NEW YORK STATE BAR ASSOCIATION
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New York State Bar Association
Committee on Professional Ethics

Opinion 1282 (08/18/2025)

Topic: Attorney's Referrals to Title Abstract Company Owned by Referring Attorney

Digest: An attorney who owns an interest in a title abstract agency that brokers title insurance may not simultaneously (i) represent a client in a real estate transaction and (ii) act as agent for a title insurance underwriter in the same transaction, unless the attorney performs purely ministerial functions for the title agency and does not negotiate on behalf of the underwriter. Under Rule 1.10(a) (as amended effective January 1, 2025), whether the attorney's conflict (which is based on a financial interest in the title abstract agency) will be imputed to the whole firm depends on whether there is a "significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected."

Rules: 1.7(a)(2), 1.8(a), 1.10(a)

FACTS

1. The inquirer is a lawyer in a small New York law firm that concentrates in real estate closings. The inquirer and another partner of the firm are considering obtaining an ownership stake in a title agency.

2. The title agency would act as agent for the title insurance underwriter.

3. Neither the inquirer nor his partner would "be involved in the day-to-day running of the title agency nor in any underwriting decisions or recommendations." The title agency and law firm would office in different locations and would not share any employees. The law firm would "occasionally" refer clients to the title agency but would not be the title agency's sole source of business.

4. When a client of the inquirer's law firm engages the title agency, the inquirer would be screened from the matter and would not participate in negotiations between the law firm and the title agency regarding omitting exceptions to title.

5. The inquirer would require a written waiver of the conflict from law firm clients who use the inquirer-owned title agency. The law firm would disclose in its engagement letter that the owners of the law firm also own an interest in the title agency, and the law firm would explain the potential conflict of interest between the law firm and the client.

6. The inquirer acknowledges that this Committee has over the years issued multiple opinions concluding it would be a non-consentable conflict of interest for an attorney who owns a interest in a title agency simultaneously to represent a client in a real estate transaction and act as agent for title insurance agency in the same transaction. Notwithstanding this Committee's prior opinions, the inquirer asserts that "for many

decades it is common practice in many areas of New York State ([and] neighboring states like New Jersey and Connecticut), for attorneys to represent clients in transactions when they also act as the title agent for an agency in which they have an ownership interest."

7. The inquirer also notes that in 2014 the New York State Legislature enacted Insurance Law § 2113(e), which states: "For the purposes of this chapter, an attorney or his or her law firm may represent a client in a matter and may also act as a title insurance agent in such matter subject to applicable law."

QUESTIONS

8. Under the circumstances proposed, does Insurance Law § 2113(e) alter this Committee's analysis of the ethical propriety of an attorney representing a client under the circumstances proposed?

9. Does revised Rule 1.10(a), which states that conflicts are not automatically imputed to all members of a firm where a lawyer's conflict is financial or otherwise personal in nature, apply to this inquiry?

OPINION

This Committee's Prior Opinions on Related Issues

10. This Committee has issued multiple opinions concluding that a lawyer may not represent a client in a real estate transaction and also act as title agent for the insurance underwriter if the attorney owns an interest in the title agency. Such a combination of roles creates a non-consentable conflict of interest.

11. In N.Y. State 595 (1988), for example, applying the former Code of Professional Responsibility (the "Code"), this Committee opined that a lawyer performing anything more than ministerial title work for a title abstract company owned by that lawyer, such as acting as agent for the underwriter, would create a non-consentable conflict of interest if the lawyer were to also represent a party to the transaction. "[T]he dual roles are improper," we said, "because they require a law firm, which as a principal in an abstract company prepares a title report showing exceptions to title and recommending whether a title insurance policy will be issued, to negotiate these issues, as counsel for a party in the underlying transaction, with itself." *Id.* at p.6.

12. In 1991, the Real Property Law Section of the New York State Bar Association asked us to reconsider N.Y. State 595. But in N.Y. State 621 ¶ 5 (1991), we adhered to the result reached in Opinion 595. We again emphasized that an attorney who acts as agent for an underwriter and represents a client in the underlying real estate transaction is beholden to two masters with potentially irreconcilable interests. We noted two problems: "the danger of the attorney using his or her fiduciary leverage over the real estate client to dictate the choice of title insurer" and "the ultimate risk that the client may not get the right title insurance."

13. In N.Y. State 738 (2001), we revisited the issue in the context of an attorney who represented clients in real estate matters and wanted to refer those clients to a title abstract company owned by the attorney's spouse. We explained that the conflict was not consentable under the former Code because "a 'disinterested lawyer' would believe that the conflict inherent in those dual roles would adversely affect the representation

of the real estate client." *See also* N.Y. State 731 (2000) ("[T]he lawyer for a party in a real estate transaction may not permit employees to solicit the lawyer's clients to engage the services of a title company in which the lawyer has an ownership interest. Nor may the lawyer compensate employees for making such referrals.").

14. In N.Y. State 891 (2011), we opined that the reasoning of those prior opinions remains valid under the current New York Rules of Professional Conduct (the "Rules"). Specifically, we concluded that an attorney "may refer a client to a title company in which the attorney has a financial interest provided that the attorney may not represent the client in the transaction in which that title company will provide title services to the client *unless the services are purely ministerial* or if, among other things, the attorney passes the commission on to the client and where exceptions to title are not negotiable." (Emphasis added.)

15. On the other hand, this Committee has also consistently opined that "a lawyer could, with consent after disclosure, refer real estate clients to a title abstract company in which the lawyer or his or her spouse had an ownership interest for *purely ministerial abstract work*, but not where the abstract company provided the additional service of preparing a title report or serving as an agent for the title underwriter." N.Y. State 974 (2013) n.1 (internal quotation marks omitted) (emphasis added).

Insurance Law § 2113(e)

16. The inquirer queries whether Insurance Law § 2113(e), passed in 2014, might lead this Committee to reconsider its earlier opinions, the most recent of which we issued in 2013, before § 2113(e) took effect. Insurance Law § 2113(e) states: "For the purposes of this chapter, an attorney or his or her law firm may represent a client in a matter and may also act as a title insurance agent in such matter subject to applicable law."

17. This Committee does not opine on questions of law and thus does not here opine on the legality of an attorney with an ownership interest in a title agency acting as agent for the underwriter while representing a real estate client in the same transaction. Further, because we here opine, consistent with our previous opinions, that under certain circumstances inquirer may both represent clients in a real estate transaction and act as title agent for a title company in which the attorney has an ownership interest in the same transaction, we need not address whether and to what extent the Legislature intended to address this Committee's ethics opinions with Insurance Law § 2113(e). We note only that we are not aware of any legislative history that speaks to this point.

Impact of Allegedly Common Practices in Other Jurisdictions

18. The inquirer asserts that in parts of New York and other jurisdictions, such as Connecticut and New Jersey, "it is common practice . . . for attorneys to represent clients in transaction where they also act as the title agent for an agency in which they have an ownership interest." We do not know whether the inquirer's assertion is accurate, but in any event the fact that a practice is common would not bear on our analysis under the Rules of Professional Conduct.

19. Further, this Committee is not aware of any New Jersey or Connecticut ethics opinion that validates the inquirer's proposed arrangement. To the contrary, in *In Re Opinion 682 of the Advisory Comm. on Professional Ethics*, 147 N.J. 360 (1997), the

Supreme Court of New Jersey held that, under Rule 1.7 of the New Jersey Rules of Professional Conduct, it would create a non-consentable conflict of interest for an attorney who owns a beneficial interest in a title abstract company both to act as title insurance agent and to represent a real estate client in the same transaction. The reasoning of the Supreme Court of New Jersey on the inherent conflict of interest is similar to this Committee's reasoning on this point. *See id.* at 368-369.

20. Thus, we adhere to our prior opinions, which state that an attorney who owns an interest in a title company while representing a real estate client in a transaction and simultaneously acting as agent for the underwriter creates a non-consentable conflict of interest, unless the title agent performs only ministerial tasks.

Imputation of Conflicts Under Amended Rule 1.10(a)(2)

21. Under the former version of Rule 1.10, the personal financial interest conflict of the attorneys who own an interest in a title agency would have been imputed to all lawyers in the firm. Until January 1, 2025, Rule 1.10(a) stated that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein." Thus, a lawyer's financial and other personal conflicts of interest arising under Rule 1.7(a)(2) were automatically imputed to the lawyer's entire firm unless the client consented to allow lawyers other than the personally conflicted lawyer to work on the matter.

22. However, the Appellate Divisions issued a Joint Order, effective January 1, 2025, amending Rule 1.10(a) so that it now states, in pertinent part:

> (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein, unless:
>
> > (1) the prohibition is based on a lawyer's own financial, business, property or other personal interests within the meaning of Rule 1.7(a)(2), and
> >
> > (2) under the circumstances, a reasonable lawyer would conclude that there is no significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected.

23. Here, the inquirer's conflict arises under Rule 1.7(a)(2) from the financial interest created by the inquirer's ownership interest in a title insurance agency. Pursuant to revised Rule 1.10(a)(2), however, the conflict will not be imputed to all attorneys in inquirer's firm if "a reasonable lawyer would conclude that there is no significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected."

24. This Committee has consistently opined that an attorney who represents a real estate client may also act as title agent for the underwriter, even if the attorney owns an

interest in the title agency, *provided that* the work does not involve negotiation on behalf of the underwriter. *See* N.Y. State 595; N.Y. State 621; N.Y. State 891.

25. We note that, assuming inquirer will perform purely ministerial services as agent to the underwriter, when the inquirer refers a client to the title abstract company in which it owns an interest, the disclosure must include notice of the availability of other abstract companies, the nature of inquirer's ownership in the title company, and the fee structure involved with the title company. *See* N.Y. State 595 and N.Y. State 755.

CONCLUSION

26. An attorney who owns an interest in a title abstract agency that brokers title insurance may not simultaneously (i) represent a client in a real estate transaction and (ii) act as agent for a title insurance underwriter in the same transaction, *unless* the attorney performs purely ministerial functions for the title agency and does not negotiate on behalf of the underwriter. Under Rule 1.10(a) (as amended effective January 1, 2025), whether the attorney's conflict (which is based on a financial interest in the title abstract agency) will be imputed to the whole firm depends on whether there is a "significant risk that the representation will be materially limited or that the independent professional judgment of the participating lawyers in the firm will be adversely affected."

(31-24)