

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 642**

May 2014

QUESTIONS PRESENTED

1. May a Texas law firm include the terms “officer” or “principal” in the job titles of the firm’s non-lawyer employees?
2. May a Texas law firm pay or agree to pay specified bonuses to non-lawyer employees contingent upon the firm’s achieving a specified amount of revenue or profit?

STATEMENT OF FACTS

A Texas law firm employs non-lawyer professionals to manage the firm’s business, including its marketing, advertising, IT services, and search-engine optimization. The firm plans to give these employees the titles “chief executive officer” and “chief technology officer” and to identify them as “principals” in the law firm. In addition to paying salaries to these employees, the firm intends to pay them specified bonuses if the firm achieves a designated amount of revenue or profit.

DISCUSSION

The term “officer” in titles such as “chief executive officer” or “chief technology officer” indicates that the person holding the title has the power to control either the entire law firm (in the case of “chief executive officer”) or significant areas of the firm’s operations (in the case of “chief technology officer”). Use of the term “principal” for non-lawyer employees implies that the employees have an interest in the firm involving control, ownership, or both.

The Texas Disciplinary Rules of Professional Conduct generally do not permit Texas lawyers to allow non-lawyers to have controlling or ownership interests in their law firms. Rule 5.04(a) provides that “[a] lawyer or law firm shall not share or promise to share legal fees with a non-lawyer,” subject only to limited exceptions not applicable here. In the case of a law firm organized as a for-profit professional corporation or association, Rule 5.04(d)(2) prohibits lawyers from practicing law with such an organization if “a nonlawyer is a corporate director or officer thereof[.]” Moreover, Rule 5.04(d)(3) prohibits a lawyer from practicing law in the form of a for-profit professional corporation or association if “a nonlawyer has the right to direct or control the professional judgment of a lawyer.” In the case of a law firm organized as a partnership, the conclusion is the same: A non-lawyer may not control a partnership’s provision

of legal services. Rule 5.04(b) prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

If the non-lawyer employees will not, in fact, control operations of the law firm nor own an interest in the firm, then designating these employees as “officers” or “principals” would be misleading and thus violate Rule 7.02(a), which states: “A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm.” Identifying a person as an “officer” of or a “principal” in a law firm when the person does not, in fact, have a controlling or ownership interest in the firm would be a false or misleading communication about the firm. Furthermore, using the title “officer” or “principal” for a non-lawyer employee who does not act as an “officer” or “principal” of the firm would violate Rule 8.04(a)(3), which prohibits a lawyer from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation[.]”

The law firm’s plan to pay specified bonuses to non-lawyer employees contingent upon the firm’s achieving a specified amount of revenue or profit requires consideration of Rule 5.04(a), which prohibits a lawyer or law firm from sharing or promising to share legal fees with a non-lawyer, except in instances not applicable here.

Comment 1 recognizes that Rule 5.04(a)’s purpose is to deter lawyers from providing an incentive for non-lawyers to practice law or to solicit clients for the lawyers. The law firm’s proposed plan for paying bonuses is the type of plan that Rule 5.04(a) forbids: one that is tied to achieving a specified level of revenue or profit. Such a plan would provide an incentive for the firm’s non-lawyer employees to increase revenues, which could be accomplished through soliciting clients, or to reduce expenses, which could be accomplished by interfering with a lawyer’s independent judgment in practicing law. Furthermore, tying a bonus to achieving a specified level of profit is similar to tying a bonus to achieving a specified level of revenue because profit is a function of revenue and expenses.

Of course, a law firm’s willingness and ability to pay bonuses will depend upon the firm’s profitability. As a practical matter, a law firm may consider its revenue, expenses, and profit in determining whether to pay bonuses and, if so, how much. In the Committee’s opinion, Rule 5.04(a) does not preclude a law firm from taking such considerations into account when paying or promising to pay bonuses. Rule 5.04(a) does, however, prohibit a law firm from agreeing to pay a non-lawyer employee a specified bonus that is tied to specified revenues or profits, such as: “We will pay you a bonus of \$10,000 if the firm’s revenue (or profit) for the year is at or above \$1 million.”

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a Texas law firm may not use “officer” or “principal” in the job titles for non-lawyer employees of the firm.

The Texas Disciplinary Rules of Professional Conduct also prohibit a Texas law firm from paying or agreeing to pay specified bonuses to non-lawyer employees contingent upon the

firm's achieving a specified level of revenue or profit. A Texas law firm may, however, consider its revenue, expenses, and profit in determining whether to pay bonuses to non-lawyer employees and the amount of such bonuses.