

You have submitted a tape recording of your law firm's personal injury advertisement which includes in part such statements as, "if you use our services, you will get the *best* legal minds . . . getting you the *biggest* winnings," (emphasis added). You have asked the Committee to advise you of the propriety of the contents of the advertisement.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:2-101(A), which provides that a lawyer shall not, on behalf of himself or any other lawyer affiliated with his firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. Ethical Consideration 2-8 [EC:2-8] similarly provides as follows:

The proper motivation for commercial publicity by lawyers lies in the need to inform the public of the availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or the segment of the community to which it is directed. To achieve these objectives, advertising must not be false, fraudulent, misleading or deceptive. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit.

The Committee has previously opined that, due to the unique and personal nature of legal problems, a lawyer should avoid statements regarding average, minimum or estimated fees which may be deceiving as well as commercial publicity conveying information as to the results previously achieved, general or average solutions, or expected outcomes. Advertisements or claims that convey an impression of the lawyer's astuteness rather than the merits of the claim as determinative of the outcome are similarly deceptive. (See EC:2-10 and LE Op. 1229) The Committee also directs your attention to EC:2-11 which provides in part that the use of extravagant or self-laudatory statements or appeals to fears and emotions made in advertisements could mislead the layperson to whom it is directed and, as such, undermine public confidence in our legal system. The attorney-client relationship should not be established as the result of pressures and deceptions. All lawyers should remain vigilant to prevent deceptive publicity that would cause distrust of the law and lawyers. (See also EC:2-12)

The Committee opines that the use of such claims as "the best lawyers" and "the biggest earnings" in the context of the instant tape recorded advertisement or in any form of public communication of a general nature which is not supported by factual assertions may be violative of DR:2-101(A) and the applicable ethical considerations. The Committee cautions that such statements are generally perceived as merely self-aggrandizement and are not in the public interest. Thus they should be avoided by members of the Virginia State Bar.

Committee Opinion  
October 19, 1989