Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2023-10
Issued November 10, 2023

FACTS

The inquiring attorney practices law through a limited liability entity in which he or she owns an equity stake. The inquiring attorney wishes to implement a business succession plan in which he or she would transfer his or her law firm equity interest into a revocable trust. He or she would continue to own the equity interest during the remainder of his or her life. However, the inquiring attorney is unsure whether the Rules of Professional Conduct permit such a plan.

ISSUE PRESENTED

The inquiring attorney asks whether an attorney who practices law through a limited liability entity in which he or she owns an equity interest may own said interest via a revocable trust?

OPINION

It is the Panel's opinion that an attorney may own his or her law firm equity interest via a revocable trust, so long as he or she is the sole trustee, and the successor trustee (if any) and beneficiary are also licensed Rhode Island attorneys in good standing.

REASONING

Rule 5.4(d)(1) of the Rules of Professional Conduct, entitled "Professional Independence of a Lawyer," states as follows:

> (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
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> (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;

"This Rule . . . expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another." Comment [2] to Rule 5.4. Although the Panel has not had occasion to determine whether this rule permits the kind of business succession plan contemplated by the inquiring attorney, at least two (2) of our sister states have examined this issue.

In Opinion 2019-2, the Ohio Board of Professional Conduct considered two (2) questions: (1) whether "a lawyer may designate his or her interests or shares in a law firm as transfer-on-death to the lawyer's revocable trust, becoming an irrevocable trust on the death of the lawyer,"

and (2) whether "a lawyer may grant to a revocable trust his or her interests or shares in a law firm for the benefit of individuals not licensed to practice law if the trustee who holds the interests or shares in trust is a licensed lawyer." Regarding the first inquiry, the Board found that such an arrangement was not prohibited under state law. Regarding the second inquiry, however, the Board determined that such an arrangement could run afoul of Ohio's Rule of Professional Conduct 5.4(d)(1)—identical to Rhode Island's Rule 5.4(d)(1)—were any of the beneficiaries not lawyers. It further found that naming a licensed Ohio lawyer as the trust's trustee would not cure this problem because the non-lawyer beneficiaries would still maintain an ownership interest in the firm.

The State Bar Association of North Dakota Ethics Committee scrutinized a similar inquiry in Opinion No. 15-03. The subject attorney owned 100% of his law firm's equity. He intended to transfer his equity interest into a revocable trust in which he and his non-lawyer spouse were named as co-trustees. A licensed North Dakota attorney would serve as successor trustee, with sole authority to deal with the equity upon the subject attorney's death.

Citing North Dakota Rule of Professional Conduct 5.4(d)(1)—also identical to Rhode Island's rule—the Committee determined as an initial matter that the subject attorney's plan to name himself and his spouse as co-trustees violated the rule because it would result in a non-lawyer owning an interest in the subject attorney's law firm and, by extension, having a say in the direction and regulation of the firm's rendering of legal services. Even if the subject attorney was the sole trustee, the Committee reasoned, the ownership structure would still likely violate Rule 5.4(d)(1) were any of the named beneficiaries to be non-lawyers. On these facts, the Committee concluded that North Dakota's Rule 5.4(d)(1) did not permit a revocable trust to own an equity interest in a law firm.

The Panel finds this guidance useful here. Both opinions make clear that a non-lawyer is not permitted under Rule 5.4(d)(1) to have any kind of ownership interest in a law firm via a revocable trust regardless of the nature of that interest—that is, as trustee or beneficiary. <u>See</u> 76 Am. Jur. 2d Trusts § 259 (noting that upon the creation of a trust, both the trustee and beneficiary obtain an interest in the trust property). Accordingly, to comply with Rule 5.4(d)(1) ownership interests at all levels of the trust must be held by licensed Rhode Island attorneys in good standing. It follows in this case that the inquiring attorney may transfer his or her equity interest in his or her law firm into a revocable trust, so long as all trustees, successor trustees, if any, and beneficiaries are licensed Rhode Island lawyers in good standing.