

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2004-7 Issued August 6, 2004

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: A law firm may be identified on a business client's Web site, but may not be referred to as the company's preferred attorneys. Communication to the public of a law firm's name and logo on a business client's Web site is acceptable because it is not a false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement. Communication to the public through the company Web site that a law firm is the company's "preferred attorneys" is misleading. Whether it is proper for a business client to list a law firm in the company's brochure and in press releases will depend upon the context and the content. A lawyer must be vigilant that any such communication does not imply that the company and law firm are in business together. A lawyer or law firm may not request a client to promote the law firm on its Web site and may not compensate the client for the publicity. If a lawyer is aware that a law firm client Web site is using the law firm name or its lawyers' names inappropriately or making improper statements or references to the lawyers or law firm, the lawyers should counsel the client and withdraw from representation if the Web site remains objectionable.

OPINION: This opinion addresses a question regarding a client Web site including publicity about a law firm.

May a law firm be identified on a business client's Web site and be referred to as the company's preferred attorneys?

A law firm's business client has asked for permission from the firm to list the law firm name and logo on the company Web site. The client also is considering listing the law firm in a written brochure or in its press releases. The law firm did not request the publicity from the client. The firm will provide no promises, guarantees, or consideration to the client for the publicity.

No disciplinary rule in the Ohio Code of Professional Responsibility directly governs what a client may place on a client's Web site or how a client may advertise. The disciplinary rules govern how an attorney may advertise and how an attorney may promote his or her services.

Lawyers are concerned when a client creates publicity and recommendations for the lawyer or law firm because DR 2-101(A)(2) prohibits lawyers from circumventing the disciplinary rules through actions of another.

The proposed client Web site advertises and recommends the law firm; therefore, disciplinary rules regarding publicity (DR 2-101 through DR 2-105) and recommendations (DR 2-103) are germane.

Recommendations

Lawyers may not request others to recommend or promote the use of the lawyers' services.

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. [There are exceptions to this rule, not applicable herein.]

Lawyers may not compensate or give any thing of value to a person or organization to recommend the lawyers' services.

DR 2-103(B) A lawyer shall not compensate or give any thing of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client. [There are exceptions to this rule, not applicable herein.]

As to the proposed client Web site, a lawyer would not violate DR 2-103(B) and (C), so long as the lawyer or law firm did not request the client to promote the law firm on its Web site and did not compensate the client for the publicity.

Advertising

The advertising rules pre-date the Internet, but are applicable to Internet advertising. The types of permissible advertising methods listed in the advertising rules are illustrative not exclusive. See e.g. Ohio SupCt, Bd Comm'rs on Grievances and Discipline, Op. 2001-2 (2001).

While there are many specific prohibitions on lawyer advertising, the overarching requirement of DR 2-101(A)(1) is that communication not contain "any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement."

As to the proposed listing of a law firm's name and logo on a client's Web site, the Board finds no bar in the advertising rules. Communication to the public of a law

firm's name and logo on a business client's Web site is acceptable because it is not a false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement.

As to the proposed listing of a law firm as the "preferred attorneys" of the company, it is not acceptable under the advertising rules. Communication to the public through the company Web site that a law firm is the company's "preferred attorneys" is misleading. It implies that the attorney and the law firm have a special "preferred" status among attorneys and law firms. It may also appear to Web site visitors as a client testimonial. Lawyers are prohibited by DR 2-101(A)(3) from using any form of public communication that contains client testimonials. Lawyers should not encourage others to publicize testimonial statements about them or their law firm.

As to the possible listing of the law firm in the company's brochure and in press releases, whether it is proper will depend upon the context and the content. A lawyer must be vigilant that any such communication does not imply that the company and law firm are in business together. DR 3-103(A) warns, "[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law."

Related Ethics Opinions

This Board has advised that the disciplinary rules do not prohibit a lawyer from listing its clients, if there is client consent, on a law firm Web site. See Ohio SupCt, Bd of Comm'rs on Grievances & Discipline, Op. 2000-6 (2000). A logical extension of that opinion is that likewise, the disciplinary rules do not prohibit a business client from listing its lawyer on the business Web site.

The Ethics and Professional Responsibility Committee of the Cincinnati Bar Association advised in Op. 96-97-01 (1997) that it is proper for a client's Web site to list an attorney or law firm.

A client of an attorney or law firm may list the attorney or law firm on the client's Internet Home Page and may provide a link to an attorney's or law firm's Home Page on the client's Internet Home Page if the attorney or law firm does not request the link and does not provide compensation or any thing of value to the client in return for the client listing the attorney or law firm as their attorney or law firm and providing the link on the client's Internet Home Page.

If a lawyer objects to a client's Web site, what should the lawyer do? The South Carolina Bar ethics advisory committee, considering the propriety of a client's Web site seeking witnesses and potential parties to litigation, stated that "[t]he attorneys may conclude that they do not object to the web page being used to seek potential plaintiffs." South Carolina Bar, Op. 99-09. But, the committee advised that "[i]f the web page does not comply with the rules on advertising, the attorneys should counsel the client about any omissions and advise the client about how the web page could be changed to comply with those rules. If the

client refuses to bring the page into compliance, the lawyer should give serious consideration to withdrawal from representation to avoid any impression that the lawyer has authorized or adopted the client's continued use of the web page." Id.

This Board agrees that if a lawyer is aware that a client's Web site uses the law firm name or the lawyers' names inappropriately or makes improper statements or references to the lawyers or law firm, the lawyer should counsel the client and withdraw if the Web site remains objectionable.

Conclusion

A law firm may be identified on a business client's Web site, but may not be referred to as the company's preferred attorneys. Communication to the public of a law firm's name and logo on a business client's Web site is acceptable because it is not a false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement. Communication to the public through the company Web site that a law firm is the company's "preferred attorneys" is misleading. Whether it is proper for a business client to list a law firm in the company's brochure and in press releases will depend upon the context and the content. A lawyer must be vigilant that any such communication does not imply that the company and law firm are in business together. A lawyer or law firm may not request a client to promote the law firm on its Web site and may not compensate the client for the publicity. If a lawyer is aware that a law firm client Web site is using the law firm name or its lawyers' names inappropriately or making improper statements or references to the lawyers or law firm, the lawyer should counsel the client and withdraw if the Web site remains objectionable.

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.