

FINAL

ETHICS ADVISORY PANEL  
OPINION # 95-47, REQUEST # 614  
ISSUED - NOVEMBER 9, 1995

The inquiring attorney asks whether or not he/she may engage in the following business with a nonlawyer. The nonlawyer would solicit businesses to handle their collection problems.

The nonlawyer would sell collection forms to a business. The purchase price for the forms would include the services of the inquiring attorney. In purchasing the forms, the business would agree to refer all collection matters to the inquiring attorney to complete the collection process. The nonlawyer would then pay the inquiring attorney a percentage from the sale of the forms. In addition, the nonlawyer would like to compile a pamphlet that discusses the collection process, which would include a mention of the inquiring attorney and his/her experience in the collection process.

The inquiring attorney asks whether he/she can receive a percentage of the sale of the business forms and whether the nonlawyer may complete and distribute the pamphlets with the inquiring attorney's name.

Rule 5.3 "Responsibilities Regarding Nonlawyer Assistants" states the following:

With respect to a nonlawyer employed or retained by or associated with a lawyer...

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The comments that follow the Rule state that "Such assistants, whether employees or independent contractors, act for lawyers in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment.

Also, Rule 5.4 "Professional Independence of a Lawyer" states the following with regard to sharing legal fees with a nonlawyer:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer...

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

In addition, Rule 7.3 "Direct Contact with Prospective Clients" addresses the issue of solicitation. That Rule states:

(a) A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

It appears from the above cited Rules that the nonlawyer is soliciting business for the inquiring attorney which is a violation of Rules 7.3 and 5.3. The nonlawyer is associated with the inquiring attorney within the meaning of Rule 5.3. A lawyer is responsible for the actions of nonlawyers who are associated with him/her if as is the case here the lawyer knows of the actions and ratifies the conduct involved.

The preparation of the pamphlet must conform to Rule 7.3 and should be disseminated by the inquiring attorney. Additionally, the information provided in the pamphlet must comply with Rules 7.1, 7.2 and 7.4.

Regarding the issue of fee splitting with a nonlawyer, the nonlawyer is receiving a fee for providing the inquiring attorney's name to the businesses. The Panel advises that the use of the inquiring attorney's name for the purposes of solicitation by a nonlawyer is violative of the Rules of Professional Conduct and cautions against such actions.