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P. Cole Law

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COMMERCE AND TRADE

Selling and Other Trade Practices: Prohibit False Advertising Regarding Legal Services

CODE SECTION: O.C.G.A. § 10-1-427 (new)
BILL NUMBER: HB 1860
ACT NUMBER: 1063
SUMMARY: The Act prohibits providers of legal services from advertising in an untrue, fraudulent, deceptive, or misleading manner. The Governor's Office of Consumer Affairs is authorized to investigate such advertising and may issue public reprimands and cease and desist orders. The Act requires that notice and a hearing be provided to the accused. The Act also provides a remedy for affected persons. The Act provides that a violator of a cease and desist order issued pursuant to the Act is guilty of a misdemeanor.
EFFECTIVE DATE: July 1, 1992

History

Historically, subject to certain limited exceptions, lawyers have not been allowed to advertise.¹ The State Bar of Georgia felt that competitive advertising was not in the public interest because such advertising would encourage pompous, disingenuous, and self-laudatory brashness which would mislead the layperson and undermine public confidence in the legal profession.² Over time, advertising by lawyers has become more common. In Georgia, such advertising is now governed by the Canons of Ethics in the Rules and Regulations for the Organization and Government of the State Bar of Georgia.³

The Canons of Ethics state that lawyer advertising should be motivated by a desire to increase the public's awareness of its legal needs and its ability to select the most appropriate counsel, rather than for the sole purpose of obtaining publicity for particular lawyers.⁴ The Canons of Ethics also provide that advertisements and public communications "should be formulated to convey only information that is necessary to make an appropriate selection that is objective in nature

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1. See GEORGIA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-9 (1976).
 2. *Id.*
 3. 1990 Op. Att'y Gen. 90-42.
 4. See GEORGIA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-2 (1976).

and that is capable of being accurately stated in an advertisement without tending to deceive or mislead."⁵

HB 1860

The Act was prompted in part by the actions of law firms that advertise that they have offices in various cities when in fact they do not.⁶ The General Assembly adopted HB 1860 in an effort to keep lawyers in a good light by requiring that lawyers who advertise only make representations that are true, and by prohibiting any fraudulent, deceptive, or misleading advertisements.⁷ Not only is it an ethical violation for lawyers to furnish misleading or deceptive advertisements, but the Act now makes it a criminal violation as well.⁸

The Act defines the scope of affected participants and also states what actions are actually prohibited by the Act.⁹ The Act applies to "any person, firm, corporation, or association," or employee thereof that intends, either directly or indirectly, to perform legal services.¹⁰ The Act applies to those who disseminate, or cause to be disseminated, advertisements to the public by means of "newspaper or other publication, radio, television, or advertising device or by public outcry or proclamation or any other manner or means whatever."¹¹ The Act applies to advertisements concerning "legal services or concerning any circumstances or matter of fact connected with the proposed performance thereof which is untrue, fraudulent, deceptive, or misleading and which is known or which by the exercise of reasonable care should be known to be untrue, fraudulent, deceptive, or misleading."¹²

The Act specifically exempts from coverage the person or entity with whom the advertisement is placed and who "broadcasts, telecasts, publishes, or prints such advertisement in good faith without knowledge of its false, fraudulent, deceptive, or misleading character."¹³

The Act empowers the Governor's Office of Consumer Affairs, upon the receipt of a complaint or on its own initiative, to investigate any

5. *Id.* at EC 2-8.

6. Telephone Interview with Rep. Ray Holland, House District No. 136 (Apr. 1, 1992) [hereinafter Holland Interview]. Rep. Holland was one of the sponsors of HB 1860.

7. *Id.*

8. O.C.G.A. § 10-1-427 (Supp. 1992).

9. *Id.* § 10-1-427(a) (Supp. 1992).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* § 10-1-427(b) (Supp. 1992).

advertising which may be a violation of the Act.¹⁴ The Office of Consumer Affairs is authorized to issue public reprimands and cease and desist orders against an offender, but only after “providing the offender with reasonable notice and an opportunity for a hearing.”¹⁵ Also, the Office of Consumer Affairs is authorized to “report any such action to any board, agency, commission, association, or other entity governing or supervising the legal profession, and to publicize any such action in a medium or media likely to reach the recipients of the improper advertising.”¹⁶ Finally, any person “against whom the office issues an adverse decision may seek a restraining order” against the decision in superior court.¹⁷

The Act also provides that “[a]ny person who violates a cease and desist order” shall be guilty of a misdemeanor in the county in which that person resides.¹⁸ This provision also states that nothing in the Act prohibits any entity which supervises the legal profession from taking action against a person guilty of improper practices.¹⁹ Each publication of an advertisement in violation of a cease and desist order constitutes a separate offense under the Act.²⁰

The Act is narrowly drawn in an attempt to avoid any constitutional problems.²¹ It does not try to prohibit truthful speech or advertising, nor does it tell lawyers how to advertise; rather, its primary purpose is to prohibit deception and fraud.²² The Act is designed to give guidance to those who are already “crossing the line” or who are about to, and to those who are preparing to start advertising.²³

The Act went through several changes before being adopted by the General Assembly. The bill, as originally introduced, applied to providers of “professional services including, without limitation, medical, legal, or dental services.”²⁴ The House Committee on Industry amended the bill as introduced by deleting “medical, legal, or dental services” from the definition of “professional services.”²⁵ This deletion was the result of a threat to table the bill because its language was believed to be too broad.²⁶ The bill was amended further by a floor

14. *Id.* § 10-1-427(c) (Supp. 1992).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* § 10-1-427(d) (Supp. 1992).

19. *Id.*

20. *Id.*

21. Holland Interview, *supra* note 6.

22. *Id.*

23. *Id.*

24. HB 1860, as introduced, 1992 Ga. Gen. Assem.

25. HB 1860 (HCS), 1992 Ga. Gen. Assem.

26. Holland Interview, *supra* note 6.

amendment in the House,²⁷ which limited the bill's application only to advertisements regarding "legal services."²⁸ This final change was made because the term "professional services" was not defined by the House and was believed to be too broad.²⁹ Thus, the bill was narrowed to apply only to "legal services."³⁰

The Committee on Industry also added the term "deceptive" to the list of prohibited advertisement styles.³¹ This was done in an attempt to make the bill consistent throughout.³² Finally, the Committee on Industry added the provision³³ that a person guilty of violating the Act shall be guilty of a misdemeanor in the county in which such person resides.³⁴ As introduced, the bill only provided that the offender was guilty of a misdemeanor.³⁵ This final change was simply for jurisdictional purposes.³⁶

The Act's sponsor summed up the purpose of the Act by stating that the intent of this bill is not to usurp regulation of lawyers from the courts and put it into the hands of the legislature, but is only aimed at fraudulent and deceptive advertising.³⁷

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27. HB 1860 (HCSFA), 1992 Ga. Gen. Assem.

28. O.C.G.A. § 10-1-427 (Supp. 1992).

29. Holland Interview, *supra* note 6. The budget of the Office of Consumer Affairs may have been considered in changing the target from "professional services" to "legal services" because the term "professional services" is so broad that it would be difficult to police. *Id.*

30. O.C.G.A. § 10-1-427 (Supp. 1992).

31. HB 1860 (HCS), 1992 Ga. Gen. Assem.

32. Holland Interview, *supra* note 6.

33. HB 1860 (HCS), 1992 Ga. Gen. Assem. This language was also adopted in the Act. See O.C.G.A. § 10-1-427(a) (Supp. 1992).

34. O.C.G.A. § 10-1-427(d) (Supp. 1992).

35. HB 1860, as introduced, 1992 Ga. Gen. Assem.

36. Holland Interview, *supra* note 6.

37. *Id.*