

Ethics Advisory Opinion Committee

Ethics Opinion 22-04

Issued April 11, 2022

ISSUE

1. Is it ethical for a personal injury law firm to advertise or solicit legal services in Utah when the firm does not have a member of its firm licensed in Utah?¹

OPINION

2. Assuming the Regulatory Sandbox has not approved of the new business venture responsible for the advertising material, or method of solicitation/advertising, it is a violation of Utah R. Prof'l Cond. 7.1 (Communication Concerning a Lawyer's Services) that prohibits false or misleading communications for a law firm to advertise or solicit legal services in Utah if that firm does not have an attorney member of the firm, licensed in Utah. Such advertisements or solicitations may be permissible if an appropriate disclaimer or qualifying language is included.

BACKGROUND

3. A law firm (Firm) is located outside the state of Utah. No attorney in the firm is licensed to practice law in Utah. Nevertheless, Firm places advertisements for legal services on billboards in Utah. Firm also solicits clients by mailing targeted advertisement to potential clients in Utah and by distributing or posting fliers and pamphlets within Utah.

¹ This Opinion contemplates that the firm in question practices in areas of the law controlled or affected in some way by Utah state law. The concerns addressed by this Opinion do not necessarily apply to firms that practice entirely federal law.

ANALYSIS

4. According to Rule 7.1 of the Utah Rules of Professional Conduct (a) 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: (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

5. Comment [1] to Rule 7.1 states "[t]his Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's service, statements about them must be truthful."

6. Comment [2] to Rule 7.1 states "[t]ruthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation."

7. The Committee has previously identified various communications a lawyer might make that would be false and misleading: an unsubstantiated comparison of the lawyer with others (Ut. Eth. Op. 14-04), advertising "\$99" bankruptcy while ignoring additional required court fees (Ut. Eth. Op. 17-06), use of "& Associates" in a firm name if there are no other lawyers in the firm (Ut. Eth. Op. No. 138 and Ut. Eth. Op. 04-03), letterhead that includes lawyers on inactive status (Ut. Eth. Op. 00-02). The Committee has noted that a disclaimer may be necessary to avoid advertising being false or misleading: testimonials or dramatizations may be false or misleading if there is a substantial likelihood that a reasonable person would reach a

conclusion for which this is no factual foundation or form an unjustified expectation, but an appropriate disclaimer or qualifying language may permit such advertisements (Ut. Eth. Op. 08-03).

8. There is a “substantial likelihood” that any audience of a billboard in Utah would “formulate the conclusion” that the lawyer or firm advertised on the billboard is licensed to practice law in Utah. Similarly, a firm that solicits clients in Utah using pamphlets or fliers that are mailed, presented, handed out or otherwise disseminated in Utah, creates a “substantial likelihood” that the recipient of the advertisement will “formulate the conclusion” that members of the firm are licensed to practice law in Utah.

9. Omitting any reference to the fact that the firm or lawyer is not licensed in Utah is therefore misleading to its audience according to Comment 2 to Rule 7.1.

10. In searching for a lawyer, a potential client likely has no greater need than for a lawyer or firm that is qualified through licensure to practice in the jurisdiction in which the client is seeking legal services. The omission of an appropriate disclaimer about where attorneys in the firm are licensed to practice is therefore “material.”

11. A billboard in Utah that omits any disclaimer about where the lawyer is licensed to practice, if the firm advertising on the billboard does not have a lawyer licensed in Utah, violates Rule 7.1 because it contains an omission that is materially misleading. Similarly, pamphlets or fliers mailed to or distributed in Utah by out-of-state lawyers violate Rule 7.1 as being materially misleading unless they include a disclaimer that the lawyers in the firm are not licensed in Utah.