



## Committee on Professional Ethics

Opinion 915 (3/27/12)

**Topic:** Links to and from a Law Firm's Website

**Digest:** Assuming relevant advertising rules are adhered to, a law firm's website may link to the website of a nonlegal entity, and vice versa.

**Rules:** 1.0(a), 1.0 (c), 7.1

### FACTS

1. The inquirer is a member of a law firm that has formed a separate consulting entity that performs nonlegal services. He inquires whether the websites of the law firm and the separate consulting entity can link to each other.

### QUESTIONS

2. May a law firm's website contain links to a website of a nonlegal consulting entity formed by the law firm? May the nonlegal consulting entity's website contain links to the law firm's website?

### OPINION

3. As a general matter, it is ethically permissible for a lawyer to link the lawyer's website to a third party's website, and *vice versa*. It should be noted, however, that the New York Rules of Professional Conduct broadly define "advertisement" to include "any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm." *See* Rule 1.0(a). Furthermore, a subcategory of "communications," called a "computer-accessed communication," specifically includes weblinks. *See* Rule 1.0(c). Therefore, if the primary purpose of a particular link is to facilitate the retention of the services of a lawyer or law firm, the link and the related text are "advertisements" under the Rules.

4. An attorney is prohibited from participating in the use or dissemination of any advertisement that (1) contains statements or claims that are false, deceptive, or misleading, or (2) violates any Rule, including, but not limited to, the rules on lawyer advertising. *See* Rule 7.1. The relevant rules include, for example, a provision requiring that advertisements be pre-approved by the attorney and retained by the attorney for a specified period. Rule 7.1(k). In addition, assuming both links are advertisements, the home pages of the websites of the law firm

and the nonlegal consulting entity must be labeled "Attorney Advertising." Rule 7.1(f); *see also* Rule 8.4(a) (a lawyer shall not violate the Rules "through the acts of another").

5. If a link's primary purpose is not to facilitate the retention of a lawyer or law firm, it would not be an "advertisement" under the Rules. *See* Rule 1.0(a), *supra*. This could be the case where, for example, the link on the nonlegal consulting entity's website is created primarily to provide biographical information concerning the entity's constituents, or to provide access to a document contained on the law firm's website.

6. It must be noted, however, that Rule 5.7 contains various rules relating to nonlegal services provided by lawyers. Rule 5.7(a)(1) and (2) apply if an attorney is providing both legal and nonlegal services to clients. Under Rule 5.7(a)(1), if the nonlegal services are "not distinct" from the legal services provided by the lawyer to the client, then the New York Rules of Professional Conduct ("Rules") apply to the provision of both legal and the nonlegal services. Under Rule 5.7(a)(2), if the nonlegal services and the legal services provided by the lawyer to the client are "distinct" from each other, then the Rules apply to the provision of legal and nonlegal services only "if the person receiving the services could reasonably believe that the nonlegal services are the subject of an attorney-client relationship." In this case however, because the lawyer owns or controls the non-legal entity the test is not distinctness. Rule 5.7(a)(3), which applies when "a lawyer or law firm ... is an owner, controlling party or agent of, or ... is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person," states that the lawyer or law firm is subject to the Rules with respect to the nonlegal services "if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship." Since Rule 5.7(a)(4) creates the presumption that a person receiving nonlegal services "believes the services to be the subject of a lawyer-client relationship", here the advertising rules will apply, as an effective notice to a person receiving the services as contemplated by Rule 5.7(a)(4) cannot be given in the advertising context where the person is unknown.

7. If any of the above subdivisions to Rule 5.7 pertain to the provision of services by a nonlegal consulting entity, the Rules, including those pertaining to advertising, would apply to the website of the nonlegal consulting entity. *See* N.Y. State 832 (2009).

## **CONCLUSION**

8. A law firm's website may contain links to a website of a nonlegal consulting entity formed by the law firm. Furthermore, the nonlegal consulting entity's website may contain links to the law firm's website. If the particular link and the related text are "advertisements" under the Rules, the relevant advertising rules must be adhered to. Furthermore, if the provisions in Rule 5.7(a)(1), (2), or (3) pertain to the provision of nonlegal services, the Rules, including those pertaining to advertising, would apply to the website of the nonlegal consulting entity.