

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 620**

October 2012

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer enter into an agreement with an agent who is acting on behalf of an owner of taxable real property in a property tax appraisal matter under the terms of which the lawyer is engaged to represent the owner in the matter and in the representation the lawyer complies with the requirements of section 42.30 of the Texas Property Tax Code?

STATEMENT OF FACTS

An owner of real property subject to property tax enters into an agreement to be represented by an agent, who is not a lawyer, in proceedings before the Appraisal Review Board relating to the value of the property. After the decision by the Appraisal Review Board, the property owner determines to file a judicial appeal of the decision and gives consent and authorization for the agent to engage a lawyer to handle the appeal for the property owner. The property owner directs the lawyer chosen by the agent to accept instructions from the agent with respect to the judicial appeal and agrees that the agent will make payment on behalf of the property owner to the lawyer for the lawyer's services with respect to the appeal. The lawyer provides written notice of the engagement to the property owner as required by section 42.30 of the Texas Property Tax Code.

DISCUSSION

Section 42.30 of the Texas Property Tax Code ("Section 42.30") became effective in 2011. Subsection (a) of Section 42.30 provides that a lawyer who is engaged by a third party (the agent) to represent a person (the property owner and client) in an appeal of an appraisal review board order must give written notice to the client that informs the client of the engagement, explains ethical obligations of the lawyer to the client, describes the general activities of the agent, explains that the lawyer will be compensated by the agent, and informs the client that the client's consent is required before compensation can be accepted by the lawyer from the agent. Subsection (b) of Section 42.30 requires this notice to be given within 30 days of the engagement and subsection (c) provides that a lawyer may comply with Section 42.30 by, within 30 days of the filing of the appeal, entering into a written agreement with the client and the agent that contains the information specified in subsection (a).

The requirements of Section 42.30 do not appear to be inconsistent with any of the requirements of the Texas Disciplinary Rules of Professional Conduct. In fact the requirement

for a lawyer to communicate to the client certain matters with respect to a representation governed by Section 42.30 appears to be fully consistent with the basic requirements of Rule 1.03 of the Texas Disciplinary Rules, which requires a lawyer to keep a client reasonably informed about the representation and to explain matters to the extent reasonably necessary to permit the client to make informed decisions concerning the representation.

Rule 1.08(e) of the Texas Disciplinary Rules prohibits a lawyer from accepting compensation from a third party for representing a client unless the client consents, there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship, and confidential information relating to the representation of the client is protected as required by Rule 1.05. There appears to be no necessary inconsistency between the requirements of this Rule and the requirements of Section 42.30.

Rule 1.05 of the Texas Disciplinary Rules provides that, with limited specified exceptions, a lawyer must not disclose confidential information relating to a client acquired by the lawyer during the course of the representation or by reason of the representation. Particularly in view of the fact that Section 42.30 requires certain communications between a lawyer and his client but does not require disclosure of client confidences to third parties, there appears to be no necessary inconsistency between a lawyer's compliance with Section 42.30 and a lawyer's compliance with Rule 1.05. However, the communications between the lawyer and the client required by Section 42.30 would themselves constitute confidential information concerning the client that the lawyer would be required to protect from disclosure to third parties except as allowed by specified exceptions set forth in Rule 1.05. Rule 1.05(c)(1) would permit the lawyer to reveal to the agent information concerning communications between the lawyer and the client required by Section 42.30 when the lawyer has been expressly authorized to do so to carry out the representation. Moreover, if a court order in the judicial appeal required disclosure of communications mandated by Section 42.30 then the lawyer's disclosure of such communications would be permitted by Rule 1.05(c)(4), which permits a lawyer to reveal confidential information when required to comply with a court order or other law.

Rule 8.04(a)(12) of the Texas Disciplinary Rules provides that a lawyer shall not "violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law." Since Section 42.30 is a law relating to the professional conduct of lawyers and the practice of law, a lawyer's violation of the requirements of Section 42.30 would also constitute a violation of Rule 8.04(a)(12).

This opinion is confined to the application of the Texas Disciplinary Rules of Professional Conduct to lawyers seeking to comply with the requirements of Section 42.30. It should be noted that a lawyer's compliance with the requirements of Section 42.30 does not necessarily mean that there has been compliance with all applicable requirements of the Texas Disciplinary Rules in the lawyer's representation of the client. For instance, in spite of notice to the client (as required by subsection (a)(2) of Section 42.30) that the lawyer is obligated to ensure that the agent does not interfere with the lawyer's independent judgment, a violation will still occur if the agent in fact interferes with the lawyer's independent judgment in the case. Moreover, compliance with the requirements of Section 42.30 would not in itself prevent a compensation arrangement among the client, the agent and the lawyer that would involve a

sharing of legal fees with a non-lawyer in violation of Rule 5.04(a) of the Texas Disciplinary Rules.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer is permitted to enter into an agreement with an agent who is acting on behalf of an owner of taxable real property in a property tax appraisal matter under the terms of which the lawyer is engaged to represent the owner in the matter and in the representation the lawyer complies with the requirements of section 42.30 of the Texas Property Tax Code.