
E-94-6 Use of financial planners and registered investment advisors in estate planning law practice

Question

May a lawyer who practices estate planning establish an arrangement whereby nonlawyer financial planners and registered investment advisors are hired as independent contractors and paid an hourly fee by the lawyer to provide potential clients with a free consultation at which data is gathered for the lawyer's review for estate planning purposes? The lawyer then would consult with the client and provide estate planning services, as appropriate. In addition, the nonlawyer independent contractors may be retained to provide appropriate assistance in preparing necessary documents and transferring assets to accomplish the estate planning objectives approved by the client.

Opinion

This method of delivering estate planning legal services, if undertaken by a Wisconsin lawyer, would involve no per se violations of the Wisconsin Rules of Professional Conduct. Several concerns are of special significance in this context, however. According to SCR 20:5.3, a lawyer's responsibilities regarding nonlawyer assistants include the duty to supervise assistants to ensure compliance with the professional obligations of the lawyer. Moreover, SCR 20:5.5 prohibits a lawyer from assisting nonlawyers in engaging in the unauthorized practice of law and SCR 20:5.4 prohibits lawyers from sharing fees with nonlawyers or being subject to their direction or regulation. False or misleading communications about the lawyer's services would violate SCR 20:7.1. It also is misconduct under SCR 20:7.2 for a lawyer to give anything of value to a person for recommending the lawyer's services. Thus, the nonlawyer assistants must be paid only for services actually performed. Formal Opinion E-92-2 offers additional cautions and concerns in this area.

These various concerns require careful planning, careful supervision, and careful follow-through if the arrangement is to be instituted in a way that conforms to the rules of professional conduct.