



Committee on Professional Ethics

Opinion #539 - 2/8/82 (50-81) Topic: Advertising; results obtained in prior cases.

Clarified by Opinion #614

Digest: Improper to advertise examples of results obtained in prior cases.

Code: DR 2-101;
EC 2-10.

QUESTION

May a lawyer include in his advertisement a listing briefly describing selected cases with which he has been associated, with the amounts recovered by his client in those cases?

OPINION

A lawyer proposes to place an advertisement in one or more publications stating that he has been practicing for more than 25 years in a particular type of personal injury case. The proposed advertisement would then, under the heading "Examples of Completed Cases . . . Handled with Associate Counsel in Multiple Jurisdictions," briefly describe (by type of injury) eight instances where the recovery by his client (either by way of settlement or after verdict) ranged from \$300,000 to \$1,300,000.

The Committee assumes that, in accordance with its opinion in N.Y. State 487 (1978), the lawyer in fact has had 25 years of frequent and substantial experience in the particular type of personal injury case. Accordingly, both for this reason and because the listed cases are characterized as "examples," it may fairly be inferred that the lawyer has been associated with many more than eight cases of the particular type.

DR 2-101(A) prohibits advertisements that are "false, deceptive [or] misleading," and DR 2-101(B) prohibits claims in advertising "that cannot be measured or verified." EC 2-10 emphasizes that information in advertising should be disseminated in an objective and understandable fashion and admonishes that "[i]n disclosing information, by advertisement or otherwise, relating to a lawyer's . . . experience or professional qualifications, special care should be taken to avoid the use of any statement or claim which is false, fraudulent, misleading, deceptive or unfair" In the opinion of the Committee, the proposed listing of "Examples" violates these principles for four reasons:

- (1) Since either some or all of the listed cases are said to

have been "Handled by Associate Counsel In Multiple Jurisdictions," there is no way to measure or verify the extent to which the efforts of the particular lawyer were instrumental. The reference in the proposed advertisement to the results seems intended to suggest that his efforts were instrumental.

(2) Since the result of a case depends upon the merits of the case as well as the ability of counsel, there is no way to measure or verify the extent to which the results obtained in the listed cases were exceptional, merely adequate or poor, given their respective merits. The proposed listing is clearly intended to suggest that the results were very favorable.

(3) Because "example" generally means an incident that is typical of the whole, the reference to the eight instances as "Examples of Completed Cases" implies that they were typical of all completed cases in the particular area of practice that have been handled by the lawyer.

(4) The eight "Examples" of large recoveries appear designed to suggest to the members of the public to whom the advertisement is addressed that the lawyer can achieve such results in their cases.

Further, as stated in Nassau Bar Ethics Opinion 81-1 (1981) "[s]tatements relating to a lawyer's success rate in [a] particular area of practice appear to be prohibited under the Code," for the reason that, "[s]uch statements are not only unverifiable, but may also give the appearance that the lawyer is preeminent in a particular field, which is improper, as a claim which cannot be measured or verified."

The Committee recognizes that the guidelines for permissible advertising are general in nature and not susceptible of specific per se rules. But applying those guidelines as set forth in DR 2-101 and EC 2-10, the Committee is of the opinion that, as a general rule, an advertisement setting forth the results previously obtained by the lawyer, either in particular cases or on some statistical basis, involve such a high potential for misleading and are, in the impression they intend to convey, so unverifiable, as to contravene DR 2-101.

In N.Y. City 80-34 (1981), there is language suggesting that a purely factual statement of results might be permissible in certain circumstances. That opinion allowed a lawyer to distribute copies of a newspaper article describing verdicts and settlements the firm had obtained in the past provided the article merely contained factual statements that the lawyer himself could properly make. Since the contents of the newspaper article are not disclosed in the opinion, we are unable to evaluate the significance of this opinion or determine whether it is contrary to the con-

clusion here reached.

For the reasons stated, the question posed is answered in the negative.
