

# REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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Reprinted from *Bench & Bar of Minnesota* (December 1978)

## **Some Answers to Questions About Lawyer Advertising**

Judging from the number of calls from attorneys to the Board's office inquiring about lawyer advertising rules, some confusion exists regarding the present rules and enforcement policies of the Board in this area. I have avoided writing about this subject in *Bench & Bar* prior to this date, since there is a risk that a short article will oversimplify the complicated issues raised by the infinite possible forms of advertising. Nonetheless, certain general propositions upon which we frequently receive questions, and upon which many misconceptions still remain afloat, are perhaps suitable for discussion here.

The following questions and answers set forth the most common inquiries and the answers that indicate the present enforcement position on lawyer advertising issues in Minnesota. Except as otherwise indicated, the answers given represent personal opinions of this writer; they do not necessarily constitute the position of the Lawyers Professional Responsibility Board or any of its members.

### **1. What is the general rule in effect regarding lawyer advertising in Minnesota?**

ANSWER: An Order of the Minnesota Supreme Court, dated April 14, 1978, amended the Code of Professional Responsibility to permit "public communications" unless they are "false, fraudulent, misleading or deceptive". That phrase is defined as follows: " A false, fraudulent, misleading or deceptive statement or claim includes a statement or claim which:

- (1) Contains a misrepresentation of fact;
- (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;
- (4) Conveys the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;

- (5) Is intended or likely to result in a legal action or legal position being taken or asserted merely to harass or maliciously injure another; or
- (6) Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived."

This rule will remain in effect for a one-year period, when a hearing will be held to consider proposed additions or amendments to the rule.

**2. Is there any prohibition against television or radio advertising by attorneys in Minnesota?**

ANSWER: An advertisement placed by an attorney to be broadcast by the electronic media is subject to the same general rule set forth in the answer to Question No. 1 above. Such advertising is not prohibited *per se*.

**3. Does the present rule permit attorneys to advertise in the "yellow pages" of the telephone directory?**

ANSWER: Yes. The Lawyers Professional Responsibility Board considered this question and determined that yellow pages advertising was a permissible "public communication", subject to the general rules set forth in the answer to Question No. 1 above.

**4. Is attorney advertising that is "undignified" or "self-laudatory" prohibited by the present rule?**

ANSWER: No, not *per se*. Although most attorney advertising in Minnesota to date has been dignified and proper by any standards, there is no rule presently in effect which would serve as a basis for disciplining an attorney who would place an "undignified" or "self-laudatory" advertisement.

**5. May an attorney advertise that he or she is a specialist in such fields of practice as domestic relations, personal injury, probate, or the like?**

ANSWER: No. Only those fields in which there is authorized certification of specialists (e.g., patents, trademarks, or admiralty) could be advertised as specialist fields. See DR 2-105. Advertising oneself as a "specialist" in personal injury work would tend to mislead the public to believe that the advertiser has been certified as a specialist in the field. However, the prohibition against using the term "specialist" does not restrain an attorney from listing one or more fields in which the lawyer wishes to announce his or her availability

**6. Is advertising by mail permitted?**

ANSWER: The answer to this question depends upon the content of the mailed communication and related circumstances. The rules prohibiting direct solicitation of legal work are contained in DR 2-103, and that rule is not altered by the liberalized advertising rules. A letter written to a particular individual to solicit legal work, such as a letter written to an accident victim in a hospital recommending the employment of oneself as an attorney, would constitute prohibited solicitation. In contrast, a direct mail communication to a significant number of persons merely announcing the availability of an attorney in certain areas could fall within the permitted definition of a "public communication". The distinction between permitted advertising, on the one hand, and prohibited solicitation, on the other hand, depends on all facts and circumstances. The mere fact that a communication is made in writing does not necessarily assure that it will be construed as advertising, rather than as solicitation.

**7. Would telephone solicitation or door-to-door solicitation be permitted?**

ANSWER: No. The present enforcement policy of the Board's staff is that all such communications are prohibited *per se* as solicitation.

**8. Do the amendments to the advertising rules contain any changes with respect to letterheads or proper firm names?**

ANSWER: No. Rules previously in effect regarding content of attorneys' letterhead and firm names are still being enforced. See DR 2-102(A)(4) and DR 2-102(B). The easing of restrictions on advertising does not permit the attorneys' letterhead to be used as a forum for advertising. Also, lawyers in private practice may not list non-lawyers on their letterheads or use a partnership or firm name to apply to a mere office-sharing arrangement.