NJ Supreme Court Clarifies Attorney Advertising, Debt Liability Rules in Recent Decisions

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The New Jersey Supreme Court recently issued two decisions that clarified previous gray areas of the law concerning attorney advertising and the extent to which a business representative may be personally liable under contract for debts incurred by the business. Both decisions provide practicing attorneys with important considerations and standards for their own advertising practices and for drafting and interpreting business agreements.

Attorney Advertising

In the attorney advertising case, *In re Opinion No. 735*, the New Jersey Supreme Court considered whether an attorney or law firm may purchase a competing attorney's or law firm's name as a "keyword" from internet search engine providers, such as Google, without running afoul of the Rules of Professional Conduct (RPCs). The practice is known as "competitive keyword advertising" and is a common marketing tactic across many industries and professions. The process works as follows: company A purchases company B's name from a search engine provider so that when a consumer searches for company B on that particular search engine, company A's website will appear as a sponsored link above the search results.

Competitive keyword advertising faces two distinct ethical hurdles in the context of legal services advertising. First, RPCs 7.1 and 7.2 prohibit attorneys from creating "false or misleading" advertising "communications" regarding "the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement." Second, RPC 8.4(c) and (d) prohibit attorneys from engaging in any conduct involving "dishonesty, fraud, deceit, or misrepresentation," or that is "prejudicial to the administration of justice."

In June 2019, the Advisory Committee on Professional Ethics concluded that the purchase of another lawyer's or law firm's name in competitive keyword advertising does not violate the RPCs. Several months ago, in May 2025, the New Jersey Supreme Court issued an opinion affirming the Committee's decision. The Court held that attorneys employing competitive keyword advertising do not violate the RPCS so long as the advertising does not create a false or misleading suggestion that the advertising attorney is affiliated with the attorney who is the subject of the search. To do so, advertising attorneys must now include a clear and conspicuous disclaimer on the landing page of their website when a user clicks on a competitive keyword advertisement.

The Court reasoned that competitive keyword advertising does not violate RPCs 7.1 or 7.2 because the purchase of a keyword is not a "communication" under the RPCs. Competitive keyword advertising is instead an act of "proximity marketing" whereby a marketplace competitor positions itself near a market leader. So long as the purchase of the keywords does not create a false or misleading suggestion that the advertiser is affiliated with the object of the search, the Court concluded, efforts made to enhance visibility do not amount to communications under RPC 7.1 and 7.2. As to RPCs

8.4(c) and (d), the Court held that the mere act of competitive keyword advertising, without more, does not falsely imply affiliation. The Court also emphasized that competitive keyword advertising is both a common practice and widely understood by consumers.

Nevertheless, to ensure complete transparency and integrity, the Court now requires a precautionary disclaimer to be used by all attorneys who engage in competitive keyword advertising. The "landing page" to which the paid ad directs a consumer must include the following message:

You arrived at this page via a paid advertisement on [insert name of search engine provider] through paid keyword search results. This website and the legal business it describes are affiliated only with [insert name of purchasing attorney] and the other attorneys referenced within this website.

The Court's long-awaited decision delivers clarity in a continually evolving digital landscape and provides New Jersey attorneys with the flexibility to engage in digital marketing practices similar to those in other industries. Practicing attorneys should expect the Court to continue this approach in future cases concerning new forms of digital advertising in New Jersey.

Personal Guarantees For Business Debt

In *Extech Building Materials, Inc. v. E&N Construction, Inc.,* the New Jersey Supreme Court considered whether a business representative's signature on a credit agreement between two businesses could personally bind the president as a guarantor of the business's debt. Under the agreement, E&N Construction purchased building materials from Extech on credit. E&N's president signed the credit agreement, which included a clause above the signature line stating that the signer "DO[ES] PERSONALLY GUARANTEE UNCONDITIONALLY, AT ALL TIMES, . . . THE PAYMENT OF INDEBTEDNESS . . . OF THE WITHIN NAME[D] FIRM."

Extech then filed suit against E&N's president after E&N defaulted on its payments. Extech argued that the company president was personally liable for the remaining payments due to the personal guarantee language in the agreement. The trial court granted summary judgment in favor of the company president. The Appellate Division reversed, holding that there were unresolved issues of fact regarding the parties' intentions. The New Jersey Supreme Court then granted certification.

The Court determined that E&N's president could not be personally liable for the debt because he did not unambiguously manifest an intent to personally guarantee the agreement. Although the Court rejected the president's argument that he would have had to sign the agreement twice to personally guarantee the debt, it concluded that the agreement's language was not sufficiently unambiguous to meet the high bar necessary to establish a personal guarantee.

The Court provided three ways by which a business representative may unambiguously manifest an intent to personally guarantee a business debt: (1) execute a separate personal guarantee agreement; (2) sign the underlying agreement once as a corporate representative and again individually; or (3) sign the underlying agreement a single time, provided that the agreement explicitly states the individual intends their single signature to bind both the company and the representative individually. The Court explained that the third method "requires the highest level of clarity in setting forth the obligations to which the single signature binds the signer," and that the contract language "must directly evince the signer's dual intent by unambiguously expressing an assumption of personal liability in addition to establishing the underlying corporate commitment." The Court stopped short of providing an example of sufficient language for this third method. Nonetheless, it cautioned that "a single signature will rarely suffice to establish the mutual assent required to personally guarantee a company's indebtedness." Given that the Court deemed the above language insufficient, there will be few occasions when a single signature establishes a personal guarantee.

The Court's decision should be a guidepost for transactional attorneys who draft various types of debtor agreements. Most importantly, the decision emphasizes the exceeding clarity required for a business owner or representative to personally

guarantee a business's debt. Attorneys drafting such agreements who seek to ensure that a representative of the debtor will be personally liable for the debt should require either that the representative sign a separate agreement or sign the underlying debt agreement twice – in both a business and personal capacity. By doing so, attorneys can avoid the risk that a single signature on the loan agreement will be insufficient, particularly given the Court's warning that a single signature "rarely" will suffice.