

## NOTICE TO THE BAR

### Client Endorsements and Testimonials Opinion 33 (Supersedes Opinion 15)

COMMITTEE ON ATTORNEY ADVERTISING APPOINTED BY THE NEW JERSEY SUPREME COURT

The Committee received an inquiry from a law firm which contemplated the use of advertisements featuring client endorsements and testimonials. The firm asked whether an endorsing client's full name must be disclosed and whether such advertisements must include the disclaimer required by Opinion 15, 133 N.J.L.J. 1370, 2 N.J.L. 588 (1993) if no specific results are to be communicated. The inquiry prompted further discussion by the Committee as to the role of client endorsements and testimonials in attorney advertising and marketing programs. RPC 7.2(a) permits attorneys to advertise their services through public media or through mailed written communication if the advertisements are predominantly informational in nature and have relevance to the selection of counsel. RPC 7.1(a)(2) prohibits advertising or marketing communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement if the advertising or marketing communication is likely to create an unjustified expectation about results the lawyer can achieve. RPC 7.1(a)(3) prohibits the comparison of the lawyer's service with the services of other lawyers.

An endorsement or testimonial by a client (or by any other person) is a statement that reflects the opinion or belief of the client. Most jurisdictions prohibit such endorsements or testimonials in attorney advertising, either absolutely or when addressed to the professional effectiveness of the lawyer or the substantive results obtained by the lawyer. Endorsements or testimonials are usually prohibited because statements of client satisfaction can mislead others into believing that the result or results obtained by the lawyer were superior to a result that would have been obtained by any other lawyer and that similar results will be obtained for potential clients being solicited to the same extent and in as satisfactory a manner when the lawyer represents a new client on different legal matters or in the same matters but with different evidence and in different circumstances.

Endorsements and testimonials as to the effectiveness of a lawyer's representation is also proscribed because they provide nothing more than a lay evaluation as to the quality of the lawyer's legal knowledge, ability and effectiveness, when the ultimate quality of those services cannot be accurately verified and are beyond the professional competence of the client.

Endorsements and testimonials are invariably given by clients whose cases have been concluded in a manner satisfactory to them. Statements of satisfaction by those clients can be attributable to the results which the client perceives to be the most optimal in a particular matter or matters. A client who has obtained what he or she believes to be a satisfactory result will be more likely to praise the lawyer than a client who believes that he or she is less successful, although the lawyer who "lost" a particular case or was "less successful" in a matter may, in fact, have been better prepared, more knowledgeable and, overall, the better lawyer.

In Opinion 15, which required a disclaimer that results may differ depending on different circumstances, the Committee held that the technique of using lay testimonials is not inherently misleading. In that opinion, the Committee stated that "[t]he fact that such advertising may tend to mislead the public or present lawyers with opportunities for isolated abuses or mistakes does not justify a total ban on this mode of protected commercial speech," citing *Shapero v. Kentucky Bar Ass'n.*, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) which held that potential advertising abuses may be regulated within the constitutionally limited protection of commercial free speech afforded under the First Amendment of the United States Constitution.

Since the Committee's opinion was published in 1993, there have been well-reasoned opinions by ethics authorities in other jurisdictions which have prohibited or limited the use of endorsements or testimonials in lawyer advertising. Based on these authorities, and in further consideration of the issue, the Committee has come to the opinion that endorsements and testimonials by lay persons as to the legal effectiveness of an attorney do not serve the ultimate end of attorney advertising: truthful communication of factually relevant

information which gives the lay public a competent basis to judge whether a particular lawyer has the requisite knowledge, skill, competence and ethical qualities to better serve in a particular area of law or in a specific matter. Accordingly, the Committee is withdrawing Opinion 15 and superseding it as follows when a lawyer uses client endorsements or testimonials as a marketing tool in an advertising or marketing campaign.

Client endorsements or testimonials which extol in any manner the professional efficiency or effectiveness of a lawyer are prohibited. An endorsement is a subjective statement reflecting the opinion or belief of the client furnishing the endorsement or testimonial. Such endorsements or testimonials, if addressed to the professional effectiveness of the lawyer, may create unjustified expectations, RPC 7.1(a)(2), as to results which the lawyer can achieve. An endorsement or testimonial also measures, without professional expertise, the results obtained for the client with results that might be obtained by the lawyer in representing a future client in different circumstances. RPC 7.1(1)(3)

Finally, such endorsements are necessarily given by a person who does not have the professional expertise to qualitatively judge the results achieved by the lawyer and, therefore, do not furnish relevant information to be considered in the selection of counsel. RPC 7.2(a). A lawyer or law firm may, however, utilize endorsements or testimonials from clients addressed to the satisfaction of the client based on the interaction between lawyer and client, for example, that the lawyer was sympathetic or concerned, returned calls, communicated frequently, was prompt in responding to client requests, or was professional in their dealings, if:

(a) the endorsement or testimonial as to these matters is, in fact, that of the client, is truthful in all respects and does not compare one lawyer with another;

(b) does not describe the work or the quality of the work which the lawyer has performed for the client; and

(c) the client consents to the use of such an endorsement or testimonial in the marketing or advertising program of the attorney.

Additionally, the use of any endorsement or testimonial given by a client under the above guidelines must cease when the lawyer no longer has a reasonable basis to believe that the client's opinion remains essentially unchanged. In this regard, notification of a change in the client's opinion need not come directly from the client. Such changes may be implied or inferred from subsequent events that would lead to a reasonable belief that the client is no longer satisfied with the lawyer or the law firm.