THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. ___ (PO 2024-5)

Posted for comment on November 13, 2024

QUESTION PRESENTED

May a Texas lawyer practicing in Texas join a District of Columbia law firm partnership that lawfully includes a nonlawyer partner?

STATEMENT OF FACTS

A Texas lawyer intends to become a partner in a law firm based in the District of Columbia. The partnership would include the Texas lawyer, one or more lawyers licensed in the District of Columbia, and at least one nonlawyer. It is assumed that the proposed partnership composition complies with the District of Columbia Rules of Professional Conduct. The proposed firm would have offices in the District of Columbia and Texas. The Texas lawyer would office in Texas and provide legal services to clients in Texas. Revenue generated by the Texas lawyer would be shared with the law firm's partners.

DISCUSSION

District of Columbia Rule of Professional Conduct 5.4(b) allows a lawyer licensed in that jurisdiction to "practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients," subject to certain restrictions.

In contrast, Texas Disciplinary Rule of Professional Conduct Rule 5.04(b) provides that "[a] lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." Rule 5.04(d) extends the prohibition against nonlawyer law firm ownership to professional corporations or associations. The principal reasons for the prohibition against nonlawyer law firm ownership are to prevent solicitation of clients by nonlawyers, to avoid encouraging or assisting nonlawyers in the practice of law, and to protect a lawyer's professional independence. *See* comments 1 and 6 to Rule 5.04.

The question in this case is whether Texas's prohibition against nonlawyer-owned law firms applies to a Texas lawyer who seeks to join a law firm based in a jurisdiction that expressly allows nonlawyer ownership. The Committee concludes that it does.

In reaching this conclusion, the Committee considered ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 91-360 (July 1991) (Prohibition of Partnerships with Nonlawyers: Extrajurisdictional Effect). Opinion 91-360 considered the dilemma of a lawyer licensed to practice law in two jurisdictions, one of which allowed nonlawyer law firm ownership (D.C.) and one of which did not (State X). The ABA Committee considered which rules should apply if the dual-licensed lawyer joined a D.C. law firm that lawfully had a nonlawyer partner.

The ABA Committee examined the different policies underlying each jurisdiction's rule, recognizing that the regulation of the bar is "an essential function of the judiciary of each state . . . involving weighty governmental interests." After considering the interests of each jurisdiction, the ABA Committee concluded that the disciplinary rules of State X would prohibit the lawyer from practicing law in State X as a member of a D.C. law firm with a nonlawyer partner. On the other hand, the ABA Committee opined that joining a D.C. law firm with a nonlawyer partner should not subject the dual-licensed lawyer to discipline in State X if the lawyer only practiced in D.C.

The New York State Bar Association Committee on Professional Ethics reached a similar conclusion in NYSBA Ethics Op. 1038 (Dec. 6, 2014). That opinion concluded that a New York lawyer who practiced primarily in New York could not join a D.C. firm with nonlawyer members and could not avoid New York's prohibition of nonlawyer firm ownership by "forming a 'wholly-owned subsidiary law firm' in New York to be 'independently managed/operated' by the New York lawyer."

This Committee reaches the same conclusion. A Texas-licensed lawyer who practices law in Texas violates Rule 5.04(b) or 5.04(d) by joining a law firm with a nonlawyer partner or owner, even if the law firm is based in a jurisdiction that allows expressly nonlawyer law firm ownership.

This Opinion does not address whether a Texas lawyer may divide fees with a lawyer in a different law firm that is lawfully owned by nonlawyers. The topic of fee division between lawyers who are not in the same firm is governed by Rule 1.04(f) and 1.04(g) and does not necessarily implicate the same issues and concerns as Rule 5.04(b) and 5.04(d).

CONCLUSION

A Texas-licensed lawyer who practices law in Texas may not join a law firm that includes a nonlawyer partner or owner, even if the law firm is based in a jurisdiction that expressly allows nonlawyer law firm ownership.