

Public perception and attorney advertising
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Despite our best intentions or aspirations, negative impressions of attorneys such as the following persist in the public mind:

- Attorneys are self-serving, caring more for themselves and money than the justice system they purport to uphold;
- Attorneys get criminals off on technicalities;
- Attorneys don't respond to their clients' needs; and,
- Disciplinary authorities fail to adequately police the profession.ⁱ

For most of the profession, it's an inaccurate depiction of who we are and who we strive to be. Even though the vast majority of attorneys are undeniably honest and hardworking, such qualities do not seem to be resonating altogether successfully with the general public.

What can we, as a profession, do to combat (or, at the very least, forestall the perpetuation of) these perceptions?

We can make a concerted effort not to act in accordance with what is perceived to be the "stereotypical attorney." But how is that accomplished?

One first step is to ensure that representations made to the public are unequivocally straightforward and honest. Subjective honesty steeped in nuanced argument and creative wordplay is not helpful; rather, what is necessary is an objective honesty that transcends legalese and speaks clearly to everyone.

With the growing number of new attorneys entering the marketplace each year, the solicitation of clients and marketing of legal services to the public will play an increasingly significant role. Such solicitations and marketing techniques must comply with rules 7.1-7.5 of the Minnesota Rules of Professional Conduct. While most attorneys seem to have a solid grasp on the concept that cold-calling potential clients unknown to the attorney is prohibited by the rules, in other areas of advertising, some attorneys may not be as sure of themselves.

For example, Rule 7.3(c) requires an attorney's written solicitation to a prospective client known to be in need of legal services in a particular matter to clearly and conspicuously include on the outside envelope and on the enclosed communication the specific words "Advertising Material." Despite the apparent clarity of the rule, this office continues to see attorney advertisements failing to comply with this seemingly unambiguous directive, and attorneys have been admonished for failing to do so.

Vague statements in advertising are also a problem.

In 1996, the Minnesota Supreme Court addressed the conduct of an attorney who advertised he had at least nine offices around the metro area at which he could meet clients. (See *In re Charges of Unprofessional Conduct Against 95-30*, 550 N.W.2d 616 (Minn. 1996)).

In actuality, the attorney had only one fully staffed office and one conference room he rented on a monthly basis. The remaining locations were rented hourly as necessary. While the court ultimately determined that the attorney's admittedly "vague" representations were not material misrepresentations and, therefore, did not violate the MRPC, the court specifically stated: "So long as lawyer advertising is not false, fraudulent, misleading or deceiving, it passes constitutional muster and the disciplinary code, but one hopes for more. ... Simply because free speech allows us to make fools of ourselves is no reason we should avail ourselves of the opportunity. For then, sadly, it is the whole profession that suffers." (*Id.* (quoting *In re Discipline of Kotts*, 364 N.W.2d 400, 407 (Minn. 1985) (Simonett, J. concurring specially) (ellipsis in original)).

The message to be taken from this case should not be that immaterial misrepresentations in attorney advertising will be countenanced under the MRPC. Rather, the message should be that we as attorneys ought to hold ourselves to a higher standard.

The MRPC cannot - nor would we want it to - micromanage every aspect of an attorney's practice. One can be within the technical bounds of the rules yet still contribute to the negative perception of attorneys held by the public. The gap left between the bare minimum required by the MRPC and that level to which we should all aspire is up to us to fill.

ⁱ See Sara Parikh, "Public Perceptions of Lawyers: Consumer Research Findings," 7-10 (ABA Litig. Sec., Apr. 2002), <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf>.