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INFORMAL OPINION #09-05

OUTSOURCING OF ADMINISTRATIVE, MANAGEMENT, ADVERTISING AND DATA PROCESSING

As a lawyer licensed in Connecticut and New York, you expect to open an office in Connecticut to practice law with a focus on real estate. Your law firm expects to engage three companies for discrete tasks to be performed by non-lawyer as follows:

1. Management Company

To manage the law firm's administrative and non-legal matters, including back office functions of word processing and bookkeeping, with limited signatory authority to pay firm expenses from the law firm's business/operating banking account. The law firm will pay a fee to the Company for such services based upon a formula consisting of cost plus a fixed percentage of the cost of the services. The fee to be paid to the management company is not dependent upon profitability of the law firm.

2. Advertising Company

To solicit business and to market the law firm, under a contract which will require marketing and advertising services to comply with the applicable Rules of Professional Conduct and Rules of Practice. The advertising materials will be submitted to Connecticut's Statewide Bar Counsel for approval in advance of publication or distribution of such materials. The law firm will pay a fee to the Company for such advertising and marketing services based upon a formula consisting of cost plus a fixed percentage of the cost of the advertising. The fee to be paid to the Advertising Company is not dependent upon the performance of the advertising or the marketing campaign.

3. Processing Company

To serve a limited function to collect documents necessary for the law firm to

evaluate the law firm's client matter/case. The law firm expects the Company will directly contact each client's lender to collect all loan documents for each client's transaction. The Company will also substantively review the client's loan documents and list for the law firm, all discrepancies uncovered in the client's loan documents. These services will be provided under a contract which requires the Company to keep all client information confidential and to prohibit disclosure of any client information other than that which is necessary to obtain the documents from the client's lender. The law firm will be charged a flat fee by the Company for such services; the law firm will treat the Company's fee as part of the firm's overhead and will not be charged to the law firm's client.

The Marketing Company, Advertising Company, and Processing Company are affiliated business entities with common ownership and control. No attorney in the law firm will directly or indirectly own any interest in these companies. The law firm expects to disclose to each of its clients, the law firm's use of these companies, particular the role to collect loan documents from the client's lender.

You ask generally if the law firm's use of these companies for marketing, advertising, and processing documents is prohibited by the applicable Rules.

There is no per se violation of the Rules presented with the law firm's engagement of the three independent vendors described, provided the use of non-lawyers for law related services is closely supervised by the lawyers of the law firm, does not interfere with the professional judgment of the lawyers, the law firm takes steps to protect client confidences, and the vendors do not engage in activities that are prohibited if performed by the lawyer or law firm.

In Informal Opinion #02-08, we considered a law firm's outsourcing of human relations aspects of the law firm with use of Professional Employer Organization ("PEO"). We concluded there is no per se violation of the Rules in having a PEO "lease" employees to the law firm so long as it is clear that the PEO, as the co-employer of the employees, will not interfere with the professional judgment of the lawyers, and the lawyers supervise the performance of the employees and take steps to protect client confidences. Informal Opinion #02-08 cites Ethic's opinions issued by the ABA and other jurisdictions which similarly approve the practice.

With regard to your law firm's engagement of the Management Company and the Processing company to perform back-office services, the applicable Rules do not prohibit the work or the relationship under the limited conditions described with adherence to the restrictions imposed by the Rules. See Rules of Professional Conduct: Rule 1.4, Rule 1.5, Rule 1.6, Rule 1.7, Rule 1.9, Rule 1.10, Rule 5.1, Rule 5.2, Rule 5.3, Rule 5.4, and Rule 7.1. The Rules permit the lawyer to use non-lawyer assistants in the practice of law and the assistants do not have to be employees of the law firm.

The official commentary to Rule 5.3 provides:

"The lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and

paraprofessionals. Such assistants, *whether employees or independent contractors*, act for the lawyer in rendition to the lawyer's professional services. A lawyer must give such assistant appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product." (Emphasis added).

The use of non-lawyers for law related services does not obscure or dilute the ethical obligations imposed upon you or your law firm. These obligations include the duty of competence, (Rule 1.1) the duty to keep client's reasonably informed with regard to their matters, (Rule 1.4) the duty to keep fees reasonable, (Rule 1.5) the duty to safeguard confidential client information, (Rule 1.6) the duty to avoid conflicts of interest (Rules 1.7, 1.9, and 1.10), and the duty to supervise employees to insure adequate compliance with all ethical obligations (Rules 5.1, 5.2, 5.3, and 5.4).

The current trend of law firms "outsourcing" law related services has been accepted in various formats in various jurisdictions when the "outsource" relationship enables the lawyer to exercise adequate supervision, independent professional judgment, ensure competence, and effective conflict checks while preserving client confidentiality with client consent. See ABA Formal Opinion #08-451. If the "outsource" arrangement permits the lawyer to exercise a level of control described above, and the appropriate disclosures are made by the law firm to its clients, the law firm would meet its ethical obligations and neither the law firm nor the service provider would be engaged in the unauthorized practice of law.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wick R. Chambers, Chair