

Synopsis:

The email address “advancingjustice.com” and the media ad phrase “we will fight for your rights – advancing justice one case at a time” are communications governed by Rule 7.1. While there is a “potential” for such communications to mislead the public regarding results a law firm can achieve, without more, the Committee is not prepared to say such communications violate Rule 7.1.

Facts:

A law firm engaged exclusively in representing claimants in personal-injury and workers’ compensation cases proposes to use the email address “advancingjustice.com” as a “tie-in” to the proposed name change of a certain national association of trial lawyers. The firm also wishes to begin using the phrase, “We will fight for your rights – advancing justice one case at a time,” in its media ads.

Discussion:

In Rule 7.2(a) the use of electronic media in advertising is expressly made subject to the general prohibitions contained in Rule 7.1 relating to misleading communications about a lawyer or a lawyer’s services. Likewise Rule 7.5 prohibits firm “professional designations” which are potentially misleading under Rule 7.1.

Rule 7.1 provides as follows:

Rule 7.1 Communications Concerning a Lawyer’s Services

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:

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

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.

Nothing in paragraph (c) of the Rule specifically prohibits communications which are unverifiable and self-laudatory so long as they do not create a direct or obvious comparison

between the lawyer's services and the services of other lawyers. In a recent memorandum opinion, the Vermont Supreme Court held that, "[d]irect claims of expertise that are not truthful and factually verifiable...may be prohibited or restricted as unduly misleading." [citations omitted] In Re PRB Docket No. 2002.093, 177 Vt. 629, 632 (2005) (relating to yellow page advertisements identifying firm as "injury experts" and stating "we are the experts in" followed by a list of certain areas of law). The Committee feels that the communications involved in this case, however, simply do not so clearly result in a violation of paragraph (c) of the Rule.

Notwithstanding the foregoing, the Committee does recognize that use of the phrase "advancing justice" in both instances of communication present in this case has the potential to be misleading. It seems axiomatic that a client feels justice is advanced only if s/he wins. Therefore, in the client's mind, a personal injury law firm that "advances justice" wins its cases for its clients as claimants. On the other hand, it is possible that the communications in this case are subtle enough to avoid violation of paragraph (b) which appears to place emphasis on what is "likely" to occur by way of client expectations. Simply put, without more, the Committee is not prepared to say these communications violate paragraph (b) of the Rule.

The opinions of this Committee are advisory only and it bears mentioning that proceeding on the basis of this opinion is not without risk. The range of decisions under the Rule is wide and the considerations are many.

To review the nature and extent of the various considerations involved, the requesting attorney would be well advised to review In Re PRB Docket No. 2002.093, Id., and cases and materials cited therein, as well as the original and amended decisions of the Professional Responsibility Board in that case. From this review the requesting attorney will see that there is some authority that the mere potential to deceive or mislead the public may be sufficient to constitute a violation of the Rule.

Also, there is some support for finding that "unverifiable self-laudatory statements" constitute a type of "comparison" that is prohibited by the Rule. (See ABA Center for Professional Responsibility, Annotated Model Rules of Professional Conduct (Fifth Ed.) at 534 for a good annotation of communications held to violate the Rule and others found not misleading.) Some of these cases finding violations were even cited by the Vermont Supreme Court in In Re PRB Docket No. 2002.093, Id at 632 (violations found in web site where attorney claims to be "passionate and aggressive advocate" and in yellow pages ad for lawyer claiming "We Do It Well"). Arguably, however, there are sufficient jurisdictional differences in rules to distinguish those cases.

Finally, as testimony to the difficulty of analysis in closer cases, the commentary under Model Rule 7.1 as set forth in the 2002 Amendments states that paragraphs (b) and (c) of the Rule, "were criticized as being overly broad, and were therefore moved to the Comment as examples of statements that are likely to be misleading." This change has not yet been adopted by Vermont.