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VIA FEDERAL EXPRESS

Hon. Richard M. Berman  
United States District Court  
Southern District of New York  
40 Centre St., Room 706  
New York, NY 10007

Thank you, MR. Weideman,  
August 20, 2005 for forwarding Ms.  
Seifert's Proposed Code of Ethics  
for the Advertising Industry and for  
submitting it so promptly. I will read  
it with great interest and anticipate  
it may generate (valuable) discussion.  
SO ORDERED:  
Date: 9/1/05 Richard M. Berman  
Richard M. Berman, U.S.D.J.

Re: United States v. Seifert, No. 04-CR-003  
Proposed Code of Ethics

Dear Judge Berman:

On July 14, 2005, the Court ordered Shona Seifert, in the above-titled case, to "draft and submit . . . a proposed written code of conduct/ethics for the advertising industry." In compliance with that Order, we have enclosed with this letter a Proposed Code of Ethics for the Advertising Industry ("Code"), which was drafted by Ms. Seifert.

Please let us know if you would like Ms. Seifert to revise the draft Code, discuss its contents with the Court, or do any other further work on this project.

Respectfully Submitted,

Christian A. Weideman

Enclosure

Cc: AUSA Lauren Goldberg

Shona Seifert

August 30, 2005

The Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
40 Centre Street  
Room 706  
New York, NY 10007

Dear Judge Berman,

PROPOSED CODE OF CONDUCT FOR THE ADVERTISING INDUSTRY

At my sentencing hearing on July 14, 2005 you asked me to write a code of conduct for the advertising industry. I am enclosing the proposed code for your consideration.

The recommendations are based on my own experiences in the advertising business, discussions with many employees at a number of advertising agencies, and the research I did on best practices in other companies, industries, and countries.

This code of ethics was written for employees of the advertising industry. I have tried to be as specific and telegraphic as possible to get their attention. I hope that the language and tonality will be effective in reaching and persuading the audience.

Thank you, your honor, for giving me the opportunity to share what I have learned. I very much hope that it will be a catalyst for higher standards in the industry.

Sincerely,

Shona Seifert

Cc: Gregory Craig - Williams & Connolly  
Chris Weideman - Williams & Connolly

**PROPOSED CODE OF ETHICS FOR THE  
ADVERTISING INDUSTRY**

By Shona Seifert

August 29, 2005

### To Frontliners Everywhere –

None of us ever plans to be thrown under a bus. But it happens.

Sometimes it's because of something we said or did. Sometimes it's not.

Either way it's painful. And it comes as a surprise.

If you are a frontliner you are more likely to find yourself in the line of fire.  
And it may be better for others that you take a bullet.

Standing up for what you think is right takes courage. Don't compromise your  
own values to achieve someone else's goals.

## Contents

1. What is a code of ethics?
2. Why should this matter to you?
3. Living the ethics
4. Proposed code of ethics
5. Grey areas

1. What is a code of ethics?

A code of ethics is a system of moral principles that help us determine right from wrong in an industry that has historically placed a higher value on creativity and ideas than process.

Each of us faces ethical dilemmas and each of us makes choices. Ethics can't be imposed upon the advertising industry. They need to be understood and internalized by all of us.

Equally we have an obligation to understand and follow our clients' codes of conduct. This often requires us to navigate our way through grey areas and potential conflicts of interest.

The advertising industry faces some unique ethics challenges, different from those in other industries. If helping your client succeed could actually result in harm to the consumer, what is the right thing to do?

This code of ethics is a set of principles to help protect people working in the advertising industry.

It is not a legal framework or a policy book. It is a frontliner's guide to doing the right thing in what are often very difficult situations.

2. Why should a code of ethics matter to you?

Our biggest risk is boring work

The advertising industry places a higher value on big ideas than we do on process

The processes for accurately recording time and costs are unpopular at most advertising agencies. We feel more pressure to do other work that we perceive to be more valuable to our clients.

However accurately we capture our time and costs, it isn't going to build a brand or help create famous advertising. So timekeeping and cost controls tend to be delegated and managers focus on "bigger issues."

Until the timekeeping and the cost controls are a "bigger issue." By that point the issue may not be seen as a collective issue, it may be your issue.

The world has changed.

Practices that were once seen as sloppy, part of doing business in a creative industry, or even the norm, are now under scrutiny by clients, by consultants, by investors, and by the Government.

Boring work has never resulted in a prison sentence. Poor timekeeping practices have.

### Our ethics are in the HR manual

Most advertising agency holding companies publish their ethics in the form of values statements on their websites. Many agencies include statements of ethics in the HR materials given to new employees.

Only a handful of employees subsequently refer to these statements.

Instead, most employees look to what is being practiced within the agency. This is the norm.

The agency's values are communicated everyday through what people spend their time on, what they pay attention to, how success is measured and what people do in a crisis situation.

### Profits versus People

Now more than ever advertising agencies are challenged by short-term financial pressures.

Much more time is spent managing the numbers than managing people. What signal does that send to employees?

Without leaders championing the values, ambiguity is created. Departmental silos are formed, with their own leaders and practices. When problems occur or mistakes are made, finger pointing begins.

Everyday there is a risk that short-term pressures will compromise ethics.

**"We must rely on the integrity of our people as our first defense."  
(Jack Welch)**

The frontline people in the advertising industry are fearful. The frontline is often the firing line.



Proper procedures may be abandoned in an effort to meet a deadline or a budget or the demands of a client. But when it's time to hold someone responsible, it's typically the frontline.

Even the best bosses are somewhat out of touch with the frontline reality. It is the reason consultants go to the frontline for the straight scoop on any issue.

It is true that senior management relies on the frontline as its first defense.

It is also true that if you are a frontliner you may be relied upon to assume a position in the line of fire. That's in front of those who are not frontliners.

### **It's not our problem, it's your problem**

When it comes to negotiating costs and carrying out financial systems, many clients are more skilled than their advertising agencies.

Clients have created procurement departments to save money. Procurement has played a role in the emergence of a multitude of agency compensation methods. Some are so complex they must be administered by third parties because neither the client nor the agency has the expertise themselves.

Every compensation agreement needs to be fair to the client for the services delivered and fair to the agency for the cost of those services.

The commission system was simple to operate but it became synonymous with agencies making an unfair profit if the client's media budget increased faster than the scope of work.

The original principle behind agency fees was that clients would only pay for what they got.

Today's compensation methods assume that the client has accurately estimated the volume of the work for the agency and the resources required. This is not always the case.

And an even larger grey area is "added value" - those things the client expects to receive from the agency at a discounted cost or for no cost at all.

**Ready! Fire! Aim!**

The advertising business is intensely competitive and agencies sometimes court clients they are not properly prepared to do business with.

The quantification of the agency's credentials may take precedence over the agency's qualifications.

And in everyone's enthusiasm to start work together, we presume we know what the other party wants. There can only be shared accountability when there are problems if there are shared expectations at the outset of the relationship.

Agencies need clarity on the deliverables, and the support and involvement of their clients.

Some clients focus their agencies almost entirely on outcomes (results), while others care greatly about the agency's ability to comply with client processes and systems.

It is critical to know how success will be measured before work begins.

"It wasn't raining when Noah built the ark." (Howard Ruff)

### **When the client is the government**

**"There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the government."  
(Benjamin Franklin)**

**Government contracting creates some of the biggest opportunities for the misalignment of expectations, cultures, and processes.**

**These contracts require an intense focus on process. Government policies and practices are extremely complex and advertising agencies often have difficulty adhering to them.**

**Some government agencies provide compliance training for their agency partners at the beginning of a new contract. Most do not.**

**Inevitably mistakes are made and problems arise.**

**Even in the most demanding private sector client relationships there is usually an acknowledgement that agencies and their clients need to partner to solve problems.**

**The consequences of non-compliance with government regulations can include legal action against individuals regardless of the government's role in the agency's non-compliance.**

**Be prepared. Don't take a government contract if your agency is not well versed in all of the regulations.**

**The hardest part of having an ethics code isn't deciding what the ethics should be, it's living them.**

**Yes.**

3. Living the ethics

Ethical issues come up everyday and nobody is going to look for their HR manual whenever they face an ethical dilemma.

Ethics need to be internalized, not imposed.

The United States Marine Corps has a very simple ethics code, which is reinforced everyday through practice and training. "Integrity is variable and tends to degrade overtime if not reinforced." (Admiral Arleigh Burke)

The ethics of Johnson & Johnson are contained in a credo that is displayed in every J&J office. Every employee knows the credo word for word.

In 1987, General Electric circulated an 80-page booklet to every employee entitled: "Integrity: The Spirit and the Letter of Our Commitment." In 1989, the Government charged GE employees with having falsified timecards in ways that led to overcharging on a government contract. The issue was raised again by the Defense Department in 1990.

The integrity of any company is not greater than the lowest common denominator.

GE recognized that a small set of guiding principles ("the GE Values Card") would be more effective than a lengthy book.

GE reinforced the importance of living the values by evaluating every employee on his or her ability to meet the numbers and live the values.

No written policy can be a substitute for thoughtful behavior. Regardless of what others may say or do, each individual is responsible for his or her own compliance with the company's ethics.

This code of ethics is proposed as a guide to what is honest and fair from both an individual and a company perspective.

When you come to work, don't leave your values at home.

#### 4. Proposed Code of Ethics

##### (i) **SPEAK UP**

"Don't compromise yourself, honey. You're all you've got." (Janis Joplin)

If you believe something is wrong, you have a responsibility to say so, regardless of your position in the company or the industry.

Don't duck the difficult issues. Don't hide the truth. Discuss the issue with your colleagues and bring it to the attention of management.

Some examples:

- ◇ Moving costs between jobs is bad business practice. And it's wrong.
- ◇ To witness sexual misconduct and do nothing about it is wrong.

##### (ii) **STAY TRUE TO YOUR VALUES**

"Anyone can get angry. That is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way – that is not easy." (Aristotle)

It takes courage to stand up against something you believe is wrong.

Be brave.

Clients, suppliers, consumers, and investors place their trust in the advertising industry. We need to earn that trust, everyday.

"Everyone does it" is not an excuse to behave unethically. Ask yourself if what you are about to do is consistent with your sense of right and wrong.

There is no place for situational ethics.

Some examples:

- ◇ Asking a supplier to conceal an error to protect yourself is wrong.
- ◇ Telling a client you only use in-house production facilities, then sending the work out, is wrong.
- ◇ Preparing or signing sloppy paperwork, which misleads others, is unacceptable.

**(iii) THINK BEFORE YOU ACT**

"The school of hard knocks is an accelerated curriculum."  
(Menander)

The advertising industry works at a frenetic pace and agencies are subjected to multiple pressures everyday.

Don't be an order taker. Accepting instruction blindly can cost you dearly. Whether the "brief" comes from the client, a colleague, your boss, or the CEO.

If you are uncomfortable, ask questions. Then make an informed decision. Don't let anyone pressure you into behavior you would not want to be held responsible for.

Some examples:

- ◇ Passing on an unreasonable request or unethical client demand to a colleague is wrong. Don't be afraid to tell the client their demand is unfair.
- ◇ Develop an open relationship with the client so that you can deal with problems before they escalate. Be ready for what you can't anticipate.
- ◇ Signing paperwork you have not checked because you want to spend time on other work is not right.

Assume your signature means you have taken responsibility for that paperwork.

(iv) **DON'T STRETCH THE TRUTH**

Doctors can bury their mistakes. It's different in the advertising industry.

Creating work that contains messages that are "technically" correct because they take advantage of a legal loophole is not good business practice.

Stretching the truth to the point that the message is misleading is a breach of trust with the consumer.

It may be easier to find a loophole than to write advertising based upon all of the facts, but the advertising industry is paid for its ability to create compelling messaging.

Don't look for loopholes. Write what's true.

(v) **BE YOUR CLIENT'S ADVOCATE**

"Your media buy should include the Superbowl." Really?  
The advice we give to clients must be what is in the client's best interest. This is not always the same as the agency's best interest.

Some examples:

- ◇ Recommending a creative idea or campaign your client cannot afford may be the right thing to do. Hiding the cost isn't.
- ◇ Hiding problems from clients rarely solves them. Tell the client what he or she needs to know. Let her make an informed decision.
- ◇ If you promise the client that specific individuals will work on his business, honor the promise.

- ◇ Your client's confidential information should be respected. Protect it.

(vi) **RESPECT YOUR COLLEAGUE, YOUR CONSUMER, AND YOUR COMPETITOR**

"Some guy hit my fender and I said to him: be fruitful and multiply. But not in those words." (Woody Allen)

Managers have a special responsibility to encourage ethical behavior and set the example for others.

Do what you say you will. Be fair.

And never leave the bridge in a storm.

Some examples:

- ◇ When a problem occurs, discuss it openly and candidly. Don't run for cover, especially if you are the manager responsible.
- ◇ If the agency's costs run over budget or work is overdue, don't penalize your supplier. Let your business partners deliver their best work and pay what you said you would.
- ◇ Compete fairly: be honest in passing comment on your competitors and do not represent their work as your own.
- ◇ Think before you air work that contains messages likely to cause offense to certain segments of the population. It is wrong to discriminate against people different from you.

(vii) **DON'T BREAK THE LAW**

Think beyond what may be lawful and ask yourself: "is this morally correct?"

If the answer is no (or probably no), don't do it. Be your own judge.



Some examples:

- ◇ Accurate recording and reporting of information in the company books isn't optional, it's mandatory.
- ◇ Taking advantage of insider information isn't acceptable. Ever.

If you are unsure whether something is lawful, ask.

Never assume.

5. Grey areas

Ethical choices aren't always black or white. There are many shades of grey.

"Listen, there is no courage or any extra courage that I know of to find out the right thing to do. Now it is not only necessary to do the right thing, but to do it in the right way and the only problem you have is what is the right thing to do and what is the right way to do it. That is the problem." (Dwight David Eisenhower)

Social and ethical standards evolve and what was considered appropriate at one time may become wholly inappropriate, if not illegal.

"Children of the poor should work for some part of the day when they reach the age of three." (John Locke, 1632-1704)

The advertising industry faces new ethical dilemmas all the time:

- ◇ Are there products that, while lawful, should not be marketed to certain segments of the population? Or perhaps not be marketed at all?
- ◇ Is a client knowingly excluding certain potential risks from his advertising message? Are these risks the consumer needs to know about?

New laws may be introduced to regulate the advertising industry. Self-regulation is always better than external imposition of rules.

Use your judgment and good sense. Let your conscience guide you.

If you are uncomfortable go back to point (i) in the proposed code of ethics: "Speak Up".

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