

**COMMITTEE:** Ethics Committee

**DATE:** March 3, 2005

**4. CHAPTER 12: WHETHER PROPER FOR LAWYER TO ENTRUST CERTAIN MATTERS INVOLVING THE PRACTICE OF LAW TO CONTRACTOR**

The Unauthorized Practice Committee asked the Ethics Committee to consider whether lawyers may refer work that involves the practice of law to private contractors. The question arose during the Committee's investigation of a conveyancing and search company for possible unauthorized practice of law. The Unauthorized Practice Committee concluded that the company was providing legal services, but declined to take any action because it was satisfied that the work the company was performing was exclusively for lawyers. The company's expressed intention is to "provide the capability of an experienced paralegal in a specialized department of a law firm or in a specialized boutique practice."

The Committee noted that in March 2001 the Ethics Committee made the following comments with respect to the question of whether employees may be permitted to take files out of the office for the purposes of performing the work elsewhere:

It was the Committee's opinion that a lawyer may permit an employee to do work out of the office, provided the lawyer is satisfied that client confidences will not be compromised by permitting that to occur. In determining whether a lawyer can fulfill obligations of confidentiality in these circumstances, the lawyer must have regard to, among other things, the trustworthiness of the employee, the nature and sensitivity of the information the employee will be taking away from the office, the environment in which the employee will be working and the security that can be accorded to the information when it is out of the office.

It was the Committee's view that this question raises access to justice issues, since lawyers' use of contractors in this fashion will permit legal services to be provided more economically than would be the case if their use is prohibited.

The Committee concluded that the real issue is not whether work is to be performed by an employee or an independent contractor, but whether the lawyer can properly supervise the work that is to be performed, including ensuring the confidentiality of information entrusted to the employee or contractor. Provided the lawyer can supervise a contractor in accordance with the requirements of Chapter 12 and can fulfill required obligations of confidentiality, it is proper for a lawyer to engage such a contractor to do work that is the practice of law. In determining whether a contractor is amenable to appropriate supervision the lawyer must consider, among other things, the trustworthiness of the contractor, the nature and sensitivity of information that might be imparted to the contractor, how that information is to be protected, and the environment in which the contractor will be working.