

N.J.L.J.

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COMMITTEE ON ATTORNEY ADVERTISING

APPOINTED BY THE NEW JERSEY SUPREME COURT

OPINION 36

**Internet Advertising and Disclaiming
Impermissible Lawyer Referral Service**

The inquiring attorney asks whether listing the attorney's web page on a web site run by a private commercial advertising and marketing enterprise, where the attorney pays a flat fee for the listing and receives an exclusive listing for a particular county in a specific practice area – in this case criminal law – is permissible under the Rules of Professional Conduct.

The starting point for analyzing this type of inquiry is Opinions 6, 13 and 13 (Supplement) of this Committee, which contain detailed discussion of the obligations of lawyers utilizing private commercial advertising, marketing or referral services, or combinations of such activities. The activity proposed by this inquiry is fundamentally advertising and marketing, and as such is controlled by the strictures of *RPC* 7.1 and 7.2. As we said in Opinion 13:

In particular, we note that an attorney may not, by advertising through a consortium, collective, or any other kind of group or association, be involved in any kind of advertising activity which would be prohibited if the attorney advertised directly. *Cf.* Opinion 8, 127 *N.J.L.J.* 753 (1991). An attorney remains responsible for the ethical propriety of all advertising with which he or she has any connection or involvement.

Opinion 13, 132 *N.J.L.J.* 267 (October 5, 1992) and 1 *N.J.L.* 1588 (October 12, 1992).

As stressed in these earlier opinions, frequently advertising or marketing services cross the line and become a form of lawyer referral service, invoking additional scrutiny under *RPC* 7.3(d) and (e):

In *RPC* 7, 3(d), a lawyer is barred from giving compensation or anything of value “to a person or organization to recommend or secure the lawyer’s employment by a client,” except that a lawyer “may pay for public communications permitted by *RPC* 71,” and “usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.” In a parallel vein, *RPC* 7.3(e)(3) exempts from a general prohibition on allowing others to promote the use of the lawyer’s services “a

lawyer referral service operated, sponsored, or approved by a bar association.”

Id.

When advertising is done through a vehicle which is not explicitly referenced as an advertisement, and is not readily known to consumers as a place of pure advertising (as, for example, the Yellow Pages would be), there is a possibility that the presentation and language could lead a reasonably informed consumer to believe that the listing has some sort of professional or authoritative imprimatur, as a kind of endorsement, such as an authorized lawyer referral service might give (*e.g.*, a web page presented as “anti-trust lawyers.com,” as a hypothetical). Such a presentation could, intentionally or inadvertently, thus mislead consumers into believing it was other or more than simply a paid advertisement, and carried greater weight. Such a consequence would appear more likely when only a very limited number of lawyers are listed for a particular geographical, subject matter or other defined area.

To forestall such a possibility, we conclude that a lawyer who seeks to give anything of value in order to participate in such a listing must, before doing so, ensure that the listing or advertisement contains a prominently and unmistakably displayed disclaimer, in a presentation at least equal to the largest and most prominent font and type on the site, declaring that “all attorney listings are a paid attorney advertisement, and do not in any way constitute a referral or endorsement by an approved or authorized lawyer referral service.” With such disclosure, the proposed activity is permissible, as long as it otherwise complies with *RPC* 7.1 and 7.2, as noted above.