

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. 709  
February 2026**

**QUESTIONS PRESENTED**

What are the ethical responsibilities of a lawyer who seeks to retain an unaffiliated lawyer to perform a discrete, temporary legal service on behalf of a client, such as appearing at a hearing in a distant city?

What are the ethical responsibilities of the lawyer who agrees to perform the temporary legal service?

**STATEMENT OF FACTS**

A lawyer is unable to attend an upcoming court hearing in a distant city. The lawyer (“hiring lawyer”) decides to retain a lawyer located in the distant city for the sole purpose of attending the hearing (the “appearance lawyer”). The appearance lawyer is not a member or employee of, or of counsel to, the hiring lawyer’s law firm.

The hiring lawyer expects that the hearing will be a formality and that the appearance lawyer will need to do little more than attend the hearing. The hiring lawyer does not anticipate a need for the appearance lawyer’s services after the hearing.

The hiring lawyer either retains the appearance lawyer directly (based on a colleague’s recommendation) or locates and retains the appearance lawyer through an online placement agency. The appearance lawyer will be paid an hourly fee.

**DISCUSSION**

It is not unusual for lawyers and law firms to retain unaffiliated lawyers on a temporary basis to assist in the representation of a client. For example, a law firm may retain a temporary lawyer to provide special expertise in an unfamiliar area of law, to serve as local counsel, or to provide additional staffing on assignments such as document review. Some of the ethical issues associated with the employment of temporary or “contract” lawyers are discussed in Texas Professional Ethics Opinions 515 (July 1996) and 577 (March 2007).

This opinion is concerned primarily with unaffiliated lawyers retained to appear at court hearings or depositions in lieu of lawyers of record. We refer to these temporary lawyers as “appearance lawyers,” although they are also known as “per diem lawyers,” or “stand-in lawyers.” Unlike traditional local counsel, who may be retained for the duration of a case, appearance lawyers are usually hired to attend

one or more hearings or depositions when the hiring lawyer has scheduling conflicts or wants to avoid expensive travel. In many cases, the hiring lawyer anticipates that the hearing or deposition will be ministerial or routine.

Appearance lawyers may provide cost-effective alternatives for consumers of legal services. Likewise, occasional work as an appearance lawyer may be an appealing option for lawyers who no longer maintain a full-time practice. On the other hand, some courts have been extremely critical of the use of appearance lawyers. *See, e.g., In re Bradley*, 495 B.R. 747, 803-07 (Bankr. S.D. Tex. 2013) (Bohm, J.) (discussing inherent problems with use of appearance lawyers and entering general order prohibiting appearance lawyers in cases assigned to author of opinion). Any lawyer considering using or serving as an appearance lawyer should understand the associated ethical issues, including but not limited to the issues discussed below.

**An appearance lawyer represents the client, not the hiring lawyer.** When a lawyer retains an appearance lawyer to provide legal services on behalf of a client, the appearance lawyer represents the client. The appearance lawyer does not represent the hiring lawyer. The appearance lawyer must observe the full range of duties that a lawyer owes a client—notwithstanding the temporary nature of the relationship or the interposition of the hiring lawyer or placement agency. These include the duties of competence, confidentiality, and loyalty.

**Competence.** A lawyer who seeks to hire a temporary lawyer to provide legal services to a client must exercise reasonable efforts to ensure that the temporary lawyer is competent to perform the services and performs those services in accordance with the Rules. *See* Rules 1.01(b) and 5.01(b) of the Texas Disciplinary Rules of Professional Conduct. A hiring lawyer must provide the appearance lawyer such information and preparation as may be reasonably necessary under the circumstances.

The appearance lawyer must exercise reasonable efforts to understand the assignment and the information provided by the hiring lawyer. The hiring lawyer should provide the appearance lawyer with any information that the appearance lawyer considers necessary to provide competent representation. The appearance lawyer should not agree to any restriction on the ability to request and receive such information.

**Client consent and communication.** Ordinarily, a client expects that legal services will be provided by the lawyer or law firm that the client retained. A lawyer who hires an unaffiliated lawyer to handle a portion of the client’s representation may therefore have a duty to notify the client and obtain prior client consent. *See* Rules 1.02(b) (a lawyer “may limit the scope, objectives and general methods of the representation *if* the client consents after consultation”) (emphasis added) and 1.03 (a lawyer “shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information”).

A lawyer has a duty to notify the client and obtain the client's informed consent when hiring an unaffiliated lawyer who will not be working under the close supervision of a lawyer affiliated with the law firm retained by the client. This includes an appearance lawyer hired to represent the client in a hearing or deposition outside the hiring lawyer's presence.

There may be cases in which an appearance lawyer is able to perform the assignment competently without direct client communication. Nevertheless, an appearance lawyer should not agree to a contract with a hiring lawyer or placement agency that contains a "no client contact" provision, and the hiring lawyer should provide the appearance lawyer with the client's contact information if asked. An appearance lawyer owes the client an independent duty of competent representation, which may require direct client contact in certain situations.

**Confidentiality.** With limited exceptions, a lawyer may not reveal the confidential information of a client to anyone other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm. Rule 1.05(b)(1)(ii). Although a lawyer may reveal *unprivileged* confidential information without client consent when "impliedly authorized to do so in order to carry out the representation" or "when the lawyer has reason to believe it is necessary to do so in order to ... carry out the representation effectively," *see* Rule 1.05(d)(1), (2)(i), these exceptions do not apply to *privileged* client information.

As noted above, a hiring lawyer is obligated to provide an appearance lawyer such information and preparation as may be reasonably necessary under the circumstances. Before revealing privileged client information to the appearance attorney, the hiring lawyer must first obtain the client's express authorization or consent after consultation. *See* Rule 1.05(c)(1), (2). A hiring lawyer should not reveal privileged confidential information to a placement agency without informed client consent.

An appearance lawyer is bound by the same confidentiality obligations as any other lawyer.

**Loyalty and the avoidance of conflicts of interest.** Both the hiring lawyer and the proposed appearance lawyer must exercise reasonable efforts to ensure that the proposed appearance lawyer is not barred from the representation due to a conflict of interest.

**An appearance lawyer's conflicts of interest are ordinarily not imputed to the hiring lawyer's law firm.** Rule 1.10(a) provides, with certain exceptions, that "while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.06 or 1.09." Under this provision, conflicts of interest are automatically imputed among lawyers "associated" in the same firm.

In Opinion 515, the Committee addressed whether a temporary contract lawyer would be considered “associated” in the hiring firm. The Committee approved of the factors announced in ABA Formal Opinion 88-356 (1988), which provides, in relevant part:

Ultimately, whether a temporary lawyer is treated as being “associated with a firm” while working on a matter for the firm depends on whether the nature of the relationship is such that the temporary lawyer has access to information relating to the representation of firm clients other than the client on whose matters the lawyer is working and the consequent risk of improper disclosure or misuse of information relating to representation of other clients of the firm. . . . [I]f a temporary lawyer works with a firm only on a single matter under circumstances like the collaboration of two independent firms on a single case, where the temporary lawyer has no access to information relating to the representation of other firm clients, the temporary lawyer should not be deemed “associated with” the firm generally for purposes of application of Rule 1.10. This is particularly true where the temporary lawyer has no ongoing relationship with the firm and does not regularly work in the firm's office under circumstances likely to result in disclosure of information relating to the representation of other firm clients.

Typically, an appearance lawyer does not have access to information relating to the representation of other clients of the hiring lawyer's law firm, has no ongoing relationship with the hiring lawyer's law firm, and does not regularly work in the office of the hiring lawyer's law firm. In such a case, the appearance lawyer is not “associated” in or with the hiring lawyer's law firm, and the appearance lawyer's conflicts of interest should not be imputed to the lawyers in that firm, or vice versa.

**Local rules and practices.** Both the hiring lawyer and the appearance lawyer must be familiar with and must comply with the local court's rules and practices. Without limitation, this includes prohibitions or conditions on the use of appearance lawyers. *See, e.g., In re Bradley*, 495 B.R. at 803-07 (barring use of appearance attorneys); *see also In re Johnson*, 411 B.R. 296, 302 (Bankr. E.D. La. 2008) (holding that “[n]o attorney shall represent a client in a case before this court, whether at an actual court hearing, or in a 341 meeting of the creditors, unless that attorney is enrolled as counsel of record or co-counsel, or is a partner or an associate at the firm of the attorney who is enrolled as counsel”); *In re Wright*, 290 B.R. 145, 155-56 (Bankr. C.D. Cal. 2003) (holding that disclosure to the court is an absolute requirement if the debtor's attorney seeks to use an appearance lawyer).

Appearance lawyers must comply with all obligations to the court, including but not limited to obligations under Rule 3.01 (meritorious claims and contentions), 3.02 (minimizing the burdens and delays of litigation), 3.03 (candor toward the tribunal), and 3.04 (fairness in adjudicatory proceedings).

A lawyer contemplating engagement as an appearance lawyer should consider whether the assignment will require or result in the entry of a formal appearance in the case. An appearance lawyer who enters a formal appearance in a case remains counsel of record until the court allows withdrawal. If the hiring lawyer has not yet made an appearance in the case, the appearance lawyer who does so could unwittingly become the sole counsel of record for the client.

**Division of fee between lawyers who are not in the same firm.** Rule 1.04(f) requires that, when a law firm and a lawyer who is not “in” the firm divide legal fees or agree to do so, the division must meet several requirements: (1) either the billing is in proportion to services performed or the lawyers involved assume joint responsibility for the matter, (2) the client consents in writing to the terms of the fee division arrangement, and (3) the total fee complies with the requirement of Rule 1.04(a) that a fee for legal services not be unconscionable.

In Opinion 577 (March 2007), the Committee addressed whether and when a lawyer who is not an associate, partner, or shareholder of the law firm should be considered “in” the firm for purposes of the fee division rules:

Such a determination can be based on various objective factors, including but not limited to the receipt of firm communications, inclusion in firm events, work location, length and history of association with the firm, whether the firm and the lawyer identify or hold the lawyer out as being in the firm to clients and to the public, and the lawyer’s access to firm resources including computer data and applications, client files, and confidential information. Examples of other firm lawyers include lawyers referred to as of counsel, senior attorneys, contract lawyers, and part-time lawyers.

In contrast, a “non-firm lawyer” is “a lawyer who is not ‘in’ the law firm and instead practices separately from the law firm even when working with the firm on a particular client’s matter.” *Id.*

Examples of non-firm lawyers can include outside patent counsel, local counsel, counsel with expertise dealing with a particular government agency, counsel in another state hired to advise regarding the application of that state’s laws, and lawyers hired individually or through another organization that provides temporary additional staffing or capabilities such as document review or research for a particular matter.

*Id.* An appearance lawyer is a “non-firm lawyer.” Accordingly, Rule 1.04(f) applies if the hiring law firm divides or agrees to divide legal fees with an appearance lawyer. Whether a fee division occurs depends on how the hiring lawyer charges the client for the appearance lawyer’s fees:

[W]hen a law firm bills a client for the work of the firm's lawyers and for the work of a non-firm lawyer, there will be a division of fees under Rule 1.04(f) unless the law firm bills the non-firm lawyer's fee to the client in the same amount as billed to the law firm by the non-firm lawyer. If there is a difference between the amount billed by the non-firm lawyer and the amount charged by the law firm to the client with respect to this work, such billing will not be permissible unless all the requirements of Rule 1.04(f) are met.

*Id.* In short, an appearance lawyer and a hiring lawyer must comply with Rule 1.04(f) unless the hiring lawyer bills the appearance lawyer's fee to the client in the same amount as billed to the hiring lawyer by the appearance lawyer.

This Opinion does not address ethical issues that may arise from the use of nonlawyer-owned appearance lawyer placement agencies.

## CONCLUSION

A lawyer may hire an unaffiliated lawyer to perform a discrete, temporary legal service on behalf of a client, and a lawyer may agree to provide that service, but each must bear in mind their responsibilities and duties under the Rules. A lawyer hired to perform such a service represents the client, not the hiring lawyer, no matter how temporary and routine the assignment may be. The appearance lawyer owes the client the full panoply of lawyer-client duties, including competence, loyalty, and confidentiality. The appearance lawyer should not accept contractual restrictions that prevent compliance with those duties.

A lawyer has a duty to notify the client and obtain the client's informed consent when hiring an appearance lawyer or any other unaffiliated lawyer who will be representing the client without the close supervision of a lawyer affiliated with the law firm retained by the client.

Both the hiring lawyer and an appearance lawyer must avoid conflicts of interest relating to the representation of the client. Both the hiring lawyer and the appearance lawyer must be familiar with and must comply with the local court's rules and practices, including but not limited to rules limiting the use of appearance lawyers.

Because an appearance lawyer is not "in" the hiring lawyer's law firm, the appearance lawyer and the hiring lawyer must comply with Rule 1.04(f) unless the hiring lawyer bills the appearance lawyer's fee to the client in the same amount as billed to the hiring lawyer by the appearance lawyer.