

Withdrawn/April 3, 2018
Committee Opinion
February 27, 1990

LEGAL ETHICS OPINION 1321

ADVERTISING AND SOLICITATION:
IMPROPER USE OF LANGUAGE IN
ADVERTISEMENT.

You have asked the Committee to consider the propriety of an attorney's advertisement in a local newspaper which states in part that "a conflict of interest between a lawyer and local expert witnesses such as doctors and other professionals make a fair battle impossible," and that the attorney "knows personal injury so well that the state supreme court has upheld his cases even when other attorneys and insurance companies said it couldn't be done."

The appropriate and controlling Disciplinary Rule is DR:2-101(A) which provides that a lawyer shall not, on behalf of himself or any other lawyer affiliated with him or 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.

The Committee has previously opined that because of the individual nature of a legal problem, statements in an advertisement which are not based on factual assertions are improper. Statements containing generalized predictions of outcomes may tend to be deceptive or misleading and produce unrealistic expectations. Ethical Consideration 2-10 [EC:2-10] provides in part that information based on past performance or prediction of future outcomes is deceptive because it ignores important, distinctive variables through which all legal matters derive their individuality. Only factual assertions, and not opinions, should be made and communications addressed to undertaking any legal action should always indicate the provisions of such undertaking and should disclose the impossibility of assuring any particular result. Not only should such communication be truthful, but its meaning must be capable of being understood by the reasonably prudent layperson. The Committee believes that the statement "a conflict of interest between a lawyer and local expert witnesses such as doctors and other professionals make a fair battle impossible," has the potential to mislead since the reader is not given any factual basis on which the statement was predicated and it presumes that all lawyers would have a conflict with any local professionals.

Furthermore, the statement which implies special recognition by the state supreme court of the lawyer's knowledge or expertise in the field of personal injury law is likewise improper. Ethical Consideration 2-10 also cautions that "[a]dvertisements or other claims that convey an impression that the ingenuity of the lawyer rather than the justice of the claim is determinative are similarly likely to be deceptive."

The Committee has earlier opined that advertising through which a lawyer seeks business by use of extravagant, or self-laudatory, statements or appeals to fears and emotions could mislead the general public. Furthermore, all lawyers should remain vigilantly attentive to prevent deceptive publicity that would mislead the layperson and cause distrust of the law and lawyers, and undermine public confidence in the legal system. (See EC:2-11 and LE Op. 1297) The Committee believes that the statements

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contained in the advertisement in question do not serve to inform the public of the availability of competent, independent legal counsel nor does the public benefit from advertising marked by statements without factual basis, excesses in content, volume, scope, or which unduly emphasizes unrepresentative biographical information.

Finally, the Committee directs your attention to the requirements of DR:1-103 regarding an attorney's obligation to report to the appropriate professional regulation authority information that another lawyer has committed a violation of the Disciplinary Rules which raises a substantial question as to that lawyer's fitness to practice law.

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