

## Ethics Opinion

### THE PROFESSIONAL ETHICS COMMITTEE FOR THE STATE BAR OF TEXAS Opinion No. 548

January 2003

#### QUESTION PRESENTED

May a law firm allow a non-profit entity to display the law firm's name as a sponsor of the entity on the entity's internet web site?

#### STATEMENT OF FACTS

A Texas law firm that represents plaintiffs who suffer from a disease caused by certain man-made chemicals often is contacted by prospective clients through internet web sites, including the law firm's own site and other web sites with names related to the disease. The law firm's web site and these other sites have been found by the Advertising Review Committee of the State Bar of Texas to comply with the Texas Disciplinary Rules of Professional Conduct (the "Rules") regarding public advertisements. See Rules 7.04 and 7.0.

The law firm is a substantial financial sponsor of a non-profit organization that has as its purpose providing information regarding the disease to those members of the public who may have been exposed to the causative agent. The organization does this by sending out newsletters, maintaining a web site, and engaging in other activities, which promote awareness of the disease, treatment options, and possibilities for compensation, both through the government and through litigation. Anyone may become a financial sponsor of the non-profit organization.

The non-profit entity would like to provide recognition to its financial sponsors, including the law firm and other lawyers who are financial sponsors, in various ways, including listing them as financial sponsors on the entity's web site. The non-profit entity will not select law firms or limit in any way the number of lawyers who can become financial sponsors.

If a law firm agrees to contribute a certain amount, the non-profit entity will list the law firm as a sponsor on its web page and will fully disclose the reason that the law firm is listed, i.e. that the law firm has contributed money to the entity. The web site will also clearly disclose that the non-profit entity is not endorsing the law firm, thus obviating any suggestion that the listing as a sponsor connotes a recommendation or referral by the entity. The location and prominence of a law firm's listing on the web site will be based on the amount of money the law firm has contributed to the entity. Every sponsor who contributes the same amount will receive similar recognition as a financial sponsor. The listing for the law firm will not include content that is not permitted under the general provisions of the Rules governing advertising by lawyers.

DISCUSSION Rule 7.03(b) prohibits certain types of solicitation and payments for such solicitations and provides: "A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Article 320d, Revised Statutes [now Texas Occupations Code Section 952.001 et seq.]." The Committee notes that, generally, advertisements permitted by the Rules have three characteristics:

1. A fixed amount is paid for a fixed period of time during which a lawyer's information is distributed to the public.
2. The operator of the media on which the lawyer's information is distributed provides only a ministerial function, merely placing the information in public view.
3. The operator of the media makes it clear that the information is an advertisement, not a recommendation or referral by the media operator.

In contrast, referrals generally have three characteristics:

1. Payment is made based on the number of people who contact or hire the lawyer or on a percentage of the fees earned by the lawyer from the referrals.

2. The operator of the media on which the lawyer's information is made available provides services going beyond merely placing the information into public view.
3. It is made to appear to the public that the operator of the media is recommending the lawyer.

Although the characteristics noted above are not necessarily the only distinctions between permissible advertisements and prohibited referral arrangements, in the factual situation here considered all of the enumerated characteristics of advertisements exist and none of the characteristics of referrals exist. The Committee is of the opinion that under the facts presented the listing of the law firm as a sponsor on the non-profit entity's web site does not violate Rule 7.03(b). The law firm will be paying a fixed amount for a given period of time that is not in any way based upon past or future solicitations or referrals, nor is the payment contingent or conditioned upon the non-profit entity soliciting or referring prospective clients for the firm.

Further, the entity's web site will clearly disclose that the law firm has been a financial contributor to the non-profit entity, that the law firm is listed on the web site for that reason alone, and that the entity is not recommending any lawyer or law firm listed on the web site.

Essential to compliance with the Rules is that the material displayed on the web site clearly inform a reasonable person that the non-profit entity is not recommending any lawyer or law firm identified on the web site and that the placement, manner or prominence of the listing of any lawyer or law firm is not a rating, ranking or indication of the qualifications of the lawyer or law firm but is based solely on the amount of money contributed to the entity.

#### **CONCLUSION**

In the situation stated, a law firm may allow a non-profit entity to list the law firm as a sponsor of the entity on its web site if each sponsor that contributes the same amount receives similar recognition as a sponsor and if the web site fully discloses that sponsors are listed because they have contributed money to the entity and that the entity is not endorsing the law firm or any other lawyer or law firm listed on the site.

*Requests for ethics opinions should be sent to the Supreme Court Professional Ethics Committee, c/o [Tanya Beckham](#), State Bar of Texas, P.O. Box 12487, Austin 78711-2487. For immediate, non-binding ethics advice, call the Lawyers' Ethics Hot Line at (800) 532-3947.*