STATEWIDE GRIEVANCE COMMITTEE

Advisory Opinion #08-01271-A
Joint Advertisement by Law Firm and NonLaw Firm

Pursuant to Practice Book §2-28B, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, reviewed a request for an advisory opinion filed on January 29, 2008. Pursuant to Practice Book §2-28B (d), the committee requested additional information on January 30, 2008. The attorney complied on February 11, 2008. The proposed advertisement is a print brochure issued by a law firm and a professional government relations firm jointly advertising their services. The governmental relations firm is not a law firm. The color brochure is on double sided, glossy paper, designed for hand delivery and sporadic mail delivery to prospective clients. The requesting attorney lists an initial printing of 500 copies and estimates delivering 3-5 copies a week to potential clients until the supply is exhausted. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The advertisement provides the following information on the bottom pages of the brochure: the name of the governmental relations firm with the phrase "government relations" and the name "the law offices of [attorney name]" with the phrase "legal services" underneath. The background of both pages of the brochure is a pinstriped blue field. The right side of the first page of the brochure is a photograph of a baseball resting atop a base on a dirt field. On top of the photograph is a slogan in large red print "We Cover All The Bases." On the top left side of the brochure in

red print is the phrase "[government relations firm's name] Home Runs." Underneath in small text is a the depiction of a page of text with sections describing the history of the government relations firm; a description of its working relationship with the law firm in the field of government relations; and a listing of client companies and the government projects secured with the help of the government relations firm.

The second page of the brochure is a collage of news articles and photographs illustrating the projects discussed on page one of the brochure. In the lower right corner of the page is a baseball and baseball glove. In two other corners of the page are pictures of baseball players.

We considered three attorney advertising issues: 1) whether the relationship between the law firm and the government relations firm violates Rule 5.4 of the Rules of Professional Conduct or is misleading; 2) whether the brochure contain the proper disclosures required by Rule 7.3 of the Rules of Professional Conduct; and 3) whether the reference to past successes misleads the prospective client.

Rule 5.4 of the Rules of Professional Conduct regulates the professional relationship of lawyers and non lawyers in order to protect the lawyer's professional independence of judgment. A lawyer may not share legal fees with a nonlawyer except in certain circumstances involving a deceased lawyer's estate, or involving compensation or retirement plans for nonlawyer employees. Rule 5.4 (b) provides "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." The commentary to Rule 5.4 provides:

> These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not

> modify the lawyer's obligation to the client. As stated in subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

In response to the committee's request for more information clarifying the business relationship of the two firms advertising their services in the proposed advertisement, the requesting attorney supplied the following additional facts. First, neither the law firm nor any of its attorneys share legal fees with the government relations firm. Second, there is no partnership between the two firms and each is a separate corporate entity. Third, no nonlawyer owns any interest in, is a corporate officer or directs or controls employees of the law firm. When the two firms have the same client, the relationship is governed by separate letters of engagement executed by the client with each of the firms.

The proposed advertisement lists clearly the names of the two firms in three separate places on the brochure. They are listed side by side and contain a description of the service each provides to distinguish them. On the first page of the advertisement, which describes the history of the government relations firm, the statement is made that the law firm is retained by the nonlaw firm for legal assistance in various matters. This reviewing committee finds the advertisement complies with Rule 5.4 because the two firms are not a partnership in fact and this portion of the advertisement is not misleading under Rule 7.1 because it sufficiently illustrates the separate relationship.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. Subsection (c) of Rule 7.3 regulates written communications to prospective clients for the purpose of obtaining professional employment. Rule

7.3 (c) provides:

> Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any...If the written communication is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. (emphasis added)

Rule 1.0 of the Rules of Professional Conduct, the Terminology section, defines "known" as "actual knowledge of the fact in question." The definition also provides that "knowledge may be inferred from circumstances." The requesting attorney for the proposed advertisement indicates that the advertisement will be mailed or hand delivered to prospective clients, with no more than 3-5 delivered per week. The advertisement therefore is targeted for a relatively small number of prospective client contacts per week. If this infrequent dissemination of the advertisement means it will be delivered to prospective clients "known to be in need of legal services in a particular matter" as discussed in Rule 7.3 (c), the proposed advertisement should comply with that rule's requirements.

If the proposed advertisement will be sent to prospective clients the law firm knows to be in need of legal services in a particular matter, the brochure should have the label "Advertising Material" in red ink on the first page and lower left corner of any outside envelope advertisement. Additionally the advertisement mailed to such clients should also comply with Rule 7.3(d) by containing in the first sentence of any written communication the statement "[i]f you have already

retained a lawyer for this matter, please disregard this letter." An exception to this requirement is if the proposed advertisement is delivered in response to a request made by a potential client or their spokespersons. We conclude that this advertisement may not comply with Rule 7.3(c) if it is being directed towards prospective clients known to be in need of legal services in a particular matter.

Finally, we considered whether or not this advertisement was misleading in that it listed a number of successes achieved by both the government relations firm and the law firm. The commentary to Rule 7.1 of the Rules of Professional Conduct discusses advertisements that may be truthful, but misleading:

> An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case...The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

On the first page of the proposed advertisement, several projects and the successful results obtained are detailed, including listing the monetary amounts of public financing obtained through the firms' efforts. Both firms are credited for these successes. An appropriate disclaimer or qualifying language inserted at the end of these statements would prevent the advertisement from being misleading pursuant to the commentary to Rule 7.1.

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct.

(E)

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