

**Nebraska Ethics Advisory Opinion for Lawyers  
No. 06-08**

A law firm consisting of two attorneys wishes to form a collection agency as a Nebraska L.L.C. The collection agency will be a completely separate entity however the law firm will own and manage the collection agency. The collection agency will not have any of its own employees, rather the law firm will contract with and lease employees to the collection agency.

**STATEMENT OF ISSUES**

The question presented is “Would the foregoing arrangement be in violation of the Nebraska rules of professional conduct?”

**STATEMENT OF APPLICABLE RULES OF PROFESSIONAL CONDUCT**

**RULE 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES**

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer 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.

(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.

**DISCUSSION**

The Committee feels that the operation of a Nebraska collection agency by an owner/law firm falls under the definition of law related services under Rule 5.7 of the Nebraska Rules of Professional Conduct. Law related services are those business ventures which might have legal ramifications but do not include the practice of law. A collection agency run by lawyers is sure to invoke some expectations of legal work, especially for those clients who have had businesses with the attorneys. Prospective customers of the collection agency will assume that collection work is reasonably performed in conjunction with the practice of law. Rule 5.7 applies to law related

services provided by a lawyer even when the lawyer does not provide any legal service to the person or entities for whom the law related services are performed and whether the law related services are performed through a law firm, or a separate entity. When a lawyer performs law related services or controls an organization that does so, there exists a potential for ethical problems. Principle among these is the possibility that the person for whom the law related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client/lawyer relationship. Under the facts proposed the clients of the collection agency should be informed that the lawyers running the collection agency will be required to maintain their professional independence as it applies to the operation of the collection agency. The Nebraska Rules of Professional Conduct provide that when law related services are provided by a lawyer under circumstances that are not distinct from the lawyers provision of legal services to clients the lawyer in providing the law related services must adhere to the requirements of the Rules of Professional Conduct as provided. Even when the law related and legal services are provided in circumstances that are distinct from each other, for example through separate entities, the Rules of Professional Conduct apply to the lawyer as provided unless the lawyer takes reasonable measures to assure that the recipient of the law related services knows that the services are not legal services and that the protections of the client/lawyer relationship do not apply. Reasonable measures could include having a contract of the collection business communicate with the client having a new contact of the collection business communicate with the client besides the lawyer handling the case, new client sheet information and new file setup, letter of engagement for collection services explaining that this is an independent service being provided apart from any legal services which may be incurred, also having the client sign a contract of understanding so that the attorney has a form which will help to establish reasonable measures, among others.

In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances, the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

## CONCLUSION

The Nebraska Rules of Professional Conduct do not prohibit attorneys from establishing business providing law-related services. Unfortunately, this venture presents opportunities for ethical violations. Clients of the collection agency need to be made aware of the distinction between the two businesses, and particularly that an attorney/client relationship will not exist when retaining the business for collection matters. For your protection, the client should be willing to sign a disclosure statement indicating his or her understanding and acceptance of this type of business arrangement. However, ultimately, it may be up to the attorney to prove ethical compliance in the face of accusations of misconduct. Attorneys operating a collection agency run the risk of violating the Nebraska Rules of Professional Conduct if sufficient measures are not adopted to notify and protect the client's best interests.