

When an attorney is offering a “law-related service” like retirement and or insurance planning, state bar association Rules of Professional Conduct recognize the potential for a client’s misunderstanding and an attorney’s conflict of interest. Attorneys and firms have offered law-related services for many years, including such services as title insurance, accounting services, financial planning, trust services, and legislative lobbying, to name some of the more common examples. It is a long-standing practice that some attorneys have earned commissions on the sale of various life insurance products.

Generally we at M&O understand the larger professional issues and would be happy to discuss individual situations and questions further. Most state bar associations, for example, follow something like ABA Model Rule 5.7. That approach requires a client disclosure and acknowledgement, something that describes the law-related services, states the conflict of interest that exists, addresses client confidentiality expectations and the resolution or mitigation of the potential conflict, and states that the attorney may share an insurance commission. It further states that there is no obligation or requirement for the client to use the offered retirement-insurance services. Some states are believed to prefer or require that any resulting commissions be earned by a separate entity.

We offer the following links to various online resources and articles. M&O Marketing also offers the following disclosure and acknowledgement as a sample document for review and consideration. M&O Marketing does not provide legal services. You will need to make your own review of the matter; we think most of you would insist on that in any event. To that end, we leave the exact legalities and language of your document in your hands. We also assume that your knowledge of your local ethics issues is better than ours and we believe that most individual state bar associations can provide you with information and assistance about their requirements.

The following online articles and information may be of assistance to you:

American Bar Association Model Rule 5.7: Responsibilities Regarding Law-related Services; http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_7_responsibilities_regarding_law_related_services.html

ABA section presentation, December 2012, “Ethical Considerations for Attorneys Who Offer Financial or Insurance Products”
http://www.americanbar.org/content/dam/aba/publishing/rpte_ereport/2012/6_december/te_adkisson.authcheckdam.pdf

Massachusetts Office of Bar Counsel, December 2003, “Wearing Two Hats: Dual Practices and Ancillary Businesses”
(<http://www.mass.gov/obcbbo/hats.htm>)

Minnesota Lawyer, October 2003, “New Rule Proposed on Responsibilities Regarding Law-Related Services.” (<http://prb.mncourts.gov/articles/Articles/New%20Rule%20Proposed%20on%20Responsibilities%20Regarding%20Law-Related%20Services.pdf>)

Paul McGillivray, Director Special Projects, M&O Marketing

For the The Attorney Collaborative Network, November 2, 2015

Professional Disclosure and Acknowledgement

The Sample Law Firm PLLC ("Sample Law") helps protect client assets and estates with its legal services. In many situations, it is advisable, if not in fact equally important, that assets and estates be better protected from the investment and financial risk. . . To help do that, Sample Law has associated with Professional Financial LLC. They are available to Sample Law clients for insurance and or financial advice, as well as services and products that may help insure the preservation of retirement and estate wealth by providing a strategy that may have more principal protection, more guaranteed income, and less market risk.

Sample Law clients are under no obligation to meet with Professional Financial or Sample Law in order to use their insurance and or financial advice or purchase products from them. If, however, clients do meet with Professional Financial and make use of their services or products, any insurance and or financial products or services purchased will generate a commission or other compensation. Sample Law will receive a portion of that compensation. Name Attorney of Sample Law is also a licensed insurance agent [include any registered rep or investment advisor rep statement, including firm associated with, if applicable].

The Name Attorney with Sample Law is licensed to practice law in Michigan.. Among a number of privileges, the State Bar of Michigan permits attorneys to engage in law-related insurance and financial planning when certain important requirements, explained below, are met. When an attorney is compensated for legal services and may also provide insurance and financial services for compensation to a client, he or she is engaging in a law-related business transaction with that person. When this occurs, the attorney must comply with Rule 1.8(a) of the Michigan Rules of Professional Conduct.

Rule 1.8 of the MRPC requires that a lawyer shall not enter into a business transaction with a client unless the transaction and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client. The client must be given a reasonable opportunity to seek the advice of independent counsel in the transaction, and the client must consent to the transaction in writing.

Sample Law is participating in the insurance and financial services business. Although clients may be presented with the option of obtaining such services from Sample Law, clients are advised that they may choose to use the services of other insurance and or financial services professionals.

I hereby acknowledge that Sample Law Firm PLLC and its Staff have disclosed that they are licensed insurance agents [insert other licenses here as may apply] who may make specific insurance and or financial recommendations and provide insurance and or financial services to me. I acknowledge that I have been advised that I may decline any offered insurance and or financial services.

I have been informed that if insurance or an annuity is purchased, a commission will be paid to or shared with the Sample Law Firm PLLC. I acknowledge that this circumstance is a conflict of interest and do waive any and all objections to that conflict of interest. I will decide, independently and with or without additional legal counsel, as I decide, whether to accept any of the insurance and financial recommendations made and whether it is appropriate or desirable that I purchase any such product. Because planning matters relating to retirement, insurance or other financial issues are law-related services and are not legal services, the protections of the client-lawyer relationship will not apply. Privacy laws do apply as appropriate.

Print Name _____ **Sign Name** _____ **Date** _____

Print Name _____ **Sign Name** _____ **Date** _____

Print Name _____ **Sign Name** _____ **Date** _____