

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2017-F-164

The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion regarding the opening and operation of a proposed interstate law firm, using a trade name, SETCO Law (the “Firm”).

OPINION

Interstate law firm partnerships are permitted if they comply with The Tennessee Rules of Professional Conduct. Such interstate law firm partnerships may use a tradename if it complies with RPC 7.1 and RPC 7.5. Interstate law firm partnerships may lease space from a title company if there is a distinct separation between the law firm and the title company with regard to entry way, signage, letterhead, business cards, etc., and the customers of the law related services are advised that the protections of the client-lawyer relationship do not apply to the provision of the law related services of the title company, preferably in writing.

INTRODUCTION

The requesting lawyer proposes a 50%-50% partnership between a Tennessee Professional Services Corporation (PA) and a Florida Professional Services Corporation (PA) that will operate under a trade name, SETCO Law. The Florida PA will lease space from SETCO Services, a title company, for which the requesting lawyer is in-house counsel, in Destin, Florida. The Tennessee PA will lease space from another law firm, Brannon Law, located in Memphis, TN.

The proposed Firm will have a separate computer system, including secure email system, apart from SETCO Services and can only be accessed by employees of the Firm. The Firm will have its own logo which will be conspicuous within the building. All clients, before engagement with the Firm, will be provided with a written engagement letter that provides in detail that SETCO Law is an entity separate and apart from SETCO Services and Brannon Law and that engagement with the Firm is in no way tied to any affiliation with SETCO services or any services provided therefrom.

ISSUES

- I.** Do the Tennessee Rules of Professional Conduct allow a partnership between a Tennessee Professional Services Corporation and a Florida Professional Services Corporation?
- II.** Can the partnership ethically use a trade name?
- III.** Can the Florida office of the partnership ethically lease space from SETCO Services, a title company?

DISCUSSION

I.

Do the Tennessee Rules of Professional Conduct allow a partnership between a Tennessee Professional Services Corporation and a Florida Professional Services Corporation?

“The growth, development and diversity of the legal profession have spawned a proliferation of new ways of conducting the practice which have taken lawyers far beyond the sole practitioner and single office law firm models of an earlier era. Today law firms operate in multiple cities, form networks or law firms under a common firm name or trade name, and join forces and pool resources in any number of business arrangements.”¹

“In the United States multi-jurisdictional law firm partnerships-formed by attorneys licensed to practice and physically located in more than one state-are accepted without question.”² “The formation of partnerships between attorneys authorized to practice in different jurisdictions is not unethical.”³ Nothing in the Model Rules or the Tennessee Rules of Professional Conduct would prohibit such a partnership so long as the partnership status is clearly disclosed to the clients, and the partnership complies with the Rules of Professional Conduct.

If several entities are held out as a single firm, then their lawyers must meet not only the obligations regarding preservation of confidences and avoidance of conflicts, but also those arising under rules that normally come into play only when lawyers are associated in the same firm.⁴ Those obligations and responsibilities include the partners making reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.⁵

¹ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 94-388 (1994) at page 1.

² D.C. Bar Legal Ethics Op. 278 (1998)

³ ABA, Comm. on Prof'l Ethics & Grievances, Formal Op. 316 (1967).

⁴ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 94-388 (1994) at page 7.

⁵ Tenn. Sup. Ct. R. 8, RPC 5.1(a).

II.

Can the partnership ethically use a trade name?

Tennessee Rules of Professional Conduct Rule 7.5 recognizes that a trade name may be used, if it does not imply a connection with a government agency or with a public or charitable legal services organization, and the rule requires that such a trade name does not violate RPC 7.1⁶ which prohibits lawyers from making false or misleading communications about the lawyer or the lawyer's services.⁷

If a law firm licenses its name to another firm, it must in fact, operate as a single firm and shall be treated as a single firm for all purposes under the Model Rules,⁸ Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.⁹

“A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.”¹⁰

III.

Can the Florida office of the partnership ethically lease space from SETCO Services, a title company?

No ethical rules restrict the location of the office of a lawyer. Nothing prevents a lawyer from entering into a landlord-tenant relationship and having an office in the same building as a land title company.¹¹

Tennessee Formal Ethics Opinion 82-F-34, based on the prior Code section DR 2-102(E) which has been carried into RPC 5.7, holds that “The Code of Professional Responsibility would not necessarily prohibit a real estate closing business from being located in the same building as the law firm. However, the divorcement between the offices must be sincere and complete with no common use of stationary, cards, announcements, names on doors, etc.”¹² The Tennessee Opinion was based on ABA Formal Opinion 328 which held that a lawyer may practice law and conduct a law related business from the same office as long as all the provisions of the Code of Professional Responsibility, are complied with, particularly DR 2-102(E).

⁶ Tenn. Sup. Ct. R. 8, RPC 7.5 (a).

⁷ Tenn. Sup. Ct. R. 8, RPC 7.1.

⁸ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 94-388 (1994) at page 1.

⁹ Tenn. Sup. Ct. R. 8, RPC 7.5 (d).

¹⁰ Tenn. Sup. Ct. R. 8, RPC 7.5 (b).

¹¹ AR Jud Eth. Adv. Comm. Advisory Opinion 2000-01 at page 1.

¹² Tennessee Formal Ethics Opinion 82-F-34 at page 1.

This is because the real estate title company provides law related services as defined in RPC 5.7(b) “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 unauthorized practice of law when provided by a nonlawyer.”¹³

A real estate title company provides a law related service and therefore lawyers must adhere to RPC 5.7(a) with regard to their responsibilities regarding law related services.

“A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, (1) if the law related services are provided in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or (2) 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.”¹⁴

“Law related services may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity’s operations the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer’s control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.”¹⁵

The lawyer should communicate in writing to the person using the law-related service the significance of the fact that the provision of the law related service will not create a client-lawyer relationship. The communication should be made prior to an agreement to provide the law related services and should preferably be in writing.¹⁶ “The burden is on the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding.”¹⁷

¹³ Tenn. Sup. Ct. R. 8, RPC 5.7(b).

¹⁴ Tenn. Sup. Ct. R. 8, RPC 5.7(a).

¹⁵ Tenn. Sup. Ct. R. 8, RPC 5.7 comment [4].

¹⁶ Tenn. Sup. Ct. R. 8, RPC 5.7 comment [6].

¹⁷ Tenn. Sup. Ct. R. 8, RPC 5.7 comment [7].

CONCLUSION

The Tennessee Rules of Professional Conduct permit interstate law firm partnerships that comply with the rules. Such interstate law firm partnerships may use a tradename if it complies with RPC 7.1 and RPC 7.5. Interstate law firm partnerships may lease space from a title company if there is a distinct separation from the law firm with regard to entry way, signage, letterhead, business cards, etc., and the customers of the law related services are advised that the protections of the client-lawyer relationship do not apply to the provision of the law related services of the title company, preferably in writing. The proposed interstate partnership appears to comply with these requirements. It is incumbent upon SETCO Services to make it clear that persons using the law related services that it provides understand that it is separate and apart from the Firm leasing space and that the law related services do not create a client-lawyer relationship with the Firm.

This ____ day of _____, 2017.

ETHICS COMMITTEE:

Bridget Willhite, chair

Ruth Ellis

Jimmie Miller

APPROVED AND ADOPTED BY THE BOARD