



SMALL BUSINESS & NONPROFIT CLINIC

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Non-licensed Manager of a PLC

Issue:

Whether an attorney in a Professional Limited Liability Company (PLC) can bring on a nonlawyer manager? If not, what options does he or she have?

Conclusion:

An attorney shall not bring on a nonlawyer as a member or manager in a PLC. An attorney may hire a nonlawyer as an employee so long as that person is not engaged in providing services which require a license. The types of positions a nonlawyer may have are limited to those that do not have ownership and do not affect the professional judgment of attorneys rendering services.

Analysis:

Section 905(1) of the Michigan LLC Act states that “[a] professional limited liability company shall not render professional services within this state except through its members, managers, employees, and agents who are licensed or otherwise legally authorized to render the professional services within this state.” MCL 450.4905. The statute clearly states that in a PLC “professional services” may not be rendered by an individual who is not licensed. Professional service “includes, but is not limited to, services rendered by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, architect, professional engineer, land surveyor, and attorney-at-law.” *Id.*

Section 1 begs the question of whether two licensed professionals in two different fields may be members or manager of the same PLC. Under the Michigan Rules of Professional Conduct it states that a “lawyer may not form a partnership with a nonlawyer if any of the partnership’s activities consist of the practice of law.” MRPC 5.4(b). *Technically*, under the Michigan LLC Act a lawyer may start a PLC with another

licensed professional, such as a doctor, though *ethically* this is prohibited by the Michigan Rules of Professional Conduct.

Section 1 does not rule out nonlawyers completely as part of the organization. It states that “[t]he term employee does not include secretaries, bookkeepers, technicians, and other assistants *who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.*” MCL 450.4905 (emphasis added). So long as the nonlawyer is not engaged in any professional services and is not a member or manager then they can work with the PLC. Though ownership is not an option for nonlawyers, they can be included in a compensation or retirement plan. MRPC 5.4(a)(3)

The issue then is what position options do nonlawyers have in a PLC. The Michigan Rules of Professional Conduct list three restrictions on the positions or titles of nonlawyers:

- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

MRPC 5.4(d). In other words there are three elements that must be satisfied for a nonlawyer position to be valid. First, the nonlawyer shall not have an ownership interest. Second, the nonlawyer shall not be a corporate director or officer. Third, the nonlawyer cannot influence the professional judgment of the lawyer(s).

The first element, as it pertains to a PLC, is straightforward. The Michigan LLC Act prohibits nonlawyers from being managers or members which deprives them of any ownership. MCL 450.4905. The third element is clearly stated as well, restricting nonlawyers from hindering the judgment of attorneys in their legal representation.

The second element is relevant to a corporation and not necessarily a PLC pursuant to Michigan law. The Model Rules of Professional Conduct 5.4(d)(2) reads “a nonlawyer is a corporate director or officer thereof *or occupies the position of similar responsibility in any form of association other than a corporation.*” RPC 5.4(d)(2) (emphasis added). Michigan has amended its rule on this topic. Michigan law eliminates the latter portion of the rule which limits this interpretation to *corporate* directors and officers and not those in other “associations” as it states in the Model Rules. This amendment gives more flexibility to LLCs and PLCs to use nonlawyers as directors, officers, or any other titles the PLC wishes to give so long as they satisfy the other two elements.

An example of a Michigan law firm that operates as a PLC is Clark Hill, PLC. This prestigious law firm has several positions that are not limited to attorneys. Here are some examples of the positions held:

- Chief Marketing Officer
- Chief Human Resources Officer
- Chief Operating Officer
- Controller
- Director of Human Resources
- Director of Information Technology

Each of these positions is held by individuals who are not licensed attorneys. <http://www.clarkhill.com/people/team>. Last visited 29. Sept. 2008.

In conclusion, a PLC law firm may hire a nonlawyer so long as they are not members or managers in the PLC and are not rendering services which require a license. The types of positions a nonlawyer may have are limited to those that do not have ownership and do not affect the professional judgment of attorneys rendering services.