

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 609**

August 2011

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer who is an employee of an insurance company and who represents persons insured by the company with respect to claims covered by liability insurance policies issued by the company share an office with a non-lawyer insurance adjuster, who is employed by the insurance company to handle on behalf of the company questions regarding coverage in particular cases under company insurance policies?

STATEMENT OF FACTS

A lawyer is an employee of an insurance company. A major part of the job of the lawyer is to provide representation to persons insured by the insurance company who are being sued on claims that appear to be covered by liability insurance policies issued by the insurance company. The lawyer shares office space with a non-lawyer insurance adjuster, who is also an employee of the insurance company and who handles on behalf of the insurance company issues concerning the extent of the coverage that is applicable under company insurance policies in the circumstances of particular insured persons. Part of the role of the insurance adjuster is to be prepared to question the extent to which particular claims asserted against insured persons are actually covered by liability policies issued by the insurance company. Some of the matters for which the lawyer provides representation are matters that are subject to evaluation by the insurance adjuster as to whether and to what extent a company-issued insurance policy provides coverage for the matter.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct and Texas statutory law do not prohibit a lawyer who is an employee of an insurance company from representing a person insured by the insurance company so long as the interest of the insured and the interest of the insurance company are congruent. See *Unauthorized Practice of Law Committee v. American Home Insurance Co., Inc.*, 261 S.W.3d 24, 26-27 (Tex. 2008). “[W]e have never held that an insurance defense lawyer *cannot* represent both the insurer and the insured, only that the lawyer *must* represent the insured and protect his interests from compromise by the insurer.” 261 S.W.3d at 42 (emphasis in original). As is true in the case of any client, the lawyer in this situation owes his client, the insured, unqualified loyalty. 261 S.W.3d at 41. In addition, since the lawyer will have obligations as a lawyer both to the insured and to the insurance company, there will exist the risk that conflicts of interest may arise where, under Rule 1.06 of the Texas

Disciplinary Rules of Professional Conduct, it may be impossible for the lawyer to continue to represent the insured.

The Texas Disciplinary Rules of Professional Conduct do not specifically prohibit a lawyer from sharing office space with a non-lawyer. However, a lawyer sharing office space with a person who is not a part of the lawyer's law firm is required to comply with all requirements of the Texas Disciplinary Rules, including the requirements of Rule 1.05 concerning the protection of a client's confidential information. See Professional Ethics Committee Opinion 493 (February 1994). In view of the lawyer's duties under Rule 1.05 not to disclose a client's confidential information or to use such information adversely to the client's interests, the lawyer in these circumstances is obligated to take all reasonable steps necessary to protect each client's confidential information so that no confidential information of a client is available to the insurance adjuster or to anyone else not working for the lawyer who will have access to the shared office space or equipment, including computer systems, used by the lawyer. Such steps should include, as necessary, restricting access to client files, computers, electronically stored information, printers, telephones, fax machines and copiers. In addition, members of the lawyer's staff should be trained and instructed to protect client confidences. Sharing confidential information with non-lawyer office staff, such as a receptionist or secretary, will be permissible only if the lawyer has taken effective steps to ensure that all confidential information of each client is protected from transmission to any person other than the lawyer and persons acting on behalf of the lawyer. In this regard, Rule 5.03(a) requires that a lawyer having direct supervisory authority over non-lawyer assistants make reasonable efforts to ensure that the assistants' conduct is compatible with the professional obligations of the lawyer.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, it is permissible for a lawyer who is an employee of an insurance company and who represents persons insured by the company with respect to claims covered by liability insurance policies issued by the company to share an office with a non-lawyer insurance adjuster, who is employed by the insurance company to handle on behalf of the company questions regarding coverage in particular cases under company insurance policies, provided that the lawyer takes appropriate steps to protect the confidential information of all clients represented by the lawyer.