An attorney recently posed a question to Bar Counsel regarding whether a client who is an attorney may enter into a lobbying business with a non-lawyer. While this issue was previously examined in Professional Ethics Commission (PEC) Opinion #158, the attorney requested that the opinion be reexamined in light of the now newly adopted Maine Rules of Professional Conduct.

PEC Opinion #158 was based on and discussed M. Bar R. 3.2(a)(2) and 3.2(h). M. Bar R. 3.2(a)(2) prohibited a lawyer from entering into a corporation or professional association with a non-lawyer if any of the activities of the business consist of the practice of law. As of August 2009, M. R. Prof. Conduct 5.4(b) states, "A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law." With the adoption of the Maine Rules of Professional Conduct, there has been no substantive change to the formerly applicable language of M. Bar R. 3.2(a)(2). In addition, former M. Bar R. 3.2(h) sought to distinguish legal services and "law-related services" to define when attorneys can offer such services in a manner considered separate from the offering of legal services. A virtually identical counterpart now exists in M. R. Prof. Conduct 5.7. As the language contained in the Rules on which Opinion #158 is based remains present in the new Rules of Professional Conduct, the opinion is still valid.

An attorney engaging in lobbying activities is obviously still subject to the Maine Rules of Professional Conduct. Allowing that attorney-lobbyist to enter a business enterprise with a non-lawyer would cause that non-lawyer to be intimately associated with activities consisting of the practice of law. Such a business relationship would cause that attorney's conduct to be in violation of M. R. Prof. Conduct 5.4(b). The policy calling for separation of legal services and lobbying is also reflected in ethics opinions issued by other states. See Iowa Opinion 90-41 and South Carolina Opinion 02-18.

In short, given the policy calling for adequate separation of legal and law-related services to avoid client confusion, and the need to distinguish a lawyer lobbyist from a non-lawyer lobbyist, PEC Opinion #158 should still be read as valid under M. R. Prof. Conduct 5.4 and 5.7, both on its face and in reflection of current policy.