

Effective Attorney Advertising

Why It Will Improve Your Life

By Victoria Vuletich



CERTIFIED SPECIALIST

“Many a small thing has been made large by the right kind of advertising.”

—Mark Twain, *A Connecticut Yankee in King Arthur’s Court*

Some may argue that there is more truth than humor in Mark Twain’s observation about advertising. Regardless, enough truth, humor, and irony exist in modern attorney advertising to greatly amuse Mr. Twain were he alive today.

States vary in regulating attorney advertising. Florida, Indiana, and New York take a comprehensive and consistently assertive approach in formulating advertising rules and prosecuting attorneys for advertising issues. Other states take positions ranging from moderate regulation to a more “hands off” belief that scarce resources are better used for prosecuting more egregious violations than determining whether an attorney’s advertising is false or misleading. Adding to the confusion, the caselaw and opinions generated by attorney discipline cases involving advertising are not always logical, realistic, or helpful for attorneys developing marketing materials.

For attorneys interested in marketing their law practices, it is important to remember that the suggestions of a professional advertising consultant may not comport with the Michigan Rules of Professional Conduct (MRPC). Attorneys are ultimately responsible for whatever advertising they generate, so knowing what one can and cannot say is critical. For an attorney engaged in “do-it-yourself” advertising, there is good news: most often, what is per-

mitted under a conservative interpretation of the MRPC also constitutes practical, effective advertising.

MRPC 7.1, which governs attorney advertising, states in part:

A lawyer may... use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

- (a) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;
- (b) be likely to create an unjustified expectation about results the lawyer can achieve, or state or imply that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) compare the lawyers’ services with other lawyers’ services, unless the comparison can be factually substantiated.

One common practice is the use of the terms “specialist” and “expert” in advertising. The United States Supreme Court in *Peel v Attorney Registration and Disciplinary Comm of Illinois*¹ held generally that attorneys may use the terms “certified,” “specialist,” or “expert” if they have been certified as such by a reputable organization. The Court believed that a certification by another entity is “a verifiable fact, as are the predicate requirements for that certification.”² By implication, the converse is true: an attorney may not use the generic terms “certified,” “specialist,” or “expert” if the claim cannot be factually verified.

Without certification by a reputable organization or facts supporting a generic claim of expertise, an attorney risks violating MRPC 7.1.

Fast Facts:

- States vary in regulating attorney advertising.
- Attorneys are ultimately responsible for whatever advertising they generate, so knowing what one can and cannot say is critical.
- Without certification by a reputable organization or facts supporting a generic claim of expertise, an attorney risks violating MRPC 7.1.

Whether an attorney thinks this ruling makes sense, it does facilitate effective advertising. Consider which of the following ads is most effective in convincing a potential estate planning client of a potential lawyer's qualifications:

Paul Probate, Attorney at Law
Probate Specialist
1234 Wood Road
Muskegon, MI
Estates Are Us

or

Paul Probate, Attorney at Law
Certified by the National Academy of Probate Lawyers
1234 Wood Road
Muskegon, MI
Practice Limited to Estate Planning

The following is *still* preferable and more helpful than using the generic terms "specialist" or "expert":

Paul Probate, Attorney at Law
Five Years' Experience Handling Probate Matters
Practicing Probate Law Exclusively

In Michigan, unlike some other states, attorneys are allowed to practice under a trade name. Although this may sound appealing at first blush, attorneys should be cautious in selecting appropriate trade names. Many attorneys pick a trade name for emotional reasons or to convey a particular image. Compare the impact on a consumer of trade names such as Spartan Law Office, Wolverine Law Office, or Detroit Law Group with trade names such as Fathers' Rights Law Group, Owosso Criminal Defense Law Firm, or Bernstein Law Firm (if the name is locally prominent).

Using the name of a lawyer having no past or current affiliation with the firm is an impermissible trade name.³ Also, a trade name cannot imply a connection with a government agency or with a public or charitable legal services organization.⁴

All states prohibit the use of misleading firm names. For example, attorneys may not imply that they have associates if they do not⁵ or that they have multiple offices when they do not.⁶ Again, these prohibitions serve attorneys well. If an individual chooses a lawyer because he or she believes the firm has more than one lawyer or more than one office, what will that individual think when discovering that it's not true? The individual will naturally feel distrustful and cynical about the lawyer and maybe even feel duped. The lawyer will be lucky if the individual simply goes elsewhere for a lawyer as opposed to telling others about the lawyer who was trying to look better by distorting the facts.

Many attorneys use a slogan or image to try to attract potential clients. For example, some attorneys think using an image of a barracuda, pit bull, or other aggressive creature conveys the notion that they are zealous advocates for their clients. Slogans like "We fight like a pit bull for you!" or "Have a piranha on your side!" abound in the marketplace. Despite being prohibited in

Florida and some other states, such slogans and images may be permitted in Michigan (the issue has not been clearly determined yet). However, advertisements like these are a one-way ticket to a poor quality of life and a stressful practice. Angry and vindictive people who are more interested in punishing the opposing party than in trying to amicably resolve differences are the types most likely to be attracted by such ads. Dealing with these clients takes much more of a lawyer's time, energy, and effort than having calm, rational clients interested in resolving disputes. Angry and vindictive clients are far less likely to be satisfied with a lawyer's services (most civil cases do not resolve on terms that "punish" one person in particular) and may fail to refer the attorney to other people. Worse, these types of clients are more likely to file a grievance against the attorney if dissatisfied, since amicable resolution of disputes is not their mindset.

Focusing on the facts in advertising can improve the quality of one's law practice and life. Every attorney—even a new one—has something unique or special that can be touted to prospective clients:

Daniel Defense, Attorney at Law
Former Ingham County Prosecutor
10 Years' Experience in Criminal Law Matters

or

Dolly Divorce, Attorney at Law
Practice Limited to Family and Probate Law
15 Years' Experience Handling Divorce, Custody, and
Probate Matters

or

Ned Newbie, Attorney at Law
General Practice
Devoting Energy and Effort to Handling Your
Legal Problem!

Marketing the facts helps an attorney create effective and ethical advertising. ■



Victoria Vuletich is an assistant professor at the Grand Rapids campus of the Thomas M. Cooley Law School and former deputy director of the Professional Standards Division of the State Bar of Michigan.

FOOTNOTES

1. *Peel v Attorney Registration and Disciplinary Comm of Illinois*, 496 US 91, 110 S Ct 2281, 110 L Ed 2d 83 (1990).
2. *Id.* at 101; accord, Michigan ethics opinion RI-142.
3. Michigan ethics opinion RI-173.
4. MRPC 7.5.
5. Michigan ethics opinion RI-130.
6. Michigan ethics opinion RI-246.