

LAWYER ADVERTISING – PERCENTAGE DISCOUNTS ON FEES

By

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Advertising a percentage discount for attorney fees has resulted in several complaints. The general rule is that attorney advertising must not contain any false, fraudulent, misleading or deceptive statement or claim. The question discussed in this article is when advertising a percentage discount on attorney's fees is misleading.

Any advertising that makes a false, fraudulent, misleading or deceptive statement or claim is proscribed by DR 2-101(A). Examples of such statements are identified in DR 2-101(B), including any statement which:

- (1) contains a misrepresentation of facts
- (2) is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts
- (3) is intended or is likely to create false or unjustified expectations of favorable results;

- (6) contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

The specific problem which has arisen is that a number of advertisements have simply contained the statement, "X% discount". In our opinion, the failure to include within the advertisement information about the standard rate against which the discount is to be applied is a partial disclosure likely to mislead. See DR 2-101 (B) (2). One danger is that the unscrupulous could manipulate their rates to give the appearance of a discount even though the fee has not really been discounted. Such dangers are increased because services rather than goods are involved. Also, oftentimes even "standard" services are very individual. When the standard fee or hourly rate does not appear in discount advertising neither the client nor the discipline board is able to verify that facts have not been misrepresented in the advertising. See DR 2-101 (A).

My office takes the position that any fee percentage discount advertising which does not fully disclose relevant facts is likely to mislead or deceive, under DR 2-101 (B) (2). This position is supported by *Kentucky Bar Association v. Gangwish*, 630 S.W.2d 66, 67 (Ky. 1982), which stated, "we are of the opinion that advertising '20% discount on legal services' is not advertising of fees for routine legal services and it is misleading in every respect."

It is particularly important that the attorney offering a percentage discount disclose all facts from which the prospective client can determine that an appropriate discount in fact is being applied. Such

disclosures would obviously include the relevant standard fee or hourly rate, together with the discounted fee or rate for the particular type of service.

Lawyer advertising has been examined in several Minnesota and U.S. Supreme Court cases. *See Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977) *In re Appert and Pyle*, 315 N.W.2d 204 (Minn. 1981); *In re R.M.J.*, 102 S. Ct. 929 (1982). These cases have recognized the constitutional concerns in restricting advertising and have declined to uphold discipline based on allegedly improper advertising. The cases also, however, have recognized that some lawyer advertising may be proscribed. Included in this category is advertising which makes claims which are not susceptible to measurement or verification, as well as advertising which involves a potential for abuse. Advertising which omits relevant information is particularly subject to regulation.

We have issued warnings in the past regarding incomplete fee discount advertising. We will continue to scrutinize complaints of improper discount advertising to determine whether such advertising is either overtly false, fraudulent, misleading or deceptive, or is likely to mislead or deceive because of insufficient disclosure of relevant facts.