

ETHICS OPINION

RO-88-52

[REDACTED]

QUESTION:

The question poses the propriety and permissibility of "tombstone announcements" of selected transactions with the approval of the parties involved as per Exhibits "A" and "B" attached hereto.

ANSWER:

In a 1983 opinion the Virginia Bar held that an attorney may advertise the names of clients and former clients with their prior consent. (Opinion 397 of the Virginia Bar, dated September 8, 1983) In reaching this opinion the Virginia Bar interpreted its Disciplinary Rules 2-101(A) and 2-104(A) and ABA Model Standard DR 2-101(B)(16), which are not dissimilar from the current Alabama Temporary Disciplinary Rules. We hold that an attorney may announce, in "tombstone announcements" comparable to those attached hereto as Exhibits "A" and "B", the law firm's participation in selected transactions, with the prior approval of the parties involved. We further hold that such announcements must fully comply with the provisions of Temporary DR 2-101 and must contain the disclaimer called for by Temporary DR 2-102(E). Tombstone advertisements of the type under consideration here have a potential for abuse and should be carefully drawn so as to comply with all of the provisions of the Code of Professional Responsibility relating to communications concerning a lawyer's services.

DISCUSSION:

Temporary DR 2-101 states that a lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. Thus the content of a "tombstone announcement" must be limited to factual data that, by its presentation, is not likely to create an unjustified expectation of the results the lawyer can achieve and which does not compare the quality of the lawyer's services with the quality of other lawyers' services. But, subject to adherence to the false, misleading and

deceptive standards imposed by the Code of Professional Responsibility, such advertisements are permissible.

The Virginia Bar, in its Opinion 397 cited above, properly requires the prior consent of the former or present client before disclosure of the client's name may be included in communications regarding the lawyer's services. It is noted in your request that you contemplate obtaining the prior approval of clients before including their identity in such announcements, and we hold such to be an affirmative requirement pursuant to DR 4-101 of the Code. Only with the consent of the client after full disclosure to them, pursuant to 4-101(C)(1), may the identity of the client be revealed.

AWJ/vf

7/13/88

June 1, 1988

L [REDACTED] & P [REDACTED]
PROFESSIONAL CORPORATION

acted as legal counsel for

THE C [REDACTED] INSURANCE COMPANY

as bond insurer

in connection with

the industrial development financing of

R [REDACTED] INDUSTRIES, INC.

Exhibit "A"

May 31, 1988

L [REDACTED] & D [REDACTED]
PROFESSIONAL CORPORATION

acted as legal counsel
in connection with
the leveraged buyout of

B [REDACTED] ELECTRIC MOTOR COMPANY, INC.

Exhibit "B"