LOS ANGELES COUNTY BAR ASSOCIATION
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

OPINION NO. 488: June 17, 1996

SUMMARY

When a lawyer utilizes law office management services of a management company controlled by non-lawyers, the arrangement is ethically permissible so long as the attorney does not abdicate control over the operation of the law office, is personally responsible for the supervision of the client trust account, does not split fees with the office management company, ensures proper maintenance of client files and records, protects client confidentiality and does not relegate control of advertising to the office management company.

AUTHORITIES CITED

Bernstein v. State Bar(1990) 50 Cal.3d 221, 266 Cal.Rptr. 625.
Coppock v. State Bar (1988) 44 Cal.3d 665, 244 Cal.Rptr. 462. Florida Bar v. Went For It, Inc. U.S. , 115 S.Ct. 2371 (1994).
Gadda v. State Bar (1990) 50 Cal.3d 344, 267 Cal.Rptr. 114.
In Re RMJ ;455 U.S. 191, 102 S.Ct. 929 (1982).
In the Matter of Francis Jones (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.
In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.
Palomo v. State Bar (1984) 36 Cal.3d 785, 795, 205 Cal.Rptr. 834.
Shapero v. Kentucky Bar Association 486 U.S. 466, 108 S.Ct. 1916 (1988).
Spindell v. State Bar (1975) 13 Cal.3d 253, 259-260, 118 Cal.Rptr. 480.
Los Angeles County Bar Opinion No. 419.
Los Angeles County Bar Opinion No. 431.
Los Angeles County Bar Opinion No. 437.
Los Angeles County Bar Opinion No. 444.
Los Angeles County Bar Opinion No. 454.
Los Angeles County Bar Opinion No. 457.
Los Angeles County Bar Opinion No. 461.
Rules of Professional Conduct, rule 1-320.
Rules of Professional Conduct, rule 1-310.

Rules of Professional Conduct, rule 3-110.
Minimum Standards for a Lawyer Referral Service in California, rule 11.

Business & Professions Code section 6155 et. seq.
Business & Professions Code sections 6157-6158.1.

FACTS AND ISSUES

Law Firm has been offered an office and office management services by a company controlled, owned and managed by non-lawyers ("the company"), pursuant to a contractual arrangement. In consideration for the payment of 50% of the net earned fees on all cases handled at the offices provided by the company, the attorney will be provided the following services: all non-legal personnel required to operate and support the law office, including receptionist, secretarial and clerical staff; general administrative services, including purchase of supplies and supervision of employees; bookkeeping, client billing and fee collection services; maintenance of client files and records; management reports; advertising prepared and controlled by company; equipment and supplies; and

janitorial services. The attorney also agrees to devote sufficient time and effort as might be required by the office management company and/or clients. The arrangement will not consist of a partnership, joint venture or employment relationship.

The question presented to the Committee is whether the Law Firm may ethically enter into an arrangement with an office management company controlled by non-lawyers, to provide support services such as are proposed. It is the Committee's opinion that agreements for the provision of office management services to be provided by non-lawyers are not per se prohibited, although lawyers may not delegate certain responsibilities such as direct supervision of the trust account, advertising and other communications on behalf of the Law Firm, and/or supervision of client matters, and the law office management company must be compensated in a manner which does not constitute fee splitting.

DISCUSSION

The Committee recognizes that, for more than 20 years lawyers have had available in the marketplace, various types of "full service" law office management programs. Typically, in such arrangements the lawyer is provided a "turn-key" operation in which most if not all support services necessary to run a law office are included in consideration of a monthly fee. For the flat monthly fee, the lawyer receives a private suite, use of common areas including a reception room, law library and client waiting area, as well as telephone answering services, receptionist, and at extra charge, photocopying and secretarial services.

The services described in the inquiry, however, differ from the typical arrangement in two major aspects: the company is paid a percentage of the attorney's fees, and the company controls all advertising. In addition to offering to employ all support staff, to supervise that support staff, and to provide additional services including bookkeeping and trust account recordkeeping, the agreement also provides that the company will engage in advertising on behalf of the law office, a process with which the attorney is contractually required to cooperate. The proposed contract does not specify the attorney's role in supervising the various aspects of the operation of the office. The agreement expressly requires the attorney to "devote sufficient time and effort" to the office to provide legal services to clients of the office, as may be arranged with the clients either by the attorney or the office staff.

FEE SPLITTING WITH THE COMPANY IS PROHIBITED

Clearly, the proposal that the Law Firm compensate the company by paying a percentage of earned legal fees is ethically improper. Although in certain limited circumstances (e.g. a California State Bar certified lawyer referral service),[1] attorneys may pay to a non-attorney a percentage of earned fees, the general rule prohibits all types of arrangements in which fees are divided with non-lawyers. Rule 1-320, Rules of Professional Conduct expressly prohibits the direct or indirect sharing of legal fees by a lawyer with a non-lawyer. However, lawyers may obviously compensate non-lawyers for support services rendered in connection with the practice of law.

Instructive on this point is Los Angeles County Bar Opinion No. 437, confirming that a non-lawyer client may be hired by an attorney to perform preparatory research and investigation where the remuneration is not contingent upon the fee received by the attorney. Payment of a bonus to a paralegal is permissible where it does not constitute a percentage of the lawyer's fees, it is not based on the amount of the lawyer's fee, and the bonus is paid as compensation for productivity as opposed to the paralegal's advance expectation. (Los Angeles County Bar Opinion No. 457.) Cf., Los Angeles County Bar Opinion No. 444, disapproving an arrangement whereby a lawyer participates in a

corporation including non-lawyer shareholders, designed to render legal services and pay the non-lawyer shareholders a return on their investment in the corporation.

Although the proposed contract specifies that the Law Firm and the company are neither joint venturers, partners, employees, nor agents of one another, the fee splitting arrangement may be seen as akin to a joint venture or partnership. As this Committee has previously opined, "A Law Firm may not enter into an arrangement with another party, whereby the other party shares in the legal fees paid by its clients for legal services rendered by the Law Firm." (See, Los Angeles County Bar Opinion 431, in which an entertainment business firm retained a law firm to advise the business firm's clients on legal issues, adding a 20% surcharge to the amount billed by the attorneys.)

This is not to say that, assuming the arrangement complies with other ethical requirements, the Law Firm could not hire a law office management company for a monthly fee, or other remuneration which does not constitute fee splitting. In Los Angeles County Bar Opinion No. 461, this Committee found no ethical impropriety in an arrangement whereby an attorney was provided office space and support services free of charge in consideration for legal services provided to the property management firm at reduced price. The arrangement was proper even though the attorney fees paid in exchange for the free office space were shared on a pro rata basis by a number of limited partnerships constituting the property management firm. Thus, so long as the attorney is not dividing legal fees with the law office management company, compensation of the company for appropriate support services does not constitute an ethical violation.

NON-LAWYERS MAY NOT CONTROL PROVISION OF SERVICE

California lawyers are ethically prohibited from forming a law partnership (corporation or association) with a non-lawyer. Rule 1-310, Rules of Professional Conduct. One of the purposes for this rule is to avoid interference by the non-lawyer with the attorney's independence of judgment. Thus, the provision relating to the attorney's obligation to provide services is impermissible to the extent it allows the non-lawyer office manager to interfere with the attorney-client relationship. Clearly, the attorney-client relationship exists with the attorney rather than the office management service. The Committee assumes that, once the fee-splitting provision is removed, there will be no inference that the company or its non-lawyer employees will intrude upon the attorney-client relationship.

Further, the Committee assumes for purposes of this opinion that the office will not be conducted as a lawyer referral service. Lawyer referral services are regulated pursuant to Business & Professions Code section 6155 et. seq., and minimum standards for a lawyer referral service established by the State Bar.

DUTY TO SUPERVISE SUPPORT SERVICES

An attorney has an ethical duty to supervise employees to ensure proper representation of clients. (Gadda v. State Bar (1990) 50 Cal.3d 344, 267 Cal.Rptr. 114; Bernstein v. State Bar (1990) 50 Cal.3d 221, 266 Cal.Rptr. 625.) Likewise, the duty to supervise the handling of the client trust account is non-delegable, and the attorney will be held responsible for mismanagement of the trust account committed by employees. (Coppock v. State Bar (1988) 44 Cal.3d 665, 244 Cal.Rptr. 462; In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.) The California Supreme Court has acknowledged that attorneys must rely upon staff to some extent, holding that, "Attorneys cannot be held responsible for every detail of office operations." (Palomo v. State Bar (1984) 36 Cal.3d 785, 795, 205 Cal.Rptr. 834.) Nonetheless, lawyers are responsible for the reasonable supervision of their support staff. (Spindell v. State Bar (1975) 13 Cal.3d 253, 259-260, 118 Cal.Rptr. 480.) Also see rule 3-110, Rules of Professional Conduct.

Similarly, it is the attorney's duty to properly train and supervise employees in connection with maintaining client confidences. Here, although the company has agreed to maintain the clients' files and records, it remains the attorney's duty to assure that all office personnel protect the confidentiality of the documents and communications relating to client matters.

Therefore, to the extent that the proposed arrangement seeks to transfer control of the supervision of client files and matters and maintenance of the trust account from the attorney to non-attorney staff, it is impermissibly overbroad. The attorney must maintain supervision of all client matters, including but not limited to supervision of the trust account. The company may provide bookkeeping services including providing a non-attorney signatory on the trust account, so long as the attorney ensures that the trust account is being handled properly. (Los Angeles County Bar Opinion No. 454.)

Likewise, the Law Firm has a duty to ensure that advertisements published on behalf of the firm comply with the provisions of rule 1-400, California Rules of Professional Conduct and Business & Professions Code §§6157-6158.1. It is not improper for the Law Firm to utilize non-lawyers to advertise. (See, In Re RMJ (1982) 455 U.S. 191, 102 S.Ct. 929.) Where the content of the advertisement is not false, misleading or harassing, direct mail solicitation may also be transmitted on the attorney's behalf to specifically targeted prospective clients. (See, Shapero v. Kentucky Bar Association 486 U.S. 466, 108 S.Ct. 1916 (1988); Florida Bar v. Went For It, Inc. U.S. , 115 S.Ct. 2371 (1994). Also, see Los Angeles County Bar Opinion No. 419).

CONCLUSION

Clearly, the Law Firm cannot enter into an arrangement whereby it abandons control of the law practice to non-lawyer law office managers. (In the Matter of Francis Jones (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.) Neither may the Law Firm agree to a fee splitting arrangement with the law office management company. However, assuming that no improper fee splitting occurs and that the lawyer maintains control over all aspects of the practice of law, including maintenance of clients' property, protection of confidentiality and supervision of all advertising conducted on behalf of the firm, it is ethically permissible to enter into a contractual arrangement with a non-lawyer controlled law office management company for the provision of all ancillary support services attendant to the practice of law.

This opinion is advisory only. The Committee acts on specific questions submitted *ex parte* and its opinions are based on such facts as set forth in the inquiries submitted.