

Ethics Opinion

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FACTS: An attorney wants to maintain a legal practice while at the same time working as an employee of a professional services organization within the same office. The attorney plans to institute the following safeguards:

1. The name of the firm includes the statement, "including the individual law office of (attorney)";
2. The attorney will practice in a business organization in which non-lawyers have no financial or ownership interest;
3. The attorney has no financial or ownership interest in the professional services firm;
4. There is no agreement regarding referrals between the attorney and the other professionals;
5. The attorney issues a separate engagement letter regarding any legal services to be rendered in addition to any engagement letters issued by the professional services firm;
6. The attorney does not allow the professional services firm to interfere with the attorney's professional judgment;
7. The attorney's work product will be delivered under cover separate from that of the professional services firm and will not include any unnecessary references to the professional services firm;
8. The attorney maintains separate client files physically separated from the professional services firm client files;
9. The attorney separately bills and retains all fees from providing legal services; and
10. The attorney takes reasonable measures with the client regarding any services related to the professional services firm that such services are not legal services and that the protections of the attorney-client relationship do not apply.

QUESTION PRESENTED: Do the attorney's proposed safeguards overcome the ethical barriers precluding the maintenance of a legal practice while working as an employee of a professional services organization?

SHORT ANSWER: No. The proposed safeguards do not alleviate the challenges such an arrangement presents to the legal profession's core values of professional independence of judgment; protection of confidential client information; and loyalty to the client through the avoidance of conflicts of interest. Additionally, there are no assurances that the employer has agreed to comply with the Rules of Professional Conduct, specifically those at the core of this inquiry. The Montana Rules of Professional Conduct preclude the establishment of the proposed arrangement, despite the proposed safeguards.

DISCUSSION: The requesting attorney is proposing the creation of an entity that is currently not permitted under rule 5.4 of the Rules of Professional Conduct. Rule 5.4, entitled the "Professional Independence of a Lawyer", provides, in pertinent part:

- (a) A lawyer or law firm shall not share legal fees with a non-lawyer.
- (b) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation, limited liability company, or association authorized to practice law for a profit, if:
 - (1) a non-lawyer owns any interest therein, except that a fiduciary representation of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) in the case of a professional corporation, a non-lawyer is a corporate director or officer thereof;
 - (3) in the case of a limited liability company, a non-lawyer is a manager of the limited liability company;
 - (4) a non-lawyer had the right to direct or control the professional judgment of a lawyer.

The entity proposed is a variation on a subject that is garnering considerable national and state attention, multidisciplinary practice (MDP). Generally, an MDP is an organization owned wholly or in part by non-lawyers that provides legal services directly to the public through owner or employee lawyers.

On the national level, the American Bar Association's Commission on Multidisciplinary Practice proposed to eliminate the rule 5.4 prohibition against non-lawyer ownership of law firms. The ABA's House of Delegates debated and defeated the proposal of, saying, in effect, the issue requires more study. The Montana Bar Association has appointed its own Multidisciplinary Practice Committee, which is studying the issue and expects to make a proposal to the State Bar of Montana's Board of Trustees in June 2000.

In the proposal that was defeated, the ABA Commission developed specific amendments to each of the rules involving the core values of confidentiality, privilege, and conflicts of interest. The ABA Commission also drafted a new rule that in part provides that not only is a lawyer in an MDP bound by the Rules of Professional Conduct, but that all the Rules of Professional Conduct that apply to a law firm also apply to an MDP.

The ABA Commission felt that amendments to the Rules were required to permit an MDP. They also proposed that non-attorneys unschooled in the Rules be brought within the jurisdiction of the Rules. These issues merit thorough consideration before proposals of their magnitude be adopted here.

CONCLUSION: The requesting attorney's proposed safeguards do not address the ethical barriers precluding the maintenance of a legal practice while working as an employee of a professional services organization under Montana's present Rules of Professional Conduct for attorneys.

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