



Committee on Professional Ethics

Opinion 908 (2/28/2012)

Topic: Advertising in internet directory

Digest: (a) It is permissible for an attorney to be listed on a local bar association website directory, if the attorney is a member of the association, and the information about the attorney contained in the listing complies with the requirements of Rule 7.1.

(b) It is permissible for an attorney to appear as a “featured attorney” on the home page of the website of a local bar association of which the attorney is a member, only if there is an appropriate disclaimer on the home page that the featured attorney is selected at random and is neither being endorsed nor recommended by the association over any other attorney.

Rules: 1.0(a); 7.1; 7.2; 7.3

FACTS

1. A local bar association proposes to provide on its internet website a directory listing of its dues paying members, listing each attorney’s name, address, phone number, e-mail, website link (if any), years of practice, areas of practice, picture and Google maps link. This listing will be accessible by members of the public. Before accessing these “profiles” a person will be required to accept a posted disclaimer noting that legal advice is not being given, that the list of attorneys may not be a complete list of all attorneys in the area, that the listing is not an endorsement of the searched attorney over another, that the listing is part of the membership fee of each attorney listed in alphabetical order, and does not mean that the attorney listed has had any special training.

2. The local bar association also proposes to provide a “Featured Attorney” spotlight, noting the picture of the attorney, years of practice, fields of practice with a link to the attorney’s profile in the directory referred to above. The spotlight attorney will be selected at random and change each week so that over an extended period, each attorney member of the association will be featured in the spotlight. There will be an asterisk after the Featured Attorney referring to a disclaimer noting that legal advice is not being given, and that the association does not endorse the Featured Attorney over another. Each visitor to the website, before being able to access the directory of information on the Featured Attorney, will have to acknowledge understanding of the disclaimer by clicking on a Notice and OK acceptance box that will pop up before the visitor can proceed further.

QUESTION

3. (a) May an attorney member of the local bar association grant permission to be listed in the profiles portion of the association's website?
4. (b) May an attorney member of the local bar association grant permission to be featured in the "Featured Attorney" spotlight portion of that association's website?

OPINION

5. Rule 1.0(a) defines "advertisement" as "any public or private communication made by or on behalf of a lawyer or law firm about the lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers."
6. The listing by a lawyer in a directory or listing available to the public indicates that it is a communication the primary purpose of which is the retention of the lawyer by members of the public. We therefore view the listing as an "advertisement" since it is a public communication made by or on behalf of a lawyer the primary purpose of which is the retention of the lawyer.
7. While the Rules do not specifically authorize advertising in a directory, Rule 7.1(f) does exclude advertising in a directory from the requirement that it be labeled "Attorney Advertising". We conclude, therefore, that advertising in a directory (here a bar association list of attorneys) is permissible advertising as long as it complies with the relevant provisions of Rule 7.1. The profile listing on the website directory therefore is advertising that must otherwise comply with the requirements of Rule 7.1 but need not be labeled "Attorney Advertising".
8. Because the advertising is not directed to, or targeted at, a specific recipient or group of recipients, it is not a solicitation under Rule 7.3, and because the local bar association does not direct any specific member of the public to a specific attorney the listing of dues paying members is not a referral for payment subject to the provisions of Rule 7.2.
9. The featured attorney spotlight is different from the profile listing of all members. Since it does not appear in a directory, it has to be labeled "Attorney Advertising" as provided by Rule 7.1(f) in addition to complying with the other applicable requirements of Rule 7.1. The disclaimer with respect to non-endorsement of the Featured attorney should also state that the association is not recommending the Featured Attorney over any other attorney and that the selection by lot is a means of merely permitting each member to be displayed on the website home page. The appropriate disclaimer by the association on the page with the featured attorney spotlight, stating that the association was not endorsing or recommending the featured attorney over any other attorney and that the featured attorney is drawn by lot and changes every week as a means of merely permitting each member to be displayed on the association's website homepage, would remove Rule 7.2 considerations.

CONCLUSION

10. (a) It is permissible for an attorney to be listed on a local bar association website directory if the attorney is a member of the association and the information about the attorney contained in the listing complies with the requirements of Rule 7.1.

(b) It is permissible for a member attorney to appear as a “featured attorney” on the home page of the website of the local bar association only if there is an appropriate disclaimer on the home page stating that the featured attorney is neither being endorsed nor recommended by the association over any other attorney and that the featured attorney is drawn by lot and changes every week so that every member of the association has a chance to appear as a featured attorney.

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