

ETHICS ADVISORY PANEL  
Opinion #93-25, Request #358  
Issued June 30, 1993

An attorney employed by a law firm desires to form a non-profit corporation to render consulting services to local artists on legal, financial and tax issues for a minimal fee. The attorney asks: (1) may he/she serve as an officer, director or member of such non-profit corporation; (2) may he/she serve as an employee of such non-profit corporation; (3) may he/she be retained by such non-profit corporation from time to time for the purpose of giving legal advice?

The Panel confines its advice to the Rhode Island Rules of Professional Conduct ("Rules") and declines to comment on the applicability, if any, of R.I. Gen. Laws § 11-27-1 et seq. (Law Practice) § 7-5. 1-1 et seq. (Professional Service Corporations) § 7-6-1 et seq. (Rhode Island Nonprofit Corporation Act) the Internal Revenue Code of 1956 as amended § 501(c)(3) and regulations promulgated thereunder, or any other law, rule or regulation with respect to such proposed activity.

The Panel calls the attorney's attention to Rules 5.3, 5.4(c), 5.5, 6.1 and 6.3.

Rule 6.1 PRO BONO PUBLICO SERVICE states in part:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations....

Rule 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATIONS states:

A lawyer may serve as a director, officer or member of a legal service organization apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) If participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) Where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Rule 5.4(c) states:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render services for another direct or regulate the lawyer's professional judgment in rendering such legal services.

Accordingly, the Panel finds:

- (1) The inquiring attorney may serve as a member, officer or director of such non-profit corporation within the confines of Rule 6.3 regarding conflicts of interest between clients of the non-profit corporation and other clients of the inquiring attorney;
- (2) The attorney may be employed by the non-profit corporation but must at all times maintain the independent professional judgment addressed by Rule 5.4;
- (3) The attorney may be retained by the non-profit corporation from time to time but the attorney is subject to Rules 6.3 and 5.4.
- (4) The attorney cannot share in fees realized by the corporation from the rendering of legal services.

The Panel cautions the inquiring attorney regarding Rule 5.3 (Responsibilities Regarding Non-Lawyer Assistants) and Rule 5.5 (Unauthorized Practice of Law). Under the facts presented, the attorney may be responsible for the conduct of non-lawyer assistants employed by the non-profit corporation and, if precautionary measures are not taken, could be construed to be assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.