

COMMITTEE: Ethics Committee

DATE: March 2, 2006

3. CHAPTER 14: WHETHER STATEMENTS IN PROPOSED TESTIMONIALS CONFORM TO RULES

A lawyer asked the Committee whether certain statements in a testimonial are proper. The Committee noted that the statements include statements of personal satisfaction as well as statements of fact, identify some of the former clients making the claims by name and may permit litigants adverse in interest to the former clients to be identified. The Committee had a concern that some of the statements made in the proposed testimonials might be defamatory.

It was the Committee's view that all elements of a testimonial must meet the requirements of the rules: they must be both true and verifiable. This includes any statements of fact made by former clients giving a testimonial. It is not enough that the former client believes a statement to be true, the statement must be verifiably true as well. Statements by a former client that the lawyer gave "great advice" or that the lawyer is "professional" or "knowledgeable" cannot be verified and therefore are contrary to the rules.

The Committee asked Jack Olsen to convey these views to the lawyer and asked that he review his proposed materials in light of these concerns.

JO/
March 2, 2006.