

# TRIAL TALK

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## Combating Tort Reform Through Advertising

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Attorney advertising has become a topic of debate. Should you advertise? Does advertising help or hurt your business? How should you advertise? What mediums are good for advertising? While I realize there are conflicting opinions - often divided along the lines of those who currently advertise and those who do not - I will offer suggestions that will hopefully prove useful to both mindsets.

In order to understand how to advertise effectively and why I make my suggestions, you should have an understanding of the human unconscious. Through my training for my master's in psychology, I have gained an appreciation for the power of the unconscious. David Ball's and Don Keenan's book, *Reptile*, also addresses this topic. My suggestions take into account the unconscious, as well as the fact that we currently face a tort-reformed society. Marketing strategies that may have worked before are no longer helpful in today's legal landscape. The tides may shift back and tort reform attitudes could recede, but until that time, you need to take the negative public perception of attorneys and lawsuits into account when choosing your marketing strategies.

With tort reform and *Reptile* in mind, consider how the public will view your advertising efforts. Television advertising that states your history of wins or has client testimonials about how much money you got them for their injuries may hurt you and other trial attorneys. Although an ad like that may grab the attention of potential clients, it will haunt you when that same client gets to the courtroom and has to face a jury.

Your marketing efforts need to be directed not only at gaining clients, but at setting yourself up to win when you and the client get to court and have to convince the general public (your jury). From talking to hundreds of jurors, watching them deliberate in focus groups and studying their thought processes, I am convinced that you will have multi-

ple tort reformed jurors left on your panel even after jury selection. Those jurors believe that you advertise only to get money, that you lie in court, that you do not care about your clients and are using them to get rich, that you bring frivolous lawsuits, and that you are making the costs of their goods, services and medical care go up by winning all of these runaway verdicts. Whether you are advertising for people to call because they have used a certain drug and had certain side effects or you are touting your wins for your past clients, all that potential jurors will see is another money-grubbing attorney. When you then get to court, you have not only contributed toward strengthening tort reform attitudes, but you may have jurors who are familiar with your advertising and will believe your case is frivolous just because of that.

So what kind of advertising would help? As taught in "damages" and other seminars, anything that does not seem like advertising is advisable. If you set up your website, television and printed ads to look more like a public service announcement and offer the public something helpful, you may not only combat the tort reform beliefs, but you may also gain new clients.

For example, Don Keenan of Atlanta, Georgia, printed up small pamphlets containing tips for parents on what to look for in a playground to make sure it was safe for their kids. At the bottom of the pamphlet was his law firm name but no phone number. Not only was this a helpful and free service, but it also got him business because if a kid was hurt on a playground, parents would look up his firm and call. On New Year's Eve, another attorney, Michael Sawaya of Denver Colorado, pays cab fare for anyone who feels too inebriated to drive. Attorneys do not believe that doing good, free work in the community will bring in business, but the testimonials from attorneys like Don Keenan and Michael Sawaya who are doing this prove otherwise.

Whether you print safety tips and put them out in stores like Don does, create a website or film a television commercial, the principles are the same. Make anything you do look more like a charity or public service than an advertisement. Your firm information should be secondary.

When you develop a website, provide helpful information on the front page and link to other resources. For example, if you handle mostly product defect cases, list on your front page some things people should look for in a company before buying their products. Have links to other safety sites or places they can go for help. Your firm contact information should be almost an afterthought. Have it in a link on a separate page.

You should mention charitable work you or your firm has done (not simply giving money). Tort reform jurors think that your giving money means you are too lazy to do hands-on work in the community. They think it is self-serving, too, because they believe you are giving money to causes that will then benefit you. List charitable work you have done that is active, such as contributing time to a food bank or tutoring underachieving kids. If you do not have anything to list, I suggest that you donate even one hour every other week to a cause.

There are ways to advertise that can bring you business and help you when you face a jury in the courtroom; think of it as public service rather than adver-

tising. The more you can combat the tort reform attitudes, the more your advertising will pay off down the line. ▲▲▲

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