



ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 735

Lawyer's Use of Internet Search Engine Keyword Advertising

The Advisory Committee on Professional Ethics received an inquiry asking whether a lawyer may, consistent with the rules governing attorney ethics, purchase a Google Adword or keyword that is a competitor lawyer's name, in order to display the lawyer's own law firm website in the search results when a person searches for the competitor lawyer by name. Internet search engine advertising programs permit businesses to purchase certain keywords or phrases; when a person searching on the internet uses those words in the search, the websites of purchasers of the keywords will appear in the search results, ordinarily presented as paid or "sponsored" ads. The same keywords or phrases usually can be purchased by more than one business.

Inquirer further asked whether, consistent with the rules governing attorney ethics, a lawyer may insert, or pay the internet search engine company to insert, a hyperlink on the name of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website. Assuming (without finding) that internet search engine advertising programs can generally operate in this manner, the Committee considers the inquiry presented: may a

lawyer insert, or pay an internet search engine company to insert, a hyperlink on the name of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website.

The inquiry was also docketed with the Committee on Attorney Advertising. That Committee found that purchasing a competitor lawyer's name as a keyword does not violate the rules governing attorney advertising. Attorney advertising rules apply to lawyers' "communications." RPC 7.1. The keyword purchase of a competitor lawyer's name is not, in itself, a "communication."

The Advisory Committee on Professional Ethics considered whether this conduct violates Rule of Professional Ethics 1.4 ("Communication"). Rule of Professional Conduct 1.4 provides that a lawyer shall inform a prospective client of how, when and where the client may communicate with the lawyer. There is no interaction, much less communication, between the lawyer who purchases a competitor lawyer's name as a keyword and the person searching on the internet. Rule of Professional Conduct 1.4 does not apply in this situation.

The Committee also considered whether purchasing a keyword of a competitor lawyer's name violates Rule of Professional Conduct 8.4 ("Misconduct"). This Rule states that it is "professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . [or] engage in conduct that is prejudicial to the administration of justice" RPC 8.4(c) and (d).

There has been some disagreement among other jurisdictions on this issue. The Texas State Bar Professional Ethics Committee found that, "given the general use by all sorts of businesses of names of competing businesses as keywords in search-engine advertising, such use by Texas lawyers in their advertising is neither dishonest nor fraudulent nor deceitful and does

not involve misrepresentation.” State Bar of Texas Professional Ethics Committee Opinion No. 661 (July 2016). See also Habush v. Cannon, 828 N.W.2d 876, 881-82 (Wisc. App. Ct. 2013) (a lawyer’s purchase of competitor lawyers’ names as keywords in internet search engines does not violate the Wisconsin right of privacy statute because the “use” of the competitors’ names is not visible to the consumer). But see North Carolina State Bar 2010 Formal Ethics Opinion 14 (April 27, 2012) (purchasing another lawyer’s name as keyword for internet search is dishonest conduct in violation of RPC 8.4(c)).

The Committee concurs with the approach of Texas and Wisconsin and finds that purchasing keywords of a competitor lawyer’s name is not conduct that involves dishonesty, fraud, deceit, or misrepresentation. The websites of the keyword purchaser’s law firm and the competitor’s law firm will, presumably, both appear in the resulting search. The keyword purchaser’s website ordinarily will appear as a paid or “sponsored” website, while the competitor lawyer’s website will appear in the organic results (unless the competitor has purchased the same keyword, in which case it will also appear as a paid or “sponsored” website). The user can choose which website to select and the search engine ordinarily will mark the keyword-purchased website as paid or “sponsored.” This is not deceptive, fraudulent, or dishonest conduct within the meaning of Rule of Professional Conduct 8.4(c).

The Committee further finds that purchasing keywords of a competitor lawyer’s name is not conduct prejudicial to the administration of justice. The standard for conduct prejudicial to the administration of justice is high; this Rule applies to “particularly egregious conduct,” or conduct that “flagrantly violat[es] . . . accepted professional norms.” In re Helmer, 237 N.J. 70, 83 (2019) (quoting In re Hinds, 90 N.J. 604, 632 (1982)). Purchasing keywords that are the name of a competitor lawyer is not egregious or flagrant conduct.

Inquirer also asked whether a lawyer may pay Google to insert a hyperlink on a competitor lawyer's name that diverts the user to the first lawyer's website. The Committee finds that surreptitiously redirecting a user from the competitor's website to the lawyer's own website is purposeful conduct intended to deceive the searcher for the other lawyer's website. Such deceitful conduct violates Rule of Professional Conduct 8.4(c).

Accordingly, a lawyer may, consistent with the rules governing attorney ethics, purchase an internet search engine advertising keyword that is a competitor lawyer's name, in order to display the lawyer's own law firm website in the search results when a person searches for the competitor lawyer by name. This conduct does not involve dishonesty, fraud, deceit, or misrepresentation, and is not conduct prejudicial to the administration of justice. Therefore, it does not violate Rule of Professional Conduct 8.4(c) or (d).

A lawyer may not, however, consistent with the rules governing attorney ethics, insert, or pay the internet search engine company to insert, a hyperlink on the name or website URL of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website. Redirecting a user from the competitor's website to the lawyer's own website is purposeful conduct intended to deceive the searcher for the other lawyer's website. Such deceitful conduct violates Rule of Professional Conduct 8.4(c).