



COMMITTEE ON ATTORNEY ADVERTISING

Appointed by the Supreme Court of New Jersey

OPINION 49

Testimonials (Superseding Opinion 15 and 33)

The Committee on Attorney Advertising issues this opinion to clarify the use of client endorsements and testimonials in attorney advertising. The Committee continues to opine that although endorsements and testimonials could contain material misrepresentations of fact or law or create unjustified expectations about the results a lawyer can achieve, a complete ban on their inclusion in attorney advertising is unjustified. The use of endorsements and testimonials is not inherently misleading and isolated instances of misuse do not justify a complete ban on this mode of protected commercial speech.

However, Rule of Professional Conduct 7.1(a) prohibits a lawyer from making a false or misleading communication about the lawyer's services. For

an endorsement or testimonial to be considered a truthful statement about the lawyer's services, the Committee will continue to require that the person making the endorsement or testimonial statement be named to ensure that it is an "identifiable person who actually received the services." This commonsense requirement will continue to separate potentially false and misleading communications that may contain material misrepresentation of fact or law from permitted truthful expression of appreciation for the lawyer's services. RPC 7.1(a)(1). The Committee clarifies that the person making the endorsement or testimonial should be identified in the advertising by full name, last name and first initial, last name only, first name only, or initials only. Lawyers are reminded that they can be required to provide the full name and contact information to the Committee upon request. Similarly, where a law firm uses an actor to portray an actual and identifiable endorsing client disclosure that the depiction is a dramatization is required.

Rule of Professional Conduct 7.1(a)(2) prohibits a lawyer from making a communication that is likely to create unjustified expectations about the results the lawyer can achieve. To protect the public from the creation of unjustified expectations, the Committee continues to require the use of the disclaimer **"Results may vary depending on your particular facts and legal circumstances"** whenever the endorsement or testimonial contains statements

regarding the lawyer's past performance. The disclaimer can be oral or written depending on the advertising medium. It should be conspicuous. It should appear or be spoken intelligibly before the end of any oral communication. For written disclaimers accompanying oral testimonials, it should appear on the screen in a discernible font size and color and should appear for enough time to reasonably conclude that a competent individual viewing the advertisement would have had time to read the disclaimer. For video testimonials embedded in a law firm website, social media or other electronic communication, the video may contain either a written or oral disclaimer. Alternatively, the webpage, social media or other electronic communication containing the testimonial may display a conspicuous written disclaimer directly above or below the link to the testimonial video. For written disclaimers accompanying written communications, it should to the extent possible be printed or displayed in the same font size and color used for the testimonial. These requirements also apply to general or targeted direct-mail solicitations.

Finally, comparative language is not permitted in endorsements or testimonials. Rule of Professional Conduct 7.1(a)(3) prohibits communications that compare the lawyer's services with other lawyer's services outside the context of awards, honors and accolades provided by

legitimate organizations conducting rigorous evaluation of the candidates.

Lawyers are not permitted to quote the comparative statements of others that they would not be permitted to make about themselves. See Opinion 8 (March 1999) “Quoting the Statement of Another Which, If Made by an Attorney Would be Considered False and Misleading” (“attorney may not employ endorsements, testimonials or other statements attributable to another in order to circumvent the Rules of Professional Conduct governing attorney advertising”). Thus, endorsements and testimonials should be reviewed to remove reference to the lawyer being, for example, “the best,” “the only,” “the top,” or “the ultimate.” Examples of permissible endorsing statements would include statements such as the lawyer was “sympathetic or concerned,” “responsive,” “professional,” “patient,” or “obtained a favorable result.”

Lawyers quoting endorsing statements that refer to exact dollar amounts¹

¹ The Committee cites for illustration an example provided by the Virginia State Bar where advertisement of a million dollar verdict although accurate could be misleading. “An attorney could accurately cite in advertising a verdict of one million dollars, yet the public would be misled if the verdict were obtained under circumstances in which the offer prior to trial had been two million dollars. The same advertisement would be similarly misleading if the one million dollar verdict were obtained against an uncollectible defendant, under circumstances in which the case was lost as to a collectible co-defendant who had made a substantial offer prior to trial. More importantly, since no member of the public is likely to have a case in which the circumstances precisely duplicate the advertised verdict, the report of a specific case result may mislead the consumer ‘if presented as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters

achieved should use caution to ensure that the statements are not false or misleading and do not omit facts necessary to make the statement verifiably truthful and accurate. RPC 7.1(a)(1). Lawyers cannot pay for endorsements or testimonials. RPC 7.3(d).

without reference to the specific factual and legal circumstances of each client's case.” Virginia State Bar Legal Ethics Opinion 1750 (approved by the Virginia Supreme Court October 2, 2019), Section F. citing VA Rule of Professional Conduct 7.1, Comment 2.