

Lawyer Advertising Opinion No. A-0117

Online Attorney Directory Listing

Question Presented:

May an attorney be listed in an online legal services directory without violating the lawyer advertising rules (Virginia Rules of Professional Conduct, Rules 7.1-7.5).

Short Answer:

Yes, if it is in fact a legal services directory and not a lawyer referral service.

Facts:

A lawyer desires to apply for a listing on an online (Internet) lawyers' directory ("Directory"). An attorney may request a listing in the Directory by completing and submitting a general information form obtained online or from the publisher. Upon submission of the form, the publisher will send the attorney an application. Upon receipt of the application and fee, and following determination by the publisher that the criteria referred to in this letter are met, the publisher will list the attorney in the Directory.

A consumer will access the Directory via the website or 24-hour telephone service. The consumer will have the option to enter either a zip code and/or a practice area to locate an attorney. The attorneys that are identified in the search will appear on the computer screen or be identified over the telephone in random order. The consumer chooses which attorney he or she wishes to contact without any assistance from the publisher. Customer service is available for the limited purpose of assistance with the technical aspects of using the Directory or to provide additional information related to the Directory. The publisher will not provide qualitative information about the attorneys listed in the Directory, answer legal questions, make recommendations or give legal or other advice.

The attorneys listed in the Directory must:

- A. Have at least 3 years of legal experience;
- B. List only their current areas of practice;
- C. Be admitted to the Bar/Supreme Court of the state in which they are practicing, and remain in good standing in all Bar/Courts to which they are admitted throughout the period of time during which they are listed in the Directory (the initial application and annual renewal forms to be completed and submitted by attorneys who wish to be listed or continue to be listed in the Directory will include a question regarding disciplinary actions currently pending against the attorney to ensure compliance with this feature);
- D. Carry and on an annual basis provide proof of minimum levels of malpractice insurance (\$100,000/claim, \$300,000 aggregate);

- E. Provide each client who identifies the attorneys through use of the Directory with a written fee agreement before beginning any legal work for the client;
- F. Be independent practitioners and not employed by the publisher or any of its affiliates;
- G. Only identify the locations from which they will perform the work;
- H. Be responsible for the content of his or her listing in the Directory;
- I. Exercise independent professional judgment in rendering legal services to any client who selects the attorney through his or her use of the Directory; and
- J. Not charge more for legal services provided to clients who are users of the Directory than would be charged to other clients who are not users of the Directory.

In addition to the description of the Directory as discussed above, the Directory shall have the following characteristics:

1. Users of the Directory will not pay any fee to the publisher for such use;
2. The Directory will not be interactive, no information about a user's legal issues will be sought or obtained by the publisher, the publisher will not engage in any solicitation of prospective clients, and users of the Directory will be solely responsible for selecting which attorney to engage;
3. As stated above, users will be able to search for listed attorneys by geographic location and/or area of practice, although all attorneys that are identified in response to a search will be listed in random order and the random order will be different for each new search;
4. If consumers are unable to utilize the Directory online, a toll-free telephone number will be available for customer service assistance (again, attorneys identified in any search will be randomly selected);
5. Attorneys who are listed in the Directory will pay a fixed annual listing fee. The publisher and listed attorneys will not share any legal fees earned by the listed attorney;
6. Neither the publisher nor its affiliates will endorse or recommend any listed attorney, and inclusion in the Directory does not constitute an endorsement or recommendation by the publisher or its affiliates;
7. The publisher will respond to and investigate complaints about attorneys by users of the Directory and will track the outcomes of such investigations;

8. The publisher will utilize its annual credentialing standards to validate licenses and each attorney's standing in the states in which he or she is licensed;
9. Attorneys listed in the Directory will not be prohibited from participating in any other form of advertising, lawyer directory, legal services plan or referral service, and the Directory will be completely independent from any other of the publisher's legal plans offered today;
10. The Directory will include only the attorney's name, address, contact information, the languages the attorney speaks fluently and area(s) of practice (with appropriate disclaimers, as necessary);
11. In accordance with Rule 7.1(a)(3) of the Rules regulating the Virginia Bar ("Rules"), at no time will the publisher compare listed attorneys against one another or against attorneys who are not listed in the Directory;
12. The publisher will not review or verify any part of the information to be included in the attorney listings;
13. Attorneys listed in the Directory will be granted non-exclusive, restricted and conditional licenses to use the publisher's logos to describe the Directory in which they are listed, but may not use such logos for any other reason. In no event will the right extend to using the logos as an endorsement of the attorneys by the publisher or any of its affiliates;
14. The publisher will not evaluate or confirm whether Directory attorneys are in good financial standing, discriminate against potential clients, or provide a certain amount of pro bono services per year;
15. The publisher also will not be responsible for determining whether a Directory attorney is qualified to handle a particular case;
16. The publisher will retain the right to remove any attorneys from the Directory, with or without cause, although attorneys who are suspended or disbarred by a State Bar Association will be immediately removed; and
17. If an attorney does not comply with the publisher's annual credentialing request for malpractice insurance updates, the publisher will remove him or her from the Directory.

The publisher also will recommend, and in some cases require, that all Directory attorneys provide (for at least one year before the amounts may be revised) the following services to members of not-for-profit organizations that provide the Directory as a benefit to their members:

- 30 minute free consultation in person or by telephone;

- Simple will for a single person at a cost of \$75;
- Simple wills for a married couple at a cost of \$100;
- Financial Power of Attorney at a cost of \$35;
- Healthcare Power of Attorney & Living Will at a cost of \$35; and
- 20% discount off the attorney's usual and customary hourly rate.

The attorneys will not be permitted or required to:

- a. Identify themselves as a specialist in any particular area of practice;
- b. List themselves in a location in which they or their law practice do not have an office;
- c. Advertise or otherwise claim they are endorsed by the publisher or its affiliates; or
- d. Pay to the publisher a per-referral fee.

Analysis:

Based on the facts presented, the Committee believes that the online Directory is, in fact, a lawyer directory and not a lawyer referral service. The publisher does not participate in any way in the selection or recommendation of any particular lawyer. Lawyers who list themselves in an online directory must comply with the professional conduct rules that govern advertising. As required by Rule 7.2(e)¹ each attorney listed in the Directory is responsible for its content or in the alternative, law firms listed in the Directory must file with the Virginia State Bar a statement identifying the attorney responsible for the content of the listing.

Online legal directories, like printed legal directories, are permissible if they do not contain false or misleading communications. Arizona Ethics Op. 99-10 (1999) (lawyers' association may publish its legal directory on Web site so long as directory is not false or misleading); Massachusetts Ethics Op. 98-2 (1998) (lawyers may participate in computerized bar directory maintained by bar association if listings are not false or misleading). According to Ohio Supreme Court Ethics Op. 99-3 (1999), when a lawyer is included in a professional organization's online membership directory, a link from the lawyer's name to the lawyer's e-mail address or Web site is not tantamount to a referral.

Committee Opinion
September 19, 2006

¹ Rule 7.2(e) Advertising made pursuant to this Rule shall include the full name and office address of an attorney licensed to practice in Virginia who is responsible for its content or, in the alternative, a law firm may file with the Virginia State Bar a current written statement identifying the responsible attorney for the law firm's advertising and its office address, and the firm shall promptly notify the Virginia State Bar in writing of any change in status.