



Committee on Professional Ethics

Opinion 888 (11/15/11)

Topic: Links on a lawyer's web site to other businesses.

Digest: A lawyer may include links to other businesses on the lawyer's web site provided neither the link nor the linked material involves misrepresentation or causes confusion.

Rules: 5.8(a), 7.1, 8.4

QUESTION

1. Under what circumstances may a lawyer's web site include links to the web sites of other businesses?

OPINION

2. The inquiring lawyer wishes to establish a law firm web site. He asks whether the web site may include links to the web sites of other businesses, particularly banks and real estate companies.

3. Whether or not a link on an attorney website is ethically permissible depends on the purpose of the link, the nature of the site to which a link is made, and the nature of the relationship between the attorney and the owner of the web site to which the link is made.

4. A web link need not be the subject of any agreement between the law firm and the site to which the link is made. Links can be made with or without the consent of the owner of the website to which the link is made. In fact, the owner of a website need not even be aware that the link has been made, much less give consent for the link.

5. A law firm web site may include informational links to third party web sites. Such links are not ethically barred if the lawyer ensures that neither the inclusion of the link nor the material to which the link is made will create confusion or misrepresentation.

For example, a link to an official government web site that created the impression that the law firm had some government connection would be impermissible where the

implied connection does not exist. NY Rule of Professional Conduct 8.4(c). The same is true for links to private web sites if the link is likely to create confusion or misrepresentation. In some circumstances, an appropriate disclaimer would be necessary.

6. No categorical ethical bar prohibits lawyers and third parties from agreeing to link to each other's web sites, but greater care must be exercised with reciprocal links. A reciprocal link (without revenue generated for the law firm and without any financial relationship between the entities) is permitted under similar conditions as an informational link.

7. Reciprocal links that constitute advertising must comply with all the requirements of Rule 7.1, including the mandate that advertising not include false, deceptive, or misleading claims. In addition, the home pages of the web sites with the reciprocal links may need to be labeled as attorney advertising. Rule 7.1(f).

8. If the link is part of a cooperative business arrangement between the lawyer and a non-legal professional, the lawyer must comply with Rule 5.8(a). A "cooperative business arrangement" is:

a contractual relationship between a lawyer or law firm and a nonlegal professional or nonlegal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm, as well as other nonlegal professional services...

See 22 NYCRR 1205.2. Rule 5.8(a) specifically limits the non-legal professionals with whom a lawyer may contract. See 22 N.Y.C.R.R. § 1205.3 (list promulgated by the Appellate Divisions of professionals with whom lawyers may contract), § 1205.5. The rules permit contractual business relationships between lawyers and five other professions (public accountancy, land surveying, social work, architecture and professional engineering) but neither realtors nor bankers. Under Rule 5.8(a), a reciprocal exclusive referral agreement may include joint advertising and sharing of office space, but may not include sharing of any legal fees.

CONCLUSION

9. A law firm web site can include informational links to other web sites, including those of banks and real estate companies. Neither the linked material nor the linkage itself may involve misrepresentation or create confusion. Reciprocal links are not inherently unethical. A simple reciprocal link (without revenue generated for the law firm and without any financial relationship between the entities) is permitted under similar conditions as an informational link.