

McDermott Will & Emery

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June 15, 2006

Via Email & U.S. Mail

Ms. Mary A. Wood
Alcohol & Tobacco Tax & Trade Bureau
P.O. Box 14412
Washington, DC 20044

Re: Power of Attorney Form - OMB No. 1513-0014, TTB Form No. 5000.8

Dear Ms. Wood:

In response to TTB's May 2, 2006 notice and request for comments regarding information collection forms,¹ I write with comments regarding the Power of Attorney form required by TTB. This form delegates the authority to a specific individual to sign documents on behalf of an applicant or principal in compliance with 26 U.S.C. § 6061. We propose that TTB modify the Power of Attorney form to allow an entire law firm to be listed on the form, rather than a single attorney. If this is not feasible, in the alternative, it would be a significant improvement to allow law firms to list multiple attorneys and non-attorney professionals on a single form.

The nature and structure of the delivery of legal services has changed immeasurably during the past several decades. Most importantly, clients now retain a law firm with many professionals, not a single attorney or professional, to represent them.

Further, professional codes largely ascribe legal duties owed to clients to whole firms, rather than to individuals. For example, Rule 1.10(a) of the American Bar Association Model Rules of Professional Conduct states, "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so" by the rules delineating duties to current and former clients, with only minor exceptions. Additionally, Rule 1.8(k) states that when lawyers are associated in a firm, a prohibition that applies to any one of them applies to all of them. Thus, it is common to impute the duties of one attorney to an entire firm, therefore it would be entirely consistent to correspondingly provide legal authority to the entire firm as well.

Because a company generally chooses to entrust a law firm as a whole to represent it in matters regulated by the TTB, and because our legal system imputes duties to entire firms, it would be

¹ 71 Fed. Reg. 25889, 25890 (May 2, 2006).

sensible to allow the company to file a Power of Attorney form for the entire firm it has hired and authorized to work on its behalf.

If TTB disagrees, then at a minimum and in keeping with the goals of the Paperwork Reduction Act of 1995 to reduce both paperwork and respondent burden, it would make the process much more efficient to provide a form on which companies can list multiple attorneys and paralegals, rather than requiring a separate form for each individual attorney.

The current form generates needless paperwork and attorney's fees. In fact, in at least one recent audit, TTB took the position that a client had too many Powers of Attorney on file. TTB's current policy towards law firms leads directly to a multiplicity of Power of Attorney forms on file. Law firms are routinely forced to fill out multiple forms, as it is often the case that multiple professionals will represent the company. This in turn increases the attorney's fees charged to businesses, slows down response time in filing documentation, and increases the burden on government employees who must then process multiple forms. This proves to be time-consuming and inefficient for all parties involved, particularly when a single form could easily include such information.

In the Federal Register, TTB estimates that this form alone burdens the affected industries by taking up 3,000 hours of respondent time annually—a rather large amount given the straightforward nature of the information being collected. With the small modification proposed above, the number of hours spent conforming to this regulation could be cut down substantially.

While government agencies understandably seek to limit liability for releasing information, the relevant case law suggests that having a Power of Attorney form on file sufficiently limits such liability. For example, in *McDermott v. United States*,² the McDermotts alleged a violation of 26 U.S.C. § 6103 for disclosing tax return information to their certified public accountant, but the court granted summary judgment in favor of the United States and the Internal Revenue Service agent in part because the plaintiffs had executed a Power of Attorney form naming the CPA as their representative, so the disclosure was authorized as an attorney in fact disclosure. Similarly, in *Sharer v. United States*,³ the court granted the IRS summary judgment in a wrongful disclosure action pursuant to 26 U.S.C. § 7431 for the disclosure of tax return information regarding assets that the plaintiff had received from her deceased husband's estate to her attorney on file. The court held that the disclosure was made in good faith and under the reasonable belief that it was authorized because the IRS had on file a Power of Attorney form from the estate naming the attorney as attorney-in-fact and the plaintiff had not revoked the power of attorney. In brief, courts use Power of Attorney forms as evidence of good faith and reasonable belief and limit the liability of government agents in releasing information based on the forms accordingly.

² *McDermott v. United States*, 2000 U.S. Dist. LEXIS 16197 (D. Ariz. 2000).

³ *Sharer v. United States*, 1999 U.S. Dist. LEXIS 2439 (D. Cal. 1999).

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To summarize, the process for collecting the information has become unnecessarily impractical in the face of changes in the delivery of legal services. Requiring a separate Power of Attorney form to be submitted for each attorney needlessly makes the process more costly and time-consuming for businesses, their attorneys and professionals, and the regulators who must process each form. The proposed change would rectify this situation without interfering with the regulatory mission of collecting information and limiting disclosure to those authorized.

Currently, TTBB has not proposed the requested modification to the authorization of attorneys on the Power of Attorney form. We respectfully request that TTBB adopt the following change to the Power of Attorney form:

- Modify the form to allow the company to authorize the entire firm that it has retained; or
- In the alternative, modify the form to allow the company to list multiple attorneys on a single form.

This would save the industry, attorneys and professionals, and government regulators valuable resources better spent elsewhere and reduce the required paperwork, while keeping the function of the form intact.

Sincerely,

A handwritten signature in cursive script, appearing to read "Me E. Sorini".

Marc E. Sorini

cc: Frank Foote