

LIONE & LEE, P.C.

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March 10, 2014

Hiram Gutierrez
Perdue, Brandon, Fielder, Collins & Mott, LLP
400 N. McColl, Suite A
McAllen, Texas 78501

Re: Termination of relationship with Law Office of John David Franz

Dear Mr. Gutierrez:

I have been asked to give my opinion about the position of Perdue, Brandon, Fielder, Collins & Mott, LLP (hereinafter PERDUE BRANDON) regarding performance of contracts with clients who engaged the law firm while it was working in association with the Law Offices of John David Franz (hereinafter FRANZ). You have questioned whether Mr. Franz, acting as the agent for FRANZ, has the ability to unilaterally terminate contracts that PERDUE BRANDON had entered into with clients while associated with FRANZ. It would appear that Mr. Franz is attempting to assert the argument that his termination or dissolution of the association of PERDUE BRANDON and FRANZ results in the automatic termination of any contracts with third parties entered into by PERDUE BRANDON in association with FRANZ. Implicit in his conduct is his belief that such activity is wholly permissible and does not amount to a breach of contract with the client on his or his firm's part.

In order to answer this question I will have to rely upon facts provided by PERDUE BRANDON attorneys, copies of contracts entered into by the PERDUE BRANDON and FRANZ with clients, the association agreement of PERDUE BRANDON and FRANZ, Mr. Franz' dissolution/termination of association letter to PERDUE BRANDON, copies of Mr. Franz' letters to current clients under the association agreement notifying them of his view of the situation, my own evaluation of rules and laws governing the conduct of attorneys, and some fundamental principles of contract law.

The specific question I have been asked is as follows: May PERDUE BRANDON properly represent to clients acquired by PERDUE BRANDON in association with FRANZ, that PERDUE BRANDON considers the contract in force and effect and intends to continue discharging its obligations to clients for the duration of the contract despite FRANZ' withdrawal from the association?

The short response is that I believe this is an appropriate and ethical position for PERDUE BRANDON to take.

I would first concede that my opinion is my interpretation and opinion. If an agreement or understanding is not reached between PERDUE BRANDON and other parties, the ultimate resolution of this matter, as with any other dispute about the force and effect of a contract, is through litigation.

A key question is whether, by associating with FRANZ for specific matters, PERDUE BRANDON and FRANZ: 1) formed a separate entity; and 2) such formation of an entity leads to the result that any contracts entered into by PERDUE BRANDON in association with FRANZ can only be performed by PERDUE BRANDON as long as associated with FRANZ. PERDUE BRANDON takes the position that it has contracts with governmental units and FRANZ' withdrawal from association with PERDUE BRANDON does not disturb the relationship between PERDUE BRANDON and the governmental units. Adoption of the premise that would appear to underlie Mr. Franz' position, as expressed to you directly and memorialized in letters to clients, would mean that a unilateral action of either party to the association agreement – dissolution of the association agreement – requires termination of the contracts entered by an entity known as "PERDUE BRANDON in association with FRANZ" due to the cessation of existence of that entity. The closest analogy that comes to mind would be that of a personal services contract entered into by an individual that cannot be completed if the individual dies. However, that analogy does not seem appropriate to the current situation for various reasons. The better analogy would be to an existing contract with a law firm when there is some change of the law firm membership and/or a change of the firm's name. The firm continues to exist even though the personnel has changed and contracts entered by the law firm continue in force and effect.

The creation of a lawyer-client relationship is the creation of a fiduciary relationship. Lawyers have fiduciary duties to their clients that include such imperatives as loyalty and faithfully seeking to achieve the client's lawful objectives. To interpret an agreement such that it grants – though not explicitly stated – unilateral authority to one member of a law firm or a consortium of lawyers to frustrate the performance of the duties owed the client by all lawyers involved – to unilaterally destroy a contract by withdrawing from his association with the other lawyers – would appear to be contrary to a lawyer's obligations in a fiduciary relationship. It is the client whose interests are to be paramount and to whom duties are owed. In the current matter it is the collection of delinquent debts for the benefit of a client that is the objective of the employment and it is faithful performance of that objective that the client is entitled to receive. If the client can be deprived of faithful performance and the discharge of the obligations of its hired lawyers by the unilateral action of one lawyer, it would seem that interpretation of the contract is contrary to sound public policy. A contract that is contrary to the public policy of the state is unenforceable. As a corollary I would argue that taking a facially valid contract and interpreting it in a manner that is contrary to sound public policy is not

avored by the law. Therefore, my position would be that the law favors the performance of valid contracts and the contracts at issue now, being perfectly valid and capable of performance, should not be construed in a way that renders them invalid. Mr. Franz' interpretation would turn things upside down by allowing one of several fiduciaries in the relationship to unilaterally engage in conduct contrary to the interests of the principal – termination of contractual duties to the client – on mere whim, without client consent, and contrary to the interests and desires of all other fiduciaries obligated under the contract. Mr. Franz' interpretation would allow conduct that most would consider to be a breach of the contract by one party to occur without any recourse available to any of the other parties to the agreement. I find it difficult to believe that such an interpretation would find solid legal or ethical support in the law.

You have not told me, as I gather you do not know, if Mr. Franz believes his action constitutes a breach of the contract – for which he and/or The Law Offices of John David Franz stand ready to be responsible for in a damages claim – or if he believes he can engage in the conduct with impunity. I suspect from the materials I have reviewed and discussion with Perdue Brandon lawyers, that Mr. Franz believes his right to disassociate his firm from Perdue Brandon means he can disrupt the performance of client services by other lawyers without liability. If that does turn out to be his belief, I would consider that to be further reason to dismiss his interpretation of the legal effect (or lack thereof) of FRANZ ceasing its association with PERDUE BRANDON.

I can elaborate on the thought processes that went in to responding to your question, but I believe for the immediate purposes of the law firm in considering its rights, duties, and obligations, it is appropriate to conclude this writing in the current form. I gather you wish to know if your position is on sound footing, not have an essay that attempts to address every nuance of every consideration that could be brought into the analysis. Should additional discussion be desired or should you wish for me to expand upon this letter, please let me know.

Thank you for all of your courtesies.

Sincerely,

LIONE & LEE, P.C.



Steven L. Lee
Attorney at Law

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Educational Background

St. Mary's University School of Law
San Antonio, Texas
J.D., May 1980

University of North Texas
Denton, Texas
B.A., magna cum laude, December 1976

Work Experience

Name Shareholder, Lione & Lee, P.C. - - 1991 to Present

Lione & Lee, P.C. was formed in February, 1992 as the successor to Lione, Monroe & Lee, P.C., which was the successor to Lione & Monroe, P.C., founded in 1985. The firm is a general civil practice with an emphasis on trial practice. Current docket is almost entirely defense of attorneys accused of professional misconduct, consultation on matters of legal ethics, representation of applicants for admission to the State Bar of Texas, and representation of judges accused of judicial misconduct.

In addition to the above practice, also presents speeches at local bar sponsored CLE programs on the defense perspective of the Texas attorney grievance process. Past President of the Association of Professional Responsibility Lawyers, a national organization of lawyers who concentrate their practices in legal ethics, attorney discipline, bar admissions, attorney malpractice, risk management, and legal education.

Attorney, Office of the General Counsel, State Bar of Texas, 1980 to 1991.

Deputy General Counsel/Administration--1989 to 1991. Maintained reduced trial docket. Responsible for administrative duties related to the Office of General Counsel which included budget preparation, personnel management, corporate counsel duties, and legal advice to the elected State Bar Officers and Directors, Executive Director, department heads, and volunteers in the grievance process. Responsible for administrative oversight of over 70 employees in the Austin office and ten regional grievance offices and implementation of the new grievance process. Served as Acting General Counsel of the

State Bar of Texas from late 1989 through early 1990.

Assistant General Counsel (Trial Attorney)--1985-1989. Maintained full docket of attorney discipline cases statewide. Experience in jury and non-jury trials in state district courts as well as defense of the State Bar of Texas in miscellaneous lawsuits.

Assistant General Counsel (Corporate Affairs and Training)--1983-1985. Responsible for prosecution of all compulsory discipline cases and State Bar debt collection; second chair in attorney discipline cases. Assisted the General Counsel in review of non-litigation matters affecting the State Bar of Texas. Assisted in training of grievance committee members and attended grievance committee meetings statewide on as-needed basis.

Assistant General Counsel (Appellate Counsel)--1980-1983. Responsible for all appeals of attorney discipline cases and second chaired some attorney discipline trials. Also handled federal appeals of civil rights and antitrust cases in the Fifth Circuit and U.S. Supreme Court. Liaison to District 9 Grievance Committee, State Unauthorized Practice of Law Committee, Professional Ethics Committee, The Real Estate Broker-Lawyer Joint Committee of both the Texas Real Estate Commission and State Bar of Texas.

In addition to the duties listed above, published numerous articles and a frequent public speaker on behalf of the State Bar of Texas. Also involved in the formulation of the State Bar's Mass Disaster Response Plan and have written public service pamphlets on topics such as the grievance process, mass disaster and the Client Security Fund.

Professional Affiliations

Admitted: State of Texas

Member: State Bar of Texas
Texas Bar Foundation
Association of Professional Responsibility Lawyers
Texas Center for Legal Ethics and Professionalism
Austin Bar Association