

Ethics Opinion

870709

QUESTIONS PRESENTED:

1. Is a newspaper ad misleading if it:

- (a) misstates the nature of changes in the definition of injury; specifically, it indicates that certain work-related injuries are no longer compensable when, in fact, they remain compensable under the Occupational Disease Act, and
- (b) states that workers with pain should file a claim irrespective of the occurrence of a traumatic event?

2. Does such an ad improperly solicit claims?

ANSWER:

1. Yes.

2. No.

ANALYSIS:

1. Rule 7.1, Communications Concerning a Lawyer's Services, provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

All communications, in whatever form, are governed by this rule. Statements about a lawyer's services should be truthful, irrespective of the means used to make them known. Paragraph (a) specifically provides that statements that omit necessary facts can be considered false or misleading. The committee agrees that it can be argued that failure to mention that repetitive trauma activities are now compensable under the Occupational Disease Act is misleading. It may be inferred that if potential claimants did not contact the attorneys by July 1, valuable reparations would be abandoned.

Paragraph (b) precludes the advertisements about results obtained such as the amount of a damage award. Such information may create the expectation that similar results can be obtained without reference to specific situations. The ad here may have created the unjustified expectation that if a claim were filed before July 1, an award would be forthcoming, otherwise not. Similarly, the suggestion that pain alone should trigger the filing of a claim could create unjustified expectations.

2. Rule 7.3, Direct Contact With Prospective Clients, provides:

A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term solicit includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.

The internal definition of solicit seems to permit this particular advertisement. The line between permissible advertising and impermissible solicitation is often hard to draw. Here, although perhaps a close call, the wide general dissemination of this ad seems to resemble advertising more than solicitation. But, the advertisement still must not be false or misleading. (See above).

THIS OPINION IS ADVISORY ONLY