

**LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**

**L.E.I. 96-01**

**"No Recovery-No Fee" Lawyer Advertisements Must Disclose Client  
Responsibility for Litigation Costs and Expenses in the Same Advertisement**

In response to client complaints and inquiries, the Lawyer Disciplinary Board has determined to address the issue of lawyer contingent fee advertising such as "No Recovery-No Fee" without disclosure in the same advertisement of any client responsibility for litigation fees and costs. Although most attorneys disclose any client responsibility for these costs and expenses in their written fee agreements or engagement letters pursuant to Rule 1.5(c), the frequency of client inquiries and complaints after their cases are concluded without recovery and they discover they still owe money, suggests to the Board that this is an ineffective and inefficient communication of the obligation and responsibility for payment of fees and costs.

Rule 7.1 of the West Virginia Rules of Professional Conduct provides:

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 a whole not materially misleading....

Lawyer advertising is a very frequent and visible form of communication. Therefore, any advertisement in print or in other media containing text or statements relating to attorney fees should clearly inform the public as to the terms upon which fee agreements are offered. The Board concludes that lawyer contingent fee advertising which contains a statement such as: "No Recovery-No Fee", "Our fee is a percentage of the settlement obtained for you.", "No fee unless case is successful...", "No fee unless compensation is awarded.", or substantially similar language without disclosure of client responsibility for expenses or costs of litigation is inherently misleading. The use

of such a statement in lawyer advertising, unless it is accompanied by a further statement that the client is responsible for payment of costs and expenses of litigation, constitutes a violation of Rule 7.1.

The Board has concluded that these No-Fee statements are likely to mislead the public and do mislead the public by failing to clearly distinguish between and among fees, costs, and expenses. Additionally, the false expectation can be raised that a client will owe nothing in the event the case is lost. In the alternative, an expectation could be raised that the lawyer intends to finance the litigation whether or not there is a recovery, and to absorb all costs and expenses.

The Board's opinion follows the holding in Zauderer v. Office of Disciplinary Counsel of the Ohio Supreme Court, 471 U.S. 626 (1985), approving regulation of such deceptive advertising of contingent fees, and is in accord with the Formal Opinions of the Bars of Virginia, Arizona, Maryland, Michigan, Mississippi, and Washington on this subject.

Approved: April 25, 1996



---

STEPHEN JORY, CHAIRMAN  
Lawyer Disciplinary Board  
State of West Virginia