

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 585**

September 2008

QUESTION PRESENTED

In a community with only a limited number of lawyers available, may a lawyer counsel his client to retain all of the lawyers in that community for the purpose of denying local representation to the opposing party?

STATEMENT OF FACTS

A lawyer represents a party in a lawsuit filed in a community where there are a limited number of local lawyers. The lawyer proposes to counsel his client to hire all of the lawyers in that community with the result that the opposing party would not be able to employ a local lawyer for representation in the lawsuit.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct do not directly address this question. Rule 5.06 prohibits certain agreements restricting a lawyer's right to practice, but this Rule concerns partnership, employment or settlement agreements, none of which is involved here. Thus Rule 5.06 does not prohibit the practice here in question.

A lawyer counseling his client to hire all lawyers in a community in order to deprive the opposing party of local representation could however violate Rule 4.04(a) in certain circumstances. Rule 4.04(a) provides: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person" The question then becomes whether the proposed course of conduct has no substantial purpose other than to delay or burden a third person, in this case the opposing party.

This question cannot be answered in the abstract. The facts of the particular situation concerning the presence or absence of other reasons for hiring all lawyers in a community would determine whether the lawyer's proposed course of conduct would violate Rule 4.04(a). See *Resolution Trust Corp. v. Bright*, 6 F.3d 336 (5th Cir. 1993) (no violation of Texas Disciplinary Rule 4.04(a) where purpose of "laborious" witness interviews was to obtain a truthful affidavit); compare *In re Dvorak*, 2000 N.D. 98, 611 N.W.2d 147 (2000) (lawyer disciplined under North Dakota's equivalent of Texas Disciplinary Rule 4.04(a) because she had no substantial purpose, other than harassment, for writing a letter to a person's employer pointing out the person's allegedly false statements in litigation) with *Scales v. Committee on Legal Ethics*, 191 W.Va. 507, 446 S.E.2d 729 (1994) (no violation of West Virginia's equivalent of Texas Disciplinary Rule 4.04(a) where wife's lawyer's letter to husband's commanding officer was written for the purpose of stopping the husband from abusing the wife). If the only substantial purpose for a lawyer's actions in a particular case is to embarrass, delay or burden another person, such conduct violates Rule 4.04(a) without regard to whether the other person was actually embarrassed, delayed or burdened. See generally *Idaho State Bar v. Warrick*, 137 Idaho 86, 44 P.3d 1141 (2002).

In this case, if there is no substantial purpose other than delaying or burdening the opposing party, then advising a client to retain all of the available local lawyers in the community where a lawsuit is filed would violate Rule 4.04(a). See Virginia Standing Committee on Legal Ethics Opinion 1794 (June 30, 2004) (noting that a lawyer would violate Virginia's equivalent of Texas Disciplinary Rule 4.04(a) by directing a client to interview all the lawyers in a small community about a prospective legal matter with no intention of actually hiring any of those lawyers but instead with the purpose of sharing confidential information in those interviews and thereby disqualifying the interviewed lawyers from representing the opposing side).

CONCLUSION

Counseling a client to hire all the local lawyers in a community where a lawsuit is filed would violate the Texas Disciplinary Rules of Professional Conduct if such course of conduct had no substantial purpose other than to delay or burden the opposing party.