NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion 633 - 5/3/92 (29-91)	Topic:	Unauthorized practice of law; partnership with nonlawyer; misleading statements; division of legal fees; office sharing; disclosure of confidences.
	Digest:	Law firm may not enter into arrangement with staff leasing company to provide debt consolidation services to law firm's clients, where law firm does not supervise work or maintain direct relationship with clients.
	Code:	DR 2-101(A), 3-101(A), 3-102(A), 3-103(A), 4-101(B), 4-101(C), 5-101(A) and 7-102(A)(8); EC 1-5, 3-5 and 3-6.

QUESTION

A staff leasing company (the "SLC"), consisting of nonlawyers, wishes to provide debt consolidation and financial planning for a law firm's clients. Advertisements would state that the law firm provides such services. Individuals would come to the law firm's office to consult with a member of the SLC staff. The SLC would generate all correspondence to the client's creditors under the law firm's name. The SLC also would handle all calls from creditors. Bankruptcy papers, if necessary, would be prepared by the SLC at the law firm's direction. The SLC would refer only "difficult" legal questions to the law firm. Clients would be billed by the law firm, which in turn would be billed by the SLC. Finally, the SLC would rent the office space and sublet part of the space to the law firm for its use. May the law firm enter into the proposed arrangement with the SLC?

OPINION

The Lawyer's Code of Professional Responsibility prohibits a lawyer from aiding

a nonlawyer in the unauthorized practice of law. DR 3-101(A); *see also* DR 3-103(A) (lawyer may not form partnership with nonlawyer "if any of the activities of the partnership consist of the practice of law"). The Code does not specifically define what constitutes the practice of law, but EC 3-5 states that "[f]unctionally, the practice of law relates to the rendition of services for others that calls for the professional judgment of a lawyer." Many services, including debt consolidation and financial planning, may properly be undertaken by either lawyers or nonlawyers. This Committee has stated, however, that even where services could be performed by a nonlawyer, an arrangement whereby a lawyer and a nonlawyer jointly provide such services is improper where it enables the nonlawyer to hold himself or herself out as offering legal services. N.Y. State 557 (1984) (lawyer and tax accountant may not jointly prepare tax returns and give tax related advice). *See also In re Schenk*, 171 A.D.2d 33, 574 N.Y.S. 2d 372 (App. Div. 1991) (lawyer may not form "association" with collection agency).

There are circumstances under which a nonlawyer may provide services to a law firm's clients in conjunction with the lawyers of the firm. The lawyers, however, must supervise the work delegated to the nonlawyers and maintain a direct relationship with the clients. EC 3-6.

Under the proposed arrangement, the lawyers of the firm would not supervise the SLC and the lawyers would have minimal contact with the clients. Instead, the SLC would perform most of the work on its own and refer only "difficult" legal questions to the law firm. Based on these facts, the proposed arrangement is prohibited by DR 3-101(A) of the Code.

In addition, while it is not the function of this Committee to address issues of law, we do observe that Judiciary Law § 495 forbids a corporation or voluntary association from practicing law except as specifically authorized by statute. *See also* Judiciary Law §§ 478, 484. Generally, conduct that is illegal is unethical. *See* DR 7-102(A)(8); EC 1-5. Thus, it would be unethical for a law firm to assist a corporation or voluntary association in the practice of law in violation of any statute or court rule regulating the practice of law.

DR 2-101(A) prohibits a lawyer from making any public communication that is false or deceptive. The SLC's use of the law firm's name in its letters to creditors would be misleading. *See* N.Y. City 80-26 (1980) (individuals reviewing the letter would assume that the named lawyer has personally reviewed the claim, determined its validity and determined that the recipient's defenses are legally insufficient when no such professional assessment has been made). *See also* N. Y. State 179 (1971) (lawyer may not allow collection agency to use its letterhead without retaining full professional responsibility over work product). It follows that any advertisement by the law firm would be misleading, and thus violate DR 2-101(A), if it did not specify that the bulk of the services would be handled by nonlawyers.

We also point out that DR 3-102 (A) prohibits a lawyer from sharing legal fees with a nonlawyer. Under the proposed arrangement, clients would be billed by the law

firm, which in turn would be billed by the SLC. If the compensation to the SLC were in the form of a commission or percentage based on the volume of business developed, this arrangement would violate DR 3-102 (A). N.Y. State 565 (1984). As we stated in N.Y. State 565, such form of compensation gives the nonlawyer a pecuniary interest in the success of the solicitation and "may lead to the use of hard-sell tactics or other improprieties."

In respect of the proposed landlord-tenant relationship between the SLC and the law firm, we note, as we did in N.Y. State 583 (1987), that "[d]epending on the financial arrangement and other business and personal circumstances, a rented office situation might involve relatively little danger that professional judgment would be improperly influenced or, on the other hand, substantial danger." Accordingly, while there is no *per se* prohibition against rentals such as the one proposed, we believe that the law firm should avoid financial or other business or personal interests, including rentals, that could reasonably affect the lawyers' exercise of professional judgment solely on behalf of their clients. *See* DR 5-101(A) (lawyer must decline employment if his or her professional judgment may reasonably be affected by the lawyer's interests).

Finally, the plan to have nonlawyer members of the SLC staff interview clients and act as intermediaries between the clients and the lawyers is fraught with the danger that confidences and secrets of clients will not be protected. *See* N.Y. State 490 (1978) (danger of breaching duty of confidentiality where staff lawyers of legal service organization are required to report to board consisting of lawyers and nonlawyers); N.Y. State 485 (1978) (improper for legal aid lawyers to divulge client confidences to research organization without clients' consent). Thus, this arrangement would be improper unless, prior to any contact with the SLC staff, each client is informed that the communication with the SLC staff may not be protected as a confidence or secret. *See* DR 4-101(B) (requires lawyer to preserve confidences and secrets of client); DR 4-101(C) (permits disclosure with client consent).

CONCLUSION

Based on the facts and for the reasons set forth above, the question is answered in the negative.
