

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 2002-7** Issued June 14, 2002

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** In advertising legal services, it is improper under DR 2-101(A)(1) and (4) for an attorney or law firm to list settlement or verdict amounts obtained in past cases. Statements such as “Trip/Fall sidewalk-brain injury, \$1,000,000 verdict” or “Dog bite, \$50,000 settlement” are misleading, self-laudatory, and may be unfair. In addition, confidential settlement amounts are unverifiable.

**OPINION:** This opinion addresses a question regarding legal advertisements that contain statements regarding past results obtained for clients.

In advertising legal services, is it proper for an attorney or law firm to list settlement or verdict amounts obtained in past cases?

The Ohio Code of Professional Responsibility regulates lawyer advertising in DR 2-101 through DR 2-105. The disciplinary rule relevant to this opinion is DR 2-101(A).

DR 2-101(A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer’s firm, use, or participate in the use of, any form of public communication, including direct mail solicitation that:

1. Contains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement;
2. [Omitted];
3. [Omitted];
4. Contains any claim that is not verifiable;
5. [Omitted].

The issue to be decided is whether an advertisement listing past cases and settlement or verdict amounts constitutes a misleading, self-laudatory, or unfair statement, or an unverifiable claim.

*Is it a misleading statement?*

DR 2-101(C) provides guidance as to what constitutes misleading communication.

DR 2-101(C) A communication is false or misleading if it satisfies any of the following:

- (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law;
- (3) Is subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

A listing of past cases, either by type of case or by case name, followed by the settlement or verdict amount is misleading to consumers of legal services. A list of settlement and verdict amounts lacks information as to the strengths and weaknesses of cases, severity of damages, information as to credibility of witnesses, availability of insurance coverage, or other factors that influence the settlement or verdict amounts. The absence of references to the specific factual and legal circumstances of each case makes the listing of cases and settlement or verdict amounts misleading.

Even though truthful, a statement may be misleading. As explained in Comment (3) to ABA Model Rule 7.1 [prohibiting false or misleading communication], “[a]n advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case.”

Further, the listing of a settlement or verdict is misleading because it creates unjustified expectations about what cases are worth. If the public sees “Trip/Fall sidewalk-brain injury, \$1,000,000 verdict” the public may easily assume that a sidewalk fall on the head will result in a big money recovery. If the public sees “Dog bite, \$50,000 settlement,” in an advertisement, the public may easily assume that dog bite cases are worth at least that much.

In other states, ethics committees have advised that statements of past case results create unjustified expectations of results that a lawyer can achieve, unless enough information is provided. *See, e.g.*, Alabama State Bar, Op. 90-61 (1990); North Carolina State Bar, Op.

2000-1 (2000); Pennsylvania Bar Ass'n 87-129 (1987). What is enough information? The North Carolina State Bar advisory committee suggests: "To put a verdict record in context, information about the lawyer's or the law firm's record must include disclosure of the following: the lawyer's or firm's history of obtaining unfavorable, as well as favorable, verdicts and settlements; the lawyer's or firm's success in actually collecting favorable verdicts; the types of cases handled and their complexity; whether liability and/or damages were contested; and whether the opposing party or parties were represented by legal counsel. In addition, the verdict record must disclose the period of time examined. Finally, the communication must include a statement that the outcome of a particular case cannot be predicated upon a lawyer's or a law firm's past results." North Carolina State Bar, Op. 2000-1 (2000). While, this Board agrees that additional information suggested by the North Carolina advisory committee would decrease the possibility of misleading consumers, there are additional concerns to consider under the disciplinary rules.

*Is it a self-laudatory statement?*

A lawyer's statements in an advertisement about how much a lawyer achieved for a client in a settlement or verdict amount is self-laudatory. There is no acknowledgment of the merits of the case. It is pure self-praise for the lawyer. The advertisement emphasis is on the strength of the lawyer, not the strength of the case.

*Is it an unfair statement?*

If there is no reference to the cases with no recovery, the statements of settlement or verdict amounts are unfair statements. A list of settlement and verdict amount obtained, without reference to any zero recoveries, imparts to the public that the lawyer has a perfect record of winning cases.

*Is it an unverifiable claim?*

A verdict amount is verifiable through public records, but a settlement amount may or may not be verifiable. Settlement agreements are sometimes confidential, thus, the settlement amount would not be verifiable through public record or otherwise.

*Conclusion*

In conclusion, this Board advises that in advertising legal services, it is improper under DR 2-101(A)(1) and (4) for an attorney or law firm to list settlement or verdict amounts obtained in past cases. Statements such as "Trip/Fall sidewalk-brain injury, \$1,000,000 verdict" or "Dog bite, \$50,000 settlement" are misleading, self-laudatory, and may be unfair. In addition, confidential settlement amounts are unverifiable.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the**

**Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**