

Avoiding Inadvertent Violations of Lawyer Advertising Rules

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The publication of Supreme Court opinions involving attorney discipline should be sufficient to educate the bar to the obvious, i.e., don't lie, cheat, or steal. There are, however, obligations imposed by the Minnesota Rules of Professional Conduct (MRPC) and associated Opinions of the Lawyers Professional Responsibility Board that may not always be obvious. This column and future installments are intended to be case studies of complaints investigated by the Office of Lawyers Professional Responsibility that have resulted in either a dismissal of the case or the issuance of a private admonition, the lowest level of attorney discipline.

"ADVERTISEMENT"

One area that commonly results in "inadvertent" violations of the MRPC are the requirements imposed on lawyer advertising. Rules 7.1 through 7.5, MRPC, contain various restrictions and requirements regarding advertising and solicitation.

Larry Lawyer represented a client in a claim arising out of the client's investment in a limited partnership. During the course of investigating the claim, Lawyer discovered that other limited partners might also have legitimate claims as well. Lawyer wrote to these partners detailing the alleged violations and diversions by the managing partner and inviting them to contact him. Managing partner's attorney obtained a copy of the letter from one of the limited partners and was not pleased. A complaint ensued alleging that Lawyer's letter was defamatory, false and fraudulent. Also noted was the fact that the letter did not contain the word "ADVERTISEMENT" as required by Rule 7.2(f), MRPC.

After a District Ethics Committee investigation and report, an admonition was issued to Lawyer for violation of Rule 7.2(f), which provides:

"(f) The word "ADVERTISEMENT" must appear clearly and conspicuously at the beginning of any written solicitation to a prospective client with whom the lawyer has no family or prior professional relationship and who may be in need of specific legal services because of a condition or occurrence that is known to the soliciting lawyer."

In this case it was clear that the letter to the limited partners was a solicitation to prospective clients in need of specific legal services because of conditions and occurrences known to Lawyer. Given that the word "Advertisement" did not appear on the letter, the rule was violated.

Because the violation appeared to be both isolated and nonserious, an admonition was the appropriate discipline. See Rule 8(d)(2), Rules on Lawyers Professional Responsibility. The District Ethics Committee

recommended finding no violation regarding the allegations of fraud and dishonesty. Because there was not clear and convincing evidence of these violations, the Director concurred.

Using a trade name?

In another advertising case, Alphonse Attorney placed ads in local newspapers advertising his firm, which did business under a trade name. A complaint was received alleging that the ads violated Rule 7.2(d), MRPC, which provides:

"(d) Any communication made pursuant to this Rule shall include the name of at least one licensed Minnesota lawyer responsible for its content if the legal services advertised are to be performed in whole or in part in Minnesota."

Indeed, the ads did not contain the name of at least one licensed Minnesota lawyer and an admonition was issued.

The lesson to be learned here is that when contemplating advertising or solicitation, there are some fairly detailed requirements and limitations that must be complied with. Familiarize yourself with the relevant rules and comply with them.

Even so-called "technical" violations of the rules can result in discipline. *See In Re MDK, 534 N.W. 2d 271 (Minn. 1995).*