



# NEW JERSEY STATE BAR ASSOCIATION

August 15, 2024

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SUPREME COURT  
OF NEW JERSEY

Re: In Re Supreme Court Advisory Committee on Professional Ethics  
Opinion No. 735 / Docket No. 083396

Dear Ms. Baker:

Please accept this reply supplemental letter brief in lieu of a more formal brief pursuant to R. 2:6-2 on behalf of the New Jersey State Bar Association (NJSBA) in the above captioned matter.

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## ARGUMENT

- I. Search Results that Appear as a Result of Purchasing Keyword Search Terms that Truthfully Reflect the Business of the Ad Purchaser Can be Useful to a Consumer and Provide Increased Choice; Intentionally Purchasing Another Attorney's Name or Law Firm Name as a Keyword Search Term that Has No Connection to the Purchasing Attorney's Firm is Distinguishable as a Misleading and False Statement or Communication in Violation of the Rules of Professional Conduct

The Advisory Committee on Professional Conduct (ACPE) contends, "An internet user engages in a keyword search to obtain information. The point of keyword ads, like any advertising online, is to target content to users who are seeking that information. Users then have the ability to filter through the search results to find the most relevant and useful answers to their query." ACPE Brief at 12-13.

The NJSBA agrees that keyword ads can be helpful in providing information that a user is seeking quickly and easily by allowing advertisers to determine those search terms that would most closely match what their website offers. So, when a user is searching for "family lawyer Mercer County," it is helpful and appropriate for firms that practice family law in Mercer County and have purchased keywords relating to those terms to appear in the search results. The user can reasonably expect that the firm is listed in the search results, even as an advertiser, because the search terms reflect the firm's practice area and location. A click on the advertiser's website by the user will

bring the user to the site where they should be able to find information that is responsive to what they are looking for.

Searching for a particular attorney or law firm, though, is very different. If a user searches for “John Smith NJ attorney” and a firm appears in the search results that has no connection to John Smith, that is not helpful to the user. On the contrary, it serves as an obstacle to the user quickly and easily finding the attorney for whom they are searching. The user may not know that the attorney searched for is not with the firm whose ad appears in the search results, and the user may click on the website expecting to find information about John Smith or John Smith’s law firm. It is in this way that keyword advertising using another attorney’s name or law firm as the purchased keyword search term is misleading and, perhaps, deceitful, in violation of Rules of Professional Conduct (RPCs) 7.1(a) and 8.4(c).

The ACPE argues that RPC 8.4(c), under which the ACPE examined this practice, is aimed at deliberately deceptive or illegal conduct. They cite cases where attorneys filed false documents with the court, misappropriated funds, and made misrepresentations to a client. ACPE Brief at 10. Discipline has been imposed under RPC 8.4(c) where attorneys have knowingly made false statements, as well. See In re Prothro, 208 N.J. 340 (2011) (attorney knowingly made a false statement of material fact to a disciplinary authority); In re

Trustan, 202 N.J. 4 (2010) (attorney knowingly made a false statement to a third party and was found to have violated RPC 8.4(c)) and offered false evidence); In re Stahl, 198 N.J. 507 (2009) (attorney knowingly made false statements to a law tribunal and offered false evidence); In re Tan, 188 N.J. 389 (2006) (attorney knowingly made false statements on his bar application).

In characterizing what occurs when an attorney purchases a competitor attorney's name as a keyword search term, the ACPE notes the results of the action – an ad for the attorney appearing among the search results. ACPE Brief at 10. They neglect to note, though, that before those search results are generated, the purchasing attorney has *knowingly* decided to use someone else's name or firm name to create a false expectation and mislead potential clients to the purchasing attorney's website.

The ACPE notes that the analysis would be different if the resulting ad contained language to falsely mislead the user to believe that clicking on the ad would lead to the searched-for attorney's or firm's website. ACPE Brief at 11, fn 3. The ACPE is correct that, in the situations being considered here, the ads themselves do not contain false language. The NJSBA submits that, in this situation, the RPC violation is not in the language contained in the ad; it is the purchased keyword search terms that are false and misleading. The user has entered search terms and reasonably expects that the results will have some

connection to the search terms, but because of the purchased keyword search terms, the results will not necessarily have that connection. The ACPE also notes that organic search results receive more clicks, leading experts to believe users perceive organic search results to be more trustworthy. ACPE Brief at 12. That may be true; however, studies also show that users often have a difficult time distinguishing between paid and organic search results. Special Adjudicator Report at 29. So, while users may prefer and are looking for organic search results in response to their search terms, the paid results interfere, serve as an obstacle, or mislead the user away from what they are actually expecting and searching for.

### CONCLUSION

In using another attorney's name or firm name as a keyword search term that has no connection to the purchaser's website for the purpose of encouraging potential clients to view their websites, the purchaser is knowingly making a false statement to the potential client. That client will click on the search result expecting to find some connection to the attorney or firm whose name they entered as a search term, but there will be none. The potential client will have been misled by the keyword search term knowingly purchased by the purchasing attorney. That is conduct the NJSBA urges this

Court to prohibit as dishonest, misleading and deceitful in violation of the  
RPCs.

Respectfully submitted,

NEW JERSEY STATE BAR ASSOCIATION

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