

This is the Proposed New Rule 7.1:

A lawyer shall not make false, misleading, or deceptive communications about the lawyer or the lawyer's services. A communication violates this rule if it...

(f) contains a statement or implication that another lawyer or law firm is part of, is associated with, or affiliated with the lawyer when that is not the case, including contact or other information presented in a way that has the effect of misleading a person searching information regarding a particular lawyer or law firm, to unknowingly contact a different lawyer or law firm.

Comment 5:

A lawyer may not state or imply an association or affiliation with another lawyer or law firm if the statement or implication is untrue or misleading. It is impermissible for a lawyer to include the name of a non-affiliated or non-associated lawyer or law firm in an internet advertisement or sponsored link that is displayed when the non-affiliated lawyer or law firm's name is used as a search term when the advertisement does not clearly indicate that the non-affiliated lawyer or law firm is not a part of the advertising lawyer's firm. Another example of impermissible conduct is use of another lawyer or law firm name as an Internet search term that triggers the display of an advertisement that does not clearly indicate that the advertisement is for a lawyer or law firm that is not the lawyer or law firm used in the search term. The triggered advertisement would not be misleading if the first text displayed is the name of the advertising lawyer or law firm and, if the displayed law firm name is a trade name that does not contain the name of a current or deceased partner, the name of the lawyer responsible for the advertisement is also displayed as the first text.

Rationale For New Rule 7.1(f)

The Technology Committee's friendly amendment has been adopted in full, so Comment 5 is changed as set out herein. We disagree with the criticism of the proposed Rule. The criticism focuses on technicalities while overlooking the overall deceptive nature of purchase of another lawyer's name. Examples of arguments that ignore the underlying deceptive nature:

I. One argument is that purchase of another lawyer's name may not be deemed to be a technical "communication." This argument contends that the Rule should go under 8.4, not 7.1. Rule 7.1 covers all communications regarding advertising, not just face to face statements. Rule 8.4 could apply too, but 7.1 is closer because it's on the same topic of advertising.

It is contended that the terms of "misdirection in search" and "manipulation of search terms" "create confusion and lack of clarity." Think about that! Purchasing names in order to create confusion is acceptable so long as a remedy to prohibit it can be questioned by questioning the definition of "misdirection" and "manipulation." Existing Rule 7.1 Comment 1 states "all communications about a lawyer's services, including advertising" are covered by this Rule. This includes communications with ad providers.

II. It is correctly noted that meta tags are different from competitive key word advertising. "Competitive keyword advertising" simply means purchasing another lawyer's name. Meta tags are a form of the same misleading practice—the other lawyer's goodwill is exploited in both cases.

The Technology Committee acknowledges on page 4 that 8.4(d) via EAO 20-01 already prohibits misdirection of a potential client by inserting metatags (Page 4 of Tech Comm's response). Therefore, the Technology Committee's discussion on the difference between keyword advertising and metatags is irrelevant because such metatags are already prohibited.

III. It is correctly noted that the lawyer isn't responsible for what Google does. However, it does not follow that this amendment is not needed. An innocent lawyer is not harmed by this proposal. The Rule simply says—7.1. A communication violates 7.1 if it contains [the proposed language]. The argument that a lawyer will be penalized for what Google does is incorrect. Only the lawyer's conduct is covered.

It is correctly noted that just because someone else's name appears first in search results does not necessarily mean that the lawyer did anything wrong. We agree. No lawyer will be punished if he did not engage in the prohibited conduct. No lawyer will be punished for what Google did.