FLORIDA BAR ETHICS OPINION
OPINION 95-1
July 15, 1995

Advisory ethics opinions are not binding.

A Florida Bar member who maintains a law practice or otherwise holds himself or herself out as a lawyer may not ethically enter into a business arrangement with a nonlawyer to represent claimants in social security disability matters. Fees claimed by or paid to the bar member for such representation are considered legal fees, and thus the proposed arrangement would violate Rule 4-5.4, which prohibits a lawyer from sharing legal fees with a nonlawyer.

RPC: 4-5.4
Opinions: 65-4; ABA Informal 1241, Kansas 93-11, Indiana 6 of 1994, Maryland 84-92, Wisconsin E-84-4
Cases: *Sperry v. State*, 373 U.S. 379 (1963)
Misc.: Code of Federal Regulations sec. 404.1705, 404.1720, 416.1505, 416.1520

A member of The Florida Bar has requested an advisory ethics opinion regarding the following:

> I have recently been approached by a non-attorney who wishes to start a business representing claimants in social security disability matters. The Code of Federal [R]egulations sections 404.1705 and 416.1505 allow for non-attorneys to represent claimants in these matters. The non-attorney has asked me to work for his company, and act as a claimant representative employed by his company. I would act not only as the representative but also as the management of the company. The non-attorney would be the sole shareholder in the company, but all management, and decisions concerning the representation of clients would be made by me.
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> The company would incur all costs associated with the representation and collect all fees resulting from it, as allowed by CFR sec. 404.1720 and 416.1520. I as an employee would receive a salary and bonuses based upon the profitability of the company. All work performed for the company would fit within the social security disability area, thus could be performed by non-attorneys.
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> The company would engage in some advertising but would not advertise the services of an attorney.
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> [1.] My question is, would this association of quasi-legal representation with the company violate Rule 4-5.4 of the Professional Rules of Conduct, or any other rule of conduct?
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> [2.] If the above discussed association does not violate a rule of conduct would I still be able to practice law independently of the company in areas other than social security? I the attorney would incur all expenses involved in the representation of clients and receive all fees resulting from that representation. The legal

representation performed by me would be conducted from my office with the company but would have no other connection to the company.

[3.] Lastly, would I as an independent attorney be able to represent the company's clients in Federal District Court proceedings resulting from their social security claim? I the attorney would bear the court costs and expenses associated with the district court case and would receive any Equal Access to Justice Act fees that may result from this action.

As noted by the inquirer, federal legislation permits nonlawyers to practice in certain specified subject areas. States are preempted from enjoining conduct that Congress has expressly sanctioned by such legislation. *Sperry v. State of Florida ex rel. The Florida Bar*, 373 U.S. 379 (1963). Nevertheless, states "maintain control over the practice of law within [their] borders except to the limited extent necessary for the accomplishment of the federal objectives." Id. at 402. It therefore appears that a state may properly proscribe, by application of its ethics rules, activities by lawyers with nonlawyers as long as the proscription does not infringe on the authorization granted the latter by Congress. ABA Informal Opinion 1241. This conclusion is consistent with our Florida Ethics Opinion 65-4. Moreover, ethics authorities from other jurisdictions have generally disapproved the type of arrangement proposed above. See Kansas Opinion 93-11. See also, e.g., Indiana Opinion 6 of 1994; Maryland Opinion 84-92; Wisconsin Opinion E-84-4.

Additionally, it is important to note that a particular activity constituting the practice of law does not cease to be the practice of law simply because nonlawyers may legally perform it. ABA Informal Opinion 1241. When engaged in by lay persons, such activity is simply the authorized practice of law. Thus, it our opinion that members of The Florida Bar who, while maintaining a law practice or otherwise holding themselves out as attorneys, represent claimants in social security disability matters are providing legal services for which they are receiving a "legal" fee even though the matters may properly be handled by nonlawyers. See ABA Informal Opinion 1241. Under those circumstances, the Florida lawyer may not join with a nonlawyer to provide such services without running afoul of Rule 4-5.4.