

Making sure your firm's website complies with the rules

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Reprinted from *Minnesota Lawyer* (September 3, 2007)

In the past 10 years the Internet has become a major marketplace for information, ideas and products. Now more than ever consumers use the Internet to research and purchase services.

The legal profession is no exception in utilizing the Internet as an important resource for marketing services to potential clients.

Many law firms maintain a homepage profiling general information about the firm, including what types of matters it handles and any special industry expertise possessed by its attorneys. In the case of many large or midsized firms, the reader is able to call up information about each attorney and various practice groups or sections. Law firm homepages are an especially attractive marketing tool because they afford the use of graphically rich and visually appealing information all within the click of a mouse.

When creating a homepage and accompanying pages detailing their firm, lawyers must keep in mind that the Minnesota Rules of Professional Conduct apply when marketing legal services on the Internet. It is improper for lawyers to communicate information that is false or misleading on their home page, just as it is to do so in any other medium.

Rule 7.1 of the MRPC makes it improper to make material misrepresentations of fact or law. While what is commonly known as "puffing" may be acceptable in some fields, a lawyer may not overstate his or her qualifications.

Prior to the October 2005 amendments to the MRPC, several additional specific types of communications were prohibited. These types of statements can still run afoul of the current Rule 7.1. For example, former Rule 7.1 expressly prohibited a lawyer from communicating in ways that created unjustified expectations. Although the advertising rules have been somewhat liberalized, lawyers still should be extremely careful when posting "track records," client testimonials and endorsements on their website so as not to be misleading. Comment 3 to Rule 7.1 states that inclusion of a disclaimer may be necessary to prevent such statements from creating unjustified expectations. A client must also consent to the use of his or her identity.

Former Rule 7.1 also prohibited comparison of a lawyer's services with that of another lawyer, unless the comparison could be factually substantiated. Current Comment 2 to Rule 7.1 now states that an unsubstantiated comparison of the lawyer's services or fees with those of other lawyers may be misleading if made with such specificity as to lead a reasonable person to conclude that the comparison could be substantiated. Thus, a lawyer who practices mainly in the area of real estate law may be able to state that he or she conducts the most closings in a certain area — if statistics are available to authenticate such a claim.

On the other hand, a lawyer may not state that he is “one of the top five real estate lawyers” because such terms are subjective and impossible to corroborate, but may appear capable of factual substantiation to prospective clients.

Finally, a law firm’s homepage may have a different URL (uniform resource locator) than the law firm’s name, provided that the URL is not itself misleading. For example, it would be misleading for a law firm’s URL to imply a relationship with a government agency.

A lawyer was recently admonished by a Lawyers Board panel in part for making a misleading statement on his Internet homepage regarding his certification as a certified civil trial specialist, after that designation had lapsed.

The lawyer was admonished for violating Rules 7.1 and 7.4(d) of the MRPC. Although discipline was found to be clearly warranted, the panel expressed a general concern that some lawyers may establish websites for competition reasons, but then lack the expertise to maintain them. If intending to have a web presence, then lawyers may need to use outside sources to keep their websites current.

The information superhighway can be a useful marketing tool for lawyers; however, lawyers who use the Internet as a marketing vehicle must ensure that their webpage complies with the applicable rules of professional conduct, including not only Rule 7.1 but also the rules specifically governing advertising, solicitation and specialization set out in Rules 7.2, 7.3, 7.4 and 7.5.