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Advertising in a Digital Age: The Do's and Don'ts of Attorney Websites

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In today's digital age, most lawyers and law firms promote their legal services on a personal or business website. Like every other form of legal advertising, attorney websites must comply with the New Jersey Rules of Professional Conduct (RPCs). Indeed, "attorneys are responsible for monitoring the content of all communications with the public—including their websites—to ensure that those communications conform at all times with" the RPCs." *In re Hyderally*, 208 N.J. 453 (2011).

In recent years, the Supreme Court of New Jersey and Committee on Attorney Advertising have published several important rulings, advertising guidelines and public notices regulating attorney websites, such as: (1) using website domain names that differ from the actual name of the lawyer or law firm; (2) incorporating comments expressed in judicial opinions; (3) using photographs of judges; and (4) referencing and displaying awards/accolades and logos such as Super Lawyers, Best Lawyers, and Million Dollar Advocates. This article discusses each of these issues.

Internet Domain Names

Pursuant to RPC 7.5, the name under which a lawyer or law firm

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practices must "include the full or last names of one or more of the lawyers in the firm or the names of a person or persons who have ceased to be associated with the firm through death or retirement." RPC 7.5(a).

In Opinion 32, the Committee on Attorney Advertising was asked to determine whether the use of domain names that do not include the firm's actual name or that of any individual attorney at the firm would violate RPC 7.5(a). 180 N.J.L.J. 654 (May 23, 2005), 14 N.J.L. 1135 (June 6, 2005). (For example, this author's law firm uses the domain name www.njlawconnect.com). The committee concluded that adopting the use of such domain names for internet access and retrieval of information about the law firm and its services does not violate RPC 7.5, provided that "the name is used for the purpose of locating and identifying a [attorney] website, not as a substitute way to identify the attorney or law firm." *Id.*

The committee's decision in Opinion 32 imposes the following limitations for lawyer domain names:

- The domain name may not be false or misleading. RPC 7.1(a).
- The law firm using the domain name may not state, imply, or attempt to practice law using that name in violation of RPC 7.5.
- The domain name may not communicate false or misleading information about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. RPC 7.1(a).
- The domain name may not create an unjustified expectation, state or imply results that can be achieved by means that violated the RPCs, or compare the lawyer's services with other lawyer's services. RPC 7.1(a)(2), (3).
- The internet form of the firm's name must be for location purposes only and may not state or imply recognition or certification of a specialty other than as authorized by RPC 7.4.
- The firm may not convert the internet domain name to the formal name of the firm or use that name in lieu of the formal name as required by RPC 7.5.

Commercial use of a judicial image may imply an ability to influence improperly a government agency or official or to achieve results by means that violate RPC 8.4 (misconduct).

In addition, in Opinion 32 the committee held that the initial or "home" page of a lawyer's website *must* contain the following information:

- The actual, formal name of the firm or attorney responsible for the site;
- The bona fide street location of the law office to which the URL refers, and the telephone number of the firm; and
- Disclaimers and advisories required by RPC 7.1, 7.2, 7.3, and 7.4.

Displaying Honors & Accolades

In response to a flood of grievances regarding attorney advertising of awards, honors, or accolades such as Super Lawyers, Rising Stars, Best Lawyer, and Top Rated Counsel, on May 4, 2016, the Committee on Attorney Advertising published a Notice to the Bar requiring the display of certain language pursuant to RPC 7.1 when referencing such professional distinctions.

Beginning with a preliminary test, a lawyer who seeks to advertise the receipt of an award, honor, or accolade that compares the lawyer's services to other lawyers' services *must*:

• First ascertain whether the organization conferring the award has made "inquiry into the attorney's fitness." Official Comment to RPC 7.1

• "The rating or certifying methodology must have included inquiry into the lawyer's qualifications and considered those qualifications in selecting the lawyer for inclusion." This inquiry into the lawyer's fitness must be more rigorous than a simple tally of the lawyer's years of practice and lack of disciplinary history.

• Pursuant to RPC 7.1 (a)(3)(ii), the basis for the comparison must be substantiated, bona fide, and verifiable.

So if an award, honor, or accolade satisfies this preliminary test then the recipient can merely plug the award on his or her law firm website and have no further worries? Not so, according to the 2016 Bar Notice.

When referring to an award, honor, or accolade on an attorney website and in any other form of advertisement, the lawyer must:

- Provide a description of the standard or methodology on which the award, honor, or

accolade is based, either in the advertising itself or by reference to a "convenient, publicly available source." Official Comment to RPC 7.1.

- Include the name of the comparing organization that issued the award (note that the name of the organization is often different from the name of the award or the name of the magazine in which the award results were published). RPC 7.1(a)(3)(i).
- Include this disclaimer "in a readily discernible manner": "No aspect of this advertisement has been approved by the Supreme Court of New Jersey." RPC 7.1 (a)(3)(iii).
- All of this additional, accompanying language must be presented in proximity to the reference to the award, honor, or accolade.

Displaying Badges and Logos

In its 2016 Bar Notice, the Committee on Attorney Advertising also established the following guidelines that govern reference to badges or logos (such as the yellow Super Lawyers badge) on an attorney advertisement.

• Every reference to such an award, honor, or accolade even when it is in an abbreviated form such as the badge or logo must include the required accompanying information:

1. a description of the standard or methodology;
2. the name of the comparing organization that issued the award;
3. the statement "No aspect of this advertisement has been approved by the Supreme Court of New Jersey."

• Only the description of the standard or methodology can be presented by reference (with the statement that the standard or methodology can be viewed at that website or hyperlinked page).

• The other required information must be stated *on the face of the advertising, readily discernible* and *in proximity to the reference to the award*.

So, according to the 2016 Bar Notice, when displaying a badge or logo on an attorney website, the required information must appear near the award, should not be obscured in tiny font, or placed on a separate page of the website.

Quotes/Excerpts from Judicial Opinions

An attorney or law firm *may* include, on a website or other advertisement, an accurate quotation or excerpt from a court opinion (oral or written) about the attorney's abilities or legal services. The following disclaimer must be prominently displayed in proximity to such quotation or excerpt: "This comment, made by a judge in a particular case, is not an endorsement of my legal skill or ability." [Official Comment to Attorney Advertising Guideline 3, by the Supreme Court (Oct. 15, 2014).] *But see*, *Dwyer v. Cappell*, 762 F.3d 275, 284 (3d cir. 2014) (Court held unconstitutional Guideline 3's requirement that an attorney use the full-length judicial opinion when citing quotes).

Use of Judicial Photographs on Websites

In Opinion 31, the Committee on Attorney Advertising held that an attorney may not include on a professional or personal website, either directly or through a link, an image of a judge if the purpose of the site is to advertise or market that attorney's practice. 180 N.J.L.J. 342, 14 N.J.L. 843 (May 2, 2005). The use of an image of a judge on an attorney's website violates RPC 7.1(a)(2), because it is likely to create an unjustified expectation, and implies endorsement of that attorney by the judge appearing on the website. In addition, commercial use of a judicial image may imply an ability to influence improperly a government agency or official or to achieve results by means that violate RPC 8.4 (misconduct).

Likewise, Opinion 31 cautions jurists that allowing another to use his or her image would violate the Code of Judicial Conduct 2.5.

So what is the moral of the story? Pay attention to how content and graphics are displayed on your law firm's website. ■