



Committee on Professional Ethics

Opinion 877 (9/12/11)

Topic: Permissible information on a law firm website.

Digest: A lawyer may accurately list, on his firm's web site, his former positions in other firms. The web site may also accurately quote bona fide professional ratings or comments from any ratings publication if the ratings or comments are factually supportable when published, and the lawyer obtains and confirms in writing the client's informed consent to any testimonial or endorsement with respect to a matter still pending.

Rules: 7.1(a), (b), (d) & (e); 7.5(a) & (b).

QUESTIONS

1. A lawyer has asked two questions about what information he may post on his firm's web site:
 - A. May he list, in his web site biography, his former partnership positions in other firms?
 - B. May he, on the web site, quote favorable comments about his work that were made in a publication that rates lawyers and law firms?

OPINION

Question A: May a lawyer's web site biography list his former partnership positions in other firms?

2. Rule 7.5(a) expressly provides that a lawyer may use "internet web sites" that do not violate any statute or court rule and are in accordance with Rule 7.1. Within Rule 7.1, subparagraph (a)(1) prohibits a law firm from using or disseminating

advertisements that are “false, deceptive or misleading.” Rule 7.1(b)(1) expressly provides that advertisements may include (among other things) information as to “public offices and teaching positions held.” Rule 7.1(b)(1) does not explicitly authorize inclusion of other kinds of experience (such as former partnership positions in other firms), but in the analogous context of professional announcement cards, Rule 7.5(a)(2) more broadly authorizes such cards to state “biographical data” that is in accordance with Rule 7.1.

3. We believe that the biographical data authorized for inclusion in professional announcement cards is authorized for inclusion on law firm internet web sites as well. Lawyer advertising serves legitimate purposes of attracting and assisting potential clients, so long as such advertising is not false, deceptive or misleading. See Rule 7.1, cmt. [3]. Accurate biographical data, such as identification of former partnership positions in other firms, can be useful in carrying out those legitimate purposes.
4. Of course, references to such former partnership positions would be prohibited if they were false, deceptive or misleading. For example, it would be impermissible for the reference to former partnership positions to imply that there is a continuing relationship with the former firm, or that the lawyer’s current firm is a successor firm to the lawyer’s former firm, if that is not a fact, and it would be impermissible for the biographical data to imply that the former partnership position lasted longer or ended for a different reason than was actually the case.

Question B: May Mr. Doe, on his web site, quote favorable comments about his work that were made in a publication that rates lawyers and law firms?

5. A lawyer’s web site may include accurate quotations from a publication about the lawyer’s work if the lawyer’s web site and the quotations comply with all applicable requirements of Rules 7.1 and 7.5. Under Rule 7.1(a)(1), an advertisement may not contain statements or claims that are false, deceptive or misleading. This means not only that the web site must quote the publication accurately, but also that the quotations themselves must not be false, deceptive or misleading.
6. The Rules also contain more specific requirements relevant to quotations. For example, if a quotation is a paid endorsement, the lawyer must disclose that fact. See Rule 7.1(c)(1) (lawyer advertisement shall not “include a paid endorsement ... about a lawyer or law firm without disclosing that the person is being compensated therefor”).¹ If the quoted statements describe or characterize the “quality” of the

¹ Until April 15, 2011, the quoted provision was numbered Rule 7.1(c)(2). On April 15, 2011, the New York Appellate Divisions amended Rule 7.1(c) by deleting some provisions, amending some provisions, and renumbering various subparagraphs.

lawyer's work, Rule 7.1(d)(4) and (e)(2)-(3) require that the statements "can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated," and require that the statements be accompanied by the specific disclaimer that "prior results do not guarantee a similar outcome." See N.Y. State 834 (2009) (an advertisement that contains a client testimonial requires the disclaimer concerning results set out in Rule 7.1(e)(3)). If the comments from the publication contain "a testimonial or endorsement from a client with respect to a matter still pending," then under Rule 7.1(e)(4) – which the Appellate Divisions added to the New York Rules of Professional Conduct effective April 15, 2011 -- the lawyer must also obtain the client's "informed consent confirmed in writing."

7. If the quotation is from a publication that rates lawyers and law firms, however, then Rule 7.1(b)(1) may temper the requirement that the statements "can be factually supported." The last clause of Rule 7.1(b)(1) provides that an otherwise compliant advertisement may include information as to "bona fide professional ratings." We do not opine as to whether the ratings in any particular publications qualify as bona fide, but for a rating to be bona fide and nondeceptive, it should at least be unbiased, nondiscriminatory and based on some defensible method. Those standards are further spelled out in Comment [13] to Rule 7.1. If the quotations from the rating publication comply with all applicable restrictions on advertising and lawyer web sites, it is permissible to include them.

CONCLUSION

8. A lawyer may accurately list, in his web site biography, his former partnership positions in other firms. His web site may also accurately quote bona fide professional ratings, or comments from any ratings publication, if the comments were capable of factual support when published, the required disclaimer about prior results is included, and the lawyer obtains and confirms in writing the client's informed consent to any testimonial or endorsement with respect to a matter still pending.