

# Lawyer Affiliation with Legal Services Companies and Out-of-State Law Firms

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OPINION #2-18

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## Question

Can an Indiana lawyer affiliate with a non-lawyer company or an out-of-state law firm to provide legal services to clients in Indiana?

## Short Answer

These arrangements risk violation of several Indiana ethics rules.

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## Recommended Rules for Review

[Indiana Rules of Professional Conduct](#): 1.2(c), 1.4, 1.5(e), 1.8(f), 5.3(b), 5.4(a), 5.4(c), 5.5(a), 8.4(a), and [Guideline 9.1 and 9.3](#).

[Indiana Admission and Discipline Rule](#): 3(2)

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## Summary

Lawyers may find themselves being approached more and more by non-lawyer companies or out-of-state law firms looking to establish an ongoing affiliation for providing legal services in Indiana. Such offers may be attractive as a means of expanding the lawyer's practice and developing a recurring flow of business. Such offers might be in the area of debt settlement, mortgage foreclosures, estate planning, traffic violations or criminal expungements, but could touch any area of the law.

An out-of-state firm may want to enter an "Of Counsel" or other contractual arrangement to nominally make the Indiana lawyer part of their firm. The specifics can take many forms. However, the common feature of this business model is that the non-lawyer company or out-of-state law firm wants to offer legal services in Indiana on an ongoing basis without being licensed to practice law in Indiana. They then direct the cases to an Indiana lawyer for a portion of the fees charged, often while requiring relatively minimal work or involvement by the Indiana lawyer. This business model is known colloquially as the "license rental" model.

## The Ethical Problems

Affiliating with non-lawyer companies or out-of-state law firms to provide legal services in Indiana on an ongoing basis can present the following potential ethical issues for Indiana lawyers:

## Assisting the Unauthorized Practice of Law

Indiana Rule of Professional Conduct 5.5(a) prohibits a lawyer from assisting Indiana law practice by anyone who is not licensed in Indiana. A lawyer violates this rule by accepting work from a non-lawyer company which is selling legal services to clients. A lawyer also violates this rule by serving as local counsel for an out-of-state law firm in situations where someone from the out-of-state law firm is performing the bulk of the work or keeping the bulk of the fee without temporary admission under Indiana Admission and Discipline Rule 3(2). The goal of some "national" law firms is to "rent" the license of an Indiana lawyer to legitimize advertising their services in Indiana and to skirt the temporary admission rule.

## Abdication of Professional Independence

Indiana Rules of Professional Conduct 1.8(f) and 5.4(c) require a lawyer to maintain his/her professional independence. A lawyer risks violation of these rules when the non-lawyer company or out-of-state law firm dictates nearly all aspects of the representation, particularly the objectives and legal strategy. Some "license rental" models sell a "one-size-fits-all" approach to a legal problem without proper attorney consultation about the various legal options available and without regard to the true needs of the client.

## Improper Fee Splitting

Indiana Rule of Professional Conduct 5.4(a) generally prohibits a lawyer from splitting fees with a non-lawyer. When a lawyer is paid only a portion of the larger fee collected by the non-lawyer company, a lawyer risks violating this rule.

Indiana Rule of Professional Conduct 1.5(e) prohibits sharing a fee between lawyers who are not in the same firm without informing the client about how the fee is shared. Under the "license rental" model, it is often kept secret from the client that their local lawyer is getting paid a small portion of the much larger fee collected by the "national" firm.

## Lack of Client Communication

Indiana Rule of Professional Conduct 1.4 can be an issue when the non-lawyer company or out-of-state law firm takes responsibility for keeping the client informed but fails to do so. Often under the "license rental" model, the client never has a chance to meaningfully consult with their lawyer and is not properly informed about aspects such as the fee-sharing arrangement or the limited scope of the Indiana lawyer's representation.

## Limited Representation

Indiana Rule of Professional Conduct 1.2(c) provides that if the services the lawyer will perform are limited in scope, the limitation must be reasonable and the client must be informed and give consent to the limitation and objectives of the representation. The "license rental" model often

raises concerns about meeting this obligation. However, limited representation, even if the client is informed and consents, does not absolve a lawyer of potential rule violations referenced in this opinion.

### Failure to Supervise Non-Lawyer Assistants

Indiana Rule of Professional Conduct 5.3(b) and Guideline 9.1 for the Use of Non-Lawyer Assistants generally provide that a lawyer must directly supervise non-lawyer assistants and are responsible for their actions. A regular feature of the “license rental” model is that a significant amount of work is performed by paralegals and legal assistants, usually in another state, where they are difficult to monitor.

Guideline 9.3 for the Use of Non-Lawyer Assistants prohibits non-lawyers from establishing an attorney-client relationship, and/or setting the amount of the fee to be charged, and/or rendering legal opinions to the client. The “license rental” model often employs non-lawyers to contract with clients and commit them to a legal strategy before the lawyer gets involved. Such an approach would be problematic under Indiana’s rules.

### Assisting Ethical Violations

Indiana Rule of Professional Conduct 8.4(a) prohibits knowingly assisting another in violating the Rules of Professional Conduct. Lawyers may be held accountable if they know that a non-lawyer company or out-of-state law firm engages in practices that would be prohibited in Indiana, such as charging unreasonable fees or using misleading advertising methods.

## Conclusion

The “license rental” model can take many forms and presents many pitfalls for the Indiana practitioner. A lawyer should carefully review the relevant rules and understand that affiliation with a non-lawyer company or an out-of-state law firm may put him/her at risk of violating multiple ethical rules and that the lawyer may be subject to discipline.

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