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The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have been asked by a law firm from another city to serve as local counsel to them in a litigation matter. The law firm wants my agreement that they will do all the material work and will handle all communications with the client, that my responsibility is simply to file pleadings and briefs they produce, and stand by for any local practice questions. This will not be a big matter for me, but any business is business, and maybe it will lead to more. Do you see any issues with this?

A: Good timing on your question! The Ethics Lawyer just returned from the ABA Fall Malpractice Conference where there was a panel discussion on local and co-counsel issues. Here are some things to consider. First, this representation will establish an attorney-client relationship that will prevent your firm from being adverse to the client in the future, and establish other ethical duties (file maintenance and preservation, etc.). Many firms choose not to undertake small dollar local counsel assignments for this reason, as well as the likelihood that they may not be very profitable in general.

Second, from an ethical perspective, you should consider your obligations under applicable law in the jurisdiction: many jurisdictions have rule or case law requirements that, notwithstanding any agreement between counsel, local counsel is still fully responsible for pleadings or discovery responses they sign or file. Under Model Rule 1.2, with informed client consent, a lawyer may limit the scope of a representation, if the limitation is reasonable, but this may be overridden by rules or other law of the jurisdiction. This may require you to do sufficient work to make sure that matters you are asked to file or sign are correct and have appropriate basis, even if you cannot bill the client for it.

Third, in this connection, your Model Rule duties of competence (1.1) and diligence (1.3) remain. If, during the representation, you see any "red flags" about matters your co-counsel is undertaking, you may have a duty to step forward to deal with it, again, whether or not you can bill the client for it. Finally, one aspect of dealing with any subsequent issues may involve direct communication with the client, even if you have agreed with your co-counsel that they will handle client communications. Rule 1.4 requires a lawyer to inform, explain and communicate with the client in order to permit the client to make informed decisions. If you have reason to believe your co-counsel is not fulfilling this duty, you may be obligated to step in.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by Mark Hinderks, former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's Legal Ethics & Professional Responsibility practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.