



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1190 (05/22/2020)

Topic: Professional limited liability company to provide legal services with non-lawyer members

Digest: A professional limited liability company with nonlawyer members may not provide legal services.

Rules: Rule 5.4 (d)(3)

FACTS

1. The committee has received an inquiry from a lawyer admitted to practice in the state of New York who is a sole practitioner doing business through a Professional Limited Liability Company (PLLC) of which the lawyer is the sole member. The PLLC has no employees. The inquirer proposes to add family members who are not lawyers as minority members of the PLLC so that they can receive retirement and health insurance benefits through the PLLC.

QUESTION

2. Is it ethically permissible for non-attorneys to be members of a PLLC providing legal services?

OPINION

3. New York Rule of Professional Conduct 5.4, entitled, “Professional Independence of a Lawyer,” contains various provisions to ensure that a lawyer’s representation of clients is not tainted by the influence of persons not bound to the tenets underlying the profession. A principle of great importance is that stated in the title of this rule, that a lawyer must maintain professional independence. Thus, a lawyer may not share fees with a non-lawyer (5.4(a)), a lawyer may not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law (5.4(b)), A lawyer may not permit someone who recommends, employs or pays the lawyer to control the lawyer’s professional judgment or to interfere with the lawyer’s duty of

confidentiality (5.4 (c)), and, relevant to this inquiry, a lawyer must not practice with or in the form of a for-profit entity wherein a nonlawyer owns any interest, or a nonlawyer holds a position as a member, director or officer, or occupies a position of similar responsibility in a non-corporate association (5.4(d)).

4. Applying Rule 5.4, this committee has opined that: 1) A patent attorney cannot offer non-distinct (mixed legal and non-legal) services in, among other situations, a business where the lawyer owns the business with a nonlawyer, N. Y. State 1166. 2) A New York lawyer may not partner with a D. C. lawyer who has nonlawyer partners in the lawyer's D. C. practice, N.Y. State 1038. 3) A lawyer may not partner with or be employed by a nonlawyer to offer legal services as part of a "disability office," N.Y. State 992. 4) A lawyer who works for a debt-management company owned by a non-lawyer may not offer legal services to the company's clients, N.Y. State 1081. 5) A lawyer cannot practice principally in New York if working for a United Kingdom firm with nonlawyer owners, N.Y. State 911.

5. The Inquirer notes this Rule, but still asks if the exception stated in Rule 5.4 (a)(3) to permit law firms to include nonlawyer employees in a retirement plan based on a profit-sharing arrangement would include the minority members of a PLLC who are not employees, and if the Committee could include other employee benefits in this exception. The committee has no authority to expand Rules beyond their clear meaning. A "member" of a PLLC is defined in the New York State Limited Liability Law as a person with a "membership interest." A membership interest includes all the indicia of ownership: a right to share in profits and losses, a right to dividends, and a right to vote and participate in management. N.Y. Limited Liability Law § 102 (q, r). The meaning of "Employee" in the Rule at issue is as the term is commonly understood, and the Inquirer has stated that the family members he wishes to include are not employees.

6. Finally, while this Committee does not decide questions of law, it is worth noting that the New York Limited Liability Company Law does not permit PLLC's that practice law to have nonlawyer members. §1203. This provision is in accord with the N. Y. Business Corporation Law (BCL) dealing with Professional Corporations (Article 15), and, of course with N.Y. Judiciary Law §495. In N.Y. State 934, a lawyer who had withdrawn as a partner in a firm but remained "of counsel" to the firm wanted his compensation from the firm to be paid into a subchapter S corporation in which his spouse was a shareholder. The opinion found that the payment for the practice of law could not be made to the S corporation, because the BCL did not permit nonlawyers to own any interest in a Professional Corporation formed to practice law. (N.Y. BCL §1503.)

CONCLUSION

Therefore, because the contemplated conduct is specifically proscribed by Rule 5.4(d), the Inquirer may not practice law in a PLLC that has nonlawyers as members.

(32-19)