

THE PHILADELPHIA BAR ASSOCIATION
PROFESSIONAL GUIDANCE COMMITTEE
Opinion 2007-7
(July 2007)

The inquirer presents various questions concerning the content of a proposed website. In conjunction with this inquiry, the inquirer provided a sample resume and summarized his professional background, which includes:

- The inquirer has been a lawyer for 35 years;
- The inquirer has litigated “landmark cases in Pennsylvania and nationally and argued such cases five times before the Supreme Court of the United States;”
- The inquirer has served in various court-appointed positions roles, including serving as a guardian *ad litem* in various litigation; and,
- The inquirer has been published in various law reviews and quoted by the lay press, etc.

The inquirer has also advised the Committee that he is “prepar[ing] to return to practice from a year and a day suspension ordered by the [Pennsylvania Supreme] Court 19 months ago” and that “The Hearing Committee recommended reinstatement recently; reinstatement is not opposed by Disciplinary Counsel.” The inquirer states that this “lapse” “was the only time in 35 years that there has been any blemish or question regarding my professional activities.”

The inquirer raises the following questions:

- 1) Is a professional resume, which is available through a link on a lawyer’s website, or provided by a lawyer to clients or potential clients (and not published or used in advertisements) considered an “advertisement or public communication” under Rule 7.2(d)?
- 2) If such a resume is covered by Rule 7.2(d), then is it considered a forbidden “endorsement” by a “public figure” if [it] quotes from a “to whom it may concern” reference letter from a federal judge stating factually, and positively, what the lawyer did as special master for that judge?
- 3) If such a resume is covered by Rule 7.2(d), then is it considered a forbidden “endorsement” by a “public figure” for the resume to accurately quote from public docketed court orders stating that the lawyer, as special master, is “a skilled judicial adjunct who has served the Court with balance and with fairness to the parties,” and that the lawyer as master “effectively rendered a great public service” in a case?
- 4) If a lawyer’s website’s pages are covered by Rule 7.2(d) as an “advertisement or public communication,” then is it considered a forbidden “endorsement” by a

“public figure” [if] the website quotes from, or references, either the recommendation letter or docketed court orders identified above?

- 5) Does any other Rule forbid or limit accurate references or quotations when used in a resume or on a website?

The answer to each of the inquirer’s questions is a qualified “Yes.” It may be permissible to include some of the materials described above, however, but the information must also be presented accurately, with appropriate disclosures and/or disclaimers.

The inquiry is governed by Pennsylvania Rules of Professional Conduct (the “Rules”) 7.1 (“Communications Concerning a Lawyer’s Services”) and 7.2 (“Advertising”). Rule 7.1 states:

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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

Several Comments to Rule 7.1 provides additional guidance:

[1] This Rule governs all communications about a lawyer’s services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer’s services, statements about them should be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case. Similarly, an unsubstantiated comparison of the lawyer’s services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule of Professional Conduct 7.2 states, in relevant part:

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through written, recorded or electronic communications, including public media, not within the purview of Rule 7.3.

(d) No advertisement or public communication shall contain an endorsement by a celebrity or public figure.

The following Comments to Rule 7.2 provide additional guidance:

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many

sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by the Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Endorsements

[7] Paragraphs (d) and (e) require truthfulness in any advertising in which an endorsement of a lawyer or law firm is made. The prohibition against endorsement by celebrity or public figure is consistent with the purpose of Rule 7.1 to avoid the creation of an unjustified expectation of a particular legal result on the part of a prospective client.

Initially, the Committee notes that all lawyer advertising is subject to the constraints found in Rule 7.1.

In addition, it is the Committee's opinion that a website and a resume contained therein are both forms of "advertising" under the Rules of Professional Conduct. However, there is generally a distinction between the two. A resume is generally either a compilation of a lawyer's professional background or a summary highlighting certain aspects of the attorney's experience. A resume must, therefore, be truthful and contain all relevant information, particularly when used as a method of seeking clients. The information regarding the inquirer's suspension is relevant to this inquiry. The inquirer's resume should accurately reflect his professional history and should not, for example, state or imply that he has been licensed continuously in Pennsylvania since first passing the Bar. Similarly, if the inquirer includes a resume or other similar outline of his professional background on his website, the resume must be accurate and not imply or otherwise create a false impression that he has been licensed to practice continuously for 35 years. The Committee acknowledges that it is difficult to determine how or if the inquirer must describe his professional background, but notes that any statements, resumes, etc. created by and used by the inquirer must be accurate and not create any false impressions or expectations.

A website is also a form of "advertising" and is subject to all applicable Rules of Professional Conduct. As recognized in the Rules, the Internet and other electronic means have become one of the preferred methods by which lawyers and other businesses seek new clients. Consequently, a website – the most basic element of electronic advertising – falls within the ambit of Rules 7.1 and 7.2. Other states such as New York and Florida have already drafted more specific Rules of Professional Conduct governing online advertising. Although those rules do not apply here – unless the

inquirer is licensed in and/or solicits clients from those states – the Rules demonstrate that Courts acknowledge that a website and its contents are advertising.

Thus, the Committee answers the inquirer's questions as follows:

1) A resume, whether posted on a website or provided to a client or potential client is an advertisement.

2) A resume that contains a reference letter from a federal judge constitutes an impermissible endorsement by a public figure in violation of Rule 7.2(d). The apparent purpose of such a quotation is to indicate to clients and potential clients that a judge has approved the lawyer's conduct in a particular matter, implying that the lawyer is either familiar with the judge and will be able to achieve a more favorable result than another lawyer, (a violation of Rule 8.4(e) as noted in Comment 4 to Rule 7.2) or that the lawyer is superior to other attorneys because of his prior history with a particular judge. The Committee also finds that use of the judge's statement violates Rule 7.1. The statement, in addition to being an endorsement, references the inquirer's conduct as a special master rather than as an advocate. The inquirer's website is geared at least in part towards obtaining clients in the inquirer's role as an advocate. Thus, the statement, although true is misleading in the context of the inquirer's website.

3-4) The Committee finds that the same rationale as noted above also applies to quotations in a resume or website from publicly docketed court orders concerning the attorney's skill, effectiveness, etc. and thus also constitute an impermissible endorsement by a public figure in violation of Rule 7.2(d).

5) In response to the inquirer's last question, in addition to the Committee's response above to questions 3 and 4, the Committee wants to point out that although it is not possible to consider every possible scenario, the Rules clearly contemplate that all advertisements must be evaluated in their proper context. Thus, for example, selective quotations may not comply with the Rules whereas a list of all cases in which the attorney served in a particular role may comport with the Rules. **The inquirer is cautioned to evaluate all advertising both in the context in which it is presented as well as the context in which it will be viewed by clients and potential clients.**

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.