

COMMITTEE: Ethics Committee

DATE: December 10, 2009

2. CHAPTER 4, RULE 1.1: APPLICATION OF RULE 1.1 TO A SUPERVISING LAWYER

A lawyer asked the Ethics Committee to give an opinion about the application of Rule 1.1 on some hypothetical facts. The lawyer stated those facts and the question arising from them as follows:

1. “Lawyer A is a Deputy Regional Crown Counsel, which is a managerial position. That is to say, Lawyer A, as a Deputy Regional Crown Counsel, is responsible for the supervision, direction and development of subordinate crown prosecutors.
2. Lawyer B is one of the subordinate crown prosecutors under Lawyer A’s supervision and direction.
3. Lawyer B has been experiencing certain work-performance problems which Lawyer A has been addressing, as Lawyer B’s manager, in meetings and correspondence with Lawyer B.
4. As part of that process, Lawyer A sends a memorandum to Lawyer B asking for an explanation of certain recent work-related conduct.
5. Lawyer A then receives a letter from Lawyer C saying that he (Lawyer C) has been retained by Lawyer B, and that he (Lawyer C) will be replying to Lawyer A’s memorandum to Lawyer B.
6. Thus, Lawyer A knows that Lawyer B has retained counsel in relation to the performance issues.

The question arising from those presumed facts is whether, in the light of the above-quoted Section 1.1, Lawyer A must now deal with Lawyer B’s performance issues through the intermediary of Lawyer C; or, put another way, whether, in the light of Section 1.1, Lawyer A is now forbidden from all direct managerial contact with Lawyer B in relation to the latter’s performance deficiencies, and attempts at correction and development and managerial matters generally.”

It was the Committee’s view that the application of Rule 1.1 is restricted to situations where a lawyer is acting as lawyer, and does not apply in situations where the lawyer’s primary obligation is to act as a manager of other staff. Were the situation otherwise, lawyers acting as managers would be in a position different from all other managers, and could be put in the untenable position of being effectively precluded from discharging their managerial duties where those duties require ongoing communication with staff who act under their supervision but have retained counsel in relation to an employment dispute.

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