

(LES 1977J)

DIGEST OF ETHICS ADVISORY PANEL
Opinion #90-33, Request #111
Issued August 2, 1990

An attorney seeks Panel advice as to whether he may properly publish a certain advertisement for his legal services.

The attorney submits a sample of the advertisement he proposes to publish. The word "divorce" appears at the top, then the question "Do you know your legal rights regarding . . ." followed by a short list of issues often involved in divorces. The attorney's name appears next, in the center of the advertisement, followed by the attorney's address, phone number and some fee information.

General Laws 1956 (1981 Reenactment) § 11-27-20, originally enacted in 1905, is entitled "Advertising assistance in divorce, annulment or alimony proceedings." It provides a criminal penalty for any lawyer advertising his or her services with regard to "any suit for alimony or divorce or the severance, dissolution or annulment of any marriage . . ."

The Ethics Advisory Panel is empowered to interpret the Rules of Professional Conduct as adopted by the Rhode Island Supreme Court. It is not empowered to pass judgment on the viability or desirability of provisions of the General Laws.

Under the Rhode Island Rules of Professional Conduct, adopted by this court November 15, 1988 an attorney may not engage in criminal conduct. Rule 8.4 provides, in pertinent part:

It is professional misconduct for a lawyer to:

* * *

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

* * *

Unless and until the General Assembly amends or repeals § 11-27-20, the attorney would technically be in violation of the Rules if he were to engage in the conduct it prohibits.

In order to respond to the other aspects of the inquiry and proposed advertisement we will analyze it apart from its references to divorce.

Rule 7.1, entitled "Communications Concerning a Lawyer's Services" provides:

A lawyer shall not make false or misleading communication

about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

The Panel takes the position that the attorney's advertisement complies with Rule 7.1.

Rule 7.2, titled "Advertising," provides in pertinent part:

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a newspaper . . .

* * *

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

The attorney's advertisement complies with Rule 7.2. Rule 7.4 provides:

Communications of Fields of Practice. -- A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, indicate that his or her practice is limited to or concentrated in particular fields of law unless, as part of the same communication, the lawyer also indicates that Rhode Island does not have a procedure for certification or recognition of specialization by lawyers. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney," or a substantially similar designation; or

(b) a lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

Rule 7.4 expressly permits an attorney to indicate the fact that he does or does not practice in particular fields of law. However Rule 7.4 also expressly prohibits a lawyer from implying that he or she is a specialist. Therefore, in order to clearly meet the requirements of Rule 7.4 and obtain Panel protection the attorney must include the disclaimer set forth in the rule to the effect that no procedure exists in Rhode Island for the certification or recognition of specialization by lawyers.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.