

Garden State CLE Presents:



**“Successful and Ethical New Jersey
Attorney Web Sites”**

Lesson Plan

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Part I - Ethics Rules on Attorney Advertising - In General

RPC 7.1 - Communications Concerning a Lawyer's Service

- (a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:
 - (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
 - (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
 - (3) compares the lawyer's services with other lawyers' services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: "No aspect of this advertisement has been approved by the Supreme Court of New Jersey"; or
 - (4) relates to legal fees other than:
 - (i) a statement of the fee for an initial consultation;
 - (ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;
 - (iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;
 - (iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;

- (v) the availability of credit arrangements; and
 - (vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive
- (b) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the Advertising Committee or as provided by Rule 1:19A-3(d).

RPC 7.2 - Advertising

- (a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.
- (b) A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; (2) a lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Part II - Business Goals:

Consistent with the ethical obligations of New Jersey attorneys, to attract the maximum traffic to your web site in an effort to motivate the visitor to take the positive action of:

- a. Becoming a new client;**
- b. Using your firm's services again; or**
- c. Recommending your firm to another person.**

1. These actions will be accomplished when your web site reveals the following:

a. “The Edge” - Firm activities and legal reputation meet a particular, specialized need of the visitor due to an “edge” or inherent advantage.

Examples:

Idefendyou.com

brentbuckman.com

<http://www.oneillaw.ca/index.html>

(See CAA opinion 31 (2005));

The Committee has been asked for its opinion as to the propriety of including photographs of judges on an attorney's Internet webpage. Publication of judges' photographs for other than promotional purposes is permissible. However, if judicial photographs are presented as part of an advertising or marketing venture their use is controlled by and subject to the Rules of Professional Conduct and the Code of Judicial Conduct.

Electronic advertising communications may constitute constitutionally protected commercial speech. However, electronic communications, either directly or through a link, may violate the Rules of Professional Conduct in that portrayal of a judge, in the context of an attorney's promotional communication, is tantamount to an unspoken and prohibited testimonial or endorsement.

Including the image of a judge on an attorney's website is improper because “it is likely to create an unjustified expectation.” *RPC 7.1(a)(2)* because of the implicit endorsement by the judge who appears on the website. Further, a commercially appropriated judicial image may “imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.” *RPC 8.4(e)*.

A judge may not permit another to use his or her image because that use would violate the Code of Judicial Conduct which provides that, “A Judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence.” *Code of Judicial Conduct 2.5*.

The Committee has, therefore, determined that an attorney may not include on a professional or personal website, either directly or through a link, an image of a judge if the purpose of the site is to advertise or market that attorney's practice.

b. Individual firm members demonstrate superior experience and expertise (e.g. trial certification) (In re Hyderally, 208 NJ 453, 454-455 (2011))

This ethics proceeding requires the Court to determine whether respondent violated [RPC 8.4\(c\)](#), which prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation,” by virtue of his display of the seal of the New Jersey Board on Attorney Certification on his law firm website, notwithstanding the fact that respondent is not a Certified Attorney. An attorney may incorporate the seal of the New Jersey Board on Attorney Certification in attorney advertising, including any website, only if he or she is certified as a civil trial attorney, criminal trial attorney, matrimonial law attorney, workers' compensation law attorney or municipal court trial attorney, pursuant to *Rule 1:39*. Members of the Bar may be subject to discipline if their websites or other communications improperly display the seal of the New Jersey Board on Attorney Certification. Attorneys are responsible for monitoring all advertising and other communications with the public to ensure conformity with the Rules of Professional Conduct. Nonetheless, the Court concludes that the record of this case does not support a finding by clear and convincing evidence that respondent violated [RPC 8.4\(c\)](#), and accordingly we do not impose discipline upon respondent.

Notwithstanding our decision on the record of this case, we remind the Bar that attorneys are responsible for monitoring the content of all communications with the public—including their websites—to ensure that those communications conform at all times with the Rules of Professional Conduct. No attorney who has not complied with the requirements of *Rule 1:39* should display the New Jersey Supreme Court Certified Attorney seal on a website, in other advertising, on letterhead or in any other form of communication, or otherwise state or imply that he or she has been certified pursuant to *Rule 1:39*. Prospectively, attorneys who are not authorized by *Rule 1:39* to utilize the New Jersey Supreme Court Certified Attorney seal, but who display that seal on their websites or in other communication, will be subject to appropriate discipline. Whether a website is created by an outside consultant or developed and maintained by an attorney or his or her staff, all language and design that appears on it should be reviewed

frequently for compliance with *Rule 1:39* and all Rules of Professional Conduct. (at 461-462)

c. Firm charges reasonable legal fees (See RPC 7.1(a)(4));

- **(a) A communication is false or misleading if it:**

(4) relates to legal fees other than:

- **(i) a statement of the fee for an initial consultation;**
- **(ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;**
- **(iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;**
- **(iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;**
- **(v) the availability of credit arrangements; and**
- **(vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive**

d. Firm possesses adequate size, experience, expertise and resources to effectively litigate the matter (CAA Opinion 42 (2010))

The Committee on Attorney Advertising recently considered a grievance regarding an attorney's solicitation letter that touted his inclusion in a "Super Lawyers" attorney ranking list and membership in the "Million Dollar Advocates Forum." The grievance was resolved informally after the attorney revised his solicitation letter. Because the problem is likely to recur, the Committee decided to issue this opinion to provide guidance to the bar on permissible language when communicating inclusion in such lists or referring to membership in organizations such as the "Million Dollar Advocates Forum."

In 2006, the Committee on Attorney Advertising issued Opinion 39, concerning attorneys advertising inclusion in ranking lists published by organizations such as Best Lawyers of America ("Best Lawyers") and Key Professional Media ("Super Lawyers"). 185 *N.J.L.J.* 360, 15 *N.J.L.* 1549 (July 24, 2006). The New Jersey Supreme Court granted a petition for review of Opinion 39 and remanded the matter to a Special Master, who held a hearing and issued a comprehensive Report that was presented to the Court. *In re Opinion 39 of the Committee on*

Attorney Advertising, 197 N.J. 66 (2008). In its decision, the Court acknowledged that the language of *Rule of Professional Conduct* 7.1(a)(3) prohibited statements comparing attorneys' services and held that it would revise the *Rule* to "take into account the policy concerns expressed by the *Rule* while, at the same time, respecting legitimate commercial speech activities." *Id.* at 79-80.

The Court issued amendments to *Rule of Professional Conduct* 7.1 effective November 2, 2009. Amended *Rule of Professional Conduct* 7.1(a)(3) provides that "a communication is false or misleading if it . . . compares the lawyer's services with other lawyers' services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: 'No aspect of this advertisement has been approved by the Supreme Court of New Jersey'" The official comment to amended *Rule of Professional Conduct* 7.1 provides:

A truthful communication that the lawyer has received an honor or accolade is not misleading or impermissibly comparative for purposes of this Rule if: (1) the conferrer has made inquiry into the attorney's fitness; (2) the conferrer does not issue such an honor or accolade for a

price; and (3) a truthful, plain language description of the standard or methodology upon which the honor or accolade is based is available for inspection either as part of the communication itself or by reference to a convenient, publicly available source.

[Official Comment to *RPC* 7.1.]

Amended *Rule of Professional Conduct* 7.1(a)(3), therefore, requires that the factual basis for a comparison of attorneys' services must be verifiable. Further, the attorney must include the name of the comparing organization and must be satisfied that the conferrer has made appropriate inquiry into the attorney's fitness. The attorney must include a description of the standard or methodology on which the accolade is based. Lastly, the attorney must state that the advertisement has not been approved by the Supreme Court. This information is necessary to protect consumers from communications that are misleading and likely to raise unjustified expectations. When adequate information is available to consumers of legal services, they should be able to differentiate between accurate puffery and unsupportable exaggeration.

The solicitation letter recently reviewed by the Committee provided: “Because of my dedication to our clients and success in the courtroom, I have been named as a *Super Lawyer* by *New Jersey Monthly Magazine* for five (5) consecutive years (2006 through 2010), and I am a *Life Member* of the *Million Dollar Advocates Forum*, which puts me in an elite group of less than one percent (1%) of all lawyers in the United States.” This language grossly violates the rules governing attorney advertising.

The advertisement calls the attorney “a Super Lawyer” instead of saying that he was included in the “Super Lawyers” list published by Thomson Reuters.¹ There is an obvious and crucial difference between stating that one is “a Super Lawyer” and stating that one received an accolade or honor by being included on a list called “Super Lawyers.” This point was addressed by the Special Master in the Report submitted to the Court in *In re Opinion 39 of the Committee on Attorney Advertising, supra*:

Where superlatives are contained in the title of the list itself, such as here, the advertising must state and emphasize only one’s *inclusion* in the *Super Lawyers* or *The Best Lawyers in America* list, and *must not* describe the attorney as being a “Super Lawyer” or the “Best Lawyer.”

[Special Master Report, June 18, 2008,
page 303.]

The claim in the solicitation letter that the attorney is in “an elite group of less than one percent (1%) of all lawyers in the United States” also is improper. As the Special Master stated in the Report:

Likewise, claims that the list contains “the best” lawyers or, *e.g.*, “the top 5% of attorneys in the state,” or similar phrases are misleading, are usually factually inaccurate and should be prohibited.

[Ibid.]

The Committee agrees with these comments of the Special Master regarding permissible language and phrasing to be used by attorneys touting this type of honor or accolade. The claim that an attorney is “super,” “best,” “elite,” or in a top percentile of attorneys, cannot be factually substantiated. Such hyperbolic words and phrases are utterly and inherently misleading and may not be used in attorneys’ communications.²

Attorneys must also refrain from making inaccurate or misleading statements about the reasons for inclusion in such lists or

membership in organizations such as the “Million Dollar Advocates Forum.” In the solicitation letter reviewed by the Committee, the attorney stated that he was included in the list called “Super Lawyers” and obtained membership in the “Million Dollar Advocates Forum” “because of [his] dedication to [his] clients and success in the courtroom.”

An attorney obtains inclusion in the list generated by Thomson Reuters (“Super Lawyers”), Best Lawyers in America (“Best Lawyers”), and similar organizations by receiving a sufficient score or rating in accordance with the organization’s standards and methodology. As required by amended *Rule of Professional Conduct* 7.1(a)(3), the advertisement must include a description of the standard or methodology used by the organization. An attorney obtains membership in the “Million Dollar Advocates Forum” because the attorney obtained a recovery of at least one million dollars in a case and then paid a substantial fee to the “Forum” for lifetime membership. Advertisements must include a description of the criteria to be met to obtain membership in organizations such as the “Forum.” Attorneys may not casually state that a reason such as “dedication to clients” was the basis for their receipt of this type of honor or accolade.

It has also come to the Committee’s attention through the hotline that some newspapers conduct contests to anoint attorneys, businesses, and pizza parlors as “top” in the region. Apparently, this type of accolade is conferred based on online voting by newspaper readers. There is no indication that the newspaper conducts an inquiry into the fitness of the attorneys who “win” such contests. These appear to be mere popularity contests and attorneys may not refer to such honors or accolades in any communications about the attorney’s services.

Accordingly, attorneys may communicate that they are included in ranking lists only if the factual basis for the comparison of attorneys’ services can be substantiated or verified, and the comparing organization has made appropriate inquiry into the attorney’s fitness. The attorney must include in the communication the name of the comparing organization and a description of the standard or methodology on which the honor or accolade is based. The attorney must state that the advertisement has not been approved by the Supreme Court. The attorney must include the year the honor or accolade was conferred and the specialty, if any, for which the attorney was listed. When the title of the list contains a superlative such as “super,” “best,” “leading,” “top,” or “elite,” the attorney must state and

emphasize only the attorney's inclusion in the list and must not state that he or she *is* "super," "best," "leading," "top," or "elite." Similarly, an attorney may not state that the list in which he or she is included reflects "the best" attorneys or a "top percentage" of attorneys, or that he or she belongs to an organization comprising an "elite percentage" of attorneys. Such statements cannot be substantiated and are inherently misleading.

e. Firm has experienced successful outcomes with similar cases - Client Testimonials (See CAA Opinion 33 (2005));

In Opinion 15, which required a disclaimer that results may differ depending on different circumstances, the Committee held that the technique of using lay testimonials is not inherently misleading. In that opinion, the Committee stated that “[t]he fact that such advertising may tend to mislead the public or present lawyers with opportunities for isolated abuses or mistakes does not justify a total ban on this mode of protected commercial speech,” citing Shapero v. Kentucky Bar Ass'n., 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) which held that potential advertising abuses may be regulated within the constitutionally limited protection of commercial free speech afforded under the First Amendment of the United States Constitution.

Since the Committee's opinion [15] was published in 1993, there have been well-reasoned opinions by ethics authorities in other jurisdictions which have prohibited or limited the use of endorsements or testimonials in lawyer advertising. Based on these authorities, and in further consideration of the issue, the Committee has come to the opinion that endorsements and testimonials by lay persons as to the legal effectiveness of an attorney do not serve the ultimate end of attorney advertising: truthful communication of factually relevant information which gives the lay public a competent basis to judge whether a particular lawyer has the requisite knowledge, skill, competence and ethical qualities to better serve in a particular area of

law or in a specific matter. Accordingly, the Committee is withdrawing Opinion 15 and superseding it as follows when a lawyer uses client endorsements or testimonials as a marketing tool in an advertising or marketing campaign.

Client endorsements or testimonials which extol in any manner the professional efficiency or effectiveness of a lawyer are prohibited. An endorsement is a subjective statement reflecting the opinion or belief of the client furnishing the endorsement or testimonial. Such endorsements or testimonials, if addressed to the professional effectiveness of the lawyer, may create unjustified expectations, *RPC 7.1(a)(2)*, as to results which the lawyer can achieve. An endorsement or testimonial also measures, without professional expertise, the results obtained for the client with results that might be obtained by the lawyer in representing a future client in different circumstances. *RPC 7.1(1)(3)*

Finally, such endorsements are necessarily given by a person who does not have the professional expertise to qualitatively judge the results achieved by the lawyer and, therefore, do not furnish relevant information to be considered in the selection of counsel. *RPC 7.2(a)*.

A lawyer or law firm may, however, utilize endorsements or testimonials from clients addressed to the satisfaction of the client based on the interaction between lawyer and client, for example, that the lawyer was sympathetic or concerned, returned calls, communicated frequently, was prompt in responding to client requests, or was professional in their dealings, if:

(a) the endorsement or testimonial as to these matters is, in fact, that of the client, is truthful in all respects and does not compare one lawyer with another;

(b) does not describe the work or the quality of the work which the lawyer has performed for the client; and

(c) the client consents to the use of such an endorsement or testimonial in the marketing or advertising program of the attorney.

Additionally, the use of any endorsement or testimonial given by a client under the above guidelines must cease when the lawyer no longer has a reasonable basis to believe that the client's opinion remains essentially unchanged. In this regard, notification of a change in the client's opinion need not come directly from the client. Such changes may be implied or inferred from subsequent events that would lead to a reasonable belief that the client is no longer satisfied with the lawyer or the law firm.

f. Web Site allows or encourages submission of questions for the purpose of obtaining legal advice.

RPC 1.6: Confidentiality of Information

- **(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).**

RPC 1.6 prohibits a lawyer from revealing any “information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted” as one of six specific exceptions expressly set out in the rule. The broad command in RPC 1.6 to preserve the confidentiality of information relating to the representation of a client has routinely been held to include keeping the identities of clients whom a lawyer represents confidential, and some authorities have also expressly disapproved revealing the identities of clients on a lawyer's website.

It is likewise a violation of RPC 1.6 to publish information relating to identifiable matters in which the lawyer represents a client.

See also RPC 7.3 Personal Contact with Prospective Clients

(a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).

RPC 1.4. Communication with prospective clients

- (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- (b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

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Most websites maintained as marketing devices include links allowing viewers to communicate by email with the website owners. Such communications via a law firm's website may create duties of loyalty and confidentiality if the persons sending them thus become “prospective clients” under RPC 1.4.

Commentary to the rule suggests that “prospective client” status is likely to be found “if a lawyer ... through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations.” Even prior to the adoption of that comment in 2012, several ethics opinions had advised that, in order to avoid creation of unintended obligations, lawyer websites that include communication links should also include prominent disclaimers alongside the links.

Part III - Attracting Web Traffic

a. Client (and attorney) referrals;

b. Self-Promotion of web site [cards, letterhead, promotional materials];

c. External Advertising [newspaper, television, radio];

d. Search Engines [Pay-per-click, pay-per-lead, rankings, links, meta-tags and bots].

The prohibition in RPC 7.2(c) (person) and RPC 7.3(d) (person or organization) against “giving anything of value” for “recommending the lawyer's services” may bear on some website marketing practices.

The commercial web search engines like Google and Yahoo have methods for ranking the websites that searches on their services yield and that ranking determines how prominent a display in those search results a website will get. The search engine's criteria for a site's ranking include measures of the quantity and quality of other websites that link to a site. One of the criteria used by Google's patented ranking algorithm, Page Rank, for instance, is the number and popularity (as determined by Google) of other web pages that link to a web site.

Website owners can thus boost the rankings of their sites, and thus also boost consumer traffic to their sites, by having other sites link to them. To that end some commercial website owners sell links that are embedded in the content of their sites to other website owners.

Groups of website owners may also agree to reciprocally link to each other's sites to enhance visitor traffic and search engine ranking of each group member's website.

A law firm's using this latter practice, however, may implicate the provisions of RPC 7.2(b). Although RPC 7.2(c)(1) permits firms to pay the “reasonable costs of advertisements or communications,” and authorities have generally permitted firms to have links to their own websites on web-based directories and on the websites of other entities, both commercial and non-commercial, if a law firm agrees with others to reciprocally link websites in order to boost search engine ranking and consumer traffic, that may be a referral arrangement involving “another lawyer or non-lawyer professional” under RPC 7.3(e) that requires the referral agreement not to be exclusive and to be revealed to any referred client. A law firm's website is visited by clients and non-clients alike, of course, and so a link to other service providers' websites may not qualify as a covered referral of clients under the rule to the extent it merely directs only potential clients to those other websites.

CAA OPINION 36 (2006) - Impermissible Lawyer Referral Services

The inquiring attorney asks whether listing the attorney's web page on a web site run by a private commercial advertising and marketing enterprise, where the attorney pays a flat fee for the listing and receives an exclusive listing for a particular county in a specific practice area - in this case criminal law - is permissible under the Rules of Professional Conduct.

The starting point for analyzing this type of inquiry is Opinions 6, 13 and 13 (Supplement) of this Committee, which contain detailed discussion of the obligations of lawyers utilizing private commercial advertising, marketing or referral services, or combinations of such activities. The activity proposed by this inquiry is fundamentally advertising and marketing, and as such is controlled by the strictures of *RPC 7.1* and *7.2*. As we said in Opinion 13:

In particular, we note that an attorney may not, by advertising through a consortium, collective, or any other kind of group or association, be involved in any kind of advertising activity which would be prohibited if the attorney advertised directly. *Cf.* Opinion 8, 127 *N.J.L.J.* 753 (1991). An attorney remains responsible for the ethical propriety of all advertising with which he or she has any connection or involvement.

Opinion 13, 132 *N.J.L.J.* 267 (October 5, 1992) and 1 *N.J.L.* 1588 (October 12, 1992).

As stressed in these earlier opinions, frequently advertising or marketing services cross the line and become a form of lawyer referral service, invoking additional scrutiny under *RPC 7.3(d)* and (e):

In *RPC 7, 3(d)*, a lawyer is barred from giving compensation or anything of value “to a person or organization to recommend or secure the lawyer's employment by a client,” except that a lawyer “may pay for public communications permitted by *RPC 71*,” and “usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.” In a parallel vein, *RPC 7.3(e)(3)* exempts from a general prohibition on allowing others to

promote the use of the lawyer's services “a lawyer referral service operated, sponsored, or approved by a bar association.”

Id.

When advertising is done through a vehicle which is not explicitly referenced as an advertisement, and is not readily known to consumers as a place of pure advertising (as, for example, the Yellow Pages would be), there is a possibility that the presentation and language could lead a reasonably informed consumer to believe that the listing has some sort of professional or authoritative imprimatur, as a kind of endorsement, such as an authorized lawyer referral service might give (*e.g.*, a web page presented as “anti-trust lawyers.com,” as a hypothetical). Such a presentation could, intentionally or inadvertently, thus mislead consumers into believing it was other or more than simply a paid advertisement, and carried greater weight. Such a consequence would appear more likely when only a very limited number of lawyers are listed for a particular geographical, subject matter or other defined area.

To forestall such a possibility, we conclude that a lawyer who seeks to give anything of value in order to participate in such a listing must, before doing so, ensure that the listing or advertisement contains a prominently and unmistakably displayed disclaimer, in a presentation at least equal to the largest and most prominent font and type on the site, declaring that “all attorney listings are a paid attorney advertisement, and do not in any way constitute a referral or endorsement by an approved or authorized lawyer referral service.” With such disclosure, the proposed activity is permissible, as long as it otherwise complies with *RPC* 7.1 and 7.2, as noted above.

CAA OPINION 43 (2011) - Impermissible Referral Services

The question remains whether the payments made by participating attorneys to the Internet company are permissible. The company charges participating attorneys a fee per “contact” or referral of potential clients to the attorney.

Rule of Professional Conduct 7.2(c) permits attorneys to pay the “usual fees” for advertising. In Internet advertising, “pay-per-click,” where the fee is based on the number of clicks or “hits” on the website link, has become a common model for advertising charges. *See* www.en.wikipedia.org, “Pay-per-click.” As one legal commenter states:

[P]ayments computed on the basis of a number of times that the viewer of a Web-based ad “clicks through” to a particular page or site should be permissible, if not linked to the actual establishment of client-lawyer relationships and if the method of computation is analogous to what is done in the marketing of goods and services other than legal services.

The fee scheme imposed by the Internet company here is “pay-per-lead,” a payment for each contact form the website sends to a participating attorney. The payment is based only on the contact, not on

the retention of the attorney by the client or the establishment of an attorney-client relationship.

The Committee hereby decides that attorneys are not flatly prohibited from paying “per-lead” Internet advertising charges provided the marketing scheme is advertising and not an impermissible referral service. Just as “pay-per-click” has become more prevalent in the Internet advertising community, “pay-per-lead” or “pay-per-contact” for Internet advertising is likely to become a more common model due to its inherent reward for effective advertising.

In sum, the content and operation of Internet advertising websites must not be misleading. Internet websites must make the methodology for the selection of the attorney’s name clear, especially if the website limits participation of attorneys by geographical area or practice area. If participation is limited, all requirements for attorneys to participate in the website must be specified. Websites may state that the participating attorneys meet these requirements but must refrain from making statements vouching for the quality of the participating attorneys or comparing participating attorneys to other attorneys. Internet websites must make a full list of participating attorneys readily

accessible. Websites must provide this information to consumers in plain language - not convoluted “legalese.” Such information cannot be countermanded or undermined by contrary statements or suggestions. The language “attorney advertisement” and “not an attorney referral service” must still be prominently displayed on the website.

The Committee finds that the Internet company website is advertising and not an impermissible referral service. The website, however, is misleading, in violation of *Rule of Professional Conduct 7.1(a)*. Attorneys are responsible for the language and methods of websites on which they advertise. A New Jersey attorney who participates in a website that is misleading violates *Rule of Professional Conduct 7.1(a)*.

Part IV - . Web Design Options and Considerations

The goal is to keep the visitor on the site long enough to be motivated to take positive action:

a. Domain Name Selection

fthglaw.com

begleylawyer.com

brentbuckman.com

CAA Opinion 32 (2005)]

The selection of an Internet domain name for a law firm and the use of that identifier in advertisements for the services of the firm raises two questions: first, must the lawyer in selecting a domain name follow the rule of professional conduct governing firm names, and second, may the selected name be used in advertisements in lieu of or in addition to the traditional form of the firm name?

The proposed domain name is intended by the inquirer to portray a law firm available to render legal services, particularly in finance and business related matters, on an as-needed basis. The Inquirer believes that the proposed name indicates a law firm capable of responding to specific needs of a particular client community and that the selected domain name will yield better results among searchers than would a traditional “attorney” or “lawyer” name.

Law Firm's Domain Name

As to the first issue, the Committee has decided that a law firm may adopt a domain name for its Internet Uniform Resource Locator (“URL”), that does not include the firm's name or that of any individual attorney within that firm, provided that the Internet web site to which the browser is directed clearly and prominently identifies the actual law firm name and its address; the domain name must not be false or misleading; the name must not imply that the lawyer has been recognized or certified as a specialist other than as provided by rules of professional conduct; and, the domain name must not be used in advertising exclusively as a substitute identifier of the firm.

Thus, the lawyer or firm is required to provide the following information at the initial or “home” page of the site:

The actual, formal name of the firm or attorney responsible for the site;

The bona fide street location of the law office to which the URL refers and the telephone number of the firm; and

Disclaimers and advisories required by RPC 7.1, 7.2, 7.3 and 7.4.

Use of Domain Name in Advertising

The Committee concludes that a firm may use a different form of its name for purposes of Internet access and retrieval of information about the firm and its services. The URL name form may be used provided the name selected is not false or misleading. RPC 7.1(a). The firm employing the domain name may not state, imply, or attempt to practice law using that name in violation of RPC 7.5. The selected name may not communicate false or misleading information “about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. RPC7.1(a). The domain name may not create an unjustified expectation RPC 7.1(a)(2), state or imply results that can be achieved by means that violated the Rules of Professional Conduct, RPC 7.1(a)(2), or compare the lawyer's service with other lawyers' services, RPC 7.1(a)(3). Furthermore, the Internet form of the firm's name must be for location purposes only and may not state or imply recognition or certification of a specialty other than as authorized by RPC 7.4. The firm may not convert the Internet domain name to the formal name of the firm or use that name in lieu of the formal name as required by RPC 7.5.

The Committee has concluded that under the circumstances outlined in this opinion an attorney or law firm may adopt a domain name that does not include the name of the firm or any of its lawyers. The attorney may use the domain name in advertising as long as the name is for the purpose of locating and identifying a website, not as a substitute way to identify the attorney or law firm. Assuming the law firm is authorized to use the proposed domain name, the firm would also be permitted to use that name as a means to direct potential clients to the firm's web site.

b. Landing Zones and Bounce Rates – In General

<http://www.bettercallsaul.com/>

<http://www.florida-attorney-lawyer.com/lawyer-attorney-1360302.html>

c. Page Design: Simple v. Complex

Google.com v. WABC RADIO

STARK-STARK.COM

BUDDLARNER.COM

NEWJERSEYCRIMINALLAWATTORNEY.COM

stephenagravattesq.com

<http://runnelslaw.com/Home.php>

e. Ease of Navigation

f. Color and Motion

GARDENSTATECLE.COM

g. Immediate Utility v. time and interest factors

IDEFENDYOU.com

NJLAWS.com

NJEXPUNGEMENTS.com

