

ETHICS ADVISORY OPINION

23-03

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

SC Rules of Professional Conduct: 7.2

Facts:

Media company owns several radio stations. It has offered a new form of advertising to Lawyer, utilizing the Radio Data System ("RDS") — a/k/a visible text across the dashboard display in vehicles when the FM radio is on. The text displayed via RDS typically includes the station identifier at minimum, and for some stations, the title/artist of the song currently playing.

The media company is offering Lawyer the opportunity to display custom text on the RDS across multiple stations. Given the medium, however, the amount of text that is able to be displayed on RDS-enabled vehicles is very limited. These space limitations apply to Lawyer. Given these space limitations, Lawyer wishes to display a simple text advertisement via RDS and/or online as follows: "[Surname] Law Firm. Call 888-[SURNAME]"

Questions Presented:

1. For advertisements of any type when Rule 7.2(d) clearly applies, does the "name" obligation require inclusion of both a first and last name of a responsible lawyer? Would just a surname alone be sufficient for (d) compliance?
2. If a surname alone is insufficient, would the combination of a surname plus other contact information be sufficient to adequately identify the lawyer under Rule 7.2(d) for accountability purposes?
3. Does use of Lawyer's surname as part of the phone number (rather than exclusively numbers), make that phone number something other than "ordinary contact information" and thus outside of the Comment 10 exception to Rule 7.2(d)?
4. Rule 7.2(d) applies to communications that contain "substantive advertising or soliciting statements." Does the inclusion of the invitation to "Call" trigger application of (d)?
5. Does even basic mention of the type of law that is generally practiced by Lawyer (ex: "Personal Injury" or "Worker's Comp") trigger application of (d)?

Summary:

The use of RDS advertising with the format proposed including only the firm name, the word "Call" and the firm phone number complies with Rule 7.2(d) as interpreted and applied in Rule 7.2, Comment 10.

Opinion:

1. Rule 7.2(d) requires the "name and office address" of a lawyer for every advertisement. Comment 10, however, explains the purpose of that obligation ("to provide accountability for the content of lawyer advertising"). That comment limits application of (d) by applying it only to "communications that contain substantive advertising or soliciting statements and inferences beyond a lawyer or law firm's mere name, design logo, and ordinary contact information." Given the text proposed, the use of Lawyer's surname in the law firm name and for the last seven digits of the telephone number of the firm complies with the rule because there is no substantive advertising or soliciting statements and presumably the firm name and number truthfully gives correct contact information for reaching the firm and the lawyer or lawyers associated with the firm as required by Rule 7.1.
2. As set forth in answer to question 1, the use of the surname alone is sufficient due to the absence of substantive advertising or soliciting statements in the proposed text.
3. The use of Lawyer's surname for the last seven digits of the law firm's phone number does not make the phone number something other than "ordinary contact information." Lawyer's surname is not a "slogan, tagline, or logo" within the common meaning of those words as used in Comment 10, nor does it resemble the examples of common contact information provided in the comment that are used to illustrate the meaning of those words as used in the comment – "e.g., www.sclawyer.com or 1-800-SC-LAWYER."
4. The inclusion of the word "Call" in the proposed text does not trigger the application of Rule 7.2(d). The word "Call" as used in the proposed text is not a "*substantive* advertising or soliciting statement[] [or] inference[] beyond a lawyer or law firm's name, design logo, and ordinary contact information" (emphasis added), as set forth in Comment 10 discussing the scope of Rule 7.2(d). Comment 2 to Rule 7.2 best illustrates the distinction between "substantive" advertising or soliciting statements or inferences and those that are not. Comment 2 states:

This Rule permits the public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

All of the information described in the first grouping before the first semicolon-- i.e., "lawyer's name or firm name, address, email address, website, and telephone number"-- is information that Comment 10 describes as non-substantive and as not generally triggering the obligation of Rule 7.2(d). By contrast, the remaining five sets of items, each separated by a semicolon, describe substantive aspects of a lawyer's practice, i.e., what kinds of work he or she will do, how much they will charge and how they expect to get paid, how they may communicate with a client, or who can share their experience of working with the lawyer. The word "Call" as used in the proposed display says nothing of substance about the lawyer's practice and does not, therefore, trigger the application of Rule 7.2(d).

5. Inclusion of information about the types of law Lawyer practices such as “Personal Injury” or “Workers Comp,” though very short and limited, speak to the “kind of services the lawyer will undertake” and, therefore, touch upon the “substance” of the lawyer’s work and not just how to get in touch with the lawyer. Inclusion of such information in the proposed text of an RDS advertisement would trigger the requirement of Rule 7.2(d) because it would be a substantive advertising or soliciting statement.