

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 618**

June 2012

QUESTION PRESENTED

Do the Texas Disciplinary Rules of Professional Conduct permit lawyers to organize a law firm as a limited partnership in which the general partner is a corporation that is not a professional corporation?

STATEMENT OF FACTS

Two Texas lawyers wish to practice law together. In order to limit the lawyers' liability in connection with their law practice, their financial advisor recommends that the lawyers form a limited partnership (instead of a general partnership or a limited liability partnership) in which each lawyer is a limited partner and the general partner is an ordinary for-profit corporation, not a professional corporation, that is owned by the two lawyers.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct do not prescribe specific forms of organization for law firms. Rule 5.04 does prohibit arrangements that would undermine a lawyer's professional independence, such as sharing legal fees with a non-lawyer; forming a partnership for the practice of law with a non-lawyer; or forming a professional corporation or association for the practice of law for profit if a non-lawyer owns any interest in the entity, is a corporate director or officer of the entity, or has the right to direct or control the lawyer's professional judgment. The Texas Disciplinary Rules regarding law firms and associations also address responsibilities of a partner or supervisory lawyer (Rule 5.01); responsibilities of a supervised lawyer (Rule 5.02); responsibilities regarding non-lawyer assistants (Rule 5.03); unauthorized practice of law (Rule 5.05); restrictions on right to practice (Rule 5.06); and prohibited discriminatory activities (Rule 5.08).

Under the Texas Disciplinary Rules, a lawyer practicing law in Texas is required to comply with applicable Texas legal requirements concerning the practice of law. Rule 8.04(a)(12) prohibits violation of any laws of Texas not otherwise specified in Rule 8.04(a) "relating to the professional conduct of lawyers and to the practice of law." Accordingly, a Texas lawyer must structure his law practice in a form that is permissible under Texas law.

Whether a law firm may be organized as a traditional limited partnership with an ordinary for-profit corporation as general partner is a question that must be answered under the Texas Business Organizations Code ("TBOC"), not the Texas Disciplinary Rules of Professional

Conduct. The TBOC specifically authorizes in title 7, entitled “Professional Entities,” the formation of a “professional entity,” which “means a professional association, professional corporation, or professional limited liability company.” TBOC section 301.003(4). A “professional corporation” is defined as “a corporation that is: (A) formed for the purpose of providing a professional service, other than the practice of medicine by physicians, surgeons, or other doctors of medicine, that by law a corporation governed by Title 2 is prohibited from rendering; and (B) governed as a professional entity under this title.” TBOC section 301.003(3).

For-profit corporations that are not professional corporations are governed by title 2 of the TBOC and are prohibited under TBOC section 2.007(4) from engaging “in a business or activity that may not be engaged in by a for-profit corporation without first obtaining a license under the laws of this state and a license to engage in that business or activity cannot lawfully be granted to the corporation.” Except for professional corporations specifically authorized under title 7 of the TBOC as noted above, the general rule is that “a corporation is not authorized to engage in the practice of law.” *Unauthorized Practice of Law Committee v. American Home Assurance Co.*, 261 S.W.3d 24, 33 (Tex. 2008). See also Texas Attorney General Opinion No. MW-99 (December 13, 1979) at page 4 (“The Texas Business Corporation Act [predecessor of the provisions of the TBOC governing ordinary for-profit corporations] and the Texas Professional Corporation Act [predecessor of the provisions of title 7 of the TBOC governing professional corporations] are as a general matter mutually exclusive . . .”).

This Committee does not have authority to interpret statutory law and expresses no opinion on the interpretation of the provisions of the TBOC quoted above. The interpretation of these provisions, however, will be critical in the application of Rules 5.04, 5.05(b) and 8.04(a)(12) of the Texas Disciplinary Rules of Professional Conduct. For example, if under Texas law a corporation acting as the general partner of a limited partnership practicing law in Texas must be authorized to practice law in Texas and if under Texas law a for-profit corporation cannot be so authorized, then Texas lawyers involved in the proposed law firm structure would violate Rule 5.05(b) by assisting the general partner corporation in the unauthorized practice of law.

CONCLUSION

The Texas Disciplinary Rules of Professional Conduct do not prescribe specific forms for organizing law firms in Texas. The Texas Disciplinary Rules do, however, prohibit a lawyer from sharing legal fees with a non-lawyer, forming a partnership for the practice of law with a non-lawyer, forming a professional corporation or association for the practice of law for a profit with a non-lawyer, and assisting a non-lawyer in the unauthorized practice of law. Moreover, Texas lawyers must choose for their law practice a form of organization that complies with all applicable Texas laws, including the requirements of the Texas Business Organizations Code.