

New Jersey Lawyers Can't Use Judicial Testimonials in Ads

By [Donald Scarinci](#)

The praise of a highly respected judge is one of the most credible endorsements a New Jersey lawyer can receive. However, incorporating these testimonials is still prohibited under the state's ethics laws.

A federal district court recently held that Attorney Advertising Guideline 3, which prohibits [New Jersey lawyers](#) from using quotations from judicial opinions to tout their abilities, does not run afoul of the First Amendment. Advertising Guideline 3 states:

Attorney Advertisements: Use of Quotations or Excerpts From Judicial Opinions About the Legal Abilities of an Attorney or law firm may not include, on a website or other advertisement, a quotation or excerpt from a court opinion (oral or written) about the attorney's abilities or legal services. An attorney may, however, present the full text of opinions, including those that discuss the attorney's legal abilities, on a website or other advertisement.

The New Jersey Supreme Court implemented the guideline in 2012 after a New Jersey judge raised concerns that his statements in a non-published judicial opinion were quoted on a law firm website. The excerpt from the opinion stated:

The inescapable conclusion is . . . that plaintiffs achieved a spectacular result when the file was in the hands of Mr. Dwyer . . . Mr. Dwyer was a fierce, if sometimes not disinterested advocate for his clients, and through an offensive and defensive motion practice and through other discovery methods molded the case to the point where it could be successfully resolved.

The Dwyer Law Firm website also contained several other opinion excerpts that were favorable to attorney Andrew Dwyer. They included the following statement: "Based upon my observations of him in court there's no question in my mind that he is in the upper echelon of employment lawyers in this state."

The attorney refused to remove the statements and filed a lawsuit challenging Attorney Advertising Guideline 3 as an unconstitutional restraint on free speech. In a recent decision, U.S. District Judge Faith Hochberg dismissed the case, [Dwyer v. Cappell](#), on summary judgment.

Judge Hochberg concluded that the guideline constituted a regulatory requirement of "additional disclosure" on commercial speech rather than a "restriction" on speech because it requires full disclosure of a judicial opinion. Accordingly, it only had to satisfy a reasonableness standard, namely whether there is a reasonable relationship between the rule and the government's interest in "preventing deception of consumers."

Under this framework, the court found that "[a] judicial quotation's potential to mislead a consumer is self-evident." As Judge Hochberg further explained, "Without the surrounding context of a full opinion, judicial quotations relating to an attorney's abilities could easily be misconstrued as improper judicial endorsement of an attorney, thereby threatening the integrity of the judicial system."

The court further concluded that Guideline 3's disclosure mandate is reasonably related to the state's interest in "preventing the deception of consumers and preserving public confidence in the impartiality of the judiciary; moreover, Guideline 3's requirements are not unduly burdensome, as they simply require the full context surrounding a judge's evaluation of a lawyer."

Andrew Dwyer has already vowed to appeal to the Third Circuit Court of Appeals, citing that other states do not impose such burdens on attorney advertisements. Until then, New Jersey lawyers will have to rely on client testimonials and other marketing statements.

[Donald Scarinci](#) is a New Jersey lawyer and managing partner of Scarinci Hollenbeck, LLC a regional law firm with offices in New York, New Jersey and Washington, D.C. His columns feature legal issues in the news and articles about the business and practice of law. He also writes regularly in Politicker NJ and the [Constitutional Law Reporter](#).