NEW YORK STATE BAR ASSOCIATION
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New York State Bar Association
Committee on Professional Ethics

Opinion 1288 (12/19/2025)

Topic: Nonlawyer ownership of a Professional Corporation

Digest: An irrevocable testamentary trust established as part of an estate plan for an attorney who is a minority shareholder in a professional corporation may not, upon his death, take over his ownership interest in the professional corporation for the benefit of an attorney employee of that professional corporation.

Rules: 1.0(h), 1.8(h), 5.4(a), (b), and (d).

FACTS:

1. The Inquirer is an attorney in a New York law firm that concentrates in advising clients on estate planning, trust and estate administration, and business succession.

2. The Inquirer is writing on behalf of a client who is an attorney and a minority equity shareholder in a New York law firm organized as a professional corporation ("P.C."). The client wishes to establish an irrevocable testamentary trust to hold his ownership interest in the law firm upon his death so that the beneficiary of the trust, a non-equity owner attorney employed by the P.C., may benefit from the client's current corporate interest.

3. The trustee of the proposed trust would be a New York licensed attorney who is not an owner or employee of the P.C., and who practices in a different area of law than the P.C. The trustee would have limited control over the affairs of the P.C. in that the trustee would not have day-to-day management responsibilities or make case-level decisions, would not serve as an officer or director of the P.C., and would have limited voting rights at the P.C.

4. The trust instrument would require the trustee to resign in the event of an unresolved conflict and would provide for the appointment of a successor New York licensed attorney in good standing who satisfies the same independence requirements.

5. In addition, the trust instrument would prohibit any distribution or benefit, direct or indirect, to any nonlawyer.

QUESTION:

6. Under Rule 5.4, may an irrevocable testamentary trust own shares of a New York law firm if: (i) both the trustee and the sole beneficiary are New York licensed attorneys; (ii) the trust instrument categorically prohibits benefits to non-lawyers; and (iii) the trustee is barred from day-to-day management and from officer/director roles in the P.C.?

OPINION:

7. Permitting the trust structure that the inquirer proposes to address his client's goal to preserve his financial position in the P.C. for another's benefit after his death to own shares of the P.C. would be in direct violation of Rule 5.4(a), (b), and (d) of the New York Rules of Professional Conduct (the "Rules"). It would result in a nonlawyer, i.e., the trust, becoming an

owner in the P.C. As an owner, the trust would receive a portion of legal fees from the P.C. for the benefit of the beneficiary. The fact that the beneficiary and the trustee are lawyers does not remedy the situation, because the trust is not a lawyer and is not an entity authorized to practice law.

8. Rule 1.0(h) defines "firm" or "law firm" and includes a professional corporation. Rule 5.4 entitled ("Professional Independence of a Lawyer") is also pertinent to the inquiry.

9. Rule 5.4(a) prohibits a lawyer from sharing fees with a nonlawyer and states: "A lawyer or law firm shall not share legal fees with a nonlawyer." None of the three exceptions that are listed in that section apply in this case.

10. Rule 5.4(b) provides: "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."

11. Rule 5.4(d)(1) provides that a "a lawyer shall not practice with or in the form of an entity authorized to practice law for profit, if: (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a *reasonable time* during administration." (Emphasis added.) The trust proposed by the inquirer contemplates holding the ownership interest on a permanent, ongoing basis, so this exception for "a reasonable time" during estate administration does not apply.

12. Comment [1] to Rule 5.4 explains that the reason for the limitations set forth in the Rule is "to protect the lawyer's professional independence of judgment." In addition, the Rule, together with the statutory requirements on professional services corporations and limited liability companies, protect clients by ensuring that the lawyers and the owners of law firms are, in the words of the N.Y. Business Corporations Law § 1505(a) and N.Y. Limited Liability Company Law § 1205(a), "fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services." See also Rule 1.8(h) ("A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice ...."). A trust owning an interest in a law firm would serve to limit the liability that would otherwise exist for owners of a law firm for conduct under their direct supervision and control.

13. While we do not interpret New York law other than the Rules of Professional Conduct, we note the New York Limited Liability Company Law (the "LLC Law") likewise limits owners of law firms practicing in the form of LLCs or PLLCs to individuals or entities authorized to practice law. The LLC Law requires that members of professional limited liability companies be "a professional ... authorized by law to practice in this state," N.Y. LLC Law § 1207(a)(1), and the term "professional" is defined to mean "an individual duly authorized to practice a profession, a professional service corporation, a professional service limited liability company, a foreign professional service limited liability company, a registered limited liability partnership, a foreign limited liability partnership, a foreign professional service corporation or a professional partnership," id. § 1201(c). A trust is not among those entities that is permitted to be a member of an LLC.

14. In N.Y. State 934 (2012), the Committee addressed a situation where a lawyer in a law firm wanted his compensation to be paid to a subchapter S corporation with a nonlawyer shareholder. The opinion held that, while a law firm could compensate a partner, associate or of counsel "by making a payment directly to the lawyer or a professional services corporation," a subchapter S was not a professional services corporation authorized to practice law and so Rule 5.4 barred the law firm from directly paying compensation for legal services to the subchapter S corporation (though the lawyer could direct payments to third parties). Likewise,

here, a trust is not an entity authorized to practice law and thus cannot own an interest in a law firm on a permanent basis.

CONCLUSION:

15. The proposed estate plan, which seeks to create an irrevocable trust that would hold the client's minority shareholder ownership interest in the professional corporation upon his death for the benefit of an attorney employee in that firm, is not permissible under Rule 5.4(a), (b), and (d), because a trust is a nonlawyer that is not authorized to practice law, and a lawyer may not practice law or share legal fees with a nonlawyer not authorized to practice law.

(12-25)