

How to Advertise Fees Within the Rules

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You and your partners have decided to launch a multimedia advertising campaign. You plan to advertise in local community newspapers, the “ad book” of a local charity, the yellow pages and a cable television program on the law. Your own practice is primarily the representation of plaintiffs in personal injury actions, and your two partners practice primarily in matrimonial disputes and real estate transactions respectively. You would like to refer to your customary fees for various services, but you are not sure just how much information to include.

You are permitted to include certain information regarding fees in your ads. DR 2-101(C)(4) specifically provides that it is proper to include information regarding “legal fees for initial consultation; contingent fee rates in civil matters...; range of fees for services...; hourly rates; and fixed fees for specified legal services.”

The advertising of fees, however, carries with it a number of obligations. These include the fees themselves, the distribution to the public of information about the fees, and appropriate statements explaining the fees, so that the public is not misled as to the services provided. Above all, a lawyer must always remember that his ads must not be deceptive or misleading or contain puffery or self-laudation or “claims that cannot be measured or verified.” DR 2-101(A),(B).

The obligations upon lawyers who decide to advertise their fees depend on the way the fees are advertised and the medium in which the advertisement appears.

Advertising Contingent Fee Arrangements

Because most of your own clients retain you in personal injury matters, you probably use contingent fee agreements and wish to advertise that fact, as do many other attorneys who represent plaintiffs in personal injury actions. If you include this information in your ad, you must explain exactly what your contingent fee rate is and whether the rate is computed before or after deduction of costs, disbursements and other litigation expenses. You must also specify that the client will be liable for costs and disbursements regardless of whether there is a recovery. DR 2-101(L).¹

If you wish to advertise that the initial consultation in a personal injury matter is free of charge, this is permitted. If you wish to advertise that the client will pay no legal fee unless there is a recovery, this statement must be accompanied by the statement that the client will remain liable for the expenses of litigation even though there is no recovery.

Advertising Fee Schedules

You may also wish to advertise a fee schedule for the real estate and matrimonial services that you and your partners provide. The rules that apply to the advertisement of fee schedules vary depending upon

the type of medium used, how often you publish, and whether your fees are fixed, based upon an hourly rate or based upon other factors.

Advertising Fixed Fees

Let's suppose that you decide to advertise a fixed fee for your residential real estate closings. If you do, you must prepare and deliver to each client who retains you for a closing, a written statement clearly describing the scope of your services. Your description of the services must be recognized as reasonable and necessary for real estate closings in the community in which you practice. DR 2-101(E). The same requirements will apply if you decide to advertise a fixed fee for handling an uncontested matrimonial proceeding.

If you do advertise any fixed fees for specified services, you may not charge your client more than the fee listed in the ad, unless your client agrees in writing that the services were not those advertised or implied in the ad and that the services performed will be governed by a different fee arrangement.

Advertising a Range of Fees or an Hourly Rate

You may decide to advertise a range of fees or an hourly rate for your services, instead of one or several fixed fees. If you do, you may not depart from the advertised range of fees or the hourly rate. DR 2-101(G).

Broadcast Ads

One of the options you are considering is advertising on cable television. If you decide to use any broadcast medium, you must obtain and approve a prerecorded or taped transcription of the ad and you must retain -a recording or videotape of the actual transmission for a period of not less than one year following the broadcast or transmission. You are not required to file a copy of the recording or tape with any authority. DR 2-101(F).

Advertising through Other Media

If you advertise in a "directory, newspaper, magazine or other periodical." you do not have to observe any filing requirements. DR 2-101(F).

However, if you advertise by mail or by other means than a broadcast medium- or a general publication, you must file a copy of the ad at the time of initial mailing or distribution with the Departmental Disciplinary Committee of your judicial department. If your advertising material is directed to predetermined addressees, you must retain a list of all their names and addresses for a period of not less than one year following the last date of mailing or distribution. The ad filed with the Committee is open to public inspection. DR 2-101(F)(1-4).

Effective Periods

Fees that are advertised must be honored for specified periods of time, depending upon the medium used and the frequency of publication. If the fee is broadcast, it must be honored for at least thirty days. DR 2-101(I). If the fee is advertised in a publication which is published more often than once a month, it must be honored for at least thirty days after publication. DR 2-101(G). Therefore, you must honor the fees you list in your cable ad or in the local community newspapers for at least thirty days.

If the fee is advertised in a publication which is published less frequently than once a month, it must be honored until the publication of the succeeding issue. Consequently, you must honor any fee you list in the yellow pages until the new yellow pages are issued for the following year. If you do not wish to be bound by any fees for that long a period, you should not advertise them in the yellow pages.

If the fee is published in a publication which has no fixed date for publishing a succeeding issue, you must honor the fee for a reasonable period after publication, but not less than ninety days. This rule would cover any fee information published in the charity's ad book. DR 2-101(H).

Name and Address Required

All advertising matter, however and wherever published or distributed, must include the name, office address and telephone number of the attorney or law firm whose services are being offered. DR 2-101(K).

Conclusion

If you do decide to advertise fees, you should take particular care to make clear exactly what services the fee schedule covers. If you do not, you will only create ill will and misunderstanding with a client who interprets your services differently from the services you intended. You have a duty to avoid controversies over fees with clients and to resolve any differences which arise amicably.² When you make your decision whether and how to advertise fees, keep these things in mind.

¹See, also, *Zauderer v. office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.s. 626 (1985).

²EC 2-23.