New York State Bar Association
Committee on Professional Ethics

Opinion 1157 **(11/27/18)**

Topic: Legal and Non-legal Services Offered by a Single Entity

Digest: A lawyer who is a licensed professional engineer may operate both a law practice and an engineering practice in a single entity from the same office. The name of the law firm may not include reference to the lawyer's engineering degree or practice, but the law firm may otherwise promote the lawyer's engineering degree in listing the lawyer's qualifications, as a branding device, or otherwise consistent with the rule governing lawyer advertising. Engineering is a non-legal service distinct from the rendition of legal services, and, as a result, the lawyer may overcome the presumption that the N.Y. Rules of Professional Conduct apply to the rendition of such services by advising the engineering client in writing that the services are not legal services and that the protections of the attorney-client relationship do not attach.

Rules: 5.7(a), 7.1, 7.5(b).

FACTS

1. The inquirer is a New York attorney and a licensed professional engineer. The inquirer wishes to establish a single-member professional entity – whether as a professional corporation or a professional limited liability company – to offer both legal and engineering services to the public. The inquirer would like to indicate the inquirer's professional status as a licensed professional engineer in the name of this entity, and asserts a current intention to offer only one service (legal or engineering) to each client.

QUESTIONS

2. The inquiry presents three issues for consideration:

(a) May a lawyer offer legal services and non-legal services through a single professional entity out of the same office?

(b) May a lawyer include reference to the non-legal service in the name of the professional entity?

(c) Does the lawyer owe duties to clients of the lawyer's non-legal services to clarify the lawyer's status as a non-legal service provider?

OPINION

3. The answer to the first question – whether the lawyer may use a single entity and office to provide both legal and non-legal services – is yes. Rule 5.7 of the New York Rules of

Professional Conduct (the "Rules") expressly contemplates that a law firm may offer both legal and non-legal services "to clients or other persons." "For many years, lawyers have provided non-legal services to their clients. By participating in the delivery of these services, lawyers can serve a broad range of economic and other interests of their clients." Rule 5.7, Cmt. [1]; *see* N.Y. State 933 ¶ 4 (2012) (lawyer may operate real estate brokerage firm out of law office). Thus, the Rules permit a lawyer to conduct both a law office and an engineering practice in a single entity out of the same office.

4. The answer to the second question – whether the lawyer may refer to the non-legal service in the firm's name – is no. The name of a law firm implicates Rule 7.5(b), which regulates the name(s) a lawyer may use to identify the lawyer's firm. Rule 7.5(b) provides, in pertinent part, that a "lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm." "The prohibition against trade names is broad, permitting use of little beyond the names of lawyers presently or previously associated with the firm." N.Y. State 869 (2011) (lawyer may not use practice area in the name of the law firm). In N.Y. State 861 ¶ 4 (2011), we considered the inclusion in a firm name of initials signifying the firm's practice area to constitute an impermissible trade name. *See also* N.Y. State 1152 ¶ 6 (2018) ("[C]ustomary usage teaches us that the public in general and the legal profession in particular expect that the name of a law firm reflects the surnames of lawyers currently or formerly associated with the law firm.")

5. That a lawyer may not use the lawyer's engineering practice in the name of the professional entity that the lawyer uses to render legal services does not mean that the lawyer may not otherwise refer to the lawyer's engineering qualifications in listings of the lawyer's qualifications and areas of practice, as well as in advertising consistent with the standards on lawyer advertising set out in Rule 7.1. Subject always to those standards, nothing in the Rules prohibits a lawyer from using the lawyer's engineering qualifications as a means of branding or other advertising.

6. The answer to the third question – whether a lawyer is obligated to clarify the lawyer's status when rendering non-legal services – is yes if the recipient of those services could reasonably believe that the non-legal services are subject to an attorney-client relationship. Rule 5.7(a) sets forth the lawyer's responsibilities when the lawyer or her law firm provides non-legal services to law clients or other persons:

> (a) With respect to lawyers or law firms providing nonlegal services to clients or other persons:
>
> (1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the provision of both legal and nonlegal services.
>
> (2) A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is

subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(3) A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(4) For purposes of paragraphs (a)(2) and (a)(3), it will be presumed that the person receiving nonlegal services believes the services to be the subject of a client-lawyer relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is *de minimis*.

7. Thus, under Rule 5.7(a)(1), non-legal services that are not distinct from legal services are always subject to the Rules, no matter what disclaimer or writing a lawyer may provide to clients of the lawyer's non-legal services. Under Rule 5.7(a)(2), however, when the non-legal services are distinct from legal services, then the non-legal services are subject to the Rules if the recipient could reasonably believe that they are the subject of a client-lawyer relationship. This same point is made in Rule 5.7(a)(3), applicable to this inquiry, when the lawyer is an owner, controlling party, or agent of the entity providing the non-legal service. Rule 5.7(a)(4) creates a presumption of reasonable belief in an attorney-client relationship, but permits the lawyer to overcome that presumption by advising the recipient of the non-legal services, in writing, that the protection of the client-lawyer relationship does not apply to the non-legal services. The initial consideration on the inquirer's third question turns, then, on whether legal services are distinct from engineering services.

8. We believe the two services are distinct. In N.Y. State 1135 ¶ 7 (2017), noting that the Rules do not define distinct, we relied on the ordinary and customary meaning of the word – namely, "not alike, different, not the same, separate, clearly marked off." The "most important factor in determining distinctness is the degree of integration of the services." N.Y. State 1155 ¶ 14 (listing other factors as well). In our view, the engineering profession differs from the legal profession in material ways, and involves the deployment of skills that are distinct from the application of legal principles to a set of facts. A clear demarcation exists between the scientific design and construction of tangible things and the use of legal knowledge and experience to advise a client on adherence to lawful behavior. This contrasts sharply with those services that we have deemed not distinct from legal services. *See, e.g.,* N.Y. State 1135 ¶ 8 (2017) (provision of state and local tax services); N.Y. State 1026 ¶ 10 (2014) (mediation in domestic relations matters); N.Y. State 1015 ¶ 14 (2014) (integrated real estate services).

9. Rule 5.7(a)(4) instructs that, when a legal service provider offers distinct non-legal services to clients which the parties do not intend to create an attorney-client relationship, then the lawyer may overcome the presumption for which that Rule provides by advising the recipient of (here) engineering services, in writing, that the services are not legal services and that the

protections attending an attorney-client relationship are inapposite. A lawyer who provides both legal and non-legal services "must take care that the clients are not confused about whether the lawyer is acting as a lawyer and must determine whether the provisions of the Rules apply to the non-legal services." N.Y. State 1155 ¶ 9 (2018). "Whenever a lawyer directly provides non-legal services, the lawyer must avoid confusion on the part of the client as to the nature of the lawyer's role," for the recipient of the non-legal services may reasonably expect "that the protections of client confidences and secrets, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of non-legal services when that may not be the case.' Rule 5.7, Cmt. [1]. Thus, while a written disclaimer under Rule 5.7(b)(4) provides something of a safe harbor for a lawyer providing distinct non-legal services such as engineering, any lawyer providing non-legal services, distinct or indistinct, owes a duty to clarify whether an attorney-client relationship exists if a client could reasonably believe in the circumstances that there is such a relationship.

10. We are mindful that the degree of integration of legal and non-legal services may vary with the nature of the legal services; we can envision, for example, that a patent lawyer with an engineering degree may use engineering skills in rendering legal services to a client in a patent matter, and do so in the client's reasonable belief that the protections of the attorney-client privilege apply. In such circumstances, Rule 5.7(a)(1) requires that the full panoply of the Rules apply to the lawyer's conduct. This inquiry does not require us to delve into all the implications of those circumstances. For now, we say only that we regard engineering and legal services as distinct, and that a lawyer offering both services to a client may provide an appropriate written disclaimer to the recipient of distinct non-legal services that the lawyer's rendition of solely engineering services does not give rise to all the attributes that an attorney-client relationship entails.

CONCLUSION

11. A lawyer may provide both legal and engineering services through a single entity provided that the entity complies with the Rule governing the name of law firms. Engineering services being distinct from legal services, a lawyer offering each service may provide a written notice to the recipient of the engineering services that no attorney-client relationship, with its attendant protections, is thereby established.

Inquiry No. 7-18