

NEW YORK STATE BAR ASSOCIATION

**Committee on Professional Ethics**

Opinion 644 4/1/93 (53-92)

Topic: Unauthorized Practice of Law;  
Sharing Legal Fees with  
Nonlawyer.

Digest: Lawyer may not form corporation  
with nonlawyers to assist  
homeowners in obtaining real  
estate tax reductions where  
lawyer's services are offered by  
corporation in violation of Section  
495 of Judiciary Law and where  
legal fees are shared with  
nonlawyer shareholders.

Code: DR 3-101(A), 3-102(A), 7-  
102(A)(8).

**QUESTION**

May a lawyer form a corporation with nonlawyers to assist homeowners in obtaining real estate tax reductions?

**OPINION**

A lawyer inquires as to the ethical propriety of forming a corporation with two nonlawyers to assist homeowners in obtaining reductions on their real estate taxes. The shareholders of the corporation would be the lawyer and two nonlawyers. The lawyer would be employed by the corporation as counsel to file and submit the petitions to obtain tax assessment reductions. The profits and losses of the corporation would be distributed in proportion to the number of shares held by each shareholder.

Section 495 of the Judiciary Law provides in pertinent part:

No corporation or voluntary association shall ... make it a business to practice as an attorney-at-law, for any person ... nor ... hold itself out to the public as being entitled to practice law, or render legal services or advice, nor ... furnish attorneys or counsel, nor ... render legal services of any kind in actions or proceedings of any nature or in any other way or

manner, nor ... assume in any other manner to be entitled to practice law.

N.Y. Jud. Law § 495(1) (b), (f) (McKinney 1983).

This Committee generally does not pass on questions of law. The inquirer acknowledges, however, that his employment by the corporation as counsel (to file and submit the appropriate petitions on behalf of homeowners) will constitute the practice of law. If so, the corporation's furnishing legal services in the manner proposed would be a violation of Section 495. Thus, the lawyer's participation in the arrangement would be improper. See DR 7-102(A)(8)(lawyer shall not knowingly engage in illegal conduct). See also DR 3-101(A)(prohibiting lawyer from aiding nonlawyer in unauthorized practice of law). See generally *People v. Lawrence Preska Assocs., Inc.*, 90 Misc. 2d 59, 393 N.Y.S.2d 650 (1977) (purpose of § 495 is to prohibit interference and possible conflict of interest in the attorney-client relationship); *People v. Peoples Trust Co.*, 180 A.D. 494, 167 N.Y.S 767 (1917) (purpose of § 495 is to prevent corporations from performing legal services through lawyers in their employ and having lawyers owe loyalty primarily to the corporations and not to the client).

Even if the proposed arrangement were to comport with the Judiciary Law, the plan for distributing profits and losses of the corporation would be improper. Because the revenue of the corporation would come, at least in part, from the performance of legal services, any distribution of the revenues among the lawyer and the nonlawyer shareholders would be in violation of DR 3-102(A), which prohibits a lawyer from sharing legal fees with nonlawyers. As this Committee has stated, DR 3-102(A) "serves to encourage a lawyer's independence by preventing the practice of law through an entity in which a nonlawyer owns an interest, or is in a position to manage or direct the lawyer or has an inducement to do so by having a financial interest in the fees to be earned." N.Y. State 618 (1991).

### CONCLUSION

For the reasons stated, the question is answered in the negative.

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