NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 ☐ PH 518.463.3200 ☐ www.nysba.org

New York State Bar Association
Committee on Professional Ethics

Opinion 1136 (10/13/17)

Topic: Law Firm Marketing: Sponsorship of Events

Digest: Subject to legal restraints, a law firm may sponsor parties, sporting events, or games of chance provided that the law firm complies with applicable rules governing lawyer advertising and solicitation.

Rules: 7.1, 7.3

FACTS

1. The inquiring law firm concentrates in employment law matters, including workers' compensation and personal injury cases. To promote its name, the firm wishes to embark on certain activities. Specifically, the firm wants to hold a party or reception for members of a local labor union, and, in addition, to sponsor a sporting match for union members at which the players would wear uniforms or T-shirts bearing the firm's name. During the sporting event, the playing field would display a billboard or banner featuring the firm's name and contact information, and players and spectators could avail themselves of free refreshments at the firm's expense. For the more general public, the firm wants also to conduct a lottery or raffle with a prize such as tickets to concerts or sporting events, with the winner required to pick up the prize at the firm's office.

QUESTIONS

2. May a law firm sponsor and bear the cost of a party or sporting event for targeted potential clients in which the firm's name is prominently displayed by various means?

3. May a law firm conduct a raffle or lottery for which the law firm pays the cost of any prize on condition that the winner retrieve the prize from the law firm's office?

OPINION

4. This Committee's charter confines us to interpreting the New York Rules of Professional Conduct (the "Rules"). We do not issue opinions on questions of law. Whether the conduct of particular sporting events, raffles, or lotteries is lawful in this State is thus beyond the scope of this opinion. For our purpose, we assume without resolving that such activities comply with law, and limit ourselves to the ethical issues that the inquiry raises.

5. These ethical issues rest mostly on the implications of the proposed activities under the regulations of advertising and solicitation set forth in Rules 7.1 and 7.3, respectively. Because

by definition under Rule 7.3 (a) a "solicitation" must be an "advertisement" within the meaning of Rule 1.0(a), the preliminary question is whether any of the proposed activities qualify as an "advertisement." Rule 1.0(a) says, in relevant part, that an "advertisement" consists of "any public or private communication made by or on behalf of a lawyer of 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." Of significance here, however, is Comment [8] accompanying Rule 7.1's prescriptions on lawyer advertising, which notes that some "communications by a law firm that may constitute marketing or branding are not necessarily advertisements. For example, pencils, legal pads, greeting cards, coffee mugs, T-shirts or the like with the firm name, logo, and contact information printed on them do not constitute 'advertisements' within the meaning of this Rule [7.1] if their primary purpose is general awareness and branding, rather than the retention of the law firm for a particular matter."

6. Our prior opinions have lent weight to this Comment in scenarios not unlike those this inquiry presents. Of particular pertinence is N.Y. State 937 (2012), in which the inquirer wished to cooperate with a local hospital to provide a promotional gift, such as a calendar or a pen branded with the law firm logo, as part of the welcoming package given to all hospital patients. Focusing on Rule 1.0(a)'s emphasis on the "primary purpose" of the communication, we said there that "when the intent of a communication is to educate recipients about legal developments or to raise general brand awareness, that intent will be considered its primary purpose. Thus, even if such communications are more fundamentally motivated by the aim of increasing the lawyer's business, they are not advertising within the meaning of the Rules." *Id.* ¶ 4. Likewise, in N.Y. State 1095 (2016), we said that "large building signs" bearing the firm's name "do not constitute 'advertisements,'" but were instead "for the purpose of general awareness and branding and thus are not subject to Rule 7.1." *Id.* ¶ 12. *See also* N.Y. State 1017 ¶ 8 (2014) (use of a law firm's initials in sponsorship of a little league baseball team did not constitute an impermissible use of a trade name).

7. We have also previously considered and, subject to legal issues, approved the offering of a prize by a law firm when the primary purpose of doing so is other than retention of the lawyer in a matter. In N.Y. State 873 (2011), the inquiring lawyer proposed to give visitors connecting to the lawyer's social media outlets the chance to win a prize for doing so, untethered to any obligation to retain the lawyer. There we said that, although "business development might be the inquirer's ultimate goal in offering the prize," this alone "would not trigger the Rules on advertising any more than it would trigger those Rules if, for example, the inquirer were to join a local Chamber of Commerce, Kiwanis Club, or bar association, or if the inquirer were to take other steps to expand the inquirer's social circle with the aim of meeting potential new clients." *Id.* ¶ B1; *see* Rule 7.1, Comment [6] ("Not all communications made by lawyers about the lawyer or the law firm's services are advertising.")

8. Simply put, nothing in the Rules creates a barrier to lawyer networking among potential clients, heightening awareness of the lawyer or law firm's name in the community, conducting social events for discrete groups, or engaging in actions that may have the long-term beneficial effect of enhancing the lawyer or law firm's profile and profitability.

9. Nevertheless, Rules 7.1 and 7.3 erect boundaries on the comportment of a lawyer or law firm undertaking such activities. A law firm may hold a party or a sporting event to promote the firm's name, but its lawyers may not use those occasions to engage in in-person solicitation of its

guests unless those guests fall within one of the exclusions in Rule 7.3(a)(1) (forbidding in-person or other real-time solicitation unless the recipient is "a close friend, relative, former client or existing client"). A written invitation to participate in those events, or in a lottery or raffle, may not seek the law firm's retention in a matter unless the communication complies with Rule 7.3(c)'s regulations on, among other things, submitting the written communication to local disciplinary authorities and retaining a list of the name and addresses of all recipients for a period of at least three years. The law firm may require the winner of any prize to retrieve the same from the law firm's office, but again may not use that opportunity to solicit the winner's legal matters (as opposed to, say, using the moment for a photo opportunity with the winner for release to the press to raise public awareness of the firm). Consequently, while the proposed sponsorships are alone untroubling under the Rules, the law firm's actions in conducting them could cross the line into advertising and solicitation requiring adherence to Rules 7.1 and 7.3.

CONCLUSION

10. A law firm's sponsorship of receptions, sporting events, and raffles or lotteries, if permitted by law, constitute permissible branding activities outside the meaning of "advertising" under the Rules, provided that the primary purpose of the activities is enhancing the firm's name recognition and the activities do not involve solicitation of potential clients or ongoing advertisement of the law firm's services.

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