

ETHICS OPINION

RO-93-08

Lawyer's brochure should not include amount of a damage award or lawyer's record in obtaining favorable verdicts

QUESTION:

"Being as close to Atlanta and Birmingham as we are, the Anytown legal services marketplace has undergone a tremendous change in recent years. Our firm has decided that we need a firm brochure to use as a tool to communicate to our friends and clients clearly and effectively the broad nature of the services we are capable of providing. Lawyer A, of our office, has worked with the Alabama State Bar, to finalize our brochure, with one exception. The one exception is that we want to refer to four civil matters which I handled in order to illustrate that a client does not have to go out of town to get a lawyer to handle a large, substantial or complex matter.

Enclosed you will find a proof of the current draft version of our brochure. We originally did not have case citations to the four civil matters we wanted to mention, but we added them in an effort to demonstrate to the Bar, as well as to the reader, that these four cases are not puffing, but are short summaries of litigated or settled matters that are on file in public documents. We would be happy to have the brochure approved in its current form, or in the alternative, we would be happy to delete the citations as a whole. or to delete the names of the parties from the citations of the cases. We do not desire for our brochure to offend or annoy any of the parties to those cases. On the other hand, if the Bar feels that the names of the parties need to be present, that is fine with us.

ANSWER:

Rule 7.1(b), Rules of Professional Conduct, does not allow for the listing of damage awards in your firm brochure.

DISCUSSION:

Rule 7.1 of the Rules of Professional Conduct directly addresses this issue and states as follows:

"Rule 7.1 Communications Concerning a
Lawyer's Services

A lawyer shall not make or cause to be made 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;
- (c) Compares the quality of the lawyer's services with the quality of other lawyer's services, except as provided in Rule 7.4; or
- (d) Communicates the certification of the lawyer by a certifying organization, except as provided in Rule 7.4."

The Comment to Rule 7.1 states:

"(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)

Comments to the Rules of Professional Conduct are designed to "explain and illustrate" the meaning and purpose of the Rules according to the Preamble to the Rules.

Alabama's Rule 7.1 and the Comment thereto are taken verbatim from the ABA Model Rules of Professional Conduct. In The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct, the authors draw the following conclusion:

"Rule 7.1(b) virtually precludes any use of a lawyer's track record as a selling point. Many other factors other than a lawyer's skill contribute to the result in any case, so claims based upon results are especially likely to be misleading. In Bates, the Supreme Court carefully limits approval of advertising to matters of price and availability of routine services, and intimated that advertisements as to quality might be inherently misleading." Hazard & Hodes, The Law of Lawyering, 863 (2d ed 1990).

It does not matter whether the references in your brochure to past damage awards include case citations or not. The question is not whether the facts are true, but whether their inclusion could create an unjustifiable expectation in the lay reader seeking legal representation.

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Cases are settled for numerous reasons and on their own distinctive facts. Similarly, the size of a damage award may have nothing to do with the skill of the lawyer representing the plaintiff. Jury verdicts can contain the same vagaries. Telling the public that a lawyer's client recovered a certain award in another case, at another time and place, really tells the prospective client nothing about his own opportunity for a like recovery.

What your firm wants to do, regardless of your motive for doing so, is essentially a textbook violation of Rule 7.1(b), as it has been interpreted.

MLM/vf

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