

**WHOLLY-OWNED SUBSIDIARY LAW FIRMS**

The Lawyer Disciplinary Board has received a request to determine whether members of one law firm may organize a wholly-owned subsidiary law firm. The question arose when two separately owned and operated law firms decided to merge, i.e., Firm A wanted to purchase Firm B. The members of Firm B would become members of Firm A but not all of the members of Firm A would become members of Firm B. Furthermore, Firm B would continue advertising under its own name but would indicate its affiliation with Firm A in the advertisement. This question is an issue of first impression for the Lawyer Disciplinary Board.

**Discussion**

The Rules of Professional Conduct were amended in 1996 to permit lawyers to be members of a law firm organized as a limited liability company or registered limited liability partnership solely to render professional legal services under the applicable laws of West Virginia. Rule 5.7 also provides that a law firm shall comply with the rules of The West Virginia State Bar with regard to registration of limited liability organizations. See, Rule 5.7 of the Rules of Professional Conduct. Therefore, there does not appear to be a prohibition in the Rules of Professional Conduct for a law firm to organize a wholly-owned subsidiary law firm organized as a limited liability company or registered limited liability partnership

solely to render professional legal services as long as the law firm has complied with Rule 5.7 and other applicable West Virginia statutes.<sup>1</sup>

The proposed arrangement impacts other Rules of Professional Conduct including but not limited to Rule 7.1(a) (Communications concerning a lawyer's services); 7.2(d) (Responsible Attorney Requirement); 7.5(a) and 7.5(d); 1.7 (Conflict of Interest); 1.9 (Conflict of Interest: Former Client); and 1.10 (Imputed Disqualifications).

Rule 7.1(a) states that “[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it: (a) contains a material misrepresentation of fact or omits a fact necessary to make the statement considered as a whole not materially misleading[.]” Accordingly, all letterhead and advertisements for law firms which organize wholly-owned subsidiary law firms must designate the affiliation with the other law firm in each of the two law firms’ letterheads and advertisements. Failure to disclose the affiliation in all forms of advertising and on letterhead shall be considered misleading with regard to the true character of the relationship between the two. This can be considered a violation of Rule 7.1(a). Furthermore, attorneys are reminded that the respective advertisements for each law firm shall include the name of at least one lawyer responsible for its content in compliance with Rule 7.2(d) of the Rules

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<sup>1</sup> The Lawyer Disciplinary Board merely answers this question with regard to whether this arrangement is permitted under the Rules of Professional Conduct. The Lawyer Disciplinary Board does not make any comment with regard to whether the arrangement may be permitted under applicable West Virginia statutes governing limited liability companies or registered limited liability partnerships. The Lawyer Disciplinary Board also does not address what effect these arrangements may have on malpractice liability but does point out that Rule 5.7(b) provides that “[n]othing in this rule or the laws under which a lawyer or law firm is organized shall relieve a lawyer from personal liability for the acts, errors, and omissions of such lawyer arising out of the performance of professional legal services.”

of Professional Conduct. The Lawyer Disciplinary Board's position that all advertisements for law firms and their wholly-owned subsidiary law firms shall disclose their affiliation with each other is also supported by Rule 7.5(a) which provides, in pertinent part, that a lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1.

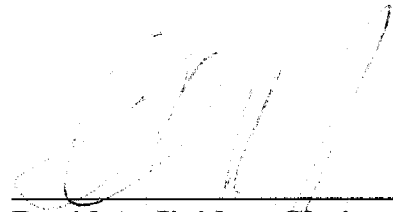
Finally, the Lawyer Disciplinary Board advises that law firms which decide to embark upon organizing subsidiary law firms must keep in mind that they are required to comply with the conflict rules outlined in the Rules of Professional Conduct, particularly Rule 1.10. Rule 1.10(a) provides that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2." The Comment Section to Rule 1.10 states, in part, that ". . . if [two or more lawyers] present themselves to the public in a way of suggesting that they are a firm or conduct themselves as a firm, they shall be regarded as a firm for purposes of the Rules." Because the Lawyer Disciplinary Board has stated that law firms and their subsidiaries shall indicate their affiliations on their letterheads and advertisements, the Board believes that the imputed disqualification rules are applicable to this situation. Therefore, the Board advises that law firms and their subsidiaries should have in place the means to run a "global" conflicts check between the law firm and the subsidiary and to refrain from accepting representation where a conflict exists. While the Board believes a "global" conflict check is necessary under the Rules, this requirement does not prohibit the law firm and the subsidiary law firm from each maintaining their own books,

files, bank and trust accounts as long as all other requirements under the Rules of Professional Conduct are met.

**Conclusion**

Few guidelines exist to define the parameters of wholly-owned subsidiary law firms for compliance with the Rules of Professional Conduct. The Lawyer Disciplinary Board finds that the Rules of Professional Conduct will accommodate the formation of wholly-owned subsidiaries. Nonetheless, we caution lawyers that, in order not to deceive clients and the public, full disclosure of the relationship between the two firms is essential.

**APPROVED** by the Lawyer Disciplinary Board on the 5<sup>th</sup> day of June, 2009, and  
**ENTERED** this 16<sup>th</sup> day of June, 2009.



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**David A. Jividen, Chairperson**  
Lawyer Disciplinary Board