

STATEMENT ON ADVERTISING AND USE OF SOCIAL MEDIA

For better or worse advertising is ubiquitous in the modern practice of law. Most lawyers and law firms utilize websites, firm brochures, newsletters or other forms of promotional material to advertise their firms or lawyers both directly and indirectly. Many employ marketing directors and publicists. Some advertise directly in newspapers, magazines, legal periodicals and the other forms of mass media including radio, television and the internet. Increasingly, lawyers are relying upon various social media platforms, including Twitter, LinkedIn and Facebook, to deliver their advertising and marketing message.

As the number of actively practicing lawyers across the United States and Canada continues to grow with each passing year, it can be anticipated that the pressures to advertise in one form or another will only increase as lawyers seek enough business to maintain themselves and their firms in practice in an ever more competitive market place.

Significant amounts of this advertising, however, are either offensive in content, deceptive, or misleading. As various state and provincial bar associations have made an effort to deal with these problems, there have emerged widely varying rules and regulations designed to regulate lawyer advertising and set at least minimum standards for its content.

The American College of Trial Lawyers does not endorse advertising by lawyers as a general matter, but does support reasonable rules and guidelines, from which no segment of the bar should consider itself exempt, designed to encourage candor and professionalism in lawyer advertising. Therefore, the College wishes to set forth a general statement of what should constitute an uncomplicated set of best practices for lawyers and law firms who elect to advertise.

At the core of these standards is the principle that in communicating with potential or existing clients as well as with the general public, lawyers have a duty and responsibility to be truthful, open and candid while at the same time upholding the dignity and honor of the legal profession. Thus, advertising in all its forms should not invoke negative perceptions of lawyers either individually or generally in the minds of those who receive or are exposed to such advertising.

Lawyers and law firms should recognize that their advertising necessarily reflects on the legal profession and influences the public's attitudes towards the profession and the administration of justice. In this same vein it should be kept in mind that while the public generally prefers dignified lawyer advertising, in the context of an actual dispute, anger and fear often produce a visceral desire for an attorney just as angry, combative and nasty as the potential clients may have become. Attorney advertising should never pander to these baser sides of human nature.

These principles must also be kept utmost in mind when communicating by way of social media. Use of social media is widespread in our society and within our profession. Lawyers use social media for various purposes including; to communicate with clients, prospective clients, to advertise and to advance client and/or personal causes or initiatives.

While use of social media has many benefits, it can also be used in a manner that is unprofessional, unethical and abusive, while also creating new risks associated with cyber security and confidentiality issues. Inappropriate use of social media or inconsiderate use of risky and unsecured internet websites, or the inappropriate use of lawyer rankings by a lawyer can bring the profession and the administration of justice into disrepute.

In short, if attorneys and firms adhere to best practices, lawyer advertising should assist potential clients in understanding their rights and in locating an attorney qualified to handle their problems and needs. These best practices apply equally to the use of social media.

To promote these objectives the American College of Trial Lawyers has adopted the following statement of best practices for lawyer advertising and use of social media:

LAWYER ADVERTISING AND USE OF SOCIAL MEDIA BEST PRACTICES

Lawyer advertising should always promote respect for the rule of law and the justice systems of the United States and Canada.

Lawyer advertising should be dignified and tasteful, reflecting the honor and professionalism the public is entitled to expect from lawyers.

Lawyer advertising should meet or exceed the standards for advertising established by statute or rule in all the jurisdictions in which the advertising will be viewed or received, no matter how numerous they may be.

Lawyer advertising should affirmatively assist potential clients in understanding their rights and in locating an attorney qualified to handle their problems and needs.

Lawyer advertising should be factual, informative and verifiable.

Lawyer advertising should never be deceptive due to affirmative misrepresentations or misleading omissions.

Lawyer advertising should never contain misrepresentations of any nature.

Lawyer advertising should avoid hyperbole and exaggeration. Lawyer advertising should not create unwarranted expectations.

Lawyer advertising should not claim expertise in an area of legal practice unless the advertiser is able to verify such expertise objectively.

Lawyer advertising should neither directly or indirectly pander to fear or prejudice, nor should it appeal to emotion or base motives.

Lawyer advertising should not seek to generate or promote vexatious or frivolous litigation.

Lawyer advertising should never disclose privileged or confidential information.