



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1082 (1/8/16)

Topic: Unauthorized practice of law

Digest: A lawyer may not provide legal services to individuals through a for-profit company in which a nonlawyer has an ownership or controlling interest.

Rules: 1.2(d), 5.4(a) & (b), 5.5(b), 8.4(c)

FACTS

1. Inquiring lawyer is employed by a for-profit finance company (the “Company”) and performs litigation services for the Company, including taking steps to enforce accounts receivable purchased by the Company from third parties.
2. The owner of the Company is a nonlawyer. The owner wants to ensure that in-house lawyers are fully utilized by providing their services to third party debtors, to perform legal services including drafting pleadings, and perhaps appearing in court. The names of the lawyers may or may not appear on the pleadings. None of the prospective defendants will be debtors on any accounts receivable owned by the Company.
3. The Company would charge debtors for these legal services.

QUESTIONS

4. May a lawyer employed by a company owned by a nonlawyer provide legal services to debtors through the company?
5. May the lawyer “ghost-write” pleadings and other litigation documents, *i.e.* where the lawyer’s name does not appear on the documents?

DISCUSSION

6. As we noted in N.Y. State 1081 [26-15], several provisions of the New York Judiciary Law prohibit a corporation or voluntary association from practicing law in New York or furnishing legal services. *See* Judiciary Law §485-a (making certain violations of Judiciary Law §§478, 484, 486 and 495 a class E felony); Judiciary Law §495 (no corporation or voluntary association shall (i) practice or appear as an attorney-at-law for any person in any court in this state, (ii) hold itself out to the public as being entitled to practice law, or (iii) furnish attorneys or counsel); Judiciary Law §478 (unlawful for any natural person to furnish attorneys or to render

legal services); Judiciary Law §484 (no natural person shall ask or receive compensation for preparing pleadings of any kind in any action brought before any court of record in this state).

7. What constitutes the practice of law or legal services is a legal question that is beyond our jurisdiction to answer. Here, however, the inquirer has already concluded that drafting pleadings and appearing in court constitute legal services, a conclusion we note is supported by the Judiciary Law.

8. Rule 5.5(b) of the New York Rules of Professional Conduct (the “Rules”) prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law. The inquirer’s employer constitutes a nonlawyer for this purpose. In addition, aiding the Company in the unauthorized practice of law would also violate Rule 1.2(d), which provides that a lawyer “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal”

9. Rule 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer. The in-house lawyers here would be sharing legal fees with a nonlawyer, since clients of the Company would pay the Company for the legal services, and the Company would pay the lawyers. *See* N.Y. State 942 (2012) (concluding that, if the amount paid by the customer to the non-legal firm is more than the non-legal firm pays the lawyer, it would violate Rule 5.4(a)’s prohibition against sharing legal fees with a nonlawyer). Similarly, Rule 5.4(b) prohibits a lawyer from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

10. If an in-house lawyer were to provide legal services to third parties through the Company, it would make no difference whether the lawyer’s name appeared on the documents. The problem would be that the Company is engaging in the unauthorized practice of law. Omitting the lawyer’s name from any documents would not cure the problem.

11. Failure to disclose the participation of the lawyer might also violate the lawyer’s obligation to be truthful. *See* Rule 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); N.Y. State 613 (1990) (a lawyer may advise a pro se litigant by preparing pleadings for the litigant to sign and file in an action, but disclosure to the court is required).

12. There may be an alternative structure in which the lawyers could provide legal services to clients and the company could provide nonlegal services. Our Committee has issued opinions involving non-lawyers marketing on behalf of a lawyer. *See, e.g.* N.Y. State 902 (2012), 976 (2013). We also have issued opinions involving referral relationships between nonlawyers and lawyers. *See, e.g.* N.Y. State 1068 (2015) (lawyer may not join with a claims recovery firm in an agreement to offer legal services to the public to be performed by the lawyer and nonlegal services by the claims recovery firm if it is to be done on a systematic and continuing basis, because claims recovery firms are not on the list of approved nonlegal professionals established and maintained by the Appellate Divisions within the meaning of Rule 5.8(a). Even if the relationship were a “non-exclusive reciprocal referral agreement” within the meaning of Rule

5.8(c), the lawyers would have to ensure that the relationship did not interfere with the lawyers' independent professional judgment, did not involve improper solicitation of clients, did not involve aiding in the unauthorized practice of law, and did not involve the improper sharing of legal fees.) We will not speculate here on whether there is such alternative structure in which the inquirers could ethically provide services to customers of the finance company.

CONCLUSION

13. A lawyer may not provide legal services to individuals through a for-profit corporation in which a nonlawyer has an ownership or controlling interest.

(34-15)