division of fees. A division of fees requires disclosure to and consent of the client. Other rules may also require disclosure of the arrangement to the client.

Supervisory Responsibility. Supervising lawyers have a duty to ensure that the lawyers they supervise act with competence and adhere to the Rules of Professional Conduct. The hiring law firm or supervisory lawyer must provide adequate supervision of temporary lawyers and has a duty to hire competent temporary lawyers.