

ETHICS ADVISORY OPINION**22-02**

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.

S.C. Rules of Professional Conduct: 7.2, 7.4

Facts

Expertise.com finds and reviews service professionals such as attorneys. The website states that it researches businesses by using customer referrals, public records, accreditations and licenses, and mystery shoppers. Some law firms are listed without the law firm knowing or requesting to be listed—presumably through Expertise.com's unilateral research and screening. Expertise.com states it lists businesses alphabetically. However, Expertise.com allows law firms to submit to be reviewed and included on Expertise.com, which Expertise.com estimates takes approximately a year. There is no cost to submit for a basic listing on Expertise.com. A law firm can also purchase a "featured placement" to take advantage of being seen first on the website page and include links to the law firm's social media on their Expertise.com listing.

Questions

1. If an attorney or law firm pays for a featured placement on Expertise.com, does that attorney violate Rule 7.4(b) by holding the law firm and its attorneys out as experts by virtue of the website's name?
2. Does paying for a featured placement on Expertise.com violate Rule 7.2(c)?

Opinion

Lawyer may not participate in any way in marketing via Expertise.com. As this committee, and several others around the country, have discussed in previous opinions, actively participating in an online business listing at a website whose stock language violates the advertising rules is itself a violation of the advertising rules. See, e.g., S.C. Bar Eth. Adv. Op. 09-10 (2009) (a lawyer who adopts, endorses, or claims an online directory listing takes responsibility under the Rules for all content of the listing and general content of the directory itself, regardless of who created the material). While Opinion 09-10 focused more on rule violations in the form of improper comparative language contained in client testimonials and endorsements submitted to the website, the same reasoning applies to content created by the host that violates some other rule, like 7.4(b). Regardless of the creator of the offending content and regardless of which rule it



offends, it is the committee's view that a lawyer may not adopt, endorse, claim, or contribute to any online listing that contains language or other material that would violate the Rules if created and disseminated directly by the lawyer. See 7.2(b) (“(b) A lawyer is responsible for the content of any advertisement or solicitation placed or disseminated by the lawyer...”) and 8.4(a) (misconduct to violate rules “or do so through the acts of another”). In this case, the website's name and URL violate Rule 7.4 in that Expertise.com contains a form of the word “expert,” which is prohibited. Brief review of the website content further reveals reference to “the best local experts.”

In S.C. Bar Eth. Adv. Op. 17-02 (2017) this committee addressed the use of certain accolades in lawyer advertising, the titles for which contain words or phrases that alone would be violative of our advertising rules, provided sufficient criteria were met and disclosures made to avoid being misleading. However, in this instance, inquirer is not in control of the content to an extent that would allow for completion of the measures discussed in EAO 17-02.

Paying for a featured placement within a business directory website is not itself a violation of Rule 7.2(c) as long as the payment obligation or amount is not tied to the referral of business as a quid pro quo. In the committee's view, if a featured placement in an online directory is the only benefit received in exchange, the payment would be a “reasonable cost of advertisement” under the 7.2(c)(1) exception. However, the committee believes a lawyer may not pay Expertise.com for a featured placement because any participation in Expertise.com by a lawyer is prohibited by Rule 7.4(b).