

ETHICS OPINION

RO-92-14

[REDACTED]

QUESTION:

The Huntsville Times would like to begin publishing a lawyer's directory in their newspaper each Tuesday. It would appear on one or two pages of the newspaper and would contain numerous short lawyer advertisements. They have submitted two proposals. The first format, which is attached as Exhibit "A", contains the disclaimer in very small print at the bottom of each of the advertisements. The other format, attached as Exhibit "B", contains the disclaimer in large print across the bottom of the page. The marketing manager of The Huntsville Times believes that repeating the disclaimer in each individual advertisement is a little silly and that it is much more effective to place the disclaimer in larger print across the bottom of the page. [REDACTED], represents the newspaper and has requested the Disciplinary Commission review both formats. They would like to print format "B" with the disclaimer across the bottom of the page but want to be able to assure the advertisers that the format meets the requirement of the rule.

ANSWER:

It is the view of the Disciplinary Commission that the format contained in Exhibit "B" does meet the requirement of Rule 7.2(e) as long as the disclaimer is prominently displayed.

DISCUSSION:

Rule 7.2(e) of the Rules of Professional Conduct requires that:

"Rule 7.2 Advertising

A lawyer who advertises concerning legal services shall comply with the following:

\* \* \*

- (e) No communication concerning a lawyer's services shall be published or broadcast, unless it contains the following language which shall be clearly legible or audible, as the case may be: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

The question here is whether this language actually requires the disclaimer to be in the body of the advertisement or whether it can be displayed once on a page containing several lawyer advertisements.

The purpose of including a disclaimer in a lawyer advertisement is to dissipate the possibility of consumer confusion or deception [In re R.M.J., 455 U.S. 191, 201 (1982)]. This purpose may be accomplished if the disclaimer is displayed contiguous with the advertisement in a prominent manner which leaves no doubt that it is clearly relating to the advertisement. It is the view of the Commission that the language "unless it contains the following language" of the rule does not mean that the disclaimer must be contained within the perimeters of the advertisement. It is sufficient if it is presented in such a manner there can be no question that it relates to the advertisement.

Because of the diversity in which the disclaimer could be displayed on a single page containing multiple lawyer advertisements, this opinion is limited to the facts presented here. It is also noted that the language of the disclaimer in Exhibit "B" is not current and should be changed to reflect the language of the current rule.

RWN/vf

7/22/92