



June 16, 2014

Mark N. Osborn, Esq.  
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Re: Texas Ethics Opinion 642



Dear Mr. Osborn:

We are writing to you in your capacity as Chair of the Texas Supreme Court Ethics Committee. This letter, on behalf of the Association of Legal Administrators, the American Association of Law Libraries, the International Legal Technology Association, the International Practice Management Association and the Legal Marketing Association, is in response to the Texas Center for Legal Ethics' Opinion 642.



We strongly encourage the Committee to reconsider its Opinion. As discussed below, we believe the Opinion is overly broad and fails to provide the protections to lawyer independence and to the public interest as intended.



Our organizations, collectively, represent tens of thousands of legal professionals throughout the United States and around the world. Our members provide professional business management skills to law firms and law departments, including operations, human resources, administration, marketing, technology, and information services. These support services ensure the ethical and efficient running of firms, enabling lawyers and other client-facing professionals to focus on providing exceptional and ethical service to their clients and the courts.



Rule of Professional Conduct 5.04 is intended to prohibit lawyers from giving non-lawyers an ownership or controlling interest in law firms, precluding lawyers from sharing fees with non-lawyers and preventing non-lawyers from directing or controlling the professional activities of lawyers. The Committee concluded that a Texas firm may not use "officer" or "principal" in job titles for non-lawyer employees of the firm. It reasoned that doing so would mislead the public into thinking that such employees had ownership or control of the firm.

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We believe Opinion 642 fails to advance the intent of Rule 5.04 on several counts:

**Not every position with the term “officer” or “principal” in the title has ownership or control interests in the firm.** The intent of the Rule is to prevent non-lawyers from having an ownership or controlling interest in the firm. The Opinion fails to account for the functional roles assumed by these positions and instead focuses exclusively on the title itself. Many firms of all sizes currently employ Chief Administrative Officers, Chief Financial Officers, Chief Technology Officers, Chief Knowledge Officers, Chief Marketing Officers, Chief Talent Officers, among other positions. These critically important roles provide vital services to law firms, but in no way control or influence the way lawyers conduct their professional activities, nor do they convey any equity interest in the firm.

**The Opinion is contrary to current trends in law firm management and its enforcement will negatively impact the professional management of firms.** Research undertaken within our associations and in the much larger legal sector shows that the non-lawyer professional supports the practice in providing strong business acumen and legal project management expertise. Real-world experience and research tell us that the decade ahead will be shaped by powerful economic, political, technological, environmental and socio-demographic global forces. Collectively these forces underscore the necessity for new thinking and large-scale change to serve a rapidly changing world. Among the many imperatives facing law firms are issues of responsiveness to client needs around value, speed, innovation and security; and industry level forces such as intensifying competition, changing firm structures and business models, developing and maintaining global operations, new (non-traditional) entrants providing law-related services and a heightened talent agenda compelling firms to seek strong business leadership to remain viable and improve profitability. Non-lawyer professionals work for and support the lawyers’ practices, rather than exercising control over those practices, while delivering deep business value.

Successful law practice management is an ethics issue; hiring legal management professionals with experience and expertise in finance and accounting, information technology, human resources, marketing, pricing and other business areas helps to ensure that law firms are operating at the highest

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ethical standards and allows attorneys to focus their time and attention on providing client service and upholding their duty to their clients and the courts.

The current law firm business model does not support the concept of lawyers without business backgrounds effectively operating profitable law firms. Running the business interests of law firms has become increasingly complex and requires advanced business and management skills. To ensure the highest standards of ethics and quality service, firms have been seeking highly trained and experienced professionals to fulfill these roles. Recognizing that many lawyers do not have the training and expertise in these areas, many firms are recruiting seasoned professionals and executives with corporate backgrounds who have experience with complex organizations, including entities with global operations. By prohibiting law firms from using titles such as Chief Financial Officer, Chief Technology Officer, and the like, the Committee is greatly impeding firms from recruiting and retaining professionals with the skills and experience necessary in today's legal environment. This creates greater risks for both law firms and their clients.

As long as the lawyers in the firm have the final word on decisions affecting clients and the delivery of legal services, it should not matter if those professionals running the business have the title of "officer." The intent of RPC 5.04 is to prevent ownership involvement in law firms that threatens the lawyers' professional independence. The rule focuses on ownership, not titles. As long as the professional independence of the lawyer is not being interfered with, title should not matter, regardless of whether it is officer, director or principal.

**Compensation related to the net profits and business performance of the firm is not the same as direct sharing of legal fees.** This rule should not be interpreted to prohibit a lawyer or firm from paying a bonus to or otherwise compensating a non-lawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm, and provided that the employee's bonus or other form of compensation is not based on a percentage or share of fees in specific legal matters.

Again, the role of these management positions is to improve the efficiency and effectiveness of the firm's operations and business performance. Incentive compensation for meeting prescribed performance goals is very common in many industries and professional service firms. These performance goals in no

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way impact or influence the attorneys' professional judgment or control of client legal matters. Rather, they enable the attorneys to provide more efficient, cost-effective and high-quality legal services to their clients and to the courts, certainly a desirable goal for all parties.

**Conclusion.** For the reasons stated above, we strongly urge the Committee to reconsider its Opinion and adopt a more flexible approach. Specifically, we ask that the Committee allow the use of the term "officer" or "principal" in titles for clearly non-lawyer and/or administrative roles. We also ask that the Committee allow firms to provide incentive compensation for business performance to non-lawyer employees, as such compensation is not equivalent to sharing legal fees on specific client legal matters.

Respectfully,



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A handwritten signature in black ink that reads "Betsi Roach". The signature is written in a cursive style with a large, prominent 'B'.

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