

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 89-24

Issued August 18, 1989

[Withdrawn- by Opinion 2016-8 on October 7, 2016]

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Pursuant to a January 24, 2005 order of the Supreme Court of Ohio, DR 2-101(A)(3) not enforceable.]

[Not current-subsequent rule amendments to DR 2-101, eff. Jan. 1, 1993 and Aug. 16, 1993.]

SYLLABUS: Advertisements containing client testimonials are not permitted under the Code of Professional Responsibility.

OPINION: We have before us your request for an advisory opinion on the Board's position regarding the use of client testimonials in attorney advertising.

Client testimonials, like all other forms of advertising by attorneys, are subject to DR 2-101 (A) which prohibits any false, fraudulent, misleading or deceptive statements or claims. DR 2-101 (C) further states that:

[a] communication is false or misleading if it: (1) contains a material misrepresentation of a fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; (2) is likely to create the 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; or (3) is subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

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.

Currently, eight states prohibit the use of testimonials and endorsements while two jurisdictions permit testimonials as long as specific information regarding compensation for the endorsement is included in the advertisement. The United States Supreme Court recently refused to review a California case in which a lawyer was disciplined for including testimonials of former clients. Grey v. State Bar of California, 55 L.W. 3473, cert. denied (1987).

In conclusion, it is our opinion, and you are so advised, that client testimonial advertisements are not permitted under the Code of Professional Responsibility. These advertisements tend to create an unjustified expectation that similar results can be obtained for others, regardless of any specific facts or legal circumstances.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.