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Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

It is hard to make money practicing law, especially with the darn Model Rules always getting in the way: conflicts, multi-jurisdictional practice issues, etc. But, I've got an idea. We've got some finance/computer whizzes who've worked out a breakthrough tool for legal matter budgeting, scheduling and reporting, incorporating AI to learn from existing matters. I figure we can form a separate company, using our firm's techno-people part-time to sell their expertise to other firms. It's not even the practice of law, so we can ignore the advertising and conflict rules and all the other requirements that get in the way. What do you think?

A: Setting aside any business questions related to your brilliant scheme, from an ethics perspective, Model Rule 5.7 Responsibilities Regarding Law-Related Services addresses this. The rule defines "law-related services" as those "that might reasonably be performed in conjunction with and in substance . . . related to the provision of legal services" but not prohibited as unauthorized practice if performed by non-lawyers. Comment 9 describes a sample list.

In line with your plan, Rule 5.7(a) exempts a separate entity performing law-related services from the Rules of Professional Conduct, even if controlled by a lawyer, but only if the lawyer "takes 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 apply." Needless to say, this language should be incorporated into a written agreement with each customer, along with a robust explanation that the entity providing the service is not a/the law firm, that there will be no attorney-client relationship or privilege, that a relationship with the entity is not a relationship with (or is separate from any relationship with) the law firm, and how any confidential information will be treated or protected. And, of course, the entity should be operated as a separate business and any overlapping personnel accounted for/paid/managed accordingly in order to maintain its separate status.

There is potentially one other issue here. Your question references the use of AI to provide scheduling, budgeting and reporting services in a way that learns from prior matters. If the prior matters you reference here are client matters of the law firm, then Rule 1.6 is a limiting factor. It prohibits any disclosure of information relating to a representation without informed consent of the client. This precludes (without client consent) disclosure of information relating to client matters by the law firm to the entity that you propose to provide the law-related services.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by Mark Hinderks, former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's Legal Ethics & Professional Responsibility practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.