



Ohio Board of Professional Conduct

OPINION 2019-2

Issued April 5, 2019

Withdraws Adv. Op. 2002-12

Transfer on Death of a Lawyer's Shares in a Law Firm to a Revocable Trust

SYLLABUS: A lawyer may not participate in a law firm in which a member, partner, or other equity holder is a nonlawyer or practice in a law firm if a nonlawyer will own any interest in the law firm. A lawyer must avoid designating his or her interests or shares in a law firm as transfer-on-death to the successor trustee in a revocable trust, becoming an irrevocable trust upon death, when one or more beneficiaries of the trust are nonlawyers.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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APPLICABLE RULES: Prof.Cond.R. 5.4, Gov.Bar R. III, §3(B).

QUESTION(S) PRESENTED:

(1) Whether a lawyer may designate his or her interests or shares in a law firm as transfer-on-death to the lawyer's revocable trust, becoming an irrevocable trust on the death of the lawyer.

(2) Whether a lawyer may grant to a revocable trust his or her interests or shares in a law firm for the benefit of individuals not licensed to practice law if the trustee who holds the interests or shares in trust is a licensed lawyer.

OPINION:

Question (1)

A lawyer proposes to designate his interests or shares in a law firm, as defined in Prof. Cond. R. 1.0, as transfer on death (TOD) to a revocable trust, to be distributed by the trustee to the named beneficiaries according to the provisions of the trust that will become irrevocable at the time of the lawyer's death.¹ Chapter 1709. of the Revised Code, referred to as the Ohio Uniform Transfer on Death Security Registration Act, allows the titling of securities² so that the transfer of property can be completed as a result of death without the necessity of those securities being administered as an asset of the deceased lawyer's probate estate. The designation of a transfer-on-death beneficiary has no effect on ownership until the death of the owner of a security. R.C. 1709.06.

Both the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar include rules to protect and maintain the independent professional judgment of lawyers by limiting the influence of nonlawyers on the lawyer-client relationship. Certain rules limit the ownership of law firms to licensed lawyers. For example, Prof.Cond.R. 5.4(d)(1) prohibits a lawyer from practicing with or in the form of a professional corporation or association if a nonlawyer owns "any interest" in the corporation or association.³ A similar Supreme Court rule prohibits a lawyer from participating in a law firm in which a member, partner, or equity holder is a person not authorized to practice law in Ohio or elsewhere. Gov.Bar. R. III, §(3)(B).

The question presented proposes one method for the transfer of the lawyer's interests or shares in a law firm to his or her beneficiaries. However, a lawyer's designation of shares in a law firm as TOD to a revocable trust will eventually lead to the

¹ Ordinarily, under Ohio law, shares in a legal professional association may be transferred to a trust for the benefit of individuals who are not licensed to render the professional services for which the association was organized. Ohio Atty' Gen'l Op. 85-065 (1985). However, both Prof.Cond R. 5.4(c) and Gov.Bar R. III, 3(B), discussed *infra*, prohibit the conduct.

² "'Security' means any certificate or instrument, or any oral, written, or electronic agreement, understanding, or opportunity, that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency* * *'" R.C. 1707.01.

³ An exception is provided in Prof.Cond.R. 5.4(d)(1) if a fiduciary representative of an estate holds the stock or interest of a lawyer for a reasonable time during estate administration for the purposes of future sale or transfer. This exception is not applicable in circumstances where the property is transferred pursuant to a trust.

transfer of a legal interest in the law firm to the beneficiaries of the trust or to their heirs in the event of the death of the beneficiaries prior to distribution. At the time of the lawyer's death, the beneficiaries would then hold an ownership interest in the law firm as a matter of law. Nevertheless, an ethical issue arises if the named beneficiaries or heirs are not licensed to practice law. In such a scenario, the remaining lawyers in the law firm are placed in a position where they are not in compliance with Prof.Cond.R. 5.4(d)(1) or Gov. Bar III, §3(B) due to the ownership interests of a nonlawyer beneficiary or heir. For example, if a deceased lawyer had been a member of a two-member limited liability company (L.L.C.), and his or her shares were designated TOD to the successor trustee of a revocable trust with nonlawyer beneficiaries, becoming irrevocable on death, the remaining lawyer member of the L.L.C. would be eventually be participating in the L.L.C. with a nonlawyer who holds a legal interest in the L.L.C. as an equity shareholder.

Based on the forgoing, the Board concludes that a TOD designation of shares in a law firm to the successor trustee of a revocable trust, becoming irrevocable upon the death the lawyer, when there are potential nonlawyer beneficiaries of the trust, creates a situation where the surviving lawyers in the law firm would not be in compliance with Prof.Cond.R. 5.4(d)(1) and Gov.Bar R. III, §3(B). The Board advises that lawyers must avoid the transfer of their interests or shares in the manner discussed above because of the potential ethical issues created for the remaining lawyers in the law firm.

Question (2)

The designation of a licensed lawyer as trustee does not eliminate the ethical problems created when a nonlawyer is a beneficiary of a revocable trust holding a lawyer's shares or interests in a law firm. Prof.Cond.R. 5.4(d)(1) prohibits lawyers from practicing in a law firm when a nonlawyer holds "any interest" in the firm. The term "any interest" in the rule encompasses an equitable interest in a trust that holds a lawyer's interest or shares in a law firm. *Pack v. Osborn*, 117 Ohio St. 3d 14, 16, 2008-Ohio-90, ¶ 7.

The end result of nonlawyers being named as beneficiaries to a revocable trust is that the remaining lawyers in the law firm would be participating in a law firm where a nonlawyer owns an interest in the firm in contravention of Prof.Cond.R. 5.4(d)(1). *See also* S.D. Ethics Comm. Op. No. 15-3 (2015) (in a transfer of shares to a revocable trust with non-lawyer beneficiaries, the nonlawyers would own an interest in the professional corporation in violation of Rule 5.4(d)(1).) Because the transfer of a law firm's shares to

a revocable trust or an irrevocable trust with nonlawyer beneficiaries implicates the prohibitions contained in Prof.Cond.R. 5.4(c) and possibly Gov.Bar R. III, §3(B), the designation of a licensed lawyer as trustee does not ameliorate the underlying ethical problem with the nonlawyer equitable ownership in the law firm.

CONCLUSION:

A lawyer's independent professional judgment may be impaired when a nonlawyer holds an interest in the law firm. To eliminate the potential negative impact on a lawyer's professional judgment, both Prof.Cond.R. 5.4(d)(1) and Gov.Bar R. III, §3(B) prohibit lawyers from practicing in a law firm where a nonlawyer holds any ownership interest in the law firm. The transfer of shares via a trust to nonlawyers results in situations where the remaining lawyers in the firm cannot comply with either rule due to the nonlawyer ownership interests. Moreover, the designation of a lawyer's shares as TOD to a revocable trust, becoming irrevocable upon death, does not remove the possibility that beneficiaries of the trust may be nonlawyers. The fact that a lawyer's trust has a licensed lawyer as trustee does not avoid the problem created for the remaining lawyers in the law firm if the beneficiaries are nonlawyers.