

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 97-09

Approved July 28, 1997

The Opinion is the result of a specific inquiry from a Utah attorney who has proposed to provide legal services as outlined in the Facts section in the body of the Opinion. The Opinion addresses the ethical considerations of a lawyer who plans to perform certain estate-planning legal services in conjunction with a non-lawyer estate-planning professional who is not employed or retained by the lawyer. In general, we find that the lawyer must perform an independent role as legal advisor to the client, assuring that the estate plan and associated documents are legally appropriate to accomplishing the client's objectives.

FACTS

An estate-planning lawyer ("Lawyer") has been approached by non-lawyer estate-planning professionals ("Estate Planner") to provide legal services to clients referred by Estate Planner, using the following procedures:

* Estate Planner will identify clients who require estate-planning services using advertisements, cold calls and other solicitation procedures. Estate Planner will meet with the client, complete with her a personal questionnaire form approved by Lawyer, and come to agreement with her about appropriate estate-planning vehicles to accomplish the client's estate-planning goals.

* Estate Planner will discuss with the client whether the client has an attorney she would like to use to complete the estate-planning documents. In the event the client does not desire to use another attorney, Estate Planner will recommend that she retain Lawyer to perform the necessary legal services.

* If the client has indicated a desire to retain Lawyer to prepare the estateplanning documents, Estate Planner will telephone Lawyer and describe the client's estate-planning objectives and the estate-planning vehicle being recommended by Estate Planner and will obtain a quotation from Lawyer as to the legal fees he will charge to perform the legal services of preparing final estate-planning

documents. Lawyer anticipates that most fee quotations will be a fixed fee of less than \$750. With respect to more complicated estates, Lawyer may quote an hourly fee or a fixed fee in excess of \$750. In such cases, Lawyer will send a letter to the client confirming the amount or basis for the fee. Lawyer will obtain the name of the prospective client from Estate Planner and will perform a conflicts check.

* After conflicts have been cleared and Estate Planner's client has agreed to be represented by Lawyer, Estate Planner will use a form prepared by Lawyer to create a "first draft" of the estate-planning documents. Estate Planner will not use Lawyer's forms unless the client has agreed to retain Lawyer to perform the legal services.

* Estate Planner will deliver the "first draft" of the appropriate documents, together with the personal questionnaire to Lawyer. Lawyer will then telephone the client and verify that the client intends to retain Lawyer to perform the legal services of completing the estate-planning documents. If Estate Planner's client agrees to be represented by Lawyer, Lawyer will (a) review the personal questionnaire, (b) review the first-draft of the estate-planning documents prepared by Estate Planner, (c) verify with the client the information set forth in the personal questionnaire, (d) inquire into the client's estate-planning goals and objectives, and (e) if appropriate, discuss alternative estate-planning vehicles to the first-draft documents prepared by Estate Planner. In most cases, these communications will be by telephone, not in person.

* Lawyer will then finalize the estate-planning documents and prepare (but not send) a "firm letter" addressed to the client, transmitting the final estate-planning documents and indicating that, in the opinion of Lawyer, the final estate-planning documents are in accordance with applicable law and accomplish the goals and objectives set forth in the personal questionnaire.

* The "firm letter" will not be delivered to the client, but will be delivered to Estate Planner. Estate Planner will then deliver the firm letter and estate-planning documents to the client for execution.

* Lawyer does not intend to advise the client with regard to the execution of the estate-planning documents or with respect to the conveyance or transference of assets into trusts or other vehicles created by the estate-planning documents. Any advice required in these areas would be provided by Estate Planner.

* Lawyer will not advise the client as to the financial appropriateness of any investments recommended by Estate

Planner as part of the client's estate plan.

* Estate Planner will bill the client a fixed fee for Estate Planner's services plus commissions with regard to any investment products sold to the client, such as life insurance. Estate Planner will bill separately from the Lawyer for Estate Planner's services.

* Lawyer will bill separately for his services and will not share any portion of his fees with Estate Planner. Lawyer will not give anything of value to Estate Planner for recommending Lawyer's services.

ISSUES AND DISCUSSION

Issue No. 1: Does a lawyer performing estate-planning legal services for a client in conjunction with a non-lawyer Estate Planner provide competent representation under Rules 1.1 and 1.2(b) under the foregoing statement of facts?

Analysis: The proposed procedures underlying the relationship between Lawyer and Estate Planner include limitations on the scope of the representation to be provided by Lawyer. Estate Planner, not Lawyer, will initially meet with the client and will counsel the client with respect to completion of the personal questionnaire form. The personal questionnaire form has been drafted to elicit the client's estate-planning objectives, assets and intended beneficiaries. On the basis of the information provided by the client in the personal questionnaire, Estate Planner-not Lawyer-will initially identify the appropriate estate-planning vehicles to accomplish the client's estate-planning objectives. It is Estate Planner-not Lawyer-who prepares the first draft of the estate-planning documents.

The legal services provided by Lawyer are: (1) a review of the personal questionnaire completed by the client and the draft estate-planning documents prepared by Estate Planner; (2) a consultation, normally by telephone only, with the client to verify the information contained in the personal questionnaire, the client's estate-planning objectives, and the appropriate estate-planning vehicle to accomplish these objectives; and (3) preparation of final estate-planning documents and a "firm letter" advising the client that the final estate-planning documents accomplish the goals and objectives of the client. The legal services provided by Lawyer will not include advice to the client with respect to the financial appropriateness of investments described in the estate-planning documents or advice to the client about the appropriate means of executing the estate-planning documents or placing assets into the estate-planning vehicles created by the estate-planning documents.

The foregoing limitations on Lawyer's services are intended to reduce the overall costs to the client of

preparation of final estate-planning documents. The issue here is whether Lawyer has limited his services to the client to such an extent that he is no longer able to provide competent representation to the client.

Rule 1.1 of the Rules of Professional Conduct provides as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." The Comment to Rule 1.1 states, in part: "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners."

Rule 1.2(b) of the Rules of Professional Conduct provides: "A lawyer may limit the objectives of the representation if the client consents after consultation." Finally, the Comment to Rule 1.2(b) provides, in part: "An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. *Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1.*" (Emphasis added.)

Rules 1.1 and 1.2(b) are intended to provide a lawyer and a client some latitude to agree, after consultation, to limitations on the scope of services provided by the lawyer. A lawyer may not, however, agree to a scope of services that excludes the methods or procedures necessary for competent representation. A lawyer is under a duty to inform clients of the relevant facts, law and issues necessary for the client to make intelligent decisions regarding the objectives of the representation. (fn1) Lawyer does not, therefore, provide competent representation to estate-planning clients in this case if he declines to counsel the client as to the appropriate means of executing the estate-planning documents or as to the appropriate means of transferring assets into the estate-planning vehicles to accomplish the client's objectives.

To provide competent representation, Lawyer need not personally present the estate-planning documents to the client or otherwise be present during the execution of the estate-planning documents by the client or during the transference of assets into the estate-planning vehicles. It would be generally sufficient for Lawyer to provide to the client a written protocol sufficient to permit the client and Estate Planner to execute the estate-planning documents properly and to transfer assets into the estate-planning vehicles so as to achieve the client's estate-planning goals.

A lawyer has an obligation not only to advise a client of legal rights and responsibilities, but also to advise the client regarding the advisability of the action contemplated. (fn2) Lawyer does not, therefore, provide competent representation to the client if he declines to counsel the

client as to the appropriateness or advisability of estate-planning vehicles recommended by Estate Planner. (fn3) If, for example, Estate Planner recommended a living trust as the appropriate estate-planning device, Lawyer may not merely advise the client as to the client's rights and benefits under a living trust, but he must also counsel the client about other estate-planning options available to the client and about the advisability of the living trust for accomplishing the client's estate-planning objectives. (fn4)

Competent representation does not, however, require that Lawyer counsel the client on the advisability of specific investment products recommended by Estate Planner (such as the relative merits of life insurance companies or life insurance products), if such services are outside the agreed scope of Lawyer's services. A lawyer need not provide services ordinarily performed by investment or financial advisers. Competent representation does require that Lawyer counsel the client as to the appropriateness of life insurance or a life insurance trust in accomplishing the client's estate-planning objective, if these products or vehicles were recommended by Estate Planner to accomplish the client's estate-planning objectives.

Lawyer is under a duty to provide independent legal advice to a client and may not permit one who has recommended Lawyer's services to the client to direct or regulate Lawyer's professional judgment in rendering legal services. (fn5) It is therefore necessary to competent representation that Lawyer provide an independent, genuine and meaningful review of Estate Planner's recommendations in conjunction with a consultation with the client. This issue of competent representation is tied to Issue No. 3 discussed below. A genuine and meaningful independent review cannot be afforded by Lawyer whose representation of the client is adversely affected by Lawyer's referral relationship with Estate Planner. (fn6)

A lawyer is under a duty to communicate with a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (fn7) Furthermore, where circumstances require, a lawyer is under a duty to verify information furnished by a client. (fn8) Competent representation, therefore, requires that:

(a) Lawyer will independently review the non-lawyer Estate Planner's choice of the appropriate estate-planning vehicles in a genuine and meaningful way in conjunction with a consultation with the client.

(b) Lawyer's communication with the client must be sufficient to reasonably satisfy Lawyer that:

(i)the client is competent to formulate and execute the estate plan,

(ii)the client filled out the personal questionnaire upon which Lawyer is relying,

(iii)the answers provided in the personal questionnaire correctly reflect the client's estate-planning goals and intended beneficiaries, and

(iv)the estate-planning vehicles contained in the estate-planning documents prepared by Lawyer are appropriate to accomplishing the client's estate-planning objectives.

(c) Lawyer will advise and counsel the client as to the advisability of the estate-planning vehicle recommended by Estate Planner. Lawyer should include in the scope of the client's representation advice as to the appropriateness of the estate-planning vehicles recommended by Estate Planner (such as a life insurance trust) and advice or counsel as to the appropriateness for the client's objectives of investments or other products sold to the client by Estate Planner.

(d) Lawyer will counsel the client how to execute the estate-planning documents and how to transfer assets to achieve the client's estate-planning goals.

The quantum and form of communication necessary for a particular representation will depend upon many factors and must be assessed by Lawyer on a case-by-case basis. This communication with the client may, under some circumstances, require face-to-face communications. Telephonic communications will be sufficient under other circumstances. It is unlikely that non-interactive written communications alone will be sufficient under normal circumstances.

Issue No. 2: Does Lawyer violate Rule 1.6(a) if he delivers the final estate-planning documents he has prepared to the non-lawyer estate planner for delivery to and execution by the client?

Analysis: The proposed procedures underlying the relationship between Lawyer and Estate Planner contemplate that Lawyer will deliver the final estate-planning documents and the firm letter directly to Estate Planner for presentation to the client. The information contained within the final estate-planning documents is information relating to the representation of the client by Lawyer and is, therefore, confidential under Rule 1.6(a) (fn9) of the Rules of Professional Conduct. Such information may not be disclosed by Lawyer without the client's consent after consultation, unless one of the exceptions to Rule 1.6(a) stated in Rule 1.6(b) is applicable.

The exceptions of Rule 1.6(b) are not applicable under the facts of this Opinion. The comment to Rule 1.6(a) provides, in part: "The confidentiality rule applies not merely to

matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source." It therefore does not matter whether Estate Planner is already privy to the information contained in the final estate-planning documents. Unless the client has consented to the disclosure by Lawyer of the final estate-planning documents to Estate Planner, Lawyer violates Rule 1.6(a) in delivering the final estate-planning documents to Estate Planner for presentation to the client.

Issue No. 3: Does Lawyer have a potential conflict of interest under Rule 1.7(b) when advising the client concerning the appropriateness of estate-planning vehicles recommended to the client by Estate Planner?

Analysis: As was discussed in connection with Issue No. 1 of this Opinion, competent representation of the client requires that Lawyer counsel the client with respect to the appropriateness of the estate-planning vehicle recommended by Estate Planner to achieve the client's estate-planning objectives. Providing such consultation to the client may place Lawyer in a conflict of interest under Rules of Professional Practice Rule 1.7(b):

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third party or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) Each client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation to each client of the implications of the common representation and the advantages and risks involved.

If Lawyer is receiving or expects to receive a significant number of referrals from Estate Planner, Lawyer's ability to advise the client as to the appropriateness of the estate-planning vehicles recommended by Estate Planner may be materially limited by Lawyer's relationship with Estate Planner or by his interest in receiving future referrals from Estate Planner. (fn10) When Lawyer is receiving or expects to receive a significant number of referrals from Estate Planner, he may not accept the representation unless he reasonably believes that the representation will not be adversely affected and the client consents after consultation, including a disclosure of the potential limitations upon Lawyer's representation. (fn11) Lawyer's reasonable belief that the representation will not be adversely affected will be tested by the standard of a disinterested lawyer. (fn12)

The Comment to Rule 1.7(b) provides: "[W]hen a disinterested lawyer would conclude that the client should

not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such an agreement or provide representation on the basis of the client's consent."

Thus, Lawyer must carefully examine the nature and circumstances of the relationship with Estate Planner to verify compliance with Rule 1.7(b).

Issue No. 4: Is Lawyer responsible for conduct of Estate Planner that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer?

Analysis: Estate Planner will be soliciting clients for estate-planning services using cold calls and other procedures that would not be permitted under Rules of Professional Conduct 7.3(a) if engaged in by a lawyer. The procedures postulated in the Fact section of this Opinion make clear that Estate Planner is not an employee of Lawyer. (fn13) The issue, therefore, arises whether Lawyer is responsible for the conduct of the non-lawyer Estate Planner in soliciting clients who are later referred by Estate Planner to Lawyer.

Rule 5.3, Rules of Professional Conduct, provides as follows:

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

If Lawyer is "associated" with Estate Planner within in the meaning of Rule 5.3, then Lawyer (assuming Lawyer is a partner in his law firm) is required to take measures to assure the compliance of Estate Planner with the

professional obligations of Lawyer, and Lawyer (whether or not a partner in his law firm) is responsible for any conduct of Estate Planner in violation of the Rules of Professional Conduct if Lawyer ordered, or with knowledge of the specific conduct, ratified the conduct involved.

Whether an "association" has been formed between Lawyer and the non-lawyer Estate Planner within the meaning of Rule 5.3 will depend upon (1) whether Estate Planner refers legal work only to Lawyer or to a limited group of lawyers of which Lawyer is one; (2) the frequency of referrals by Estate Planner to Lawyer and Lawyer's expectation of future referrals; and (3) Lawyer's assistance, if any, to Estate Planner in the conduct of Estate Planner's services.

If Estate Planner has agreed to make referrals only to Lawyer, or to a small group of lawyers, the closer is the association between Lawyer and Estate Planner. Courts and ethics committees have recognized that the exclusivity of the referral relationship is material to assessing a lawyer's responsibility for the conduct of an Estate Planner with whom Lawyer is working. (fn14) Similarly, the frequency of referrals from Estate Planner to Lawyer and Lawyer's expectation of future referrals is relevant to the closeness of the association between Lawyer and Estate Planner. Finally, the greater the assistance afforded by Lawyer to Estate Planner in the soliciting or management of Estate Planner's business, the closer the association between Lawyer and Estate Planner. (fn15)

The greater the association between Lawyer and Estate Planner, the greater is the justification for imposing upon Lawyer duties and responsibilities with regard to the conduct of Estate Planner under Rule 5.3. This analysis has the effect of discouraging *de facto* solicitation agreements designed to evade Rule 7.3. (fn16)

As the relationship between Lawyer and Estate Planner is described in the Request, it is sufficiently close to constitute an association for purposes of Rule 5.3. Estate Planner will refer all business of clients requesting a referral to Lawyer, Lawyer anticipates systematic and frequent future referrals, and Lawyer assists Estate Planner in soliciting clients and performing its services by providing Estate Planner the form estate-planning documents. Given Lawyer's knowledge of the cold calls and other solicitation methods of Estate Planner that could not be engaged in by Lawyer under the Rules of Professional Conduct, Lawyer's acceptance of referrals from Estate Planner will constitute a ratification of Estate Planner's conduct and will make Lawyer responsible for the unethical solicitation by Estate Planner under Rule 7.3(a), Rules of Professional Conduct. (fn17)

In summary, Lawyer is responsible for conduct of Estate Planner if (a) the relationship between Lawyer and Estate

Planner constitutes an association within the meaning of Rule 5.3, and (b) Lawyer orders or, with knowledge of specific conduct, ratifies the conduct involved. Whether the relationship between Lawyer and the non-lawyer Estate Planner constitutes an "association" for purposes of Rule 5.3 will depend on factors such as (i) whether Estate Planner refers legal work only to Lawyer or to a limited group of lawyers of which Lawyer is one; (ii) the frequency of referrals by Estate Planner to Lawyer and Lawyer's expectations of future referrals; and (iii) Lawyer's assistance, if any, to Estate Planner in the conduct of Estate Planner's services.

Issue No. 5: If Lawyer provides forms of legal documents to the non-lawyer Estate Planner to use with its clients in preparing a first draft of estate-planning documents for later review by Lawyer, does Lawyer violate Rule 5.5(b) by assisting the non-lawyer Estate Planner in an activity that constitutes the unauthorized practice of law?

Analysis: Most of the courts and ethics committees that have considered ethical issues arising out of relationships between lawyers and non-lawyer estate planners have found the relationships unethical because lawyer is assisting the unauthorized practice of law by Estate Planner. (fn18)

Rules of Professional Conduct 5.5(b) provides in part: "A lawyer shall not: (b) Assist any person in the performance of activity that constitutes the unauthorized practice of law." The courts and ethics opinions that have reviewed relationships between lawyers and estate planners have considered whether the activities of an estate planner constitute the practice of law. When an estate planner's activities have constituted the practice of law, the lawyer's acceptance of referrals has been found to violate Rule 5.5(b). These opinions have consistently found that the independent drafting of legal documents by estate planners constitutes the practice of law. (fn19) Similarly, it is the unauthorized practice of law for an estate planner to usurp a lawyer's independent judgment as to the appropriate estate-planning vehicle and to relegate the lawyer to a mere scrivener. (fn20)

It is also the unauthorized practice for an estate planner to complete, or to assist clients in the completion of, form legal documents provided to an estate planner by a lawyer. (fn21) Some courts and ethics committees have found that it is the unauthorized practice of law for non-lawyer estate planners to counsel clients as to appropriate estate-planning vehicles to accomplish a client's estate-planning objectives. (fn22) Others have not found it to be the unauthorized practice of law for estate planners to recommend estate-planning vehicles, so long as they refer to a lawyer the drafting of estate-planning documents. (fn23)

This Committee does not ordinarily decide issues regarding

the unauthorized practice of law. However, it is unarguably the practice of law for Estate Planner independently to prepare the first draft of the estate-planning documents. (fn24) Therefore, unless Estate Planner was acting as a non-lawyer assistant to Lawyer in the preparation of the first drafts and under adequate supervision of Lawyer, then Lawyer's actions in providing forms to Estate Planner for the purpose of allowing Estate Planner to prepare the first draft of the estate-planning documents violate Rule 5.5(b). Lawyer is assisting a non-lawyer in an activity that constitutes the unauthorized practice of law. (fn25)

Some authorities have suggested that lawyers may avoid the risk of assisting in the unauthorized practice of law by Estate Planners through referral relationships with Estate Planners, if Lawyers engage Estate Planners as employees or independent contractors. These authorities have noted that Rule 5.3 authorizes lawyers to engage such non-lawyer assistants. (fn26) However, if Lawyer engages Estate Planner as a non-lawyer assistant, Lawyer becomes responsible for compliance with Rule 5.3, as was discussed in greater detail with respect to Issue No. 4 of this Opinion.

If Lawyer does engage Estate Planner as a non-lawyer assistant, he is required adequately to supervise the activities of Estate Planner in the preparation of first-draft estate-planning documents or in other activities constituting the practice of law. Absent adequate supervision of the non-lawyer assistant in such activities, Lawyer violates Rule 5.5(b) by assisting in the unauthorized practice of law. (fn27) Furthermore, under the procedures described for the relationship between Lawyer and Estate Planner in the Fact section, numerous other ethical violations arise if Estate Planner is functioning as Lawyer's non-lawyer legal assistant. Lawyer may not delegate to the non-lawyer assistant responsibility for establishing the attorney-client relationship. (fn28) The creation of an attorney-client relationship before Lawyer has ascertained the existence of an impermissible conflict of interest violates Rule 1.7, (fn29) and the cold calls performed by Estate Planner violate Rule 7.3 (prohibiting in-person solicitation).

Thus, unless the relationship between Lawyer and Estate Planner constitutes an "association" within the meaning of Rule 5.3 and Lawyer adequately supervises the non-lawyer Estate Planner in the preparation of the first-draft documents, Lawyer violates Rule 5.5(b) by providing forms of legal documents to the non-lawyer Estate Planner to use with its clients in preparing a first draft of estate-planning documents for later review by Lawyer.

Footnotes

1. *Joos v. Auto-Owners Ins. Co.*, 288 N.W.2d 443 (Mich. App., 1979); *In re Ratzel*, 321 N.W.2d 543 (Wis., 1982).

2. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1523 (1987).

3. See Ore. State Bar, Formal Op. No. 1991-115 (replacing Op. No. 523).

4. See *The Committee on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa, 1992); Ind. State Bar Assoc., Op. No. 4 (1992).

5. Utah Rules of Professional Conduct 5.4(c).

6. In *The Committee on Professional Ethics and Conduct of the Iowa State Bar v. Baker*, 492 N.W.2d 695 (Iowa 1992), the Iowa Supreme Court held that a lawyer did not provide a genuine and meaningful review of the estate planner's recommendations of a living trust when, out of 50 to 60 total referrals, the lawyer did not once suggest to the client that the living trust (for which the estate planner earned fees administering) was not appropriate for the client's situation.

7. Utah Rules of Professional Conduct 1.4(b).

8. See, e.g., *Dixon v. Perlman*, 528 So. 2d 637 (La. Ct. App. 1988).

9. "A lawyer shall not reveal information relating to representation of a client except as stated in paragraph (b), unless the client consents after disclosure." Utah Rules of Professional Conduct 1.6(a).

10. Ind. State Bar Assoc., Op. No. 4 (1992).

11. See *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992).

12. Dallas Bar Assoc., Op. No. 1991-03, concerning a similar association between an estate planner selling living trusts and a lawyer, states that it would be highly unlikely that the relationship would allow the independent exercise of professional judgment required by a rule comparable to Utah Rules of Professional Conduct 5.4(c).

13. If Estate Planner is an employee of Lawyer, then Rule 5.3 would unquestionably apply. Lawyer would therefore be responsible for solicitation of clients by Estate Planner using methods and procedures violative of Rule 7.3(a), if Lawyer accepted the clients solicited with knowledge of the unethical solicitation. Rules of Professional Conduct 5.3(c)(1) and 8.4(a).

14. Ind. State Bar Assoc., Op. No. 4 (1992), addressed a relationship between a lawyer and an estate planner remarkably similar to the relationship analyzed in this Opinion. The Indiana Bar's Legal Ethics Committee found

that the proposed procedures complied with the Rules of Professional Practice. The Committee cautioned, however, that "if this agreement was an exclusive agreement between the Financial Organization and the Attorney, it may well be considered a referral service in violation of Rule 7.3." See Dallas Bar Assoc., Op. No. 1991-03; *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992). In Mich. Bar Assoc., Op. No. RI-191 (Feb. 14, 1993), the Committee stated: "[R]eferrals given over only to one lawyer cannot help but generate 'the definite appearance of a quid pro quo . . . [which] constitutes giving value for a recommendation within the meaning of the rule.'"

15. Most of the authorities addressing this issue have done so in the context of Rule 5.5(b) (assisting in the unauthorized practice of law). See, e.g., *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695, 702-03 (Iowa 1992).

16. This analysis under Rule 5.3 is supported by Rules of Professional Conduct 8.4(a), which provides: "It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

17. Utah Rules of Professional Conduct 5.3(c)(1) and 8.4(a).

18. *The Committee on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992); *People v. Macy*, 789 P.2d 188 (Colo. 1990); Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993); W. Va. State Bar, Op. 92-03; Ohio Supreme Court, Op. 92-15 (Aug. 14, 1992); Ore. State Bar, Op. No. 1991-115.

19. *Bd. of Comm'rs of Utah State Bar v. Petersen*, ___ P.2d ___, 315 Utah Adv. Rep. 38, 1997 WL 200040 (Utah 1997); see also W. Va. Bar Assoc., Op. No. L.E.I. 92-03; Ore. State Bar Assoc., Op. No. 1991-115; *People v. Macy*, 789 P.2d 188 (Colo. 1990).

20. *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992).

21. Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993); Ind. State Bar, Op. No. 4 (1992).

22. Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993); Ore. State Bar, Op. No. 1991-115; Supreme Court of Ohio, Op. 92-15 (Aug. 14, 1992). See *Comm. on Professional Ethics and Conduct of the Iowa State Bar Assoc. v. Baker*, 492 N.W.2d 695 (Iowa 1992); Ind. State Bar, Op. No. 4 (1992).

23. W. Va. State Bar, Op. No. L.E.I. 92-03 n.2.

24. See notes 19 and 21, *supra*.

25. It is not for this Committee to decide whether the initial recommendation by Estate Planner to the client of the appropriate estate-planning vehicle or the later counseling by Estate Planner of the client respecting the execution of the estate-planning documents and the transference of assets into the estate-planning vehicles is the practice of law. If such activities do constitute the unauthorized practice of law, Lawyer also violates Rule 5.5(b) by accepting referrals and thereby assisting Estate Planner in the unauthorized practice of law. See note 18, *supra*.

26. Ind. State Bar, Op. No. 4 (1992); Penn. Bar Assoc., Inquiry No. 90-65.

27. Mich. State Bar, Op. No. RI-191 (Feb. 14, 1993).

28. *Id.*

29. *Id.*

Rule Cited:

1.1