

Interpretive Comment 17

Part 7. Information About Legal Services

To assist lawyers advertising in the public media or soliciting prospective clients by written communications, the Advertising Review Committee has adopted Internal Interpretive comments to be used by staff. The Interpretive Comments are designed to establish objective means for staff members to review advertisements or writings and to determine whether they comply with Part 7 of the Texas Disciplinary Rules of Professional Conduct. If the statements and representations contained in advertisements or writings comply with the Interpretive Comments, staff is authorized to approve them.

26. Reference to Past Successes or Results Obtained in an Advertisement in the Public Media (December 2005)

When making any reference to past successes or results obtained in advertisements in the public media, an attorney or law firm must comply with the general rule contained in Rule 7.02(a)(1), which prohibits communications that: (i) contain a material misrepresentation of fact or law, or (ii) omit a fact necessary to make a statement not materially misleading.

In addition, Rule 7.02(a)(2) imposes an affirmative requirement that advertising lawyers and law firms include specific information when referring to past successes or results obtained.

1. A lawyer or lawyer firm publishing a claim of past successes or results obtained in an advertisement in the public media must include information sufficient to provide the basis for a reasonable person to understand the nature of the case, matter or representation, and the advertising lawyer or law firm's role in it.
 - a. When reference is made to past successes or results obtained by a lawyer or firm in a matter where any or all of the descriptive elements of 7.02(a)(2)(i)-(iv) apply, the applicable elements must be incorporated into that reference.
 - b. When reference is made to past successes or results obtained by a lawyer or firm in a matter where one or more of the descriptive elements of 7.02(a)(2)(i)-(iv) do not apply – either because of the nature of the matter or representation or for any other reason –the advertising lawyer or law firm must not only comply with the applicable elements, but must also comply with the requirement that sufficient information be included to avoid misleading a reasonable person. That lawyer bears the burden of providing in the advertisement the information required by the particular facts and circumstances of that representation and that communication.
2. If any reference is made to a sum of money, a particular type of relief, or some other amount or value, care must be taken to make clear the nature of the result, the role of the advertising lawyer or law firm, their relationship to that result, relief, or amount, and the net effect thereof.

3. Claims referencing cumulative results or successes must be accompanied by information sufficient to meet the advertising lawyer or law firm's burden under 7.02(a)(2) with regard to each individual case, matter, or representation.
4. A disclaimer regarding the uniqueness of client matters will not cure a failure to provide adequate information about a claim of past successes or results obtained.
5. If a lawyer or law firm describes his or her legal experience with reference to a specific matter without claiming responsibility for success or results obtained, that communication may not be subject to the requirements of Rule 7.02(a)(2). In that instance, however, the general rules regarding communications about qualifications and services still apply, and the burden lies with the advertising lawyer or law firm to demonstrate that a reasonable person would not conclude that a claim of responsibility for a particular result is being made.