

Memorandum

MPT 1 2105

To: Thomas Burke

From: Applicant

RE: In re Rose Kingsley
Rule 200 compliance

I. Issues:

- (1) Whether Greene was a partner or an associate of Kingsley for purposes of Rule 200 of the Franklin Rules of Conduct ("Rule 200"); and
- (2) Whether the requirements of Rule 200 have been met by the fee-splitting agreement between Kingsley and Greene and the communication with Kingsley's client, Janice Moreno ("Moreno").

II Short answer:

- (1) Greene was not a partner or associate.
- (2) The requirements of Rule 200 were not met.

Please see the discussion that follows for analysis of the relevant law and facts.

III. Discussion

(II) Whether Greene was a partner or associate for purposes of Rule 200.

Rule 200 provides for financial arrangements among lawyers. Specifically, a lawyer shall not divide a fee for legal services with a lawyer who is temporarily engaged and who is not a partner or associate of the lawyer unless certain exceptions are met.

Before examining the exceptions, it is important to determine whether a lawyer is a partner or associate. The Franklin court of Appeals provided guidance on this determination in

Chambers v. Kay (2002) by stating that "an associate is a lawyer who works for, rather than with,

another lawyer." In making this determination, the court will consider the totality of the circumstances and, in particular, consider the supervision ^(of) and compensation arrangements with the lawyer at issue.

(A) Supervision

In considering the supervision of a lawyer, the court will look at the following: (1) direct and indirect control of the representation; (2) oversight of the temporarily engaged lawyer in the legal + factual aspects of the case; (3) control over the work environment; and (4) the relationship with the client. Also considered, will be the relative strengths and experience of each lawyer such that any particular expertise may affect the

control that a temporarily engaged lawyer is given.

Here, Greene was supervised with respect to her legal work because she was a new lawyer with respect to the technical/engineering work, ^(factual) for which ^{the primary purpose} she was hired, Kingsley did not supervise very much but, instead, relied on Greene's expertise. This level of supervision and reliance on one lawyer's expertise is consistent with the court's definition of working with a lawyer, rather than for her. Further, Kingsley had control over Greene's work environment to the extent that Greene used Kingsley's office and staff to work on the case. However, Greene was free to come and go at her convenience and continued to pursue

(B) Compensation

In considering the compensation of a lawyer, the court will look to whether that compensation was contingent. Here, the compensation was contingent with advances being made on the basis of hours worked by Greene. Although Greene might argue that the payments made were not tied to contingency, the underlying agreement indicates otherwise and such an assertion would defeat her ^{current} claim to collect \$300,000. As such, it is clear that the compensation arrangement was contingent, which is the most indicative evidence that Greene worked with, rather than for, Kingsley.

her own practice from another location. These facts are consistent with the conclusion that Greene worked with, and not for, Kingsley. Finally, Greene had no face-to-face contact with the client, Ms Moreno, and limited phone contact. The facts indicate that this was deliberate on the part of Kingsley to ensure that there was no confusion as to the attorney of record. Again, these facts are evidence of Greene's working with, rather than for, Kingsley.

In reviewing the facts in the record along with Rule 200 and the case law on point, it is clear that Ms. Greene was not an associate ~~of~~ or partner of Ms. Kingsley.

~~IV~~. Whether the requirements of Rule 200 have been met by the fee splitting agreement between Kingsley and Greene and the communication with Moreno

Rule 200 prohibits the splitting of a fee between lawyers ~~unless~~ who are not partners or partners/associate unless (1) the client has consented in writing after a full disclosure has been made in writing that the fees will be split and the terms of such split; and (2) the total fee charged by all lawyers is not increased solely by reason of the fee split and is not unconscionable. The purpose of Rule 200 is to protect the client to the maximum extent possible.

It is already been established that Greene was not a partner or associate so the remainder of the memo will examine whether any exceptions apply that would allow fee splitting and render the fee arrangement between Kingsley and Greene enforceable.

(A) Did Ms. Moreno consent in writing after full disclosure of fee splitting arrangement and its terms was made in writing?

There was a written letter sent to Ms. Moreno by Kingsley stating that Greene would be working on the case and indicated that Greene would be paid by Kingsley. Ms. Moreno acknowledged receipt of the letter by signing it and returning it to Kingsley.

This letter, however, did not satisfy the requirements of a written consent after a written disclosure of the fee splitting arrangement. The Franklin Court of Appeals has ruled that Rule 200 is a bright line rule and must be satisfied by full compliance with the rule's written disclosure and written consent requirements. Margolin v. Shemana (2000). Here, the letter to Ms. Moreno did not disclose the manner in which the fees would be split and may not, from the client's perspective, made it clear that the arrangement was one of fee-splitting. Ms. Moreno's subsequent call indicates that the writing did not make the fee arrangement clear nor did she understand her ~~the~~ right to consent or withhold consent, which is

an important purpose of requiring the written disclosure and written consent. Margolin. Greene's oral explanation of the details of the fee arrangement did not serve to make Moreno's consent valid because such details should have been disclosed in writing. For the reason set forth above and because the purpose of Rule 700 is to protect the client to the maximum extent possible, it is clear that Kingsley's letter to Moreno and Moreno's subsequent signature and return did not satisfy the written-disclosure and written consent requirement of Rule 700.

③ Did the fee arrangement result in an increase in the total fee charged to Ms. Moreno?

Kingsley's arrangement with Greene did not and, even if it were enforceable, would not result in an increase in the amount of fees charged to Ms. Moreno.

This fact, however, is irrelevant at this stage because, as discussed above, ~~the~~ the written-disclosure and written-consent requirements were not complied with by Kingsley or Greene.

In examining rule 200, the relevant case law and the facts provided, it is clear that the fee arrangement between Kingsley and Greene is unenforceable because the requirements of Rule 200 were not met regarding fee splitting.

VI. Conclusion

Ms. Kingsley's fee arrangement with Ms. Greene is likely unenforceable because (1) Ms. Greene was not an associate or partner of Kingsley and (2) the requirements of Rule 200 were not met. ~~As~~ As such, it is unlikely that a Court would require Kingsley to pay Greene the \$300,000 that is demanded.