

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-427
Issued: March 23, 2007

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

OPINION

Subject: Lawyer and law firm domain names (web addresses)

Question I: May a lawyer or law firm use a domain name that does not identify the lawyer or firm, but links to a website that clearly identifies the sponsoring lawyer or law firm?

Answer: Qualified Yes

Question II: May a lawyer maintain a website that is identified by domain name only and does not identify an individual lawyer or law firm?

Answer: No

References: SCR 3.130 (7.01-7.60); KBA E-338 (1990); KBA E-302 (1985); Az. B. Ethics Op. 01-05 (2001) (available at www.myazbar.org/Ethics/opinionview); Ass'n of the City B. of N.Y. Op. 2003-01 (available at 2004 WL 837935); N. J. Comm. on Atty. Advt. Op. 32 (available at 2005 WL 3890570); S. C. B. Ethics Adv. Comm. Op. 04-06 (available at 2004 WL 1520110).

Introduction

The Attorneys' Advertising Commission is responsible for overseeing the regulation of lawyer advertising, which is governed by SCR 3.130 (7.01 - 7.60). Lawyer advertising on the internet raises a broad range of ethical issues, which are not specifically addressed by the rules. The Attorneys' Advertising Commission has asked the Ethics Committee to consider two of those issues; both are related to the use of domain names (web addresses). This opinion is designed to assist the Commission in its work and to alert members of the bar to some of the ethical issues associated with the use of domain names. Lawyers are reminded that Rule 7.05 provides that all advertisements must be filed with the Attorneys' Advertising Commission;¹ lawyers who have ethical questions

¹ Lawyer websites are a form of advertising and are subject to the same rules, including the submission requirements, as other forms of advertising.

about lawyer advertising should request an advisory opinion from the Commission, not the Ethics Committee. SCR 3.130 (7.06).

The Kentucky Rules of Professional Conduct contain extensive provisions regulating lawyer advertising. See SCR 3.130 (7.01 - 7.60). Rule 7.02(1) defines advertising as the furnishing of “any information or communication containing a lawyer’s name or other identifying information....”² Rule 7.15 prohibits communications about the lawyer or the lawyer’s service that are false, deceptive or misleading. These umbrella provisions are the foundation of lawyer advertising regulation and apply to all advertisements, no matter what form they take. In addition, Rule 7.50(1) prohibits the “use of a firm name, letterhead or other professional designation that violates Rule 7.15.” It is against this backdrop that the Committee considers the ethical issues related to lawyer and law firm domain names.

I. Use of a domain name that does not identify the lawyer or law firm, but connects to a website that clearly identifies the sponsoring lawyer or law firm

Various electronic media, including the internet, have become important sources of information for the public, and lawyer websites have become a popular means of communicating with clients and potential clients. Typically, websites contain information about the lawyer or the firm members and the nature of the practice. They are designed to promote the lawyer or the firm and to attract clients. Websites are a form of advertising; they “furnish ... information ... containing a lawyer’s name or other identifying information....” and are subject to regulation by the bar. SCR 3.130 (7.02(1)).

Just as websites are a type of advertising subject to the Rules of Professional Conduct, so are the domain names that are used to access those websites. Domain names are a form of communication about the lawyer’s services. Like firm names, they contain “identifying information” and cannot be false, deceptive or misleading. SCR 3.130 (7.15).

Many lawyers use domain names that are related to their own name or that of their firm. Lawyer Joe W. Smith may use the domain name of www.jwsmithattorney.com or www.jwsmithandassociates.com. In the first example, the domain name is that of the lawyer; in the second example, the domain name is that of a law firm. These hypothetical domain names, standing alone, would not be false, deceptive or misleading advertising.³ The webpages to which they link would, of course, be subject to a separate review under the rules.⁴

² The rule excludes certain basic kinds of communication, such as professional cards, professional directory listings and office signs, from the definition of advertising. SCR 3.130 (7.02 (1) (a)-(i)).

³ In the above example, the domain name www.jwsmithandassociates.com would violate the rule if no legal entity actually exists. Rule 7.50(4) provides: “Lawyers may state or imply that they practice in a legal entity only if that is the fact.”

⁴ See SCR 3.130 (7.05) requiring all advertisements to be filed with the Commission.

The issue becomes more complicated when the lawyer selects a domain name that is not related to his or her name, or that of the firm. Most ethics committees considering this issue have concluded that domain names that do not include the lawyers name are not per se unethical as long as they comply with the general advertising rules.⁵

A domain name must be analyzed under several provisions of the advertising rules. Again, the initial focus will be on whether the domain name is false, deceptive or misleading. Does the name contain a material misrepresentation of fact, create unjustified expectations or compare the lawyer's services with others? SCR 3.130 (7.15 (a) – (c)). The following examples of domain names, unrelated to the lawyer or the firm, may be helpful in understanding the application of the rules.

Some domain names are targeted to a particular group of potential clients by suggesting an area of concentration. For example, a lawyer who practices family law might use www.divorcelawyer.com. The mere fact that the domain name indicates a field of practice does not, in and of itself, make it false, deceptive or misleading. Although Kentucky does not recognize specialists, Rule 7.40 permits a lawyer to indicate his or her area of practice as long as the advertisement otherwise conforms to the rules.⁶ If a lawyer can state that he or she practices divorce law, there does not appear to be any reason why that same lawyer cannot use a domain name that conveys the same information.

This is not to suggest that all domain names will withstand scrutiny under the rules. Just as a lawyer could not say she is the “greatest lawyer in Kentucky,” because that is likely to create unjustified expectations (and compares her services with others), she could not use the domain name www.greatestlawyerinky.com for the same reason. Similarly, any domain name that suggests a connection with a governmental entity would violate Rule 7.15. For example, a private law firm that used a domain name of www.louisvillelegalclinic.com might lead a prospective client to believe that the lawyer is part of a governmental entity or a non-profit organization. Similarly, the Arizona Bar has concluded that the domain name www.countybar.com is misleading because it implies affiliation with a bar association and the domain name www.arizonalawyer.org is misleading because the use of the top level domain name “org” implied that the firm is a non-profit organization.⁷ Finally, although a lawyer may use a domain name that indicates an area in which the lawyer practices, Rule 7.40 prohibits the use of any form of

⁵ See e.g., N.J. Comm. on Atty. Advert. Op. 32 (available at 2005 WL 3890570); Assn. of the B. of the City of N. Y. Formal Op. 2003-01 (available at 2004 WL 837935) (decided under the Code).

⁶ SCR 3.130 (7.40) provides:

Communication of fields of practice.

A lawyer may communicate the fact that the lawyer does or does not practice in particular field of law. A lawyer who concentrates in, limits his or her practice, or wishes to announce a willingness to accept cases in a particular field may so advertise or publicly state in any manner otherwise permitted by these Rules. Any such advertisement or statement shall be strictly factual and shall not contain any form of the words “certified”, “specialist”, or “authority.”

⁷ Az. B. Ethics Op. 01-05 (2001) (available at www.myazbar.org/Ethics/opinionview).

the words “certified,” “specialists,” “expert,” or “authority.”⁸ Thus, a domain name of www.accidentsspecialist.com, would violate Rule 7.40.

Finally, it is important to emphasize that Question I. assumes that the domain name links directly to the website of the lawyer or the law firm and that the site clearly identifies the lawyer or firm by name. This satisfies the requirement of Rule 7.20, which provides that “(a)ny communication made pursuant to these Rules shall include the name of at least one lawyer licensed in Kentucky, or law firm any of whose members are licensed in Kentucky, responsible for its contents.” By clearly identifying the lawyer or the firm on the webpage, the user will not be misled about the identity of the lawyers and the services being offered.

II. Maintenance of a website that is identified by domain name only and does not include the name of an individual lawyer or law firm

The second question is a variation on the first. It assumes that the domain name does not include the lawyer’s name or the name of the firm, that the website is identified by the domain name only and that the identity of the lawyer or law firm is unclear. In the first question, the domain name was a form of communication, but its primary purpose was to attract the user and connect him or her to the lawyer’s website, where the lawyer or the firm was identified. In this question, the domain name is again used to attract the user but, because it connects to a website that does not identify the lawyer or the firm, the domain name becomes the identifier. The current Rules of Professional Conduct were developed long before the internet became a generally accepted means for exchanging information. Nevertheless, the rules contain a number of principles that are relevant to website communications. In applying those principles, it becomes immediately apparent that the practice of not prominently identifying the lawyer or the law firm on the website is problematic on several levels.

First, the overwhelming concern of the rules is that all advertisements be truthful; they cannot be deceptive or misleading. SCR 3.130 (7.15). By failing to identify the name of the firm or the lawyer involved, the public may be misled as to the identity, status and responsibility of those involved.

Second, Rule 7.20(3) requires that every communication made under the rule “shall include the name of at least one lawyer licensed in Kentucky, or law firm any of whose members are licensed in Kentucky, responsible for its contents.” Failure to prominently identify the lawyer or the firm on the webpage violates this rule.

It has been suggested that when a lawyer maintains a website that does not identify the lawyer or the law firm, but uses the domain name as the identifier, the domain name becomes a tradename. Although the tradename issue may be an interesting one, the Committee is of the view that this question can be resolved on the basis of the two rules described above. It is the Committee’s view that it is a violation of the Rules 7.15 and

⁸ SCR 3.130 (7.40), *supra* n. 6.

7.20(3) to maintain a website that is identified by domain name only and does not include the name of an individual lawyer or law firm.

Conclusion

The Committee has concluded that it is not inherently unethical for a lawyer or a lawyer firm to adopt a domain name, unrelated to the name of the lawyer or the law firm, if the following conditions are met:

- The domain name complies with RPC 7.15; it is not false, deceptive or misleading.
- The website to which the domain name connects prominently identifies the name of the firm or the lawyers involved. The domain name cannot be used as a substitute identity for the lawyer or the firm.
- The domain name does not imply that the lawyer is a specialist, except as permitted by Rule 7.40.⁹

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. The Rule provides that formal opinions are advisory only.

⁹ Rule 7.40 generally prohibits communications which state or imply that the lawyer is “certified” or a “specialist” or “expert” in a particular area of practice. The rule contains a narrow exception for licensed patent lawyers, admiralty lawyers and those certified by national organizations qualifying under *Peel v. Attorney Registration and Disciplinary Commission of Illinois*.