

STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 49
Issued on October 27, 2011.

QUESTION PRESENTED

May an attorney who is also a licensed clinical social worker (LCSW) practice law under the same limited liability company which she has established for her social work practice?

ANSWER

Yes.¹ An attorney may practice law and operate as a licensed clinical social worker under the same limited liability company, provided that the attorney is not representing the same clients in both her capacity as an LCSW and as an attorney. However, the attorney must evaluate potential conflicts of interest prior to undertaking representation of clients in either capacity.

AUTHORITIES

- a. Nevada Rules of Professional Conduct 1.6, 1.8, 5.4 (2010)
- b. Nevada Revised Statute § 432B.220.
- c. State Bar of Nevada, Standing Comm. on Ethics and Prof'l Responsibility, *Formal Op. No. 30* (March 25, 2005).
- d. State Bar of California Standing Comm. on Prof'l Responsibility and Conduct, *Formal Op. No. 1999-154*.
- e. ABA Center for Prof'l Responsibility Report (June 2000) (*available at* <http://www.abanet.org/cpr/mdp/mdp-report10f.html>)
- f. ABA Comm'n on Multidisciplinary Practice, *Report to the House of Delegates* (July 2000) (*available at* <http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html>).
- g. Code of Ethics of the National Association of Social Workers (Rev. 2008) (*available at* <http://www.socialworkers.org/pubs/code/code.asp>).

DISCUSSION

Discussions regarding multidisciplinary practice have in large part focused on the concern with non-lawyers having any ownership or supervisory role over attorneys with regard to the practice of law.² In Nevada, RPC 5.4(a) generally prohibits lawyers from

¹ This opinion is limited to the situation where the LLC is owned or operated by an attorney. The Committee would also like to note that anyone employed by such an LLC is bound by attorney confidentiality rules.

² See American Bar Association, Center for Professional Responsibility Report (June 2000) (*available at* <http://www.abanet.org/cpr/mdp/mdp-report10f.html>).

sharing fees with non-lawyers. Similarly, RPC 5.4(b) prohibits an attorney from forming a partnership with a non-attorney “if any of the activities of the partnership consist of the practice of law.” The RPC does not specifically address the context of an attorney who is also engaged in a profession outside the practice of law. However, the analysis is generally based on the understanding that in a multidisciplinary practice situation, attorneys should “have the control and authority necessary to assure lawyer independence in the rendering of legal services.”³

While this issue has not previously been reviewed by this Committee, the State Bar of California Standing Committee on Professional Responsibility and Conduct (California PRC Committee) has considered the issue of an attorney performing both legal and non-legal professional services for the same client.⁴ That opinion involved an attorney who intended to form a company which would offer investment advisory services. While the attorney would act primarily as an investment advisor, she intended to advertise her legal background in soliciting clients. Moreover, she intended to offer incidental legal advice and services to her clients in connection with their investment advisory issues. The California PRC Committee found that, when an attorney was engaged in providing both legal and non-legal services to a client, all services were considered as legal services with respect to the responsibility to comply with the rules of professional responsibility.⁵ The California Committee also noted that the attorney was not “sharing a legal fee” under the rules.⁶ This Committee agrees with the California committee’s reasoning with regard to the sharing of legal fees. However, in the context of an attorney who is also acting as a social worker, inherent conflicts arise between the rules governing each profession.

Both attorneys and licensed clinical social workers operate under ethical rules. An attorney who is also practicing as a licensed clinical social worker must be mindful of both sets of ethical obligations and the potential for conflict among those rules. It is this Committee’s opinion that because of the potential for conflict, an attorney who is also a social worker should not represent the same client in both capacities.

Nevada Rule of Professional Conduct [“NRPC”] 1.2 (a) requires an attorney to “abide by a client’s decision concerning the objectives of the representation” and to “consult with the client as to the means by which they are to be pursued.” Similarly, NRPC 1.4(a)(2) requires an attorney to communicate with the client regarding the means of achieving the client’s objectives. In this context, the attorney must ensure that her law clients are informed and fully understand that she is representing them solely in her capacity as an attorney, not as a social worker, in order to avoid the appearance of any

³ ABA Commission on Multidisciplinary Practice, Report to the House of Delegates (July 2000) (*available at* <http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html>).

⁴ State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Op. No. 1999-154.

⁵ *Id.*

⁶ *Id.*

conflict. The Code of Ethics of the National Association of Social Workers [“NASW”] requires that social workers “should provide services to clients only in the context of a professional relationship based...on valid informed consent.”⁷ Therefore, social workers also have an obligation to ensure that clients understand the services to be provided.

The NASW Code of Ethics includes several provisions regarding conflicts of interest. Section 1.06(c) provides that “[s]ocial workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate and culturally sensitive boundaries.” The NASW Code of Ethics also advises social workers to inform clients “when a real or potential conflict of interest arises...”⁸

The most serious potential for conflict arises with respect to the attorney’s duty to maintain a client’s confidences. The attorney’s responsibility in this regard is broader than that of the social worker. NRPC 1.6 (a) requires an attorney to maintain a client’s confidences, with specific delineated exceptions. The NASW Code of Ethics delineates slightly different obligations for social workers. The NASW Code provides that “social workers’ responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised.”⁹ Specifically, social workers are not permitted to disclose client confidences, other than for “compelling professional reasons.”¹⁰ Therefore, the NRPC and the NASW impose different requirements with regard to the preservation of client confidences. The American Bar Association Commission on Multidisciplinary Practice has noted that an attorney involved in a multidisciplinary practice “would have to make reasonable efforts to ensure that a client to whom legal services are being rendered sufficiently understands that the lawyer and the nonlawyer professional in the MDP may have different obligations with respect to the disclosure of client information and that the courts may treat the client’s communications to the lawyer and nonlawyer differently.”¹¹ Where one person is operating as both an attorney and a social worker, the potential for conflict and confusion on this issue is clear. For this reason, the Committee concludes that an attorney who is also a social worker should ensure that her clients know and understand in which capacity she is representing them, and that the clients have consented to that scope of representation.

⁷ See Code of Ethics of the National Association of Social Workers (Rev. 2008) (*available at* <http://www.socialworkers.org/pubs/code/code.asp>), Section 1.06(c).

⁸ *Id.*, at Section 1.06(a).

⁹ *Id.*, at Section 1.01.

¹⁰ *Id.*, at Section 1.07(c).

¹¹ See *supra* fn. 3.

Similarly, an area for potential conflict between the professional obligations of attorneys and social workers arises in the context of mandatory reporting of child abuse. Pursuant to NRS 432B.220(4)(a), clinical social workers are mandatory reporters of suspected child abuse. However, the responsibilities of attorneys differ under that statute. Attorneys are mandatory reporters “unless the attorney has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect.”¹² Therefore, while social workers have an absolute responsibility to report any time they have reasonable cause to suspect that a child has been abused, attorneys are specifically exempted from this requirement if the suspected perpetrator of the abuse is a client.¹³ Because of this inherent conflict, the same person should not act as both attorney and social worker for the same client.

CONCLUSION

No current prohibition exists which would prevent an attorney from also practicing as a licensed social worker. However, because of the potential for conflict and the different professional obligations imposed on attorneys and social workers, it is the Committee’s opinion that an attorney should not act as a social worker to the same client. Moreover, in a multidisciplinary practice, the attorney should ensure that the client understands in which capacity the attorney is acting and has consented to the scope of that representation.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.

¹² See Nev. Rev. Stat. § 434B.220(4)(i).

¹³ The Standing Committee on Ethics and Responsibility previously discussed the conflict between NRS 434B.220(4)(i) and then SCR 156 in Formal Opinion No. 30 (March 25, 2005).