

Rule G-40

Using Testimonials in Advertisements



June 20, 2023

Speakers

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Getting Started

- What is an advertisement?
 - Material published or used in electronic or public media or written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public, including but not limited to form letters (abbreviated, See Rule G-40 (a)(1))A form letter is a written letter or email distributed to more than 25 persons in 90 days
- What is a testimonial?
 - A statement of a person's or entity's experience concerning the MA or the municipal advisory services rendered by the MA

HOW Can Testimonials be Used?

- Testimonials used in advertisements are permissible under certain conditions starting July 3
- May be used in:
 - Printed documents (e.g., brochures, pamphlets, form letters)
 - On Firm web site
 - In Firm/MA social media postings

BUT KEEP IN MIND -

HOW Can Testimonials be Used?

- MA may not make false, exaggerated, unwarranted, promissory, or misleading statements or claims in advertisements, including omitting material facts.
 - *Discussion: what constitutes these types of non-permissible statements?*
- MA must have a reasonable belief that the person making the testimonial has the knowledge and experience to do so.
 - *Discussion: how is reasonable belief determined?*
- Certain disclosures must appear near the advertisement stating whether the testimonial is given by a MA client or person other than an MA client; the fact that the testimonial may not be representative of the experience of other clients; and that the testimonial is no guarantee of future performance or success.
 - *Discussion: where must the disclaimer be posted?*

WHO Can Provide a Testimonial?

- A testimonial may come from:
 - Clients
 - Former clients
 - Other market participants

That have the knowledge and experience to do so

Supervision and Recordkeeping Requirements

- Prior to any use of advertisements, the advertisement – new or materially updated - must be approved in writing by a MA principal in the firm stating that it meets the qualifications of the Rule. All approvals must be kept for five years.
 - *Discussion: in what format must the approval take place?*
- The appropriate firm principal must form a reasonable belief that the testimonial is from a person that has the knowledge and experience to do so and have a process for forming and documenting this belief in writing, and for ensuring that appropriate disclosures have been made.
 - *Discussion: should these processes be incorporated into Firm's WSP? What else should be updated in a Firm's WSP?*

Considerations to Meet Supervisory Requirements

- Have policies, processes and procedures in place to:
 - Approve all advertisements by Firm Principal
 - Approve testimonials used in advertisements by Firm Principal
 - Testimonial approved by Firm Principal prior to use*
 - Documentation of advertisement's review and approval
 - Documentation that the testimonial meets required standards:
 - Statement is not false, exaggerated, unwarranted, promissory, or misleading statements or claims in advertisements, including omitting material facts
 - Person making the statement has the knowledge and experience to do so
 - The MA and MA Principal reasonably believe that the person making the testimonial meets that standard
 - Disclosures specific to testimonials clearly and prominently discloses
 - Ongoing monitoring of Firm and individual MA compliance with Rule G-40

Supervision and Recordkeeping Requirements

- Duty to maintain records for 5 years
- Rule G-40: Records of all advertisements and compensation paid for a testimonial
- Rule G-9: Written and electronic communications received and sent, including interoffice memoranda, relating to municipal advisory activities
- Rule G-44: What records are made/kept to support reasonable supervision

Special Discussion: Social Media

- **MA Firm/Individual Postings:**
 - Using Testimonials on Firm Web Page
 - Using Testimonials on Firm LinkedIn Page
 - Using Testimonials on Individual MA LinkedIn Page
 - Using Testimonials on Firm Twitter Feed
 - Using Testimonials on Individual MA Twitter Feed
 - Using Testimonials on Firm Facebook Page
 - Using Testimonials on Individual Facebook Page

Special Discussion: Social Media

- **Key Concepts Regarding Third Party Information and Advertisements**
 - Entanglement – if the MA has involved itself with the preparation of the content
 - See questions 7 and 8 in MSRB’s Social Media FAQs
 - Adoption – if the MA explicitly or implicitly approves or endorses the content (“likes” or “shares”)
 - See questions 7 and 8 in MSRB’s Social Media FAQs
 - Static vs Interactive engagement

Special Discussion: Social Media

- **Postings From Third Party or to a Third Party's Site:**
 - Likes or shares
 - Comments
 - Hyperlinks
 - Unsolicited content added

Paid Testimonials

- **NAMA Statement: Don't Do It!**
 - **Numerous conflicts exist**
- Paid testimonials are when an MA gives cash or non-cash compensation over \$100 to someone for the testimonial
 - Additional disclosures including that it is a paid testimonial
 - Mention of any conflicts within the disclosure
 - Monitoring of compensation paid to third party

Discussion: What are the documentation procedures for paid testimonials?
- *An MA may not pay in cash or non cash value more than \$1000 for a testimonial*

Questions

Resources

- **MSRB Notice 2023-05**

- <https://www.msrb.org/sites/default/files/2023-05/2023-05.pdf>
- Includes updates to the Social Media FAQ

- **NAMA G-40 Resource**

- June 2023 (Using Testimonials in Advertisements)
 - <https://www.municipaladvisors.org/assets/updatedadvertisingresourceJune2023.pdf>
- August 2019 (Rule G-40: Advertisements)
 - <https://www.municipaladvisors.org/assets/G40resource.pdf>