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STATE BAR ASSOCIATION OF NORTH DAKOTA ETHICS COMMITTEE

OPINION NO. 99-02

June 21, 1999

The Committee has received a request for its opinion on a question involving the promotion of a law firm through the law firm's web page. The question presented is whether or not this web page is in full compliance with all ethical rules and considerations.

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FACTS

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The web page of this law firm has various parts. There is a home page which briefly describes the other portions of the web page. There is also a welcome and mission statement of the law firm. There are also portions of the web page which give a background of the firm, biographical information of the members of the firm, and the area of practice of the firm. There is also a portion of the web page which provides links to other web sites that may be of value or interest.

The lawyer requesting this opinion has asked that this Committee review the law firm's web page and confirm whether or not the web page is in full compliance with all ethical rules and considerations. Further, the inquiring lawyer has asked that if there are any suggested changes, this Committee notify the lawyer of those recommendations.

DISCUSSION

The web page would be a part of the World Wide Web. The World Wide Web is defined as "a part of the Internet designed to allow easier navigation of the network through the use of graphical user interfaces and hypertext links between different addresses -- called also *Web*." Merriam-Webster, WW Webster Dictionary (visited June 7, 1999) <<http://www.m-w.com/cgi-bin/dictionary>>. The web page of this law firm provides information of the firm, including its members, in the obvious hope of informing users of the World Wide Web about this law firm to advertise its business and attract clients. In other words, the purpose of this web page is the promotion and advertising of the law firm.

N.D.R. Prof. Conduct 7.1(a) does address communications made for the purposes of advertising. This subsection states the following:

A lawyer shall not make a false or misleading communication about the lawyer, a person professionally associated with the lawyer, or their 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; or
2. contains an assertion that cannot be substantiated.

The position of this Committee regarding advertising was most recently stated in State Bar

Association of North Dakota Ethics Committee Opinion 98-06 (July 14, 1998) as follows:

This Committee can provide only limited guidance to lawyers concerned about the content of their advertising. A recent opinion of this Committee describes limitations on opinions addressing advertising issues.

“[I]n most instances, the Ethics Committee is not in a position to determine whether a particular communication is truthful and not misleading. The Committee is not investigatory and cannot verify the veracity of the various statements that could be made in the context of lawyer advertising. It remains the obligation of the lawyer to ensure that a communication is truthful and not misleading. Thus, the Committee will not pre-approve a brochure or other similar documents. If the lawyer has a specific question regarding a specific portion of the brochure, the Committee will respond to such question to the extent that it has the necessary facts.”

State Bar Association of North Dakota Ethics Committee Opinion 97-11 (November 11, 1997). In those limited instances where the Committee has considered specific advertisements or solicitations, it has never explicitly determined that an advertisement or solicitation met the requirements of Rule 7.1. Rather, the Committee has identified specific concerns about the content of the specific advertisements or solicitations.

An example of when this Committee has identified specific concerns and made recommendations is when it suggested that a lawyer delete the word “only” from the heading of a yellow pages advertisement which had stated “Divorce only.” State Bar Association of North Dakota Ethics Committee Opinion 93-05 (February 25, 1993). Another example is when this Committee concluded that an advertisement in the yellow pages listing a number of cities was not misleading as to the cities where the law firm had offices, but this Committee recognized that if the last line of the advertisement was not read, a person may be misled into believing that the law firm had an office in each city where the telephone numbers were listed. State Bar Association of North Dakota Ethics Committee Opinion 98-06 (July 14, 1998).

As society continues to advance and move into the computer age, advertising solicitation will continue to advance and move to computers from the advertising and soliciting which was previously done by more traditional methods such as brochures. The legal profession likewise in its advertising will move from brochures to computers, and advertising and soliciting will be done by methods such as the web page. It is the opinion of the Committee that attorney advertising or solicitation on a web page is governed by the same rules generally applicable to attorney advertising or solicitation done by more traditional methods.

This Committee has previously concluded that it will not pre-approve a brochure. State Bar Association of North Dakota Ethics Committee Opinion 97-11 (November 11, 1997). A consistent position is that it will not pre-approve a web page. Therefore, until this Committee is presented with

a specific question regarding a specific portion of a web page, it cannot confirm whether a web page is in full compliance with all ethical rules and considerations. Although this Committee will not pre-approve this web page, it will state that the burden is upon the lawyer to make sure that all information contained on the web page is truthful and not misleading.

CONCLUSION

This Committee is not investigatory and cannot verify the veracity of statements contained in advertising such as web pages. Further, this Committee will not pre-approve a web page without being presented with a specific question regarding a specific portion of the web page.

This opinion was drafted by J. Thomas Traynor, Jr., and was unanimously approved by the Committee on June 21, 1999.



Alice R. Senechal, Chair

99-02)

May 10, 1999

**Ms. Sandi Tabor
State Bar Association
Of North Dakota
P.O. Box 2136
Bismarck, ND 58502**

Dear Sandi:

The most recent edition of the Gavel had an interesting article entitled "What can the SBAND Ethics Committee do for you?" After reading the article, it appeared that our office has an issue with which committee could assist.

We are currently in the process of developing a web page. You can presently access the web page at www.██████████.com. After reading the applicable rules, we believe that our web page is in full compliance with all ethical rules and considerations.

Would it be possible for the ethics committee to review our web page and confirm that the web page is in full compliance? Alternatively, if there are any changes that might be necessary, could the committee notify us and we would be happy to make any such changes.

Thank you for your cooperation in this matter.

Sincerely,