

ethics Committee Reports

Ethical Rules on Attorney Advertising

The New Hampshire Bar Association Ethics Committee has received numerous inquiries in recent months relative to various uses of attorney advertising. Under the Committee's Rules of Procedure, it will not render an opinion relative to "past conduct," including previously published legal advertisements. Because of the importance of compliance by the members of the Bar with rules on legal advertising, the Committee is publishing the following excerpt of the provisions of the New Hampshire Code of Professional Responsibility relative to attorney advertising. Any member of the Bar who observes a breach of these provisions of the Code of Professional Responsibility by a member of the Bar should forward his/her complaint with respect to such breach to the New Hampshire Supreme Court Committee on Professional Conduct.

Disciplinary Rules

1. 2-101 Publicity and Advertising

A) No lawyer may conduct in-person solicitation of clients through personal contact, mail, or otherwise.

A lawyer shall not on behalf of himself, his partner, or associate, or any other lawyer affiliated with him or his firm, or participate in the use of any form of written communication containing a false, fraudulent, misleading, or deceptive statement or claim.

2) Without limitation a false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which:

- (1) Contains a material misrepresentation of fact;
- (2) Omits to state any material fact necessary to make the statement, in light of all circumstances, not misleading;
- (3) Is intended or is likely to create an unjustified expectation;
- (4) States or implies that a lawyer is

a certified or recognized specialist;

(5) Is intended or is likely to convey the impression that the lawyer is in a position to influence improperly any court, tribunal or other public body or official;

(6) Contains statistical data or other information based on past performance or prediction of future success;

(7) Contains a testimonial about or endorsement of a lawyer;

(8) Contains a statement of opinion as to the quality of the services or contains a representation or implication regarding the quality of legal services which is not susceptible of reasonable verification by the public;

(9) Appeals primarily to a layperson's fear, greed, desire for revenge, or similar emotion; or

(10) 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;

(11) Indicates that the attorney is a justice of any court.

(D) A lawyer may not advertise regarding fees other than:

1. A statement of the fee for an initial consultation.

2. A statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;

3. A statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;

4. A statement of specified hourly rates, provided the statement makes clear that the total charge will vary

according to the number of hours devoted to the matter;

5. The availability of credit arrangements; and

6. A statement of the fees charged by a qualified legal assistance organization in which he participates for specific legal services the description of which would not be misunderstood or be deceptive.

(E) A lawyer shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item. A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement. If the paid advertisement is communicated to the public by use of electronic media, it shall be prerecorded, approved for broadcast by the lawyer, and a recording of the actual transmission shall be retained by the lawyer for a period of one year.

(F) A lawyer may represent that he practices or prefers to practice in a particular field or that he does not practice or prefers not to practice in a particular field. Firms may also advertise such preferences or limitations.

The following statements of practice or non-practice are acceptable:

- a. A listing of fields of practice without additional descriptive language (e.g., "Real Estate; Probate; Commercial; General Practice");
- b. "engaged in the practice of _____";
- c. "_____, _____, _____ and other areas of general practice";
- d. "general practice, except _____";
- e. "No _____ cases accepted."

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DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the im-

mediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of

succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.

(6) A listing in a reputable law list, legal directory, or a directory published by a state, county or local bar association giving brief biographical and other informative data. A law list or any directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list or any directory is conclusively established

to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law, or a statement that the lawyer or law firm specializes in a particular field of law or law practice, to the extent permitted by the authority having jurisdiction under New Hampshire law over the subject and in accordance with rules prescribed by that authority; date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with the dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships, legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented; whether credit cards or other credit arrangements are accepted; office and other hours of availability; and a statement that fees will be discussed at the initial conference; provided, all such

published data shall be disseminated only to the extent and in such format and language uniformly applicable to all lawyers, as prescribed by the authority having jurisdiction under New Hampshire law over the subject.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other

permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2-105 Limitation of Practice

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2-102(A)(6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proc-

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tor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of

other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.