

Advisory Committee on Professional Ethics
Appointed by the Supreme Court of New Jersey

OPINION 712

Advisory Committee on Professional Ethics

**Attorney-Staffed Legal Hotline
For Members of Nonprofit
Trade Association**

Inquirer represents a nonprofit trade association that wants to set up a legal hotline, staffed by attorneys, to provide short-term, limited legal services to its members, with no expectation of continued representation in the matter. The nonprofit association would compensate the attorneys on either a flat fee annual basis or an hourly rate for the services for its members. The attorneys would be paid by the association, and no formal conflict check would be done on receipt of an inquiry from an association member. Association members would be advised in writing that no attorney-client relationship arises, and any potential conflict of interest would be waived by the member unless the attorney providing the advice knows there is a conflict.

Inquirer expresses the view that ACPE Opinion 671, 133 *N.J.L.J.* 1370 (April 5, 1993), 2 *N.J.L.* 535 (April 5, 1993), does not apply to its inquiry due to the subsequent adoption of *RPC* 6.5. Opinion 671 expressly provides that an attorney-client relationship ordinarily arises during one-on-one discussions between a lawyer and a person seeking legal advice, and found that an organization cannot disclaim the attorney-client relationship. Opinion 671 further noted that organizations providing legal services to its

members or beneficiaries, where the attorneys providing the advice are paid, ordinarily must adhere to the provisions of *RPC 7.3(e)(4)* and register with the Supreme Court.

The Committee concludes that *RPC 6.5* does not supersede Opinion 671 and the Opinion is, in fact, fully applicable to this inquiry. *RPC 6.5* provides that a lawyer who is participating in a program sponsored by a nonprofit organization or court by providing short-term limited legal services without an expectation of continued representation is not subject to strict application of *RPC 1.7*, *RPC 1.9*, and *RPC 1.10*. Specifically, a conflict arises under these *Rules* only when the lawyer knows that the representation of the client involves a conflict of interest, and conflicts are imputed to the firm only when the lawyer knows that another lawyer in his or her firm would be disqualified from representing the client. *RPC 6.5(a)(1)* and (2).

RPC 6.5 was enacted as part of the 2004 Rule revisions. The Pollock Commission Comment notes that the Rule is based on ABA Model Rule 6.5, “which arises out of the ABA Commission’s concern that a strict application of the conflict-of-interest rules may deter lawyers from serving as volunteers in nonprofit or court-annexed limited legal services programs.” Administrative Determination, 173 *N.J.L.J.* 933 (September 15, 2003). The Pollock Commission further noted that the Model Rule “provides for a limited relaxation of the conflict-of-interest rules in situations where lawyers provide clients with short-term limited legal services under the auspices of a program sponsored by a nonprofit organization or court.” *Ibid.*

ACPE Opinion 671 did not concern application of the conflict of interest rules to attorneys participating in limited legal services programs. Rather, the Opinion addressed whether an attorney-client relationship develops when an attorney provides limited legal

services for beneficiaries of a nonprofit organization; whether such an organization may sponsor a limited legal services program; whether different standards of competence apply to attorneys providing *pro bono* legal advice; and whether an attorney may accept compensated employment from a person who initially participated in the nonprofit legal services program.

The Committee in Opinion 671 found that when an attorney and an individual are engaged in one-on-one discussions, “there is a presumption that legal advice may be relied upon by the client, and that an attorney-client relationship exists.” The attorney-client relationship may be limited to a short time frame, the duration of a telephone call, and to a curtailed scope, the topic of the request for advice, with no expectation of continued representation. Even when so limited in time and scope, the attorney-client relationship still springs into existence whenever “the legal counseling becomes particularized to an individual – eliciting facts and providing reaction and advice specific to the individual’s situation” Opinion 671.

The Committee in Opinion 671 further noted the provisions of *RPC 7.3(e)(4)*, permitting attorneys to participate in legal service programs offered by a bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries provided certain conditions are satisfied. The Committee noted that one of the conditions is that the beneficiary of services must be recognized as the client of the lawyer and, when the lawyers providing the legal advice are compensated for doing so, the organization must register with the Supreme Court.

The principles of Opinion 671 remain applicable after the enactment of *RPC 6.5*. Accordingly, in response to the inquiry, the nonprofit trade association may not disclaim

the formation of an attorney-client relationship, as it is likely such a relationship will arise in the course of the provision of services by the attorneys staffing the legal hotline. In addition, the association should file its legal services plan with the Supreme Court and demonstrate that its proposed services comply with *RPC 7.3(e)(4)*.