

I. Introduction

The inquirer requests an opinion on the following issue:

May a nonprofit organization, whose purpose is to provide legal services, accept a share of the fees for legal services from a lawyer to whom it refers certain cases if the fees meet the other requirements of Pennsylvania Rule of Professional Conduct (“Rule”) 1.5?

It is this Committee’s opinion that a nonprofit organization which provides exclusively legal services is considered a “law firm” within the Rules and, as such, may receive a referral fee from the lawyers to whom it refers certain cases.

II. Analysis

A. Background

The inquirer is a local nonprofit organization. Its Articles of Incorporation describe it as a nonprofit whose purpose is to “provid[e] legal assistance...” to its target audience. It receives funding from the Philadelphia Bar Foundation and other sources that are known to direct their resources for legal assistance. Its staff is comprised predominantly of lawyers. Its executive director also is a lawyer.¹ All the services it provides are “legal” in nature. In some cases, the inquirer, through its staff attorneys, represents clients directly. In other cases, it refers clients to lawyers outside of the organization, who then handle these cases *pro bono*.

When the inquirer refers cases to a lawyer outside of the organization, it enters into an agreement with the outside lawyer pursuant to which the organization receives a certain reasonable percentage of the lawyer’s fees, if the case is successful, either by a settlement or an adjudication,² and/or if the lawyer is awarded fees from the adverse party as provided by an applicable statute.

¹ There are a handful of nonlawyers on the board of directors of the inquiring nonprofit. This situation does not alter the Committee’s conclusion because Rule 5.4(d) only prohibits nonlawyers from acting as corporate directors where the association is practicing law for profit. *See also* Philadelphia Bar Association Ethics Op. 2014-8 (January 2015). Here, the inquirer is a nonprofit organization.

² An attorney is entitled to recover fees even if he or she handled the case *pro bono*. *See, e.g., Blum v. Stenson*, 465 U.S. 886 (1984) (awarding attorney fees to a nonprofit legal service organization); *Dudley v. Lower Merion Sch. Dist.*, 768 F. Supp. 2d 779, 782 (E.D. Pa. 2011) (noting that Supreme Court precedent holds that an attorney’s agreement to work on a *pro bono* basis does not “preclude the award of a reasonable fee to a prevailing party.”) (internal citations omitted).

B. Pertinent Pennsylvania Rules of Professional Conduct

The inquiry implicates several Rules, including:

Rule 1.0(c) Terminology

“Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

Rule 1.5 Fees

(e) A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless: (1) the client is advised of and does not object to the participation of all the lawyers involved, and (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

Under these Rules, if the inquirer is considered a lawyer or law firm, this referral fee arrangement is permissible, as long as the fee is not excessive and otherwise meets the requirements of Rule 1.5.

C. Discussion

The Rules and applicable ethics opinions support the conclusion that the nonprofit organization described here is considered a “Firm” or “Law Firm” such that fee sharing is permissible under Rule 1.5.

The definition of “Firm” or “Law Firm” in Rule 1.0(c) explicitly includes an “association authorized to practice law.” The inquirer is an organization whose exclusive purpose is to provide legal services on a not-for-profit basis to its target audience. The composition of the leadership and staff of the inquirer, as well as the services provided, leave little room to dispute the conclusion that it is a legal services organization and, therefore, a “Firm” or “Law Firm” under the Rules. The fact that the inquirer provides legal services on a not-for-profit basis does not change this analysis.

Several ethics opinions support this conclusion. The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility Informal Opinion 2010-044 (Oct. 6, 2010) addresses this precise issue. The inquirer there was the “Justice Center,” a “subproject” or subsidiary of a larger nonprofit organization, the Resource Organization. The umbrella nonprofit, the Resource Organization, provided a variety of services to women including crisis response, safe housing and community outreach. That organization’s services were not limited to nor did they predominantly consist of legal services. However, it did operate a “subproject” called the “Justice Center,” which focused on providing legal assistance to its target community.

A person seeking assistance from the Justice Center sought guidance from a lawyer employed by the Justice Center about a possible claim arising out of an automobile accident. Because this was not the type of legal service provided by the Justice Center, the prospective client was referred to an outside lawyer with the relevant expertise. Ultimately, the claim resulted in a recovery and the possibility of a referral fee to the Resource Organization or the Justice Center.

The informal opinion considered whether the Resource Organization might be considered a “Law Firm” such that it would be permitted to accept the referral fee. The opinion concluded that it was not a “Law Firm” because it was not exclusively or even primarily a provider of legal assistance. However, the opinion concluded the Justice Center was a “Law Firm,” reasoning that the sole purpose of the Justice Center was to provide civil legal representation to the Resource Organization’s clients. For that reason, fee sharing was permitted with the Justice Center, provided the requirements of Rule 1.5 were met.

A literal reading of Rule 1.5(e) refers to a “lawyer” sharing a legal fee with another “lawyer” not in the same firm. The Committee views this distinction between “lawyer” and “law firm” as a distinction without a difference. The attorneys working for the inquirer can be viewed as sharing the fee even though it is actually received by the employer/law firm organization.

Opinions from other jurisdictions with similar rules support this conclusion. For example, Michigan Ethics Op. RI-32 (October 6, 1989) held that while Rule 5.4 prohibits a lawyer or law firm from sharing legal fees with a nonlawyer, that prohibition was not applicable where a Legal Hotline staff which made the referral and received the referral fee consisted entirely of lawyers. *See also* Illinois State Bar Association Ethics Op. 15-04 (September 2015) (concluding that because the relevant nonprofits did not provide legal services directly to clients, referral fees paid to nonprofit organizations are limited to court-awarded attorney fees pursuant to Illinois Rule of Professional Conduct 5.4).

We have also considered that the limitations on fee-sharing with nonlawyers in Rule 5.4³ were designed to protect the lawyer’s professional independence of judgment. As Rule 5.4, cmt. [1] specifically states, “These limitations are to protect the lawyer’s professional independence of judgment.” The concern was that a nonlawyer who stood to gain monetarily from the lawyer’s results has the incentive and power to influence the lawyer’s decisions and, therefore, compromise the lawyer’s independent professional judgment. *See* ABA Formal Op. 93-374 (June 7, 1993) (holding that a lawyer who undertook a *pro bono* representation at the request of a nonprofit organization comprised of both lawyers and nonlawyers could share court-awarded fees resulting from the representation). There is no risk of a nonlawyer’s interference

³ Rule 5.4(a) generally prohibits a lawyer from sharing legal fees with a nonlawyer except in a few narrow situations. One of those situations, set forth in 5.4(a)(5), allows sharing court-awarded legal fees “with a nonprofit organization that employed, retained or recommended the employment of the lawyer in the matter.” Rule 5.4(e) does not address specifically whether sharing legal fees with a nonlawyer would be permissible if the fees were the result of a settlement agreement, rather than awarded by the court. Because the inquirer is considered a lawyer for the reasons set forth above, this opinion does not need to address this issue.

with the lawyer's professional judgment where, as here, the referring party is comprised of and directed by lawyers.

For all these reasons, in our view, the inquirer is a law firm and, therefore, may accept a referral fee if the other conditions of the applicable Rules are met.

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.