

Nebraska Ethics Advisory Opinion for Lawyers  
No. 91-1

A SALARIED ATTORNEY-EMPLOYEE OF A CORPORATION (WHICH IS NOT A NEBRASKA PROFESSIONAL CORPORATION ENGAGED IN THE PRACTICE OF LAW) WHICH PROVIDES FINANCIAL AND ESTATE PLANNING SERVICES OR PRODUCTS MAY NOT ETHICALLY PREPARE TRUST AGREEMENTS, WILLS OR RELATED ESTATE PLANNING DOCUMENTS FOR THE CORPORATION'S CUSTOMERS NOR FOR CUSTOMERS WHICH MAY BE REFERRED TO THE CORPORATION BY INDEPENDENT INSURANCE AGENTS OR PROVIDERS OF OTHER FINANCIAL PRODUCTS SUCH AS MUTUAL FUNDS. THE SAME RULE WOULD APPLY AS WELL TO PARTNERS OR EMPLOYEES OF A PARTNERSHIP THAT IS NOT ENGAGED EXCLUSIVELY IN THE PRACTICE OF LAW WHICH PROVIDE SUCH SERVICES.

FACTS

A corporation (which is not a Nebraska professional corporation engaged in the practice of law) proposes to provide financial and estate planning services and products to its customers. The corporation also intends to contract with independent insurance agents or providers of other financial products such as mutual funds, who would then contact their client base to discuss inter vivos trusts, Wills or related estate planning documents.

If a client expresses interest in an inter vivos trust, or other such document, information provided by the client would be forwarded to the salaried attorney-employee of the corporation. The attorney would then prepare the appropriate documents, with or without contacting the client.

QUESTION PRESENTED

May a salaried attorney-employee of a corporation (which is not a Nebraska professional corporation

engaged in the practice of law) which provides financial and estate planning services ethically prepare trust agreements, wills or related estate planning documents for the corporation's customers or for customers referred to the corporation by independent insurance agents or providers of other financial instruments such as mutual funds?

#### APPLICABLE CODE PROVISIONS

DR 1-102 Misconduct.

(A) A lawyer shall not:

. . . .

(2) Circumvent a Disciplinary Rule through actions of another.

DR 2-103 Recommendation of Professional Employment.

(A) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

DR 2-104 Personal Contact with Prospective Clients.

(A) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment only in the following circumstances and subject to the requirement of paragraph (b):

(1) If the prospective client is a close friend, relative, former client or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable

legal services organization; or

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

DR 3-102 Dividing of Legal Fees with a Non-Lawyer.

(A) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

EC-3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however that the pecuniary value of the interest of a deceased lawyer in

his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

#### DISCUSSION

The creation, marketing and sale of trust documents by non-lawyers constitutes the unauthorized practice of law, contrary to Neb. Rev. Stat. § 7-101 (Reissue 1987); *People v. Macy*, 789 P.2d 188 (Colo. 1990). Attorneys may not aid a non-lawyer (the corporation) in the unauthorized practice of law. DR 3-101 (A). Attorneys may not practice law in association with non-lawyers. EC 3-8. An attorney-employee of a business corporation which provides financial and estate planning services may not, therefore, render legal advice to or prepare trust or estate planning documents for the corporation's customers on behalf of the corporation, nor may the corporation collect money for legal services rendered by the lawyer. Formal Tennessee Ethics Opinion No. 83-F-44, summarized in ABA/BNA Lawyers' Manual on Professional Conduct 801:8108; Formal Tennessee Ethics Opinion No. 84-F-74, summarized in ABA/BNA Lawyers' Manual on Professional Conduct 801:8113-8114; Dallas Bar Association Ethics Committee Opinion No. 1982-3, summarized in ABA/BNA Lawyers' Manual on Professional Conduct 801:8405; and Ethics Committee of the State Bar of South Dakota Opinion No. 88-4, summarized in

ABA/BNA Lawyers' Manual on Professional Conduct 901:8001. A corporation which reaps a benefit or profit from an employee-attorney who provides legal services to third parties is sharing legal fees with an attorney. Such an arrangement is prohibited by DR 3-102 (A).

This Committee has previously opined that a lawyer may not contract with independent insurance agents or others for referrals. Nebraska State Bar Association Advisory [Opinion 81-10](#). The reasons are twofold. The Nebraska Supreme Court Disciplinary Rules specifically prohibit an attorney from compensating anyone for recommending the attorney's services. DR 2-103(A). If the corporation for which an attorney worked, contracted with insurance agents and financial advisors for client referrals, the attorney would be violating the rules if he provided his services to the referred clients. The Nebraska Supreme Court Disciplinary Rules also specifically prohibit in-person solicitation of prospective clients. DR 2-104(A). The present referral arrangement as proposed by the corporation would involve personal solicitation. Even if done by the insurance agent or financial planner, the attorney would knowingly be violating DR 2-104(A) through the actions of others. This is also a violation DR 1-102(A).

Finally, a lawyer has an obligation to give independent professional advice to a client. The attorney's judgment must not be restricted by the attorney's financial, business, property or personal interests. DR 5-101 (A). An attorney who provides legal services to third persons on behalf of his corporate employer is under conflicting pressures to honor the pecuniary needs and concerns of the corporation in obtaining business, and to honor the legal needs and concerns of the third-party client. Because of this conflict, a staff attorney for a corporation which provides financial and estate planning services should not render legal advice to the corporation's customer. See Nebraska State Bar Association Advisory [Opinion 81-11](#).

#### CONCLUSION

A salaried attorney-employee of a corporation (which is

not a Nebraska professional corporation engaged in the practice of law) which provides financial and estate planning services or products may not ethically prepare trust documents, wills or related estate planning documents for the corporation's customers nor for customers referred to the corporation by independent insurance agents or financial planners. The same rule would apply as well to lawyers who are partners or employees of a Partnership that is not engaged exclusively in the practice of law.

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