7343 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 2, 2002

The Honorable J. G. McGee, III
Member, House of Representatives
420-A Blatt Building
Columbia, South Carolina 29211

Re: Your Letter of April 2, 2002
Pee Dee Coalition Against Domestic and Sexual Assault

Dear Representative McGee:

In your above-referenced letter, you ask this Office the following question: "can attorneys be paid through a nonprofit organization to provide legal services to clients the organization serves?" By way of background, you indicate that "[i]n September of 2001, the Pee Dee Coalition Against Domestic and Sexual Assault (PDC) was privileged to receive a Legal Assistance for Victims Grant through the U.S. Department of Justice Programs' Violence Against Women Office. The purpose of the grant is to provide legal services to victims who would not otherwise receive representation. The PDC offers these services free of Charge."

You further indicate that it has been brought to your attention that S.C. Code Ann. §40-5-320, which prohibits a corporation from practicing law, may be applicable to the PDC in this situation. You further question whether Rule 5.4 of the Rules of Professional Conduct, which generally prohibits a lawyer from sharing legal fees with a nonlawyer, might also prohibit the PDC from providing the legal services mentioned above.

You also state that "[t]his complication was taken to the Ethics Committee of the Bar Association which instructed the PDC to abide by rules 5.4c and 1.8f so there would be no breach of ethics."

S.C. Code Ann. §40-5-320 provides, in pertinent part, as follows:

(A) It is unlawful for a corporation or voluntary association to:
(1) practice or appear as an attorney at law for a person other than itself in a court in this State or before a judicial body;
(2) make it a business to practice as an attorney at law for a person other than itself in a court or judicial body;
(3) hold itself out to the public as being entitled to practice law, render or furnish

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Request Letter

> legal services, advise or to furnish attorneys or counsel, or render legal services in actions or proceedings;
>
> (4) assume to be entitled to practice law or to assume, use, or advertise the title of lawyer, attorney, attorney at law, or equivalent terms in any language as to convey the impression that it is entitled to practice law or to furnish legal advice, services, or counsel; or
>
> (5) advertise that it has, owns, conducts, or maintains a law office or an office for the practice of law or for furnishing legal advice, services, or counsel, either alone or together with, by, or through a person, whether a duly and regularly admitted attorney at law, or not.

In a previous opinion request, this Office was asked whether Section 40-5-320 "applies to the Charleston Neighborhood Legal Assistance Program, Inc., created under the auspices of ..." certain federal laws existing at that time. In response to this question, we opined that

> § 40-5-320 prohibits the practice of law by corporations and voluntary associations. The corporation created under Public Law 93-355 does not practice law but rather disburses funds in a manner which allows private, qualified attorneys to maintain a client/attorney relationship with individuals who might not be able to obtain legal assistance otherwise. The attorneys are not involved in the corporation and the funding corporation does not practice law. It is therefore the opinion of this Office that the Charleston Neighborhood Legal Assistance Program, Inc., is not subject to the prohibitions of § 40- 5-320.

See OP. ATTY. GEN. Dated April 14, 1978. Courts in other states which have similar laws have produced similar opinions. In In Re Education Law Center, Inc., 429 A.2d 1051 (NJ 1981), the New Jersey Supreme Court held that nonprofit corporations operating for charitable purposes could be exempted from the ban on the practice of law by corporations if certain standards were met in order to preserve the integrity of the lawyer-client relationship. The Education Law Center court noted that the basis for the general prohibition of the practice of law by a corporation is a concern that the relationship of confidentiality, trust and undivided loyalty which must exist between a lawyer and his client could be impaired if the lawyer is employed by a corporation and a concern that such corporation may place its own interests ahead of interests of its clients. Id. The court recognized the public need for organizations such as the PDC and set forth the following standards which must be met in order for the organization to be exempt from the ban on the corporate practice of law:

> First, the role of the public interest law firm as regards the relationship between individual staff attorneys and clients must be limited to that of "a conduit or intermediary to bring the attorney and client together" which "does not purport to control or exploit the manner in which the attorney represents his ... client." Once a staff attorney is retained by a client, there can be no interference in the attorney-client relationship by the organization. Staff attorneys must remain fully responsible to the client and the corporation must be liable for any damages arising

> from the attorney's malpractice. In the course of this representation, lawyers are, of course, subject to all Disciplinary Rules and to the discipline of [the] Court. The responsibility of the lawyer to the client naturally includes the pursuit of the client's best interests in all legal matters. As far as legal matters are concerned ... the participation of ... non-lawyers must be limited to the formulation of broad policies ... and the use of "reasonable procedures to review periodically the actions of (the organization's) personnel to determine whether the board's policy directives have been adhered to. Determinations of which cases to accept and all decisions concerning how such cases are to be handled must be made by lawyers, either employed by the organization or members of its board, who are fully cognizant of governing professional standards and who are responsible to [the] Court for maintenance of those standards. Once a staff attorney has begun representation of a client in a case, it would be prudent for the [organization] to "take special precautions not to interfere with its attorney's independent professional judgment in the handling of the matter." (Citations omitted).

Id. at 1058, 1059.

I have spoken with Wendy M. Bowen, Director of Community & Outreach Victim Services for the PDC, concerning this matter. From her description, it sounds as if the PDC and the attorneys it hires would be operating in accordance with the standards expressed in In Re Education Law Center, Inc. Id. and our prior opinion. Therefore, as long as the attorneys are given the autonomy to maintain the appropriate attorney-client relationship, it is my opinion that the PDC would not be in violation of S.C. Code Ann. §40-5-320. Further, as long as these standards are maintained, it is also my opinion that neither the PDC nor its attorneys would be in violation of Rule 5.4 of the Rules of Professional Conduct. Of course, as stated by the Bar Association's Ethics Committee, the PDC attorneys must comply with the consultation, client consent and other requirements of Rule 1.8(f).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General