To whom it may concern:

Comment [7] to Proposed Rule 7.1 is new and states: “Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined by Rule 1.0(c), because to do so would be false and misleading.” This Comment is based upon current Rule 7.5(d) which states: “Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.” The new Comment is somewhat more specific, particularly with respect to the presence of a violation. As a policy matter, I have no concern about the substance of the rule. I am concerned that we understand the implications of the old rule and more pointedly the new Comment.

A number of large firms are organized as Swiss vereins. The verein structure is a flexible one and can allow for an association of lawyers that meet the definition of a firm under the ABA Rules. The structure can also consist of a loose association or affiliation in which confidential information is not shared among members and conflicts are not cleared among members. In one recent case, a firm organized as a verein asserted that conflicts were not imputed among its various different offices. See https://www.ipethicslaw.com/the-mega-firm-swiss-verein-law-firm-structure-provides-more-access-to-legal-services-good-and-more-conflicts-of-interest-bad/

The change proposed seems to me to call the question of whether vereins whose web pages and advertising materials at least imply that they are practicing together, in fact, meet the definition of a “firm.” If a verein asserts that conflicts are not imputed among its various members than I would think that that verein may not be a “firm.” I am somewhat agnostic on how to approach this issue generally but do think that the ABA should understand the enforcement consequences of policing vereins structures and the challenges of the proposed rule.

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