

ETHICS OPINION

RO-92-06

QUESTION:

Mobile attorney, R [REDACTED], has requested an opinion on his use of the following language in an ad about his certification by the National Board of Trial Advocacy:

"There are 9,300 attorney practicing law in the State of Alabama. Only 19 of them have been Board certified by the National Board of Trial Advocacy as a civil trial advocate. R [REDACTED] is one of these 19. If you need the qualified attention of a law firm that handles personal injury and wrongful death cases, call R [REDACTED] & Associates today."

QUESTION ONE:

Can he use the above language or some variation of it?

QUESTION TWO:

If the answer to Question One is no, what are the limits of advertising certification by the National Board of Trial Advocacy?

ANSWER QUESTION ONE:

You may not use the ad as proposed. The Disciplinary Commission believes that it is inherently misleading when one compares numbers of lawyers certified by any organization with numbers who are not.

ANSWER QUESTION TWO:

The Disciplinary Commission is of the opinion that all advertising such as this must be evaluated on its own. Any advertising which states more than "Civil Trial Advocate - certified by the National Board of Trial Advocacy" or "Certified in Civil Trial Advocacy by the National Board of Trial Advocacy" will probably not pass muster.

DISCUSSION:

Rule 7.7 of the Rules of Professional Conduct allows lawyers to advertise that they have been certified by a certifying organization provided that organization has been approved by the Disciplinary Commission in accordance with guidelines adopted under that rule. The National Board of Trial

Advocacy has been approved and lawyers are permitted to state that they have been certified by the National Board of Trial Advocacy in their advertising or on letterhead (see RO-87-45). The Disciplinary Commission has not previously considered the extent to which a lawyer may expand upon the fact of his certification or the significance of it.

Lawyers are not unilaterally selected for recognition by the National Board of Trial Advocacy. They themselves make application and are certified if they meet the National Board of Trial Advocacy's criteria. Only 19 lawyers have potentially applied for certification. Hundreds of competent civil lawyers have never applied for a certification. The fact that a lawyer is allowed to advertise his certification by the National Board of Trial Advocacy does not obviate the basic rules on advertising set out in Rule 7.1, i.e., that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. By definition, a communication is "false or misleading" if it (1) contains a misrepresentation of a material fact or omits a necessary fact, (2) creates an unjustified expectation about results, or (3) compares the quality of a lawyer's services with the quality of other lawyer's services.

The ad proposed seems to run afoul of all three of these points. The Disciplinary Commission believes that any ad regarding a lawyer's certification by an organization is misleading when it compares, in any fashion, the number of lawyers who are certified with the number who are not. The numbers per se have no relationship to the quality of those certified. Therefore, any ad which states more than the fact that the lawyer is certified, i.e., "Civil Trial Advocate - certified by the National Board of Trial Advocacy" or "Certified in Civil Trial Advocacy by the National Board of Trial Advocacy" will be suspect.

MLM/vf

3/23/92