

Utah Ethics Opinions

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UTAH STATE BAR

Ethics Advisory Opinion Committee

Opinion No. 02-07

Issued September 13, 2002

¶ 1 **Issue:** Under Rule 5.4 of the Utah Rules of Professional Responsibility, may a Utah lawyer (a) hire a paralegal, not otherwise associated with the lawyer or the lawyer's firm, as an independent contractor, or (b) compensate an employee paralegal or other firm employee based on a percentage of the lawyer's fees.

¶ 2 **Conclusion:** Utah lawyers may hire outside paralegals on an independent-contractor basis, provided the paralegal does not control the lawyer's professional judgment. In addition, if the amounts paid for services are not tied to specific cases, Utah lawyers or law firms may share fees with nonlawyer employees in a compensation plan.

¶ 3 **Background:** A Utah lawyer contemplates hiring outside paralegals and compensating them on a per task basis. The lawyer seeks our opinion on whether such an arrangement complies with the Utah Rules of Professional Responsibility. While the lawyer's inquiry is limited to hiring outside paralegals, it raises related issues about whether compensation for paralegals and other professionals, either as independent contractors or employees, can be tied to fees the lawyer generates. We take the occasion to resolve both the lawyer's inquiry and to reiterate and clarify our prior opinions on these issues.

¶ 4 **Analysis:** The plain language of Rule 5.4, (fn1) as well as official comments to the Rule, and our opinions interpreting it, stress its underlying rationale: "protect[ion of] the lawyer's professional independence of judgment" and overriding loyalty to the client against potential conflicts. (fn2) The proposed contractual arrangement here is between the lawyer and an outside, independent paralegal. This arrangement does not violate either the letter or spirit of Rule 5.4, assuming the paralegal compensation is totally independent from the lawyer's relationship with, and compensation from, the client. The same rationale would apply to other third parties the lawyer hires, such as expert witnesses, copy centers, computer specialists, etc.

¶ 5 Under Rule 5.4(a), the lawyer in such a relationship

would not be sharing legal fees with the non-lawyer paralegal or other third-party professional. Our rationale for this conclusion is the same as that in Opinion 02-01, in which we concluded that a lawyer would not be sharing legal fees with a non-lawyer financing company that underwrote litigation under a "recourse" loan to the lawyer. (fn3) The non-lawyer paralegal, as with the financing company in Opinion No. 02-01, has an independent contractual relationship with the lawyer and is paid for work done, no matter the outcome of any legal matter.

¶ 6 Succinctly stated, the contemplated lawyer-paralegal relationship is permissible under the Utah Rules of Professional Conduct because the lawyer's professional judgment is not compromised.

¶ 7 The same concept applies to employee-paralegals. Rule 5.4(a) forbids the sharing of legal fees, except in three instances, one of which is the inclusion of a "nonlawyer employee" in a "compensation plan" under Rule 5.4(a)(3). The Rule does not presume to define the boundaries of an acceptable compensation plan. We have previously held, however, that compensation of nonlawyer employees may be based upon a percentage of gross or net income provided: (a) compensation is not tied to specific fees from a particular case; (b) there is nothing in the nature of the arrangement that would tend to impair the independence of the law firm or lawyer; and (c) no other rule of professional conduct is violated. (fn4)

¶ 8 Conversely, Rule 5.4 precludes a compensation plan tied to a sharing of lawyer fees for independent paralegals. Given the rule's underlying rationale of preserving lawyer independence, the apparent difference between the permissible sharing of fees for employee-paralegals and the impermissible sharing of fees with an independent contractor stems from the nature of the lawyer/paralegal relationship. The employee-paralegal, being an employee of the lawyer, is not in a position to exert undue influence on the lawyer. The independent paralegal would be in a less subordinate role. The rule's distinction between permissible and impermissible compensation arrangements for employee-paralegals and independent paralegals is thus consistent with its underlying purpose.

Footnotes

1. The text of the relevant portions of Rule 5.4 reads:

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

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even

though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer. . . .

2. *See, e.g.*, Utah Rules of Professional Conduct 5.4, cmt; Utah Ethics Advisory Op. 02-04, 2002 WL 448569 (Utah St. Bar) (Rule 5.4(b) prohibits lawyer from forming a business association with non-lawyer accounting firm where the lawyer is contemporaneously engaged in the practice of law); Utah Ethics Advisory Op. 02-01, 2002 WL 231939 (Utah St. Bar) (Rule 5.4 does not preclude litigation financing arrangements, provided lawyer's professional independence is not compromised); Utah Ethics Advisory Op. 00-03, 2000 WL 347378 (Utah St. Bar) (lawyer may form business relationship with a non-lawyer to engage in law-related activities only if the lawyer withdraws entirely from the active practice of law).

3. Utah Ethics Advisory Op. 02-01, 2002 WL 231939 (Utah St. Bar).

4. Utah Ethics Advisory Op. 139, 1994 WL 579849 (Utah St. Bar).

Rule Cited:

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