FLORIDA BAR ETHICS OPINION
OPINION 17-1
June 23, 2017

Advisory ethics opinions are not binding.

Florida Bar members may divide legal fees with an out-of-state lawyer whose firm includes non-lawyer ownership where: the out-of-state lawyer is providing only services that the out-of-state lawyer is authorized by law to provide; nonlawyer ownership of the out-of-state firm is permitted in the jurisdiction where that law firm is located; the out-of-state firm is in compliance with that jurisdiction's requirements; and the division of fees complies with Florida Bar rules on fee division. The opinion does not address a Florida Bar member becoming a partner, shareholder, employee, or other formal arrangement with a law firm with nonlawyer ownership.

RPC: Rules 4-1.5(g), 4-5.4(a), 4-5.5
Opinions: 90-8; 88-10; 62-3; ABA Formal Opinion 464 (2013); New York City Bar Formal Ethics Opinion 2015-8 (2015); and Philadelphia Bar Association Ethics Opinion 2010-7 (2010)

The Professional Ethics Committee has been asked by the Board of Governors of The Florida Bar to give an opinion on the issue of whether Florida Bar members may divide fees with out-of-state lawyers where those out-of-state lawyers are members of law firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in the jurisdiction where the other law firm is located.

Florida Bar members frequently work with lawyers outside their firms in representing clients. Florida Bar members also co-counsel cases with lawyers who are admitted solely in jurisdictions outside of Florida. Lawyers admitted solely in jurisdictions outside Florida are authorized to provide legal services in Florida under limited circumstances. Co-counselling with out-of-state lawyers thus raises potential concerns regarding assisting in the unlicensed practice of law and improper division of legal fees. Florida Bar members may divide fees with lawyers from other jurisdictions only where the out-of-state lawyers are providing legal services to the same client that the out-of-state lawyers are authorized by other law to provide and only in compliance with Florida Bar rules. *See*, Rules 4-1.5(g), 4-5.4(a), 4-5.5, and Florida Ethics Opinions 90-8, 88-10, and 62-3.

Florida Bar members are prohibited from partnering or sharing legal fees with nonlawyers. *See*, Rule 4-5.4. Most U.S. jurisdictions share a similar prohibition. The only United States jurisdictions that currently permit nonlawyer ownership of law firms are Washington, D.C. and Washington state. Nonlawyer ownership of law firms is permitted in Canadian provinces Ontario, British Columbia and Quebec, England, Wales, Scotland, Germany,

the Netherlands, Brussels, and New Zealand.[1] Requirements and limitations on nonlawyer ownership vary in jurisdictions that allow it.

This opinion addresses Florida Bar members in co-counseling and dividing fees with out-of-state lawyers with whom the Florida Bar members are permitted to divide fees as noted above, and in which the out-of-state lawyers practice in law firms with nonlawyer ownership as permitted by the other jurisdiction.

The committee is of the opinion that sharing fees with an out-of-state lawyer in accordance with Florida rules, law, and ethics opinions does not violate the prohibition against fee sharing set forth in Rule 4-5.4. A Florida Bar member should not be subject to discipline merely because a nonlawyer ultimately may receive some part of the out-of-state lawyer's fee solely by virtue of being an owner of the out-of-state law firm. The Florida Bar member has no control over the organization and ownership of the out-of-state firm. The out-of-state law firm may be organized in accordance with the rules of its own jurisdiction. The fact that the nonlawyer ownership would not be permitted in Florida should not impact what the out-of-state lawyer is permitted to do under the rules of that jurisdiction. To opine otherwise unnecessarily places Florida Bar members at risk and deprives clients of counsel of their own choosing from other jurisdictions.

Other jurisdictions that have addressed the issue have reached similar conclusions. *See,* ABA Formal Opinion 464 (2013); New York City Bar Formal Ethics Opinion 2015-8 (2015); and Philadelphia Bar Association Ethics Opinion 2010-7 (2010).

ABA Formal Opinion 464 also cautions lawyers that they:

> . . .must continue to comply with the requirement of Model Rule 5.4(c) to maintain professional independence. Even if the other law firm may be governed by different rules regarding relationships with nonlawyers, a lawyer must not permit a nonlawyer in the other firm to interfere with the lawyer's own independent professional judgment. As noted above, the actual risk of improper influence is minimal. But the prohibition against improper nonlawyer influence continues regardless of the fee arrangement.

The committee agrees with and adopts the reasoning of the ABA Standing Committee on Ethics and Professional Responsibility in formal opinion 464 above.

Finally, the committee notes that this opinion does not address a Florida Bar member becoming a partner, shareholder, associate, or other formal arrangement in a law firm that is permitted to have nonlawyer ownership in its home jurisdiction and does so in compliance with the rules of its home jurisdiction. Neither does this opinion address the issue of a Florida Bar member who also is admitted to practice in another jurisdiction where nonlawyer ownership is permitted joining a law firm with nonlawyer owners under the rules of the other jurisdiction.

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1 *Alternative Law Business Structures ABA Issue Paper* (April 5, 2011) available at: http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf.