This opinion of the Indiana State Bar Ethics Committee ("Committee") addresses whether the Indiana Rules of Professional Conduct ("Rules") preclude an attorney from accepting public defender appointments in one county when an associate in his/her law firm is a part-time prosecutor in an adjoining county.

BACKGROUND AND CONSIDERATIONS

The issue addressed in this opinion involves ethical considerations as well as constitutional concerns. Under the Sixth and Fourteenth Amendments to the United States Constitution, a criminal defendant is guaranteed the right to the effective assistance of conflict-free counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). This constitutional mandate must be recognized in analyzing the ethical propriety of the attorney's acceptance of public defender appointments.

The American Bar Association ("ABA") has promulgated Standards for Criminal Justice regarding prosecution and defense functions. ABA Standards for Criminal Justice, 3rd Edition (1993). ABA Standard 3-1.3(g) and ABA Standard 4-3.5(i) provide that a prosecuting attorney and defense attorney who share a financial interest should not participate in the same criminal case. The commentary in these sections provides:

It is important to note that lawyers who are associated in the practice of law should not appear on both sides of the case, i.e., as prosecutor and defense counsel. The principal rationale for this prohibition, of course, is the avoidance of any possibility of division or dilution of loyalties. Relationships between lawyers who are associated in practice are so close and the potential for conflict is so great that, given the lack of any strong reason for permitting such potentially conflictive representation, a flat prohibition is warranted against lawyers from the same firm or office appearing as prosecutor and defense counsel in the same case.

Id.

ABA Standard 4-3.5 goes on to state, "Similarly, it would not be wise to permit the prosecutor and criminal defense attorney from the same jurisdiction to practice together."

The ABA guidelines describe various considerations that are particularly important with respect to the criminal defense attorney. One such consideration is confidentiality. The criminal defense attorney must hold inviolate the confidences and secrets of the criminal defendant. This is particularly important in the
development of the facts of the case for a possible defense. There must be absolute trust that the words of the criminal defendant go no further than his representative.¹

Another consideration is the ability of an indigent client to consider fully and waive knowingly certain conflicts which may arise. The indigent defendant is not afforded the same free choice of attorneys as one who retains counsel. The indigent client may face a narrow list of potential replacement attorneys, which may affect the client's calculation of the risks of waiving conflicts of interest. The ABA Guidelines have recognized that criminal defendants may be less capable of understanding all of the circumstances. Also, the confrontation with the criminal justice system may loom so large that the indigent defendant wishes to begin and maintain his representation as soon as possible without properly considering his/her own interests and the potential effects of his/her attorney's conflict of interest.

A prosecuting attorney and defense attorney from the same law firm would be prohibited from working on the same case. In Green v. State, 168 N.E.2d 345 (Ind. 1960), the co-defendant of the appellant was represented by an attorney of the same law firm as the prosecuting attorney. The appellant argued that the trial court erred in refusing to consider the alleged conflict of interest. Although finding that the issue was not properly preserved on appeal, the Court stated:

[W]e cannot by this opinion condone improper conduct if it exists on the part of the attorneys who appeared in the trial of this cause before the lower court... It is a flagrant breach of professional ethics for an attorney to act as counsel for a defendant in a criminal case when the same case is being prosecuted by an attorney belonging to the same law firm. See ABA Committee on Professional Ethics and Grievances, Op. 15, p. 89.

Id. at 348. In quoting from an opinion of the ABA Committee on Professional Ethics and Grievances ("ABA Committee"), the Court stated:

So long as the partnership relation continues between the county prosecutor and his professional associate, it is clearly unethical for one member of the firm to oppose the interests of the state while the other member represents those interests. The positions are inherently antagonistic and this would be so irrespective of Canon 6. No question of consent can be involved as the public is concerned and it cannot consent.

In many communities it is the privilege of the prosecutor to continue in the private practice of law
during his term of office, but this in no way alters the foregoing conclusions. The prosecutor himself cannot represent both the public and the defendant and neither can a law firm serve two masters. It follows that a partner in such a firm must forego the representation of defendants whose prosecution is the duty of another member who represents the public.

Id. at 348 n.2. Similarly, in concluding that an attorney would be prohibited from defending criminal cases prosecuted by another member of the same firm, the ABA Committee stated in Opinion 16:

In many communities it is the privilege of a prosecutor to continue in the private practice of law during his term of office, but this in no way alters the foregoing conclusions. The prosecutor himself cannot represent both the public and the defendant and neither can a law firm serve two masters. It follows that a partner in such a firm must forego the representation of defendants whose prosecution is the duty of another member who represents the public.

See ABA Formal Ethics Opinion 16 (June 11, 1929); cf. Ohio Bd.Com.Griev.Disp. 91-22 (Oct. 18, 1994) (representation of opposing parties by a prosecuting attorney and a criminal defense attorney who are siblings (and former law partners) creates a conflict which cannot be waived by the prosecutor who represents the public); but see Ohio Bd.Com.Griev.Disp. 94-14 (Dec. 2, 1994) (mere sharing of office space between a part-time prosecutor and attorney who represents criminal clients does not create ethical conflict so long as they comply with applicable ethical standards); Cal.St.B.Com.Prof.Resp. Formal Op. No. 1984-83) (public defender spouse may represent accused being prosecuted by the district attorney spouse (with proper disclosure) or colleague of district attorney spouse).

ANALYSIS OF INQUIRY

We assume that the part-time prosecutor and the public defender do not work on the same case or in the same jurisdiction. The Rules would prohibit such representation. Even if they perform their work in separate jurisdictions, however, the Committee believes that the public defender would be prohibited from taking appointments of criminal defendants in the county adjoining the county in which the prosecutor works.2

Rule 1.7 provides in pertinent part:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

Rule 1.7(a). Under Rule 1.10, lawyers associated in a firm are precluded from representing a client if they know or should know that any of them practicing alone would be prohibited from such representation.3 Rule 1.10(a).

The Committee believes that a part-time prosecutor, whose prosecutorial duties are conducted in one county, would be prohibited from representing criminal defendants in an adjoining county. See Rule 1.7(a); Green, supra. In this regard, the ABA Ethics Committee has concluded that a prosecuting attorney of a county in a state may not ethically defend a resident of his own county in a criminal action in an adjoining county. ABA Ethics Op. 30 (March 2, 1931). The ABA stated:

It is a well-known fact that prosecutors are granted courtesies and assistance by the police departments, as well as the prosecuting authorities, of other cities and counties throughout the country. This practice is of great benefit to the administration of criminal justice. If prosecutors indulged in the practice of defending criminals in states other than their own, this helpful cooperation might easily and quickly be withdrawn. Other evils, detrimental to the proper enforcement of criminal laws, are not difficult to conceive, were prosecutors also acting as defenders of those accused of crime. Subjectively, the effect of such a practice upon the prosecutor himself must, in our opinion, be harmful to the interest of the public, whose service is the prosecutor’s first and foremost duty.

Id. The Committee finds this rationale persuasive and concludes that a part-time prosecutor with responsibility in one county should not represent criminal defendants in another county.

Since the part-time prosecutor in one county would be prohibited from representing criminal defendants in an adjoining county, Rule 1.10 would likewise prohibit the public defender from engaging in such representation. See Rule 1.7(a); Rule 1.10(a). The public defender’s appointment could create significant ethical issues. For instance, prosecutors share information and resources with prosecutors and law enforcement personnel of other jurisdictions. The mingling of information between these parties creates the potential for misuse of information, inadvertent or otherwise, particularly where the part-time prosecutor and public defender work for the same firm.
Although the Committee believes that the ethical dilemmas in the public defender's representation of criminal defendants are arguably less than those if the part-time prosecutor represented the defendants, Rule 1.10 is nevertheless clear. The public defender's representation is precluded by virtue of his/her association with the part-time prosecutor. See Rule 1.7(a); Rule 1.10. Furthermore, because the part-time prosecutor's client (i.e., the public) could not consent to this conflict, there is no relief under Rule 1.7(b) in the view of the Committee.

**CONCLUSION**

A public defender would be precluded by the Rules from representing a criminal defendant in one county where the defender is associated in a firm with a part-time prosecutor who prosecutes in an adjoining county.

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1. The prosecutor must also guard the public's confidence in the criminal justice system. The public's confidence in the system may be harmed if the public perceives that the prosecution and defense are engaged in sharing confidences.

2. The Committee is mindful that the issue may have equal application in the realm of the private attorney accepting criminally charged clientele. It further recognizes that there may be issues arising in the context of multiple offices of the same firm located in non-adjoining counties. The Committee does not purport to address these issues, as they are not before the Committee at this time.

3. A "firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client." Comment to Rule 1.10.
Mr. Thomas Pyrz  
Indiana State Bar Association  
230 East Ohio Street, 4th Floor  
Indianapolis, IN 46204

Dear Mr. Pyrz:

As a member of the ABA Standing Committee on Professional Discipline, I want to offer you the resources and expertise of the ABA Standing Committee on Professional Discipline that may be most helpful to you.

At its February 1992 Midyear Meeting, the ABA House of Delegates adopted the Report of the Commission on Evaluation of Disciplinary Enforcement (McKay Commission), which was published as Lawyer Regulation for a New Century. Key recommendations of the Report affect client protection mechanisms, bar regulation and activities, dispute resolution, lawyers’ professional liability, professionalism considerations, lawyer competence, lawyer impairment and other aspects of professional regulation. Accordingly, the Discipline Committee revised the ABA Model Rules for Lawyer Disciplinary Enforcement to reflect the McKay Report’s recommendations. The new ABA Model Rules were adopted by the ABA House of Delegates in August 1993.

Lawyer Regulation Implementation

The Discipline Committee created a Joint Subcommittee on Lawyer Regulation responsible for assisting interested jurisdictions in the implementation of the McKay Report. The Subcommittee consists of nine members from the Center for Professional Responsibility - five from the Discipline Committee, two each from the Standing Committees on Lawyers’ Responsibility for Client Protection and Professionalism, and one member from each of the following entities: the National Association of Bar Executives; the National Conference of Bar Presidents; the National Organization of Bar Counsel; the Association of Professional Responsibility Lawyers; the Judicial Administration Division; the Standing Committees on Dispute Resolution; Lawyer Competence, and Lawyers’ Professional liability; and the Commission on Impaired Attorneys.
The Subcommittee draws heavily on the expertise of various states that already have in place many of the programs recommended by the McKay Commission. It is also prepared to offer several services and resources to assist your jurisdiction: long-distance resource assistance, on-site visits with state study committees, monitoring of lawyer regulation activities in various jurisdictions, participation in public forums, assistance in establishing pilot programs, and on-site consultation on your jurisdiction's regulatory system.

Consultations re State Discipline Systems

The latter program, on-site review assistance, is a continuation of the Discipline Committee's program of evaluations of state discipline systems which, since 1980, has involved consultation with 34 jurisdictions. Upon invitation by a state's highest court, our team visits a jurisdiction to conduct interviews with disciplinary staff, hearing committee members, state bar officials, complainants, respondents' counsel, members of the judiciary and others who have had contact with or roles in the state's disciplinary system. The team also reviews relevant court rules, reports and statistics and examines sample disciplinary files. The team then prepares a comprehensive report with recommendations, which is reviewed by the Joint Subcommittee on Lawyer Regulation and the Discipline Committee before submission to the highest court.

The Discipline Committee also makes available follow-up assistance in implementing its recommendations. Such assistance underscores our view that site visits are intended to meet the needs of the inviting jurisdiction. For this reason, they incorporate elements of the existing state and ABA disciplinary models as well as the expanded system of regulation recommended by the McKay Report. Most important, in both form and substance these consultations are joint efforts in which the team considers unique local factors as well as the ABA models in fashioning its recommendations. While jurisdictions are asked to contribute $5,000 to the cost of the consultation, the ABA contributes approximately 50% of the actual cost of each team's transportation, lodging and meal expenses. The ABA covers the cost of producing the report.

Model Rules for Judicial Disciplinary Enforcement

Under a grant from the State Justice Institute, the Discipline Committee underwent a major review of the 1978 ABA Standard Relating to Judicial Discipline and Disability Retirement and the Model rules for Judicial Discipline and Disability Retirement. This study was undertaken jointly with the ABA's Judicial Administration Division. The Joint Subcommittee's work product, Model Rules for Judicial Disciplinary Enforcement, was adopted by the ABA House of Delegates at its August 1994 Annual Meeting.
The Model Rules are a careful balance of competing interest: the rights of judges to fair treatment; judges’ interest in confidentiality; the public’s concerns that complaints be given serious consideration; the interest of holding judges to high standards; the interest in prompt and fair resolution of complaints. They recommend that judicial disciplinary investigative and prosecutorial functions be separated from the hearing, fact finding and adjudicative functions. They also recommend public scrutiny of judicial discipline in order to promote public confidence in the system. The Model Rules are presented with the understanding that each state should determine whether to accept or modify its individual Rules. They are intended to assist jurisdictions in reviewing the procedures of their existing judicial discipline systems and in drafting fair and efficient procedures for enforcement of their ethics codes if they choose to revise their present systems. The Committee is available for consultations regarding your state’s judicial disciplinary system.

Judicial Education

The Discipline Committee’s Judicial Education Project offers educational presentations for the judiciary concerning the role of judges in responding to misconduct of which they become aware. Because judges are in a unique position to observe in-court violations of ethical standards, it is important that the judiciary remain cognizant of extra-judicial measures available for addressing misconduct. Upon the request of any judges’ organization, one or more members of the Discipline Committee will be able to discuss the various approaches that may and should be taken by judges who are confronted with apparent disciplinary violations. A manual published by the Discipline Committee to assist judges in understanding their role in dealing with misconduct is provided to those attending these presentations, which, since 1983, have involved 65 programs around the nation. The State Justice Institute has provided funding for development of a videotape presentation with discussion guide, The Judicial Response to Misconduct, which is also available.

National Lawyer Regulatory Data Bank

Established at the recommendation of the Clark Committee in 1968, the ABA’s National Lawyer Regulatory Data Bank is the only national repository of information concerning public regulatory actions regarding lawyers. Although information concerning sanctions that are matters of public record is theoretically available from each jurisdiction, the difficulty involved in locating and examining individual court records is obvious. By securing the cooperation of disciplinary agencies in forwarding to the Data Bank orders imposing public discipline, the Discipline Committee has been able to offer a valuable service to the profession and the public. A monthly reciprocal discipline report is sent to each state in which a lawyer licensed by that state but residing in another state has been
sanctioned. All states and the District of Columbia, as well as many federal courts and some federal agencies, now provide disciplinary information to the Data Bank.

The Data Bank service can be particularly helpful to state disciplinary authorities and bar admissions agencies in providing a central repository of information to facilitate reciprocal discipline and to help prevent the admission of lawyers who have been disbarred elsewhere. West Publishing Company is making the Data Bank available to bar admissions and disciplinary agencies in your state on a private file on Westlaw. Additional information on this on-line version of the Data Bank for lawyer regulatory agencies in your state is available from Joseph Scott, at West Publishing Company (Telephone: 202/682-4743).

The National Conference on Professional Responsibility

The Discipline Committee, together with the other standing committees of the ABA Center for Professional Responsibility (the Standing Committees on Lawyers’ Responsibility for Client Protection; Ethics and Professional Responsibility; and Professionalism) annually sponsor The National Conference on Professional Responsibility.

Lawyers’ Manual on Professional Conduct

On a bi-weekly basis, the Current Reports of ABA/BNA Lawyers’ Manual on Professional Conduct reports important developments in lawyer discipline, ethics and malpractice cases. The Manual is an indispensable component of every lawyer’s library.

Publications

I look forward to being of service to you and hope that you will feel free to contact me concerning any issues, questions or concerns you perceive in the field of lawyer discipline. More information on any of these services is available by contacting the ABA Regulation Counsel at the Center for Professional Responsibility: Mary Devlin, 312/988-5295.

Sincerely,

[Signature]

Charles A. Powell, III

CAP/jbh
 ISSUE

The Legal Ethics Committee has been asked to provide an advisory opinion with respect to whether the Rules of Professional Conduct permit an Indiana lawyer to sell or purchase a law practice, including its good will.

OPINION

Upon the termination of the practice of law of a sole practitioner, by retirement or by reason of a lawyer's death, the law practice of such lawyer, including its good will, may be sold to another Indiana lawyer, provided that the clients express their consent and their rights are protected fully.

HISTORICAL PERSPECTIVES IN INDIANA

The Indiana Rules of Professional Conduct neither permit nor prohibit the sale of a law practice. Nor has the issue been addressed in any reported decision of the Court of Appeals or Supreme Court of Indiana.

At one time, the earlier Code of Professional Responsibility suggested that the sale of a law practice was prohibited. Ethical Consideration 4-6 of that Code stated that "a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets." However, no canon or disciplinary rule under that code addressed the issue.

With the adoption of the Rules of Professional Conduct in Indiana in 1987, the Ethical Considerations of the format of the earlier Code were abandoned. In 1990, the American Bar Association, with the adoption of Model Rule 1.17, which permits the sale of a lawyer's practice, expressly departed from the earlier Ethical Consideration. Whether the Supreme Court of Indiana has considered the adoption of Model Rule 1.17 is not published information.

DISCUSSION

The earlier prohibition against the sale of the non-physical assets of a law practice seems to have been grounded in the common characterization of the practice of a lawyer as something quite different from the good will of other businesses. A New York ethics committee best stated the perceived distinction:

Clients are not merchandise. Lawyers are not tradesmen. They have nothing to sell except
personal service. An attempt, therefore, to barter in clients would appear to be inconsistent with the best concepts of our professional status.²

Similarly, in a 1961 Opinion of the American Bar Association, the subject was put to rest for nearly 30 years:

The practice of law is not a business which can be bought or sold.³

One modern writer suggests that the early prohibitions were based upon the belief that the sale of a law practice was undignified and excessively commercial, a belief which he argues "contradicts reality."⁴ Professor Kalish points out that lawyers think of their clients as belonging to them, taking these clients from one firm to another as the lawyer moves, and further observes that the good will of a law practice has been recognized by the IRS and in several reported cases of marital dissolution.⁵

Indeed, in 1990, the American Bar Association reversed itself with the adoption of Model Rule 1.17:

A lawyer or a law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;
(b) The practice is sold as an entirety to another lawyer or law firm;
(c) Actual written notice is given to each of the seller’s clients regarding:
   (1) the proposed sale;
   (2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);
   (3) the client’s right to retain other counsel or to take possession of the file; and
   (4) the fact that the client’s consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to
the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

The issue before this Committee then becomes whether the Supreme Court of Indiana, not having adopted Model Rule 1.17, would disapprove the sale of a law practice, provided that the interests of existing clients are fully protected.

As noted above, the sole expression in Indiana against the sale, as recited in the earlier EC 4-6, was abandoned with the adoption of the Rules of Professional Conduct in 1987. Indiana’s present Rules are patterned after the ABA Model Rules.

It is said by the authors of one treatise on ethics that the traditional thinking of 30 years ago can be supported in Indiana’s present Rules only by "negative implication," which has been described as "minimal." They argue that the best case in support of a prohibition against sale of a law practice is found in Rule 1.5(e), which forbids the division of a fee if disproportionate to the legal work performed ("the sale of a law practice . . . is simply fee splitting by another name"), but concede that the rule against fee splitting has been relaxed in recent years. The authors dismiss the fee splitting prohibition as unimportant, and contradictory of "economic reality" compared to the real dangers to the client’s rights, which could be jeopardized in the sale of a practice. They then conclude that the client-protection restrictions of Model Rule 1.17 are adequate to provide such protection. The earlier arguments that the sale of a law practice offends the dignity of the profession seem to have withered.

Since one of the overriding purposes of the Rules of Professional Conduct is to protect the client, and such protection of the client is afforded in a given sales agreement, it follows that such sale is ethically permissible, provided all other ethical rules are followed.

CONCLUSION

Although the Supreme Court of Indiana has not adopted Model Rule 1.17 (and may not even have considered it), there appears to be no ethical prohibition against the sale of a law practice upon the retirement or death of the lawyer, provided that such matters as the protection of confidences of the client, the informed
consent of the client to the transfer of the legal matter, no increased cost to the client and no diminution in the level or quality of service are guaranteed, and are provided for consistently with the Model Rule.

1. Caveat: This opinion assumes that the Supreme Court of Indiana does not in some fashion reject the provisions of Model Rule 1.17, which was adopted by the American Bar Association in 1990.


4. Kalish, ibid, note 2.

5. Id.

The Legal Ethics Committee of the Indiana State Bar Association (the "Committee") has been requested to provide an advisory opinion with respect to the following hypothetical facts and issues.

**FACTS**

A newspaper purchased certain software which would provide an extensive voicemail system for its advertisers. Under the title of "Info-line," the subscribers to the newspaper are urged to dial a certain telephone number and then select a category on which they wish to receive information. The categories include news, sports, school, weather, and advice on a wide range of areas. Specifically, a series of different options can be selected regarding legal advice including four or five different topics on estate planning, social security, personal injury, and other matters.

If a legal topic is chosen, a voice announces that the topic is sponsored by a particular law firm. A short monologue is presented on the topic. When the topic is done, the listener is invited to dial four more numbers to obtain a free consultation with the law firm which sponsored the topic. If that option is chosen, the listener is directed to the law firm where either an individual answers or, during off-business hours, an answering machine thanks the person for using "Info-line" and asks them to leave their name, address, and telephone number. In deciding who provides advice over "Info-line," the newspaper chooses those businesses that advertise the most in a calendar year.

**ISSUES**

1. Whether "Info-line" constitutes a referral system and, if so, whether it meets the requirements of the Indiana Rules of Professional Conduct (the "Rules").

2. Whether "Info-line" constitutes advertising and solicitation and, if so, whether it meets the requirements of the Rules.
DISCUSSION

As to the first issue raised, Rule 7.3(f) of the Rules provides that "A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communication permitted by Rule 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service falling within the provisions of Rule 7.3(e)."
The Committee is of the opinion that "Info-line" is not a referral service, but rather an advertising medium. The newspaper is not recommending the law firm. The law firm is paying the newspaper for the ability to sponsor a particular legal topic on "Info-line" and then provide possible free consultation. As stated in Rule 7.3(f), a lawyer may pay for public communication permitted by Rule 7.1. Accordingly, the Committee believes that Rules 7.1(a), 7.1(b), and 7.1(e) are applicable to this fact situation.¹

The applicable provisions of Rule 7.1 state:

(a) Subject to the requirements of this rule, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television or through other public communication.

(b) A lawyer shall not, on behalf of himself, his partner or associate or any other lawyer affiliated with him or his firm, use, or participate in the use of, any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

* * *

(e) A lawyer shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for provisional publicity in a news item. An advertisement must be identified as such unless it is apparent from the context that it is an advertisement. A copy or recording of an advertisement shall be approved by the lawyer and shall be kept for six years after its dissemination along with a record of when and where it was used.

¹Please note that if the voicemail announcement did not include an invitation to contact a particular law firm or a particular lawyer with a means to contact such law firm or lawyer directly, the Committee is of the opinion that such announcement would not be subject to Rule 7.1.
According to Rule 7.1, the law firm may advertise its services through the newspaper or through any other public communication ("Info-line") so long as such communication does not contain a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim. Rule 7.1(b) provides examples of permissible areas in which a lawyer may advertise and Rule 7.1(c) provides examples of a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim. The Committee was not provided with enough facts to determine whether this is an issue. Therefore, for purposes of this opinion, it will be assumed that the advertisement complied with the requirements of Rules 7.1(b) and 7.1(c).

However, since the Committee is of the opinion that the usage of "Info-line" constitutes advertising and solicitation, the law firm is required to be in compliance with Rule 7.1(e). "Info-line" is not being used in such a way that the law firm is compensating the newspaper in exchange for professional publicity in a news item, but is being used as an advertisement which must be identified as such unless it is apparent from the context that it is an advertisement. Even then, a recording of the advertisement must be kept by the law firm for six years after its dissemination along with a record of when and where it was used.

So long as the law firm complies with the requirements of Rules 7.1(e), through its use of "Info-line" the law firm would be complying with Rule 6.1 of the Rules which provides:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal provision, and by financial support for organizations that provide legal services to persons of limited means.

**CONCLUSION**

The usage by the law firm of "Info-line" does not constitute the usage of a referral service but rather as advertising and solicitation. Accordingly, it is the opinion of the Committee that so long as:

1. The advertisement does not contain a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim and

2. A recording of the advertisement has been approved by the law firm and is kept by the law firm for six years after its dissemination along with a record of when and where it was used; and
3. The words "Advertising Material" are conspicuously placed both at the beginning and ending of the recorded communication, and

4. A copy of the recording is filed with the Indiana Supreme Court Disciplinary Commission at or prior to its dissemination,

the record would be a permissible form of advertisement and solicitation in compliance with the Rules.