

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
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OPINION 2000-6

Issued December 1, 2000

[Withdrawn- by Opinion 2016-8 on October 7, 2016]

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-pursuant to Jan. 24, 2005 order of the Supreme Court of Ohio, DR 2-101(A)(3) is not enforceable until further order of the court.]

SYLLABUS: It is improper under the Ohio Code of Professional Responsibility for a law firm's Web site home page to include quotations from clients, even with their consent, describing the general nature of the legal services provided, responsiveness of the law firm, and other non-substantive aspects of the firm's representation. Such client quotations constitute client testimonials prohibited under DR 2-101(A)(3); may be misleading to the public under DR 2-101(A)(1) and (C) depending upon the content of the quotation; are claims regarding the character of a lawyer and the quality of a law firm's services that cannot be verified by reference to objective standards under DR 2-101(A)(4); and involve the lawyer or law firm in improperly requesting that a client recommend or promote the law firm's services to others under DR 2-103(C).

It is proper for a law firm to list a client's name with the client's consent in public communication, such as a law firm Web site. Such listing of a client's name is not prohibited by any rule within the Ohio Code of Professional Responsibility. As a matter of courtesy and confidentiality, a lawyer should not publicly list a client's name without client consent.

A law firm's Web site may provide a link from an attorney's biography to published opinions of cases in which such attorney participated. A link from an attorney's biography to published opinions of cases in which the attorney participated is not considered a false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement under DR 2-101(A)(1), but rather provides factual information that may help educate the public.

OPINION: Three questions are addressed.

1. May a law firm's Web site home page include quotations from clients, with their consent, describing the general nature of the legal services provided, responsiveness of the law firm, and other non-substantive aspects of the firm's representation?
2. May a law firm list a client's name with the client's consent in public communication, such as a law firm Web site?

3. May a law firm's Web site provide a link from an attorney's biography to published opinions of cases in which such attorney participated?

Question One

May a law firm's Web site home page include quotations from clients, with their consent, describing the general nature of the legal services provided, responsiveness of the law firm, and other non-substantive aspects of the firm's representation?

A law firm inquires regarding the use of client quotations on the home page of the law firm Web site. The proposed quotations would be general statements from existing clients regarding the law firm's service, responsiveness, and style. The quotations would not describe any particular transaction or litigation matter that the firm has handled or currently handles. The Web site would identify the quoted client by name and company along with an image of the individual and/or the logo, building, or other recognizable image of the company.

The applicable rules in the Ohio Code of Professional Responsibility are DR 2-101(A)(1), (3), (4), DR 2-101(C), and DR 2-103(C).

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;
- (3) Contains **any testimonial of past or present clients pertaining to the lawyer's capability** (Emphasis added);
- (4) Contains any claim that is not verifiable.

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.

DR 2-103(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, except that; (exceptions not applicable herein).

At issue is whether these rules prohibit a law firm from communicating on its Web site home page a client quotation describing the general nature of services provided, responsiveness and other non-substantive aspects of the firm's representation. Is such client quotation a client testimonial pertaining to the lawyer's capability [DR 2-101(A)(3)]; a misleading statement [DR 2-101(A)(1) and C]; a claim that is not verifiable [DR 2-101(A)(4)]; and/or a response to a lawyer's improper request to a client to recommend or promote the lawyer's services [DR 2-103(C)]?

DR 2-101(A)(3) prohibits client testimonials pertaining to a lawyer's capabilities, but does not define "testimonial." Therefore, the Board interprets the word "testimonial" as it is customarily defined.

Testimonial

1. A formal or written statement testifying to a particular truth or fact.
2. A written affirmation of another's worth or character.
3. Something given as a tribute for one's service or achievement.

Webster's II New Riverside University Dictionary 1196 (1984).

Thus, a testimonial includes objective statements of a truth or fact as well as subjective affirmation of worth or character. A statement made by a client regarding the nature of the legal services provided is a statement of truth or fact. A statement made by a client as to law firm's responsiveness to the client's need is an affirmation of the character of the lawyers within the firm. As such, these statements by clients are testimonials that DR 2-101(C)(3) prohibits.

Although not adopted in Ohio, ABA Model Rule 7.1 similarly prohibits client testimonials, referred to in the model rule as client endorsements.

ABA Model Rule 7.1 A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) 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 Rules of Professional Conduct or other law; or
- (c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

The Comment to ABA Model Rule 7.1 states that “[t]he prohibition in paragraph (b) of statements that may create ‘unjustified expectations’ would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, and **advertisements containing client endorsements.**” (Emphasis added).

In Opinion 89-24, this Board advised that “[a]dvertisements containing client testimonials are not permitted under the Ohio Code of Professional Responsibility. At the time that opinion was issued, there was no rule like current DR 2-101(A)(3) specifically prohibiting client testimonials. [(DR 2-101(A)(3) was amended to the Code effective January 1, 1993]. Nevertheless, even without a specific rule, other rules were interpreted as a prohibition on client testimonials. In Opinion 89-24, the Board stated:

In our view, a client’s testimonial regarding his or her lawyer misleads the public into believing that similar results can be achieved if they hire that lawyer, thereby creating an unjustified expectation. In addition, testimonials are subjective statements regarding the quality of a lawyer’s services which cannot be verified by reference to objective standards established by the profession. Such statements of quality are generally banned because they are not capable of objective verification and mislead the public. See, Moss, *Law Practice Marketing*, 61 Notre Dame L. Rev. 619 (1986).

We believe that a lawyer cannot effectively avoid the ban on self-laudatory statements by having a client make such statements. In addition, under DR 2-103(C), a lawyer cannot request a person or organization to recommend or promote the lawyer’s services (exceptions not applicable). An attorney is also forbidden from giving anything of value to someone in return for recommending the attorney for employment. These restrictions are intended to protect members of the public from lawyers who may use misleading advertising or engage in conduct that is likely to impair public confidence in the legal system.

Ohio Sup Ct, Bd of Comm’rs on Grievances and Discipline, Op. 89-24 (1989).

The current Ohio Code of Professional Responsibility includes the specific prohibition on client testimonials in DR 2-101(A)(3) as well as rules similar to the rules on which the advice in Op. 89-24 was based. As set forth above, current DR 2-101(A)(1) prohibits false, fraudulent, misleading, deceptive, self-laudatory, or unfair statements and DR 2-101(C) describes false and misleading communication. Current DR 2-101(A)(4) prohibits claims that are not verifiable. Current DR 2-103(C) prohibits lawyers from requesting others to recommend or promote the use of the lawyer's services.

As to the present inquiry, this Board's view is that a law firm's public communication of client quotations describing the general nature of the legal services provided, responsiveness of the law firm, and other non-substantive aspects of the firm's representation is improper under the professional rules of conduct. This view is based on the current rules in the Ohio Code of Professional Responsibility and is consistent with ABA Model Rule 7.1, the Comment thereto, and the advice offered by the Board in Opinion 89-24.

Thus, as to the question raised, the Board advises that it is improper under the Ohio Code of Professional Responsibility for a law firm's Web site home page to include quotations from clients, even with their consent, describing the general nature of the legal services provided, responsiveness of the law firm, and other non-substantive aspects of the firm's representation. Such client quotations constitute client testimonials prohibited under DR 2-101(A)(3); may be misleading to the public under DR 2-101(A)(1) and (C) depending upon the content of the quotation; are claims regarding the character of a lawyer and the quality of a law firm's services that cannot be verified by reference to objective standards under DR 2-101(A)(4); and involve the lawyer or law firm in improperly requesting that a client recommend or promote the law firm's services to others under DR 2-103(C).

Question Two

May a law firm list a client's name with the client's consent in public communication, such as a law firm Web site?

While not asked to address whether the listing of client names in public communications is proper, the Board will so address because it is an obvious extension of the question raised. The Cincinnati Bar Association has already addressed the issue. In Opinion 96-97-01, the Cincinnati Bar Association advised that an "attorney or law firm may list on the attorney's or law firm's Internet Home Page the name of a client regularly represented, provided that written consent has been obtained."

A prior version of the Ohio Code of Professional Responsibility contained a rule, DR 2-101(B)(20) addressing the listing of client names. DR 2-101(B)(20), permitted attorneys to publish or broadcast "[i]n law directories and law lists only, names and addresses of references, and, with their written consent, names of clients regularly represented." That rule was deleted from the Code when DR 2-101 was amended effective March 1, 1986.

The current version of the Ohio Code of Professional Responsibility does not mention the use of client names or client lists in attorney advertising, not even in DR 2-101(D). DR 2-101(D) lists information that “will be presumed to be informational rather than solely promotional or self-laudatory, and acceptable for dissemination under these rules, if accurate and presented in a dignified manner.” However, the absence of client names from DR 2-101(D) does not indicate that the use of client names is improper. The DR 2-101(D) list is an illustrative list, not an exhaustive list.

In this Board’s view, there is no rule within the Code that would prohibit the listing of a client name. The listing of a client name is not a client testimonial under DR 2-101(C)(3). It is neither a statement testifying to a particular truth or fact (other than the fact that the named person or entity is a client), nor is it an affirmation of another’s worth or character.

Requesting consent to list a client’s name does not violate DR 2-103(C). It is not a request for a client to recommend or promote the legal services of the lawyer or law firm. It is merely a request for permission to list publicly a client’s name as a client of the law firm.

Thus, as to Question Two, the Board advises that it is proper for a law firm to list a client’s name with the client’s consent in public communication. Such listing of a client’s name is not prohibited by any rule within the Ohio Code of Professional Responsibility. As a matter of courtesy and confidentiality, a lawyer should not publicly list a client’s name without client consent.

Question Three

May a law firm’s Web site provide a link from an attorney’s biography to published opinions of cases in which such attorney participated?

This Board advises that a law firm’s Web site may provide a link from an attorney’s biography to published opinions of cases in which such attorney participated. A link from an attorney’s biography to published opinions of cases in which the attorney participated is not considered a false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement under DR 2-101(A)(1), but rather provides factual information that may help educate the public.

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.