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FINAL

ETHICS ADVISORY PANEL  
OPINION #93-101 REQUEST #447  
Issued December 8, 1993

The inquiring attorney asks whether a proposed advertisement violates the Rules of Professional Conduct. The advertisement will be paid for, and run by, a group of clients who are represented by the inquiring attorney's law firm. It appears that the purpose of the advertisement is to increase the number of parties in a class-action lawsuit. The advertisement makes several references to the inquiring attorney's law firm. It states that the inquiring attorney's law firm "focus[es] primarily on tax issues" and that the inquiring attorney's law firm provides "top notch legal representation." The advertisement indicates that clients "will receive quality representation at a cost [they] can afford in order to receive justice."

The Panel believes that the proposed advertisement is subject to the Rules of Professional Conduct on advertising despite the fact that it is paid for, and run by, a group of clients. The advertisement contains information about legal services and therefore falls within the scope of the Rules.

The Panel concludes that the proposed advertisement violates Rule 7.1. That Rule states:

Rule 7.1 Communications Concerning a Lawyer's Services. - 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:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as 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 use of the subjective term "top notch" in the advertisement is inherently misleading. Further, stating that the inquiring attorney's law firm "focus[es] primarily on tax issues" implies a concentration. Thus, the advertisement must also contain language indicating that "Rhode Island does not have a procedure for certification of recognition of specialization by lawyers" pursuant to Rule 7.4.

Having concluded that the advertisement violates the Rules, the Panel cautions the inquiring attorney that under Rule 8.4(a) it is professional misconduct for a lawyer to knowingly violate the Rules of Professional Conduct or to do so thought the acts of another.