



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1005 (4/2/14)

Topic: Whether using the phrases “I KNOW HOW TO WIN FOR YOU” or “unsurpassed litigation skills,” violates Rule 7.1.

Digest: Neither the statement “I KNOW HOW TO WIN FOR YOU” or “unsurpassed litigation skills” in lawyer advertising is permissible under Rule 7.1 because the statements are misleading, and neither statement can be factually supported as of the date on which it is disseminated.

Rules: 7.1

QUESTION

1. Two inquirers have asked about the use of specific phrases to advertise their services. The first asks whether she may use the phrase “I KNOW HOW TO WIN FOR YOU” in print and other advertising. A second inquirer asks whether the law firm can use the words “unsurpassed litigation skills” on its website.

OPINION

2. Each inquiry concerns a form of lawyer advertising. Whether each is permissible primarily is governed by Rule 7.1 in New York’s Rules of Professional Conduct (the “Rules”). In general, Rule 7.1 prohibits the use or dissemination of an advertisement that “contains statements or claims that are false, deceptive or misleading.” Rule 7.1(a)(1).

3. Determining whether the proposed advertising is ethical requires an assessment of whether the phrases violate Rule 7.1(a)(1) (prohibiting advertising that is “false, misleading or deceptive”), or 7.1(d) and (e) (together, permitting statements that “compare the lawyer’s services with the services of other lawyers” or describe “the quality of the lawyer’s or law firm’s services” provided the statements do not violate Rule 7.1(a), can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated, and are accompanied by the disclaimer “Prior results do not guarantee a similar outcome”).

4. Comment [3] to Rule 7.1 provides that “[a] truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication . . . not materially misleading . . . [or if there is] a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services, or about the results a lawyer can achieve, for which

there is no reasonable factual foundation.” For example, this Committee concluded a proposed advertisement that stated “We will stop your foreclosure” was impermissible because a layperson was likely to read the phrase literally to mean that the lawyer could cease and terminate a foreclosure, rather than merely delay its progress and assist with a negotiated settlement. N.Y. State 921 (2012). Cmt. [12] to Rule 7.1 explains that descriptions of characteristics of a lawyer or law firm that compare its services with other firms and cannot be factually supported could mislead potential clients, and therefore it could be improper for a lawyer to advertise that he or she is the “Best.” Rule 7.1, Cmt. [12].

5. Neither of the proposed statements is permissible under Rule 7.1. The statement “I KNOW HOW TO WIN FOR YOU” is misleading because it suggests that the lawyer can win any potential client’s case regardless of the facts of the case or legal support for the prospective client’s position, and this statement cannot be factually supported by the lawyer. Similarly, advertising on a website that a lawyer has “unsurpassed litigation skills” is misleading because it compares the skills of the lawyer with others without factual support, similar to listing a lawyer as the “Best” in the example provided in Cmt. [12] to Rule 7.1. *See* N.Y. State 877 (2011) (a statement that describes or characterizes the “quality” of a lawyer’s work must be “factually supported” at the time it is disseminated and accompanied by the disclaimer provided in Rule 7.1(e)). Merely posting the disclaimer that “Prior results do not guarantee a similar outcome” will not cure the ethical infirmity of the proposed advertising.

CONCLUSION

6. The statement “I KNOW HOW TO WIN FOR YOU,” and the statement “unsurpassed litigation skills,” may not be used in lawyer advertising. Both statements are misleading in suggesting a result or skill level that cannot be factually supported as of the date on which the statements are published or disseminated, and therefore both violate Rules 7.1(a) and 7.1(e).

43b-13