

NOTICE TO THE BAR

Committee on Attorney Advertising - Opinion 31

The Supreme Court Committee on Attorney Advertising has issued the following opinion (CAA 31), entitled, "Use of Judicial Photographs by Attorneys," to guide attorneys about the use of photographs of judges in promotional advertisements or websites. A copy of the opinion will also be posted at the Rutgers-Camden Website, <http://lawlibrary.rutgers.edu/ethics/search.shtml>.

Dated: April 4, 2005
George J. Kenny, Esq.
Chair, Committee on Attorney Advertising

COMMITTEE ON ATTORNEY ADVERTISING APPOINTED BY THE NEW JERSEY SUPREME COURT OPINION 31 USE OF JUDICIAL PHOTOGRAPHS BY ATTORNEYS

The Committee has been asked for its opinion as to the propriety of including photographs of judges on an attorney's Internet webpage. Publication of judges' photographs for other than promotional purposes is permissible. However, if judicial photographs are presented as part of an advertising or marketing venture their use is controlled by and subject to the Rules of Professional Conduct and the Code of Judicial Conduct.

Electronic advertising communications may constitute constitutionally protected commercial speech. However, electronic communications, either directly or through a link, may violate the Rules of Professional Conduct in that portrayal of a judge, in the context of an attorney's promotional communication, is tantamount to an unspoken and prohibited testimonial or endorsement. Including the image of a judge on an attorney's website is improper because "it is likely to create an unjustified expectation." RPC 7.1(a)(2) because of the implicit endorsement by the judge who appears on the website. Further, a commercially appropriated judicial image may "imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law." RPC 8.4(e).

A judge may not permit another to use his or her image because that use would violate the Code of Judicial Conduct which provides that, "A Judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence." Code of Judicial Conduct 2.5.

The Committee has, therefore, determined that an attorney may not include on a professional or personal website, either directly or through a link, an image of a judge if the purpose of the site is to advertise or market that attorney's practice.

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