



ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 735

SUPPLEMENT

Lawyer's Use of Internet Search Engine Keyword Advertising

The Advisory Committee on Professional Ethics issues this Supplement to Opinion 735 (June 25, 2019), in which the committee considered two related inquiries pertaining to online attorney advertising. The Committee first considered whether the purchase of a competing lawyer's or law firm's name from an internet search engine provider, such as Google, Yahoo, or Bing violates the Rules of Professional Conduct (RPCs). This practice is known as "competitive keyword advertising." In Opinion 735, the Committee also considered a second, related inquiry whether the practice of embedding a hyperlink into a competitor lawyer's or law firm's name such that clicking the competitor's name redirects the user to the purchasing lawyer's website violated the RPCs. The Committee concluded that the practice of competitive keyword advertising did not violate the RPCs, while hyperlinking a competitor's name would violate RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Supreme Court of New Jersey granted Petitions for Review of Opinion 735 from the New Jersey State Bar Association, 241 N.J. 391 (2020) and the Bergen County Bar Association,

241 N.J. 392 (2020) and following oral argument, the matter was remanded for appointment of a Special Adjudicator to make factual findings about the mechanics of keyword searches and their capacity to mislead. The Bar Associations participated in the remand hearing, which included testimony from three experts and feedback from members of the bar whose name or law firm name had been purchased as keywords by competitors.

In June 2024, the Special Adjudicator submitted his report detailing the effect of keyword advertising on search engine algorithms. The Special Adjudicator concluded that the current RPCs were sufficient to contend with any allegations of deception, dishonesty, fraud, or misrepresentation alleged via competitive keyword advertising. The Court received supplemental briefing after the Special Adjudicator issued the report.

On May 22, 2025, the Court issued an opinion captioned In re Opinion No. 735 of the Supreme Court Advisory Committee on Professional Ethics, 260 N.J. 482 (2025). The Court held that the practice of purchasing a competitor's name as a keyword, without more, does not violate the RPCs. No party challenged the second determination in Opinion 735, that hyperlinking a competitor's name violated RPC 8.4(c), so the Court did not consider that issue. The Court affirmed the Committee decision that the purchase of a keyword is not, in itself, a communication subject to RPC 7.1 or RPC 7.2. The Court likewise affirmed the Committee decision that purchasing the proper name of a competitor lawyer or law firm did not violate RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) or RPC 8.4(d) (conduct that is prejudicial to the administration of justice). In New Jersey, violations of RPC 8.4(c) require a showing of deliberate and intentional conduct designed to mislead. Purchasing a competitor's name as a keyword did not divert the user to a misleading website or falsely imply affiliation between the lawyers. Keyword advertising instead enables a lawyer's sponsored ad to

appear alongside results for a search of the competitor's name. The Court noted that this practice of "Sponsored" results appearing on top or alongside the other fruit of the search was well-understood by even relatively unsophisticated internet users.

The Court, however, modified Opinion 735 to require lawyers who utilize competitive keyword advertising campaigns that include purchasing competitor lawyer or law firm names to include a disclaimer on any landing page to which the paid ad directs the consumer:

You arrived at this page via a paid advertisement on [insert name of search engine provider] through paid keyword search results. This website and the legal business it describes are affiliated only with [insert name of purchasing attorney] and the attorneys referenced within this website.

The disclaimer must be prominently displayed on the landing page or pages of the lawyer or law firm website where the sponsored search result is likely to lead the consumer. The disclaimer, to the extent possible, should match the font size and color that is predominately used on the landing page.