



New York State Bar Association
Committee on Professional Ethics

Opinion 957 (1/14/13)

Topic: Nonprofit organization offering legal services and seeking grants to subsidize the legal services programs

Digest: A lawyer for a bona fide nonprofit organization may furnish legal services to beneficiaries of the organization as part of the organization's programs as long as the agency is complying with Judiciary Law § 495. However, the lawyer must obtain each client's consent for him to be compensated by the agency, the lawyer must not permit the organization to direct, regulate, or otherwise interfere with the lawyer's independent professional judgment in rendering legal services for clients, and the lawyer must protect the clients' confidential information. As long as the programs satisfy these criteria, the lawyer may assist the agency in seeking grants to support the agency's legal services programs.

Rules: 1.8(f), 5.4(c) & (d), 5.5(b), and 7.2(b)

FACTS

1. The inquiring attorney is a salaried employee of a bona fide nonprofit credit counseling agency that is not a law firm. He has inquired whether he may ethically participate in two legal services programs that his employer would like to offer: (1) filing for bankruptcy protection for clients who are unable to do so outside of the agency because of their financial situation, and (2) advising seniors concerning whether they should join supplemental needs pooled income trusts previously established by a separate 501(c)(3) agency under the applicable provisions of the New York State Social Services Law by entering into "joinder" agreements.

2. The credit counseling agency presently advises debtors on whether they will benefit from payment plans with the debtors' creditors. The agency would like to add legal services to enhance the agency's role in providing financial solutions, primarily to assist the elderly or others in need of social security assistance. Since this market is underserved, the agency intends to assist individuals with Representative Payee services as well as to form a bill pay service for those who are incapable of handling their own finances or who lack assistance of others. The agency has not established any fee arrangement for the proposed services. However, in light of the agency's mission, the agency plans to keep fees to a minimum so that it can serve those who cannot afford private representation but are not sufficiently indigent to qualify for free legal aid. The agency plans to seek grant funding opportunities to assist it in subsidizing the legal services programs.

3. If the proposed programs are implemented, the inquiring lawyer will furnish legal services to the agency's clients. Each client for whom legal services are provided will sign an engagement letter that specifies that the agency itself will not give legal advice or represent clients and that the client-lawyer relationship is only between the client and the attorney. The agency's board of directors will adopt a policy prohibiting the agency from controlling the lawyer's representation of clients.

QUESTIONS

4. May a lawyer employed by a nonprofit credit counseling agency assist the agency in offering legal services programs?

5. May a lawyer employed by a nonprofit credit counseling agency assist the agency in seeking grants to support the agency's legal services programs?

OPINION

Legal Services Offered by a Nonprofit Organization

6. Rule 5.4(d) prohibits a lawyer from practicing with or in the form of an entity authorized to practice law *for profit* if a nonlawyer owns any interest in the entity, is a member, corporate director or officer of the entity, or has the right to direct or control the professional judgment of the lawyer. However, Rule 5.4(d) does not extend to nonprofit organizations.

7. New York Judiciary Law § 495 prohibits corporations from practicing law, but New York Judiciary Law § 495(7) carves out exceptions for (1) organizations that offer prepaid legal services, (2) nonprofit organizations that furnish legal services as an "incidental activity" in furtherance of some other "primary purpose," and (3) organizations whose primary purpose is to furnish legal services to indigent persons. Judiciary Law § 496 requires organizations exempt under § 495(7) to report and annually update the following information to the Appellate Division: a statement describing the nature and purposes of the organization, composition of the governing body, type of legal services offered, and names and addresses of any attorneys employed by the organization.

8. Therefore, nonprofit organizations authorized to practice law under Judiciary Law §§ 495(7) and 496 and organizations that offer prepaid legal services and furnish legal services to the indigent are not subject to Rule 5.4(d)'s prohibition against lawyers working at an entity where a nonlawyer is "a member, corporate director or officer thereof."

9. The credit counseling agency is a nonprofit organization operated primarily to provide financial counseling to those in need of assistance. Its services include credit counseling, budget planning, debt management plans, bankruptcy counseling and advocacy of pooled income trusts established by others. In furtherance of these activities, the agency proposes to furnish legal services to help clients seek bankruptcy protection and to review joinder agreements that will enable seniors to join existing pooled income trusts. If the agency's legal services constitute "incidental activities" in furtherance of some other "primary purpose," the agency is exempt from

the prohibitions of Judiciary Law § 495 by virtue of subdivision (7). In *Paskowski v. DiBenedetto*, 184 Misc.2d 34, 705 N.Y.S.2d 521 (Family Court, Rockland County, 2000), the court held that a legal services program established by a nonprofit community organization to provide emergency housing and outreach programs to victims of domestic violence is exempt under Judiciary Law § 495(7) because it offers legal counseling to those who use the shelter's services.

10. Similarly, the credit counseling agency that employs the inquiring attorney wishes to offer legal solutions that follow from their other services: representation of a client in a bankruptcy proceeding and in reviewing and advising the client concerning the joinder agreements that they must sign to join existing pooled income supplemental needs trusts. This Committee does not render opinions on questions of law such as the interpretation and application of Judiciary Law § 495, but for purposes of this opinion we will assume that the agency that employs the inquiring attorney is not violating § 495. If the agency is violating § 495, then the inquiring attorney may not assist the agency in offering or providing legal services because he would be assisting a nonlawyer (the agency) in the unauthorized practice of law, in violation of Rule 5.5(b) (“A lawyer shall not aid a nonlawyer in the unauthorized practice of law”).

11. Even if a nonprofit organization is in compliance with Judiciary Law § 495, however, lawyers working for the organization are still required to comply with the applicable Rules of Professional Conduct. Three rules are especially relevant here. Rule 1.8(f) provides that a lawyer shall not accept compensation (or anything else of value) from a third party for representing a client unless “(1) the client gives informed consent; (2) there is no interference with the lawyer’s independent professional judgment or with the client-lawyer relationship; and (3) the client’s confidential information is protected as required by Rule 1.6.” Rule 5.4(c) prohibits a lawyer from permitting a person who recommends, employs or pays the lawyer to render legal service for another to direct or regulate the lawyer's professional judgment in rendering such legal services. And Rule 7.2(b)(4) permits a lawyer to be employed or paid by a "bona fide" organization to furnish legal services to others, so long as (*inter alia*) there is no interference with the lawyer’s exercise of independent professional judgment.

12. The Code predecessors of Rule 1.6 and 5.4(c) were applied in N.Y. City 1997-2, which concluded that a lawyer employed by a social services agency to represent clients must provide independent and competent representation and preserve client confidences in accordance with the ethics rules, without allowing it to direct or regulate the lawyer's independent professional judgment. We agree with that aspect of Opinion 1997-2.

Seeking Grant Funding Opportunities

13. The agency proposes to seek grant funding opportunities to assist it in paying for the legal services programs. As noted above, Rule 1.8(f) prohibits a lawyer from accepting compensation for representing a client from one other than the client unless the client gives informed consent, there is no interference with the lawyer’s independent professional judgment or with the client-lawyer relationship, and the client’s confidential information is protected as required by Rule 1.6. Rule 1.8(f) does not prohibit the agency from seeking grants to support the

proposed legal services programs as long as the grants are not tied to any particular client's legal services, the grantors do not interfere with the lawyer's exercise of professional judgment, and neither the lawyer nor the agency reveal client confidential information in the grant applications or in any communications regarding how the grant money is being used.

CONCLUSION

14. A lawyer for a bona fide nonprofit organization may furnish legal services to beneficiaries of the organization as part of the organization's programs as long as the agency is complying with Judiciary Law § 495. However, the lawyer must obtain each client's consent for him to be compensated by the agency, the lawyer must not permit the organization to direct, regulate, or otherwise interfere with the lawyer's independent professional judgment in rendering legal services for clients, and the lawyer must protect the clients' confidential information. As long as the programs satisfy these criteria, the lawyer may assist the agency in seeking grants to support the agency's legal services programs.

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