

AO 1983-4/6

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Newspaper Advertising

October 11, 1983

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1983-4/6
April 6, 1983

QUESTION:

The Committee has received a request for an opinion concerning the propriety, under the New Hampshire Code of Professional Responsibility, of a series of ten personal injury newspaper ads prepared and sold by _____ of _____, which will be run in one or more local newspapers on a weekly basis with the firm's name, address and telephone number inserted below the tag line "Ask a lawyer" in each advertisement.

RESPONSE:

Publicity and advertising by attorneys is governed principally by the provisions of DR 2-101 of the Disciplinary Rules under the New Hampshire Code of Professional Responsibility. This rule was published in its entirety in 10 N.H. Law Weekly 131 on September 7, 1983 for the guidance of attorneys engaging in publicity and advertising. DR 2-101 (B) provides that a "lawyer shall not on behalf of himself, his partner or associate or any other lawyer associated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim." Paragraph (C) of the rule goes on to list eleven specific factors which per se are deemed to be false, fraudulent, misleading or deceptive for purposes of this rule.

It is the opinion of the Committee that none of the advertisements submitted to the Committee for review as part of this inquiry contain statements or claims which are false, fraudulent, misleading or deceptive, either in general or in the context of the specific matters addressed in DR 2-101 (C). It should be noted, however, that DR 2-101 (C) (10) proscribes any statement of claim which "is intended or is likely to attract clients by use of showmanship, puffery or hucksterism, including the use of slogans, jingles or garish or sensational language or format."

While the Committee does not feel that the general layout of the advertisements submitted (including the use of artwork, oversized and bold-faced type and the tag line "Ask a lawyer") would be impermissible within the meaning of this provision, due care should be exercised in this regard with respect to similar advertisements in the future. Judgments in this area are necessarily highly subjective, and advertising techniques which this Committee finds to be unobjectionable under the standards set forth in the Disciplinary Rules might be viewed to the contrary by others. In this context, the Committee reminds the inquiring attorney that the determination of this Committee is not binding on any other committee or disciplinary body to which members of the New Hampshire Bar Association are subject.

DR 2-101 (D) contains certain restrictions concerning advertisements by a lawyer regarding fees. Only one of the ads submitted for review deals specifically with this issue. Provided the statements made in that advertisement, concerning free evaluation of claims and contingent fee arrangements, are correct, the Committee does not find this advertisement to be objectionable.

Attention is drawn to the provisions of DR 2-101(E) which provides that “a paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.” It is the opinion of the Committee that the advertisements submitted, with the addition of the firm’s name, address and telephone number, are clearly paid advertisements, and specific identification as such is required.

As indicated above, the Committee’s review is limited to the specific advertisements submitted with this inquiry, and its opinion concerning the propriety of the same is advisory only and is not binding on any other body. It is important to note that a petition is currently pending before the New Hampshire Supreme Court making certain changes to the current New Hampshire Code of Professional Responsibility, for the purpose of bringing the same conformity with the 1980 version of the ABA Model Code; however, the Committee’s opinion concerning the propriety of the advertisements submitted under DR 2-101 would not be affected if these changes are adopted. Further, on August 16, 1983 the American Bar Association at its annual meeting adopted new Model Rules of Professional Conduct, which are intended to replace the Model Code of Professional Responsibility. While the new Model Rules have not been submitted to the New Hampshire Supreme Court for adoption in New Hampshire, nor are the same under consideration, the matter of attorney advertising is dealt with in Rule 7.1 and 7.2 of the new Model Rules. While the provisions of the new rules are substantially similar to those of DR 2-101 of the present Code, the Committee at this time can make no comment as to whether the proposed advertisements submitted would be acceptable under these rules, if the same were ever adopted in New Hampshire.