

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 601**

August 2010

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer employed by a city as an assistant city attorney refuse to withdraw from legal representation of the city because the lawyer is protected from termination of employment by civil service employment provisions of the city charter?

STATEMENT OF FACTS

A lawyer, who is employed by a city as an assistant city attorney, is covered by provisions of a city charter under which (1) a covered city employee may not be terminated from employment without “due cause” and (2) a covered city employee may appeal termination to a civil service commission that has power to direct reinstatement of employment. The city proposes to terminate the lawyer’s employment.

DISCUSSION

In the case of a lawyer who is an employee of a governmental entity, there is a clear distinction between the responsibilities of the lawyer under the Texas Disciplinary Rules of Professional Conduct and the lawyer’s rights and responsibilities as an employee of the governmental entity. The lawyer’s responsibilities as a lawyer are governed by the Texas Disciplinary Rules of Professional Conduct. Depending on the circumstances, the lawyer’s rights and responsibilities as an employee of the governmental entity may be governed by Texas common law, contract, or statute.

Assuming the city has determined through its duly constituted processes that it no longer desires the lawyer to represent the city, the Texas Disciplinary Rules of Professional Conduct govern the lawyer’s responsibilities as a lawyer in this situation. Rule 1.15(a) requires that, with a sole exception in the case of a tribunal’s order to the contrary (as provided in Rule 1.15(c)), a lawyer “shall withdraw” from representation of a client if “(3) the lawyer is discharged, with or without good cause.” Thus, except in the case where a tribunal’s order requires representation to continue, the lawyer must withdraw as a lawyer for the client if the client discharges the lawyer for any reason. Rule 1.15(d) requires that, upon terminating representation of a client, “a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests” A client’s decision as to the termination of a lawyer’s representation of the client will apply and must be respected by the lawyer regardless of any rights of the lawyer as an employee vis-à-vis the client as an employer.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer employed by a city as an assistant city attorney may not refuse to withdraw from legal representation of the city because the lawyer is protected from termination of employment by civil service employment provisions of the city charter.