

New Rule Proposed on Responsibilities Regarding Law-Related Services

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More and more law firms are establishing law-related entities to provide services to clients. Among those services are: financial planning, accounting, economic analysis, trust services, title insurance, real estate, tax preparation, specialty consulting, psychological counseling, parenting, social work and lobbying. The list is as large and as varied as the needs of clients.

A significant number of solo practitioners also have ancillary businesses in addition to their law practice. But possible ethical issues can arise when a lawyer performs law-related services or a person is a “client” of both the law firm and the law-related entity the firm controls.

Revising the rule

The Minnesota State Bar Association (MSBA) will soon be petitioning the Minnesota Supreme Court to adopt American Bar Association Model Rule 5.7, regarding the provision of law-related services. The rule provides that a lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services if the law-related services are provided:

- by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or
- in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

Under the rule, the term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as the unauthorized practice of law when provided by a nonlawyer.

The rule emphasizes that an attorney needs to make clear to the person receiving law-related services that he or she is not receiving legal services and that the usual attorney/client protections do not apply to

these services.

This communication should be made (preferably in writing) before entering into an agreement to provide the law-related services. This communication is necessary whether or not the person is also a client of the lawyer or law firm.

Consequences

If the attorney fails to make this communication, then all of the Rules of Professional Conduct will apply to the attorney's conduct in dealing with the person receiving nonlegal services, including the rules regarding diligence, communication, confidentiality, conflict of interest, candor and misrepresentations, etc.

Some measures that will help to ensure that the distinction between legal and nonlegal services are clearly understood include:

- separate addresses and phone numbers for the firm and law-related business;
- separate business cards, letterhead and advertising; and
- separate personnel, or if shared, well-trained support staff who understand the importance of

clear distinctions regarding the services sought or provided.

The burden is upon the attorney to demonstrate that reasonable communications and distinctions between legal and law-related services have been made. More sophisticated consumers may require less explanation than an unsophisticated consumer who may not be used to making such distinctions.

Obviously, the risk of confusion is greatest when an individual or corporation is receiving both legal services from the firm and law-related services from the law-firm controlled entity. In addition, the attorney for such a client must be sure to comply with the requirements of Rule 1.8(a) of the Minnesota Rules of Professional Conduct, which deals with business transactions with a client.

In this complex environment in which provision of multiple law-related services is increasingly more common, the new Rule 5.7 and its comments should be of assistance to lawyers in understanding their ethical obligations and highlighting potential ethical problems.