

# **HANDBOOK ON LAWYER ADVERTISING AND SOLICITATION**



**The Florida Bar**  
**Standing Committee on Advertising**  
**Eleventh Edition**  
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## TABLE OF CONTENTS

INTRODUCTION .....	1
When the Lawyer Advertising Rules Apply .....	2
Types of Media – Rule 4-7.11(a) .....	2
Florida Bar Members - Rule 4-7.11(b).....	2
Florida’s lawyer advertising rules apply to lawyers admitted to practice in Florida advertising to provide legal services in Florida.....	2
Lawyers admitted in other jurisdictions - Rule 4-7.11(b) .....	2
Press Releases - SCA Decision .....	2
Referral Sources - Rule 4-7.11(c).....	2
Class Actions – SCA Decision .....	3
Seminars – SCA Decision .....	3
Welcome Wagon / Val Pak / Money Mailers – SCA Decision.....	3
When the Lawyer Advertising Rules Do Not Apply .....	3
Advertisements Used Out of State - Rule 4-7.11 Comment .....	3
Mediators – SCA Decision.....	3
Newspaper Articles – SCA Decision .....	3
Political Advertisements – SCA Decisions .....	4
Solicitation of Birth Mothers - SCA Decision .....	4
Witnesses .....	4
Prohibited Forms of Solicitation.....	4
Direct Contact with Prospective Clients - Rule 4-7.18(a).....	4
Payment for Recommendations - Rule 4-7.17(b).....	5
Statutory Prohibitions .....	5
Regulations Governing Content.....	5

Required Content.....	5
Deceptive and Inherently Misleading Statements – Rule 4-7.13 .....	9
Potentially Misleading Advertisements – Rule 4-7.14.....	12
Unduly Manipulative or Intrusive Advertisements – Rule 4-7.15 .....	15
Presumptively Valid Content – Rule 4-7.16.....	16
Payment for Advertising and Promotion – Rule 4-7.17 .....	17
Firm Names – Rule 4-7.21 .....	18
Additional Regulations for Direct Mail & Email Communications	
to Prospective Clients – Rule 4-7.18.....	19
Regulations Applicable to All Unsolicited Direct Mail .....	20
Additional Regulations for Targeted Direct Mail and Email .....	21
Lawyer Referral Services – Rule 4-7.22.....	24
Definition – Rule 4-7.22(c) .....	24
Lawyer’s Responsibility – Rule 4-7.22(b) .....	24
Requirements for Lawyer Referral Services – Rule 4-7.22(a).....	24
Definition – Rule 4-7.23(a) .....	25
Lawyer’s Responsibility – Rule 4-7.23(c).....	26
Requirements for Lawyer Directories – Rule 4-7.23(b).....	26
Filing Requirement - Rule 4-7.19(a).....	27
Direct Mail and Direct Email - Rule 4-7.19(a).....	27
All other media (television, radio, print, billboards and signs, Internet banner and pop-up ads, etc.) - Rule 4-7.19(a) .....	27
Where to File .....	27
When to File .....	27
Contents of Filing .....	27
Review by The Florida Bar .....	28

Exemptions from Filing Requirement - Rule 4-7.20 .....	28
Announcements of Contribution or Sponsorship – Rule 4-7.20(b).....	29
Legal Listings – Rule 4-7.20(c).....	29
Mailings to lawyers, current clients and former clients – Rule 4-7.20(d).....	29
Communications sent at the request of a prospective client – Rule 4-7.20(e) .....	29
Professional Announcements – Rule 4-7.20(f) .....	29
Websites – Rule 4-7.20(g).....	29
Florida Bar Consumer Information Pamphlets – SCA decision .....	29
Florida Bar <i>Journal</i> and <i>News</i> Advertisements – SCA decision.....	29
Letterhead & Business Cards - SCA decision.....	30
Mediator Advertisements – SCA decision .....	30
Newspaper Articles and Columns – SCA decision .....	30
Newsletters – SCA decision .....	30
Solicitation of Birth Mothers - SCA decision .....	30
Solicitation of Witnesses – SCA decision.....	30
" Tombstone " Ads for Lawyer Referral Services – Rules 4-7.20(a) and 4-7.16(b).....	30
" Tombstone " Ads for lawyers or law firms- Rules 4-7.20(a) and 4-7.16(a).....	31
Reliance on Florida Bar opinions - Rule 4-7.19(e) and (f).....	32
How the Review Process Works.....	32
Options on Receiving an Unfavorable Staff Opinion .....	33
Appeal to the Standing Committee.....	33
Revise and Resubmit the Filing.....	33
Use the Original Submission.....	34
Enforcement .....	34
Statewide Advertising Grievance Committee .....	34

Compliance Review Program.....	34
Formal Advertising Opinions .....	34
Proposed Advisory Opinions.....	34
Appeal to the Board of Governors.....	35
Board of Governors Opinions .....	35
Record Retention – Rule 4-7.19(j).....	35
Public Records – 15-4.2.....	35
FREQUENTLY ASKED QUESTIONS.....	37
GENERAL: .....	37
INTERNET ADVERTISING:.....	42
FILING: .....	42
QUICK REFERENCE CHECKLIST - PRINT ADS .....	46
QUICK REFERENCE CHECKLIST - T.V. & RADIO .....	50
QUICK REFERENCE CHECKLIST - WEBSITES .....	54
QUICK REFERENCE CHECKLIST - INTERNET ADS OTHER THAN ELECTRONIC MAIL OR WEBSITES (e.g., BANNER AND POP-UP ADS).....	58
QUICK REFERENCE CHECKLIST - DIRECT MAIL.....	62
QUICK REFERENCE CHECKLIST - ELECTRONIC MAIL .....	67
ADVERTISING RULES .....	72
RULE 4-7.11 APPLICATION OF RULES .....	72
RULE 4-7.12 REQUIRED CONTENT .....	73
RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS .....	75
RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS .....	80
RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS.....	83
RULE 4-7.16 PRESUMPTIVELY VALID CONTENT.....	85

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION .....	86
RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS.....	87
RULE 4-7.19 EVALUATION OF ADVERTISEMENTS .....	90
RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT ....	93
RULE 4-7.21 FIRM NAMES AND LETTERHEAD.....	94
RULE 4-7.22 LAWYER REFERRAL SERVICES .....	97
RULE 4-7.23 LAWYER DIRECTORY .....	98
APPENDIX 1: "COMMERCIAL SPEECH DOCTRINE" .....	101
APPENDIX 2: ADDITIONAL RULES REGULATING THE SCA.....	103
CHAPTER 15. REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS .....	103
RULE 15-1.1 PURPOSE.....	103
RULE 15-2.1 MEMBERSHIP AND TERMS .....	103
RULE 15-2.2 FUNCTIONS.....	103
RULE 15-2.3 REIMBURSEMENT FOR PUBLIC MEMBERS.....	103
RULE 15-2.4 RECUSAL OF MEMBERS .....	104
RULE 15-3.1 MEETINGS .....	104
RULE 15-3.2 RULES.....	104
RULE 15-4.1 GENERALLY .....	104
RULE 15-4.2 RECORDS.....	104
APPENDIX 3: FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION .....	106
The Florida Bar Standing Committee on Advertising Guidelines for an Attorney's Statement of Qualifications and Experience .....	112
The Florida Bar Standing Committee on Advertising Guidelines for a Firm's Statement of Qualifications and Experience .....	113

The Florida Bar Standing Committee on Advertising Guidelines for a Lawyer Referral Service's Statement of Qualifications and Experience .....	115
The Florida Bar Standing Committee on Advertising Guidelines for Networking Sites .....	116
The Florida Bar Standing Committee On Advertising Guidelines for Video Sharing Sites .....	118

# INTRODUCTION

The Florida Bar's SCA ("SCA") has been charged by the Supreme Court of Florida with the responsibility of evaluating all non-exempt lawyer advertisements, as well as all direct mail communications to prospective clients, for compliance with the Rules Regulating The Florida Bar. Accordingly, such advertisements and communications must be filed with The Florida Bar for review. Due to the high volume of advertisements filed by Florida lawyers, the SCA has delegated the initial review function to the staff of the Ethics and Advertising Department of The Florida Bar.

This handbook was produced by the Ethics and Advertising Department in an effort to assist advertising lawyers in developing advertisements that comply with the rules governing lawyer advertising. For your convenience, this handbook includes, among other things: an overview of applicable regulations broken down by the type of advertisement to which they apply; a reproduction of Subchapter 4-7 of the Rules Regulating the Florida Bar in its entirety; answers to frequently asked questions about attorney advertising regulations; quick reference checklists for different advertising media. Examples of complying and non-complying advertisements, including direct mail, appear in a separate document on The Florida Bar's website at [www.floridabar.org](http://www.floridabar.org) under "Advertising Rules."

Filings and other communications regarding attorney advertising should be directed to:

Ethics & Advertising Department  
c/o The Florida Bar  
651 E. Jefferson Street  
Tallahassee, Florida 32399-2300  
Telephone number (850) 561-5780

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## **When the Lawyer Advertising Rules Apply**

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### **Types of Media – Rule 4-7.11(a)**

Florida's lawyer advertising rules apply to all forms of communication seeking legal employment in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media.

### **Florida Bar Members - Rule 4-7.11(b)**

Florida's lawyer advertising rules apply to lawyers admitted to practice in Florida advertising to provide legal services in Florida.

### **Lawyers admitted in other jurisdictions - Rule 4-7.11(b)**

Florida's lawyer advertising rules apply to lawyers admitted to practice in jurisdictions other than Florida who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. Out-of-state lawyers may only advertise to provide legal services in Florida when they are authorized by other law to provide those services in Florida, such as lawyers who are authorized by Federal law to practice before the Citizenship and Immigration Services, before the U.S. Patent Office, before the Internal Revenue Service, and before the Social Security Administration anywhere in the United States. Out-of-state lawyers may not advertise to provide legal services in Florida for state matters, such as personal injury, probate, traffic, or criminal law. *See* Rule 10-2.1(c). An out-of-state lawyer's expectation that the lawyer will be admitted pro hac vice in a particular matter does not authorize the out-of-state lawyer to advertise to provide legal services in Florida. *Id.*

### **Press Releases - SCA Decision**

Under Rule 4-7.11, Florida's lawyer advertising rules apply to press releases that are provided to media outlets by lawyers or law firms. However, a lawyer or law firm is not required to file a press release with the bar for review if the press release is provided solely to legitimate media outlets where the media outlets have complete editorial control, including whether to print any information in the press release, and where the media outlet is not paid to print information from the press release.

### **Referral Sources - Rule 4-7.11(c)**

Florida's lawyer advertising rules apply to communications made to referral sources about legal services.

### **Class Actions – SCA Decision**

Advertisements designed to obtain clients to join as members of a class are subject to the lawyer advertising rules.

### **Seminars – SCA Decision**

Florida's lawyer advertising rules apply to announcements of and invitations to attend seminars sponsored by a lawyer or law firm.

### **Welcome Wagon / Val Pak / Money Mailers – SCA Decision**

Lawyer or law firm advertisements in a coupon express (such as welcome wagon, val pak, or money mailer) in which the lawyer's advertisement is enclosed with multiple advertisements from various businesses, must comply with general advertising regulations for print advertisement, but need not comply with direct mail requirements and are not considered a form of direct solicitation.

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## **When the Lawyer Advertising Rules Do Not Apply**

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### **Advertisements Used Out of State - Rule 4-7.11 Comment**

Florida's lawyer advertising rules do not apply to advertisements aired or disseminated in a jurisdiction other than Florida if the Florida Bar member is admitted in the other jurisdiction, the advertisement complies with the appropriate rules of that jurisdiction, and the advertisement is not intended for use in Florida.

### **Mediators – SCA Decision**

Advertisements for mediation services for lawyer/mediators who are subject to the ethics rules for mediators that provide no information about the lawyer's legal services or qualifications other than that the mediator is a lawyer or member of The Florida Bar are not subject to the lawyer advertising rules and need not be filed for review. Mediators should contact the Alternative Dispute Resolution Center at (850) 921-2910 for guidance concerning rules for certified mediators and mediator advisory ethics opinions.

### **Newspaper Articles – SCA Decision**

Columns or articles for a newspaper which are informational, do not contain promotional information about the lawyer and do not solicit legal employment are not considered lawyer advertising and need not be filed for review.

## **Political Advertisements – SCA Decisions**

Advertisements for politicians or political causes that do not promote a lawyer or law firm are not considered lawyer advertising and need not be filed for review. Advertisements for a political campaign where a lawyer is running for political office are not subject to the lawyer advertising rules.

## **Solicitation of Birth Mothers - SCA Decision**

Florida's lawyer advertising rules do not apply to advertisements to solicit birth mothers when placed by an attorney on behalf of existing adoption clients.

## **Witnesses**

Florida's lawyer advertising rules do not apply to notices to find witnesses if the lawyer has an existing client and the lawyer does not accept prospective clients as a result of placing the notice seeking witnesses.

Note: Although the lawyer advertising rules do not apply to some communications, the rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation applies to all communications of a lawyer. Rule 4-8.4(c)

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## **Prohibited Forms of Solicitation**

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### **Direct Contact with Prospective Clients - Rule 4-7.18(a)**

A lawyer may not contact a prospective client in-person, by telephone, telegraph, or facsimile, or through other means of direct contact, unless the prospective client is a family member, current client, or former client. This prohibition does not extend to unsolicited direct mail or email communications made in compliance with Rule 4-7.18(b). The Board of Governors has determined that participation in real-time Internet chat rooms is not a form of prohibited solicitation as long as there is no face-to-face communication and the communication meets the requirements of direct written solicitations in Rule 4-7.18(b), in Florida Advisory Advertising Opinion A-00-1 (2016). Based on a decision of the Board of Governors, the in-person solicitation prohibition also does not extend to unsolicited text messages meeting the requirements of Rule 4-7.18(b), as long as the lawyer provides an “opt-out” for recipients, recipients are not required to pay for receipt of the text messages, and the lawyer complies with all applicable state and federal laws, rules and regulations regarding unsolicited text messages. The lawyer is responsible for determining compliance with applicable laws, rules and regulations, including the federal Telephone Consumer Protection Act, 47 U.S.C. §227. The following have been found to be prohibited direct in-person solicitation by the SCA:

- Cold calls.
- An advertisement printed on a pharmacy bag that is handed directly to pharmacy customers.
- An advertisement printed on a claim check for valet service at a hospital.
- An advertisement printed on a folder given by a realtor to the realtor's clients.
- Business cards and flyers left on car windshields or passed out to passers-by.
- Faxed newsletters and news alerts.
- An advertisement printed on a wristband to indicate that a customer or attendee is of legal drinking age.

### **Payment for Recommendations - Rule 4-7.17(b)**

A lawyer may not give anything of value to a person for recommending the lawyer's services. This prohibition does not prevent a lawyer from paying the reasonable cost of advertising or the payment of usual charges to a lawyer referral service or other legal service organization; nor does it apply to the sale of a law practice as permitted under Rule 4-1.17.

### **Statutory Prohibitions**

Lawyers should also be aware that certain forms of solicitation may be prohibited under Florida Statutes. *See, e.g.*, § 119.105, Fla. Stat. (forbidding use of information from non-confidential police reports to solicit accident or crime victims or their relatives); §877.02, Fla. Stat. (making it a misdemeanor for employees of hospitals, sanitariums, police departments, wrecker services, garages, prisons or courts, or for bail bondsmen, investigators, photographers, insurance or public adjustors to assist an attorney in soliciting legal business); §316.066(3)(c), Fla. Stat. (forbidding use of information from accident reports prepared by law enforcement officers for commercial solicitation); and 49 U.S.C. §1136(g)(2) (no unsolicited communications offering personal injury representation within 45 days after an interstate or international air carrier accident).

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## **Regulations Governing Content**

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### **Required Content**

#### **Name of Lawyer or Law Firm - Rule 4-7.12(a)(1)**

All forms of lawyer advertising, including advertisements that are exempt from the filing requirement, must include the name of at least one lawyer, law firm, lawyer referral service, or

lawyer directory responsible for the advertising content. The name must be reasonably prominent in the advertisement.

Lawyers must advertise and practice under their official bar names. Each member of The Florida Bar is required to designate an official bar name, which must be used in the course of the member's practice of law. Rule 1-3.3(a) and (b). A lawyer may change the lawyer's official bar name only with the approval of the Supreme Court of Florida. The Supreme Court of Florida website states that a lawyer may change his or her official bar name by sending a letter to the clerk's office requesting that the name be changed on the roll of attorneys, including the lawyer's old name, new name and Florida Bar number. The lawyer must also include a self-addressed stamp envelope for return of the order approving the change. The address of the Clerk's office is: 500 South Duval Street, Tallahassee, Florida, 32399-1927. The telephone number is 850-488-0125.

### **Location of Practice - Rule 4-7.12(a)(2)**

- All forms of lawyer advertising must disclose the city, town or county of 1 or more bona fide office locations of the lawyer or lawyers who will perform the services advertised. The geographic location disclosure must be reasonably prominent. The SCA has found that an advertisement is misleading if it lists law firm offices in several cities when, in fact, there are no bona fide firm offices in those cities. The comment to Rule 4-7.12 defines "bona fide office" as "a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis." The commentary also states that "An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule." The SCA has developed the following criteria for determining whether an advertised location is a bona fide office:
  - Does the office have the firm's name on an outside office sign or on the building's directory?
  - Is the advertised location staffed by law firm employees who answer phone calls at that location from prospective clients?
  - Is the advertised location staffed by receptionists, secretaries, clerks, or paralegals employed by the firm on a full-time basis?
  - Other than client interviews and conferences, do firm attorneys furnish legal services from the advertised location?
  - Is the advertised location staffed by at least one firm lawyer on a regular and continuing basis?

Even though a lawyer may not advertise an office location that is not a bona fide office, the lawyer may advertise that he or she is "available for consultation" or "available by appointment" at a specified location. Such designations are appropriate when the space is a "virtual office" that

is owned or under the control of another, is shared with multiple lawyers or other professionals, or is a conference room or other space rented by the hour. A lawyer may identify other office locations as “limited service” or “satellite” offices only if the advertised office location is controlled exclusively by the lawyer’s law firm.

### **Referrals – Rule 4-7.12(b)**

Advertisements in which the advertising lawyer intends to refer the advertised matter to another lawyer or law firm must contain a reasonably prominent disclaimer indicating the matter will be referred. The required disclaimer may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where the disclaimer appears as on-screen text, it must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule.

### **Languages – Rule 4-7.12(c)**

All required information in an advertisement must appear in the same language used in the advertisement. If more than 1 language is used, the required information must appear in all languages used in the advertisement.

### **Legibility – Rule 4-7.12(d)**

All required information in an advertisement must be reasonably prominent and clearly legible if written and clearly audible if spoken aloud. For example, advertisements including dramatizations of actual or fictitious events must contain the disclaimer: “DRAMATIZATION. NOT AN ACTUAL EVENT.” For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the same size as the largest text used in the advertisement, or the same size as the text that a required disclaimer qualifies. However, required information may need to be printed in a different color or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. A required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. In a television advertisement where required information appears as on-screen text, the required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. If a disclaimer is required in a television advertisement, it must be on-screen at the same time and for a reasonable amount of time as compared to the information the disclaimer qualifies. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required to qualify other information provided in the advertisement, the disclaimer must be

spoken reasonably close to the information requiring the disclaimer. Required information, including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies. Examples of information required to appear in advertisements are:

### **All Media:**

- Rule 4-7.12(a)(1) - Name of lawyer, law firm, lawyer referral service, or lawyer directory responsible for the advertisement
- Rule 4-7.12(a)(2) - Geographic disclosure
- Rule 4-7.12(b) – Disclosure that cases will be referred to another lawyer
- Rule 4-7.13(b)(5) – Disclosure “Not an employee or member of law firm”
- Rule 4-7.13(b)(6) – Disclosure “DRAMATIZATION. NOT AN ACTUAL EVENT” when a dramatization is used
- Rule 4-7.13(b)(8) – Disclosure that a prospective client may not obtain the same or similar results when specific results are advertised
- Rule 4-7.14(a)(4) - Name of certifying organization and area of practice for which a lawyer is board certified if the advertisement states that the lawyer is certified
- Rule 4-7.14(a)(5) - Cost disclosure, if the advertisement provides fee information
- Rule 4-7.14(a)(5) - Time a price will be honored, if the advertisement lists a price that is valid for a period of less than 90 days [or 1 year for annual publications such as the yellow pages]

### **Additional requirements for all unsolicited direct mail and email**

- Rule 4-7.18(b)(2)(B) – “Advertisement” on the outside of direct mail advertisements and on each page of the advertisement or inside panel of a self mailing brochure [“Advertisement” as the first word of the subject line if an email]
- Rule 4-7.18(b)(2)(G) - If the case will be handled by an attorney who did not sign the advertisement or whose name does not appear in the advertisement, direct mail advertisements must so indicate
- Rule 4-7.18(b)(2)(C) - Statement of attorney or firm qualifications is required [see guidelines for both lawyer and firm qualifications]

**Additional requirements for all unsolicited *targeted* direct mail and targeted e-mail (prompted by a specific occurrence):**

- Rule 4-7.18(b)(2)(H) - Targeted direct mail and e-mail must contain a statement as to how the attorney obtained the information about the prospective client's legal matter
- Rule 4-7.18(b)(2)(E) - Targeted direct mail and e-mail must include as the first sentence "If you have already retained a lawyer for this matter, please disregard this letter."

**Deceptive and Inherently Misleading Statements – Rule 4-7.13**

A lawyer cannot make deceptive or inherently misleading communications about the lawyer or services offered. This rule prohibits advertisements that contain a material statement that is factually or legally inaccurate, material omissions, or implications of material nonexistent facts. Examples of deceptive and inherently misleading statements include:

**Predictions of Success – Rule 4-7.13(b)(1)**

An advertisement cannot include statements that a consumer can reasonably interpret as a prediction or guaranty of success or specific results the lawyer can achieve. The comment to Rule 4-7.13(b)(1) provides the following as examples of statements that would violate the rule: "I will save your home," "I can save your home," "I will get you money for your injuries," and "Come to me to get acquitted of the charges pending against you." The comment also provides the following regarding interpretation of the rule:

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client's rights, protect the client's assets, or protect the client's family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "strive," "dedicated," "mission," and "philosophy." For example, the statement, "My goal is to achieve the best possible result in your case," is permissible. Similarly, the statement, "If you've been injured through no fault of your own, I am dedicated to recovering damages on your behalf," is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, "I will get you acquitted of the pending charges," would violate the rule as it promises a specific legal result. In contrast,

the statement, "I will pursue an acquittal of your pending charges," does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: "When the government takes your property through its eminent domain power, the government must provide you with compensation for your property."

### **Past Results – Rule 4-7.13(b)(2)**

Information regarding past results must be factually verifiable and cannot omit facts that would make the results misleading under Rules 4-7.13(b)(2) and 4-7.14.

### **Comparisons – Rule 4-7.13(b)(3)**

An advertisement cannot compare lawyers' skills, experience, reputation or record unless the comparison is objectively verifiable.

### **Areas Not Currently Practiced – Rule 4-7.13(b)(4)**

A lawyer cannot advertise practice areas in which the lawyer does not currently practice or intend to practice.

### **Nonlawyer Appearing to be Member of Firm – Rule 4-7.13(b)(5)**

Advertisements cannot contain a voice and/or image that create the impression that the person is an employee or member of the law firm. If the person is not an employee or member of the law firm, the following disclaimer must be displayed clearly and conspicuously in the advertisement: "Not an employee or member of law firm." The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time that the person appears in the advertisement and for a reasonable amount of time as compared to the time the person is on-screen. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as other information in the advertisement, and spoken reasonably close to when the person is speaking if the person speaks in the advertisement.

## **Dramatizations – Rule 4-7.13(b)(6)**

Advertisements using dramatizations of actual or fictitious events must contain the prominently displayed disclosure: “DRAMATIZATION. NOT AN ACTUAL EVENT.” The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time the dramatization appears and for a reasonable amount of time as compared to the dramatization. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as other information in the advertisement, and spoken reasonably close to the dramatization.

## **Implying Use of Improper Tactics – Rule 4-7.13(b)(7)**

Advertisements cannot include statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will use tactics that are prohibited by the Rules of Professional Conduct, court order, court rule or law.

## **Testimonials – Rule 4-7.13(b)(8)**

Testimonials are prohibited unless they meet the following requirements:

- the person making the testimonial must be qualified to evaluate the lawyer
- the testimonial must be the actual experience of the person making the testimonial
- the information provided by the testimonial must be representative of what clients of the lawyer or law firm generally experience
- the lawyer may not write or draft the testimonial
- the person making the testimonial may receive nothing of value in exchange for the testimonial
- if the testimonial contains information about results obtained, the advertisement must contain a prominent disclaimer that prospective clients may not obtain the same or similar results.

The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the testimonial. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as the testimonial, and spoken reasonably close to the

testimonial. Additionally, the lawyer must have the client's informed consent to use a testimonial related to a client's matter, pursuant to Rule 4-1.6 (a).

### **Implying Florida Bar Approval – Rule 4-7.13(b)(9)**

Advertisements cannot state or imply that they or the advertised lawyer or law firm have been approved by The Florida Bar. An advisory opinion from the SCA regarding compliance with lawyer advertising regulations is not the equivalent of “approval” by The Florida Bar. Any use of the bar's seal or logo must be approved by The Florida Bar Board of Governors or Executive Director. Florida Bar members may not use The Florida Bar seal in advertisements. Use of the seal is misleading because it implies bar approval of the advertisement.

### **Judicial Titles – Rule 4-7.13(b)(10)**

Retired or former judges cannot use the title “Judge” preceding their names in advertisements. Retired or former judges therefore cannot use “Judge Smith,” “Retired Judge Doe” and the like. However, the title may be used with an appropriate modifier after the retired or former judge’s name, e.g., Jane Smith, Retired Circuit Court Judge; or John Doe, former County Court Judge.

### **Executive Titles – Rule 4-7.13(b)(10)**

Retired or former executive officials cannot use their former titles preceding their names in advertisements. However, the title may be used with an appropriate modifier after the retired or former executive branch official’s name. Thus, while “Governor Smith” would not be permissible, Jane Smith, former governor, or John Doe, Florida governor (2008-2012) would be permitted under this rule.

### **Legislative Titles – Rule 4-7.13(b)(10)**

Retired or former legislators cannot use their former titles preceding their names in advertisements. However, the title may be used with an appropriate modifier after the retired or former legislator’s name. Therefore, “Senator Smith” would be impermissible while “Jane Smith, state senator (2000-2006) would be permissible.

### **Potentially Misleading Advertisements – Rule 4-7.14**

#### **Varying Interpretations – Rule 4-7.14(a)(1)**

Advertisements that are subject to reasonable varying interpretations are prohibited unless they contain sufficient information to clarify the potentially misleading nature of the advertisement. The clarifying information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The clarifying information must be reasonably near and clearly connected to the information it qualifies. If appearing in a television advertisement where the clarifying information appears as on-screen text, it must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information it qualifies. In an advertisement where the clarifying information is spoken, it must be clearly

audible and at a comparable volume and speed as the information it clarifies, and spoken reasonably close to the information it clarifies.

### **Literally Accurate but Misleading – Rule 4-7.14(a)(2)**

Advertisements that contain information that is literally accurate but could reasonably mislead a consumer about a material matter are prohibited as potentially misleading. The advertisement would comply if sufficient information to clarify the potentially misleading nature of the advertisement is added. The clarifying information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The clarifying information must be reasonably near and clearly connected to the information it qualifies. If appearing in a television advertisement where the clarifying information appears as on-screen text, it must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information it qualifies. In an advertisement where the clarifying information is spoken, it must be clearly audible and at a comparable volume and speed as the information it clarifies, and spoken reasonably close to the information it clarifies.

### **Awards, Ratings, and other Honors – Rule 4-7.14(a)(3)**

Advertisements cannot contain information about awards, honors, ratings or memberships of lawyers “unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover.” Additionally, the SCA has determined that references to awards, honors, ratings or memberships are potentially misleading unless the exact name of the rating or award is used, the exact name of the organization giving the rating or award is included, the year the rating or award is bestowed is included, and the organization uses legitimate selection criteria. The committee has determined, however, that the year that the rating or award was bestowed is not required in advertisements aired or published in the same year that the rating or award was given.

A lawyer may state that the rating is the highest, but other statements characterizing the rating or award may not be permissible. For example, a lawyer may state that the lawyer is AV rated, the highest rating by Martindale-Hubbell, but the lawyer may not state that the rating is prestigious. A lawyer may state that the lawyer is included in the [Year of Inclusion] Best Lawyers in America, but the lawyer may not refer to him or herself as one of the best lawyers in America.

Note: The use of Martindale-Hubbell ratings may be restricted by the publisher. For information on the use of ratings, please see Martindale-Hubbell Peer Review Ratings Use Guidelines.

([http://www.martindale.com/xp/legal/About\\_Martindale/Products\\_and\\_Services/Peer\\_Review\\_Ratings/ratings.xml](http://www.martindale.com/xp/legal/About_Martindale/Products_and_Services/Peer_Review_Ratings/ratings.xml))

### **Board Certification, Specialization, Expertise – Rule 4-7.14(a)(4)**

Lawyer advertisements may not include statements that claim or imply a lawyer is “certified” or “board certified” in an area of law unless the lawyer is Board Certified in that practice area.

Lawyers certified by The Florida Bar must identify The Florida Bar as the certifying organization. If a lawyer is certified by another state bar, the lawyer may state that the lawyer is “certified” or “board certified” in an area of law only if the state bar certification program is comparable to Florida's certification program and the advertisement indicates that the certifying organization is the other state bar. If the lawyer is certified by another organization, the lawyer may state that the lawyer is “certified” or “board certified” in an area of law only if the certifying organization has been accredited by the American Bar Association or The Florida Bar, and the advertisement identifies the certifying organization. Both the certifying organization and the area of certification must be included in the advertisement. The certifying organization and area of certification must be reasonably prominent and may not appear in fine print, nor buried in a footnote. The certifying organization and area of certification must be reasonably near and clearly connected to the statement indicating that the lawyer is certified or board certified. If appearing in a television advertisement where the certifying organization and the area of certification appear as on-screen text, they must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the statement that the lawyer is certified or board certified in an area of law. In an advertisement where the certifying organization and the area of certification are spoken, they must be clearly audible and at a comparable volume and speed as the information provided about certification and spoken reasonably close to the information about certification. In addition, an advertisement may not state or imply that a law firm is board certified in a particular area of practice; only individual attorneys can claim certification. A lawyer or law firm may claim specialization, expertise, or other variations of those terms only if the lawyer or law firm can objectively verify the claim.

### **Cost Disclosure – Rule 4-7.14(a)(5)**

Every lawyer advertisement that contains information about the lawyer's fee must also disclose whether the client will be responsible for costs or any other expenses in addition to the fee. Advertisements which state that the lawyer's fee is contingent upon the outcome or that the fee will be a percentage of the recovery must also disclose whether the client will be responsible for costs if there is no recovery. For example, if fees and costs are contingent on the outcome of a case, a lawyer may state “No recovery, no fees or costs.” If fees but not costs are contingent on the outcome, the lawyer may state “No recovery, no fee, but client is responsible for costs.” The SCA has previously determined that if a lawyer states that the lawyer charges a flat fee, a disclosure of whether the client will be responsible for costs in addition to the flat fee is required. However, the SCA has also determined that stating that the lawyer offers an initial consultation at no charge does not require a disclosure of costs (unless there is a cost associated with the initial consultation). The cost disclosure information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The cost disclosure must be reasonably near and clearly connected to the fee information. If appearing in a television advertisement where the cost disclosure appears as on-screen text, the disclosure must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information provided about fees. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as the information about fees, and spoken reasonably close to the information about fees.

## **Honoring Advertised Fees – Rule 4-7.14(a)(5)**

Advertised fees or a range of fees for particular services must be honored by the advertising attorney for at least 90 days, unless the advertisement specifies a shorter time period. The specification of a shorter time period must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The specification of a shorter time period must be reasonably near and clearly connected to the fee information. If appearing in a television advertisement where the disclaimer appears as on-screen text, the shorter time period must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information about fees. In an advertisement where the shorter time period is spoken, it must be clearly audible and at a comparable volume and speed as the information about the fee, and spoken reasonably close to the information about the fee. However, for yellow pages advertisements or advertisements in other directories or publications that are published annually, the fee must be honored for no less than one year following publication.

## **Unduly Manipulative or Intrusive Advertisements – Rule 4-7.15**

### **Manipulative Appeals – Rule 4-7.15(a)**

An advertisement cannot contain any image, sound, video or dramatization that is unduly manipulative. An advertisement is unduly manipulative if it is “designed to solicit legal employment by appealing to a prospective client’s emotions rather than to a rational evaluation of a lawyer’s suitability to represent the prospective client.”

As an example, many advertisements use animals. Some advertisements include animals purely as an attention-getting device, while others include animals in an attempt to compare lawyers or their legal services to the animals appearing in the advertisements. Many advertisements using animals are permissible under the lawyer advertising rules. However, the SCA’s opinion is that use of animals is prohibited in advertisements when the animal is shown in a predatory or aggressive way, such as attacking another animal, growling, showing teeth, because that suggests the lawyer will act in an inappropriate fashion. The SCA’s opinion does not mean, however, that an advertisement could not include an aggressive growling dog used to indicate that a lawyer or law firm handles dog bite cases if the advertising lawyers are not improperly comparing themselves to the aggressive animal. Similarly, any use of the animal that would suggest that the lawyer would engage in improper tactics would be improper. See, *The Florida Bar v. Pape & Chandler*, 918 So.2d 240 (Fla. 2005), in which 2 lawyers were publicly reprimanded for using 1-800-PITBULL and drawing of a pit bull in their television ads, because the Supreme Court of Florida found that improperly indicated that the lawyers would engage in improper tactics, as pit bulls are often perceived as representing vicious behavior.

### **Authority Figures – Rule 4-7.15(b)**

An advertisement cannot use an authority figure such as a judge or law enforcement officer, or an actor portraying a judge or law enforcement officer, to endorse or act as a spokesperson for a lawyer or law firm.

## **Celebrities – Rule 4-7.15(c)**

An advertisement cannot contain the voice or image of a celebrity. Rule 4-7.15(c). A celebrity is defined as “an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level.” Comment to Rule 4-7.15(c). An exception to the rule is that advertisements may be recorded by “a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.”

## **Economic Incentives – Rule 4-7.15(d)**

An advertisement cannot offer an economic incentive for consumers to hire the lawyer or view the advertisement. However, a lawyer may offer a discount on legal fees or a special fee structure, or free legal advice in an advertisement.

## **Presumptively Valid Content – Rule 4-7.16**

### **Lawyers and Law Firms**

Lawyers and law firms may include the following information in advertisements, which is presumed not to violate the lawyer advertising rules:

- the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, e-mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";
- date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
- technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
- military service, including branch and dates of service;
- foreign language ability;
- fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification;

- participation in prepaid or group legal service plans;
- credit cards accepted;
- fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;
- common salutary language such as "best wishes," "good luck," "happy holidays," "pleased to announce," or "proudly serving your community";
- punctuation marks and common typographical marks;
- an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

## **Lawyer Referral Services**

Lawyer referral services may include the following information in their advertisements, which are presumed not to violate the lawyer advertising rules:

- name, location, telephone number;
- referral fee charged;
- hours of operation;
- process by which referrals are made;
- areas of law in which referrals are offered;
- geographic area in which the lawyers practice to whom those responding to the advertisement will be referred; and
- the logo of its sponsoring bar association and its nonprofit status if approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar.

## **Payment for Advertising and Promotion – Rule 4-7.17**

### **Payment by Other Lawyers – Rule 4-7.17(a)**

A lawyer may not pay all or part of the costs of the advertising of another lawyer who is not a member of the same law firm. However, lawyers may advertise jointly. If lawyers advertise

jointly, all required information must be included for each advertising law firm. Additionally, if lawyers advertise jointly, the lawyers must take care not to state or imply that they are part of the same law firm so that the public will not be misled. See Rule 4-7.21(f). Depending on the circumstances, the advertisement may need to include a prominently displayed disclaimer that the lawyers practice in separate law firms.

### **Payment for Referrals – Rule 4-7.17(b)**

A lawyer is not permitted to give anything of value to another person for recommending the lawyer or for referrals. However, a lawyer may pay reasonable costs of advertising, fees charged by a lawyer referral service that do not constitute improper division of legal fees, fees charged by a lawyer directory that do not constitute an improper division of legal fees, and may buy a law practice in conformance with Rule 4-1.17. A lawyer may not participate in networking or tips clubs where members are required to make referrals to each other as part of the membership. Massachusetts Ethics Opinion 08-01; Montana Ethics Opinion 960227; New York City Bar Opinion 2000-1; New York State Ethics Opinion 791 (2006); and Virginia Legal Ethics Opinion 1846 (2009).

### **Payment by Nonlawyers – Rule 4-7.17(c)**

A nonlawyer may not pay all or part of the costs of a lawyer's advertising.

### **Firm Names – Rule 4-7.21**

Lawyers may not advertise under firm names that are false, misleading or deceptive. Therefore, a lawyer may not use a trade name that implies connection with a government agency or with a public or charitable legal services organization. Some trade names may require a disclaimer such as "a private law firm" so as not to be misleading. The disclaimer must be reasonably prominent as defined above. Similarly, a lawyer may not practice under a trade name that includes the phrase "legal clinic" or "legal services" unless the practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services. In addition, a lawyer may not advertise under a trade name unless the same name appears on the lawyer's letterhead, business cards, office sign, fee contracts, and appears with the lawyer's signature on pleadings and other legal documents. A firm name may not include the name of a person who is not a partner or shareholder of the firm, except that the firm may continue to use the name of a deceased partner or shareholder where there has been a continuing succession in the firm's identity. Rule 4-7.21, Comment.

Effective July 1, 2003, attorneys who are employed by insurance companies to represent insureds may use a name other than that of the insurance company if certain requirements are met so that there is no material misrepresentation. Rule 4-7.21(g). These requirements include the following: (1) that the name of a supervisory attorney must be included in the firm name; (2) the employment relationship with the insurance company must be disclosed in, among other things, offices signs, firm letterhead, announcements, websites, business cards, advertising and legal directories; (3) the employment relationship with the insurance company must be disclosed to all clients, potential clients and in the official court file at the attorneys first appearance; (4) the

offices of the firm and insurance company should be physically and functionally separate as required by private practitioners sharing space with nonlawyers; and (5) the lawyer must take efforts to correct any misunderstanding when the lawyer knows or reasonably should know a client or prospective client misunderstands the situation.

The SCA offers the following examples of misleading firm names. The law firm of Smith & Brown proposes to create a professional association to be called "The Personal Injury Firm." This second law firm, which is wholly owned by Smith & Brown or its shareholders, will handle only personal injury matters. The Personal Injury Firm will have its own letterhead and members will sign pleadings under the name of the new firm. When handling personal injury matters, firm members will use business cards that include the name of The Personal Injury Firm. Otherwise, firm members will distribute business cards that include the original firm name of Smith & Brown. Separate books and records will be kept for the new practice. Smith & Brown intends to provide its new personal injury firm with employees, facilities, and equipment. In return, The Personal Injury Firm will pay Smith & Brown a fee based on the amount of profit earned by the new firm.

In essence, the new firm will operate parallel to Smith & Brown. The SCA believes that use of the "parallel law firm" name, The Personal Injury Firm, violates Rule 4-7.21 because it is deceptive and misleading. Use of the name The Personal Injury Firm implies that attorneys working for that firm practice exclusively in the area of personal injury when, in fact, those same attorneys also work for Smith & Brown, a firm which maintains a general law practice with no special emphasis. For a variety of reasons, the full extent of the nature of a firm's practice can play a significant role in a prospective client's decision about which firm to hire. Accordingly, an implied practice restriction that does not actually exist is deceptive and misleading. See also, [Florida Ethics Opinions 93-6](#) and [93-7](#) (regarding other ethical concerns raised by the simultaneous practice in more than one law firm).

The SCA has determined that a sole practitioner may not use the term "and Associates" as part of the firm name, where the law firm employs no associates, to indicate that the firm employs associates is misleading in violation of Rule 4-7.2(c)(1). See also, *The Florida Bar v. Fetterman*, 439 So.2d 835 (Fla. 1983). In *Fetterman*, the Florida Supreme Court found it permissible to have the trade name "Fetterman & Associates" where the lawyer had associates when the name was adopted and continued to have one associate, but that the name would be misleading if the lawyer stopped employing any associates. The court noted that "associate" means a lawyer who is "a salaried employee who is not a partner of the firm." *Id.* Similarly, the SCA has determined that use of the term "group" or "team" in a firm name implies that multiple attorneys are employed by the firm. Therefore, a sole practitioner cannot use the term "group" or "team" in the firm name.

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### **Additional Regulations for Direct Mail & Email Communications to Prospective Clients – Rule 4-7.18**

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In addition to complying with the general regulations set forth above, all unsolicited direct mail and email communications sent to prospective clients or referral sources must comply with the following regulations:

## **Regulations Applicable to All Unsolicited Direct Mail**

### **Prospective Client Has Asked Not to Receive – Rule 4-7.18(b)(1)(C)**

A lawyer may not send direct mail or direct email to a person who has informed the lawyer that the person does not want to receive information from the lawyer.

### **Coercion, Duress, Fraud, Overreaching – Rule 4-7.18(b)(1)(D)**

A lawyer may not send direct mail or direct email that involves “coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence.”

### **Physical and Mental State of Recipient – Rule 4-7.18(b)(1)(E)**

A lawyer may not send direct mail or direct email if the lawyer “knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.”

### **"Advertisement" Mark - Rule 4-7.18(b)(2)(B)**

Every page and the face of the envelope of an unsolicited direct mail communication to prospective clients must be reasonably prominently marked "Advertisement" in ink that contrasts with both the background and other text on the same page. For a self-mailing brochure, "Advertisement" must be marked on the address panel and also on each panel of the brochure in a color that contrasts with both the background and other text on the same page. The SCA does not interpret the rule as requiring that the “Advertisement” be in a different color from every other color that appears on the same page. Instead, the SCA is of the opinion that the “Advertisement” mark is not reasonably prominent if a reasonable consumer would likely not notice it. For example, the SCA is of the opinion that the “Advertisement” mark will not meet the requirements of the rule if all text on the page is in the same color as the “Advertisement” mark, all text near or surrounding the “Advertisement” mark is in the same color as the “Advertisement” mark, or the color of the “Advertisement” mark is not of sufficient contrast to its background. If the direct mail advertisement is sent as a postcard, the SCA has determined that the advertisement mark must appear on the reverse side of the postcard as well as the front of the postcard [please note that a targeted direct mail advertisement may not be sent as a postcard]. If the direct mail advertisement is sent as a self-mailing brochure, all inside and outside panels must contain the “Advertisement” mark. An unsolicited email must include a subject line that begins with the word “Advertisement.” The “advertisement” mark may not appear in fine print, nor may it be buried in a footnote.

The SCA has determined that use of statements such as "Important Information," "Urgent" and "Official Documents Enclosed" negate the purpose of the "Advertisement" mark, are misleading, and therefore are impermissible on the outside of an unsolicited direct mail communication. The SCA also is of the opinion that it is impermissible to state "Important" with the word "Advertisement" or to have "Important Legal Documents Enclosed," "Time Sensitive

Information Enclosed," "Open Immediately," or other similar language on the outside of a direct mail advertisement.

Note: When filing direct mail advertisements that will be sent in an envelope, filers must include a sample envelope so that bar staff may determine whether the direct mail complies with this requirement.

Information solicited by prospective clients or that is sent only to existing and former clients, the lawyer's family members, and other lawyers do not need to include the "advertisement" mark.

### **Statement of Qualifications - Rule 4-7.18(b)(2)(C)**

Every unsolicited direct mail and email communication to prospective clients must be accompanied by a written statement detailing the lawyer's or law firm's background, training and experience and must specifically include the advertising attorney or law firm's experience in preparing cases similar to the one that forms the subject matter of advertising. This statement may be either on a separate document or incorporated into the body of the direct mail communication, but it must include information on background, training, and experience. The SCA has adopted guidelines for the statement of qualifications for an individual lawyer, a law firm, and a lawyer referral service, which appear in this handbook as appendices. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers do not need to include the statement of qualifications. This information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote.

### **Inclusion of "Sample" Contract - Rule 4-7.18(b)(2)(D)**

If a contract for representation is included in the direct mail or direct email, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers do not need to comply with this requirement.

### **Resemblance to Legal Documents – Rule 4-7.18(b)(2)(F)**

Direct mail and email advertisements cannot be "made to resemble legal pleadings or other legal documents." Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers do not need to comply with this requirement.

### **Additional Regulations for Targeted Direct Mail and Email**

In addition to the general advertising regulations for all media and the general regulations for direct mail advertisements, the following regulations apply to unsolicited written communications prompted by a specific occurrence affecting the intended recipient or the recipient's family member:

### **First Sentence - Rule 4-7.18(b)(2)(E)**

Any unsolicited written communication concerning a specific matter must include as its first sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The first sentence must be reasonably prominent and may not appear in fine print. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers does not need to comply with this requirement.

### **Disclosure if Another Lawyer Will Handle the Case or Matter - Rule 4-7.18(b)(2)(G)**

If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, the direct mail or email advertisement must include a reasonably prominent statement so advising the client. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers does not need to comply with this requirement.

### **Disclosure of How Lawyer Obtained Information - Rule 4 7.18(b)(2)(H)**

Any unsolicited direct mail or email communication prompted by a specific occurrence involving or affecting the intended recipient or a family member must disclose how the lawyer obtained the information prompting the communication. This disclosure requirement is intended to help the recipient understand the extent of the lawyer's knowledge regarding the recipient's particular situation and to minimize the possibility of the recipient being misled into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. Rule 4-7.18, Comment. The advertisement must include enough information or explanation so that the recipient can find the information that prompted the unsolicited direct communication from the lawyer. Rule 4-7.18, Comment. A written communication may also comply with this requirement by stating what information the lawyer has, e.g., "I obtained your name from a list of investors and the only information on the list is the names and addresses of investors and the fact that the investment was made." Rule 4-7.18, Comment. This disclosure must be reasonably prominent in the advertisement and may not appear in fine print, nor may it be buried in a footnote. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers does not need to comply with this requirement.

### **Disclosure of the Legal Problem on the Outside Prohibited - Rule 4 7.18(b)(2)(I)**

An unsolicited direct mail or email communication seeking employment by a specific prospective client with regard to a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure, the nature of the client's legal problem. If a window envelope will be used in the advertisement, the nature of the prospective client's matter must not be visible through the glassine window, or the advertisement will be in violation of this requirement. Also, the SCA has determined that a targeted direct mail advertisement cannot be sent as a postcard, because required disclosures (that the person has a matter, how the information about the matter was obtained, and experience in the area of law being advertised) and other information on the

postcard reveal the nature of the prospective client's legal problem to anyone viewing the postcard. To comply with this rule, a postcard either must be placed in an envelope, or must be converted to a self-mailing, fold-over brochure in which all information disclosing the nature of the legal problem is on the inside of the mailer and the fold over is secured shut.

The Supreme Court of Florida has determined that an advertisement did not violate this rule where a lawyer sent a direct mail brochure that included "The Ticket Clinic" with picture of stop sign and roadway, along with the words "Don't Just Roll Over Fight Back" on the outside because that information would not "lead inescapably to the conclusion that the recipient had indeed been charged with a particular offense" and "there was nothing to distinguish the outside of the brochure from numerous other unsolicited, seemingly random bulk mail advertisements which are mailed and delivered regularly in the hopes of gaining, by chance alone, some new customers or purchasers." *The Florida Bar v. Gold*, 937 So. 2d 652 (Fla., 2006). Following the court's reasoning, if the information on the outside would inescapably lead the viewer to the conclusion that the intended recipient had a specific legal problem, the advertisement would violate this rule.

Note: When filing direct mail advertisements that will be sent in an envelope, filers must include a sample envelope so that bar staff may determine whether the direct mail complies with this requirement.

Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers does not need to comply with this requirement.

### **30 Day Waiting Period - Rule 4-7.18(b)(1)(A)**

If an unsolicited direct mail or email communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, the lawyer must wait at least 30 days after the injury, death, accident or disaster to mail or email the communication.

### **Representation by Another Lawyer – Rule 4-7.18(b)(1)(B)**

If an unsolicited direct mail or email communication concerns a matter in which the sending lawyer knows or reasonably should know that the recipient is already represented by another lawyer, no direct mail or email communication may be sent.

### **Waiting Period in Violence Injunction Cases - Rule 4-7.18(b)(1)(G)**

If an unsolicited direct mail or email communication concerns an injunction against violence, the lawyer cannot send the direct mail or email if the lawyer knows or reasonably should know that the respondent in the injunction petition has not yet been served with notice of process in the matter.

Note: Newsletters qualify as direct mail communications. Newsletters must therefore, comply with the requirements of Rule 4-7.18 and must be filed for review in accordance with Rule 4-7.19 if mailed to prospective clients. Any subsequent editions of a previously filed newsletter

must be filed for review as new advertisements if they include any new information about the lawyer or law firm, unless it is information of the type set forth in Rule 4-7.16(a) ("Permissible Content of Advertisements"). However, if no new information about the lawyer or law firm is added to subsequent editions of a previously filed newsletter, or if the only new information about the lawyer or law firm appearing in subsequent editions is covered by Rule 4-7.16(a), these subsequent editions need not be re-filed. *See* Florida Advertising Opinion A-99-01.

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## **Lawyer Referral Services – Rule 4-7.22**

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### **Definition – Rule 4-7.22(c)**

A lawyer referral service is “any person, group of persons, association, organization, or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers.” Additionally, a lawyer referral service is “any group or pooled advertising program operated by any person, group of persons, association, organization, or entity wherein the legal services advertisements utilize a common telephone number or website and potential clients are then referred only to lawyers or law firms participating in the group or pooled advertising program.”

### **Lawyer’s Responsibility – Rule 4-7.22(b)**

A lawyer is responsible for making sure that lawyer referral service advertisements comply with lawyer advertising rules if the lawyer accepts referrals from that lawyer referral service.

### **Requirements for Lawyer Referral Services – Rule 4-7.22(a)**

A lawyer can only accept referrals from a lawyer referral service that complies with Rule 4-7.22, Rules Regulating The Florida Bar, including the following requirements:

- The service’s advertisements comply with lawyer advertising rules;
- The service does not engage in any in-person solicitation;
- The service does not charge any fee that is an improper division of legal fees;
- The service does not refer prospective clients to persons who are not authorized to provide legal services;
- The service carries malpractice insurance of at least \$100,000 per claim/occurrence or requires the lawyer to carry the required insurance;
- The service quarterly reports to The Florida Bar the names and bar numbers of all participating Florida Bar members;

- The service responds in writing within 15 days of any official inquiry from The Florida Bar;
- The service does not state or imply that the service is endorsed or approved by The Florida Bar, unless the service is approved under Chapter 8 of the Rules Regulating The Florida Bar;
- The service uses its actual legal name or a registered fictitious name in all communications to the public;
- The service states in all advertisements that it is a lawyer referral service; and
- The service states in all advertisements that lawyers pay to receive referrals from the service.

Note: For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the same size as the largest text used in the advertisement, or the same size as the text a required disclaimer qualifies. However, required information, may need to be printed in a different color or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where required information appears as on-screen text, required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required, the disclaimer must be spoken reasonably close to the information requiring the disclaimer. Required information, including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies.

## **Lawyer Directories – Rule 4-7.23**

### **Definition – Rule 4-7.23(a)**

A lawyer directory is “any person, group of persons, association, organization, or entity that receives any consideration, monetary or otherwise, given in exchange for publishing a listing of lawyers together in one place, such as a common Internet address, a book or pamphlet, a section of a book or pamphlet, in which all the participating lawyers and their advertisements are provided and the viewer is not directed to a particular lawyer or lawyers. A local or voluntary bar association that lists its members on its website or in its publications is not a lawyer directory under this rule.” Traditional telephone directories are exempted from the requirements of Rule 4-7.23.

## **Lawyer's Responsibility – Rule 4-7.23(c)**

A lawyer is responsible for making sure that lawyer directory advertisements comply with lawyer advertising rules if the lawyer advertises with that directory.

## **Requirements for Lawyer Directories – Rule 4-7.23(b)**

A lawyer may advertise in a lawyer directory only if the directory meets the following requirements:

- The directory's advertisements comply with lawyer advertising rules;
- The directory does not engage in any in-person solicitation;
- The directory does not charge any fee that is an improper division of legal fees;
- The directory only lists persons authorized to provide the advertised services;
- The directory responds in writing within 15 days of any official inquiry from The Florida Bar;
- The directory does not state or imply that the service is endorsed or approved by The Florida Bar;
- The directory uses its actual legal name or a registered fictitious name in all communications to the public; and
- The directory states in all advertisements that it is a lawyer directory.

Note: For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the same size as the largest text used in the advertisement, or the same size as the text a required disclaimer qualifies. However, required information, may need to be printed in a different color or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where required information appears as on-screen text, required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. If a disclaimer is required in a television advertisement, it must be on-screen at the same time and for a reasonable amount of time as compared to the information the disclaimer qualifies. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required, the disclaimer must be spoken or printed reasonably close to the information requiring the disclaimer. Required information,

including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies.

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## **Filing Requirement - Rule 4-7.19(a)**

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### **Direct Mail and Direct Email - Rule 4-7.19(a)**

All unsolicited direct mail and direct e-mail advertisements must be filed for review at least 20 days before their planned use. Rules 4-7.19(a) and 4-7.20(a).

### **All other media (television, radio, print, billboards and signs, Internet banner and pop-up ads, etc.) - Rule 4-7.19(a)**

Television, radio, print, and Internet advertisements (except for lawyer or law firm websites) must be filed for review with the bar at its headquarters address at least 20 days before their first use, unless the content of the advertisements is limited to the presumptively valid content listed in Rule 4-7.16. Rules 4-7.19(a) and 4-7.20(a). Presumptively valid content is also commonly referred to as "safe harbor" or "tombstone" information.

### **Where to File**

All required filings must be submitted to: Ethics and Advertising Department, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

### **When to File**

All required filings must be submitted for review at least 20 days before the first use of the advertisement to allow for a 15-day evaluation period and 5 days mailing time.

### **Contents of Filing**

A filing with the bar must include:

- a copy of the advertisement:
- on DVD or flash drive for television (one advertisement per DVD or flash drive)\*
- on CD or flash drive for radio (one advertisement per CD or flash drive)\*
- plus all enclosures and a sample envelope for direct mail
- noted as a self-mailer on the cover sheet or cover letter for self-mailing direct mail
- a transcript of the audio portion of the recording, if audio is used;

- a printed copy of all text used in the advertisement, including both on-screen text and audio if applicable;
- a statement listing all media in which the advertisement or communication will appear, the expected frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used;
- the name of the lawyer responsible for the content;
- a check made payable to The Florida Bar including \$150 for each advertisement timely filed (at least 20 days in advance of first use) and \$250 for each advertisement filed late (less than 20 days in advance of first use); and
- an accurate English translation if the advertisement appears in a language other than English.

\*Note: the advertisement must be capable of duplication by The Florida Bar for the committee's use. Please do not send a recording that is locked to prevent duplication. If the advertisement is being provided via electronic recording, the recording must be sent via DVD, CD or flash drive. The Florida Bar will not accept an e-mailed link or e-mailed file as the filing or a hypertext link on a DVD or CD. The preferred file format for advertisements recorded electronically for is [H.264 / MPEG-4](#) or AVC (advanced video coding). Resolution should not be larger than 720x480. [VLC Media Player](#) is the preferred software that will be used by The Florida Bar to view electronically recorded advertisements. Windows Media (.wmv), QuickTime (.mov or .qt) and Real Player (.rm, .ram, .rmvb) files can also be viewed.

### **Review by The Florida Bar**

Advertisements will not be reviewed until the bar has received a complete filing. The bar will mail a response on or before 15 days from the date a complete filing is received. The bar's response will be mailed to the lawyer responsible for the advertisement's content at that lawyer's record bar address. If the advertisement is submitted by someone other than the lawyer, such as a marketer or a nonlawyer employee, the bar will mail a copy of the bar's response to that person on request. If an incomplete filing is received by the bar, or if the bar has questions regarding the content of the submission, the bar will mail a notification of the information required to complete the file, or the additional information requested, on or before 15 days from the date the filing is received.

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### **Exemptions from Filing Requirement - Rule 4-7.20**

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Certain types of advertisements are exempt from the filing requirement. An advertisement that is exempt need not be filed for review. The fact that an advertisement is exempt from the filing and review requirements of Rule 4-7.19 does not mean that it is exempt from the other provisions of Subchapter 4-7. Thus, all advertisements must include, at a minimum, the name of at least one lawyer, law firm, or lawyer referral service responsible for the advertisement's

content and the geographic location, by city, town or county of at least one bona fide office location of the lawyer who will perform the advertised services. Rules 4-7.12(a)(1) and (a)(2). For additional regulations governing all forms of lawyer advertising, see Rules 4-7.12 through 4-7.17 and 4-7.21. The following are exempt from the filing requirement:

### **Announcements of Contribution or Sponsorship – Rule 4-7.20(b)**

A brief announcement in any public medium that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than the presumptively valid content of advertisements set forth in Rule 4-7.16.

### **Legal Listings – Rule 4-7.20(c)**

A listing or entry in a law list or bar publication

### **Mailings to lawyers, current clients and former clients – Rule 4-7.20(d)**

Mailings that are sent only to other lawyers, current clients, and former clients

### **Communications sent at the request of a prospective client – Rule 4-7.20(e)**

Mailings or other communications sent to a prospective client at that prospective client's request

### **Professional Announcements – Rule 4-7.20(f)**

Professional announcement cards (announcing changed associations or addresses) that are mailed only to relatives, close personal friends, existing clients, former clients, or other lawyers.

### **Websites – Rule 4-7.20(g)**

Lawyer and law firm websites are exempt from the filing requirement, including pop-ups on the lawyer or law firm's own website.

### **Florida Bar Consumer Information Pamphlets – SCA decision**

Florida Bar consumer information pamphlets stamped with a lawyer's exempt contact information and placed in the lobby of a business where pick up by consumers is strictly voluntary are exempt from the filing requirement.

### **Florida Bar *Journal* and *News* Advertisements – SCA decision**

Advertisements by lawyers placed in the Florida Bar *Journal* and Florida Bar *News* are not required to be filed for review. Please note that the editorial policy of the Florida Bar *Journal*

and Florida Bar *News* is that advertisements must comply with substantive lawyer advertising rules.

### **Letterhead & Business Cards - SCA decision**

Letterhead and business cards, provided they are not used in an unsolicited, direct mail communication or duplicated for publication in an advertising medium, are exempt from the filing requirement.

### **Mediator Advertisements – SCA decision**

Advertisements solely for mediator services in which the advertisements contain no information about legal services or experience, other than that the mediator is a member of The Florida Bar, are exempt from the filing requirement.

### **Newspaper Articles and Columns – SCA decision**

Newspaper articles and columns that are written by a lawyer that are informational and do not contain promotional information about the lawyer are not required to be filed for review.

### **Newsletters – SCA decision**

Informational newsletters which contain the lawyer or law firm's name, address, phone number and fax number must be filed for review. If the promotional information about the lawyer or law firm does not change from issue to issue, only the first issue of the newsletter is required to be filed for review; subsequent issues need not be filed for review (Advertising Opinion A-99-1).

### **Solicitation of Birth Mothers - SCA decision**

Advertisements to solicit birth mothers when placed by an attorney on behalf of existing adoption clients are not required to be filed for review.

### **Solicitation of Witnesses – SCA decision**

Florida's lawyer advertising rules do not apply to notices to find witnesses if the lawyer has an existing client and the lawyer does not intend to accept prospective clients as a result of placing the notice seeking witnesses.

### **"Tombstone" Ads for Lawyer Referral Services – Rules 4-7.20(a) and 4-7.16(b)**

A lawyer referral service advertisement that contains no information or illustrations other than its name, location, telephone number, the referral fee charged, its hours of operation, the process by which referrals are made, the areas of law in which referrals are offered, the geographic area in which the referral lawyers practice, and, if applicable, the service's nonprofit status, its status as a

lawyer referral service approved by The Florida Bar, and the logo of its sponsoring bar association. Direct mail and direct email advertisements do not fall within this exception and must always be filed for review.

### **“Tombstone” Ads for lawyers or law firms- Rules 4-7.20(a) and 4-7.16(a)**

Direct mail and direct email advertisements do not fall within this exception and must always be filed for review. An advertisement in any public medium (e.g., t.v., radio, print, Internet banner, Internet pop-up) that contains no information other than the following is not required to be filed for review:

- the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, e-mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";
- date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
- technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
- military service, including branch and dates of service;
- foreign language ability;
- fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification;
- participation in prepaid or group legal service plans;
- credit cards accepted;
- fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;
- common salutary language such as "best wishes," "good luck," "happy holidays," "pleased to announce," or "proudly serving your community";
- punctuation marks and common typographical marks;

- an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

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### **Reliance on Florida Bar opinions - Rule 4-7.19(e) and (f)**

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A finding of compliance is binding on The Florida Bar in a grievance proceeding, unless: 1) the advertisement contains a misrepresentation that is not evident from the face of the advertisement; or 2) The Florida Bar later sends a notice of noncompliance regarding the advertisement, in which case there is a 30-day period to discontinue or revise the advertisement. Rule 4-7.19(b) and (f). Use of a noncomplying advertisement or unsolicited direct mail communication after notification of noncompliance may be considered an aggravating factor by the grievance committee.

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### **How the Review Process Works**

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The advertising attorney must provide a complete filing (copy of advertisement, filing fee, statement of media duration and use) at least 20 days before the advertisement is first published or otherwise used. The Florida Bar must complete review of a filing within 15 days of receipt, unless The Florida Bar determines that further examination is warranted and the The Florida Bar so advises the filer within the 15 day period. In such cases, The Florida Bar must complete the review as promptly as the circumstances reasonably allow. If The Florida Bar fails to send the filer any communication within 15 days of receipt, the advertisement is deemed approved.

For each distinct advertisement submitted for review, a separate file is opened and a separate file number assigned. The filing is reviewed to determine whether it is complete. (A complete filing includes the advertisement, the review fee, and a statement of intended use. For a more exhaustive list of requirements, see above.)

If the filing is incomplete, the filer is notified and asked to submit the omitted materials.

If the filing is complete, SCA staff reviews the advertisement to determine whether it complies with the requirements of Subchapter 4-7. If SCA staff determines that the advertisement falls into one of the exempt categories discussed in Section II., E., above, staff notifies the filer that the filing is exempt, returns the filing fee, and provides no opinion on the advertisement.

If the filing is complete and not exempt, SCA staff next determines whether the advertisement complies with the applicable advertising rules and notifies the filer of its advisory opinion. The notification letter identifies the areas of noncompliance, if any, and describes the procedure to be followed to obtain SCA review of the staff's determination.

A preliminary opinion may be obtained by providing a draft advertisement, the filing fee, and statement of media use and duration. Receipt of a preliminary opinion based on a draft does not satisfy the filing requirement. Lawyers who obtain a preliminary opinion must file the final version of the advertisement at least 20 days before its first publication or dissemination. On receipt of an advertisement in its final form, a final advisory opinion will be rendered.

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## **Options on Receiving an Unfavorable Staff Opinion**

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### **Appeal to the Standing Committee**

Any filer receiving an unfavorable staff opinion may submit a written request for SCA review, postmarked no later than 30 days from the date of the non-compliance letter (not the date of receipt).

The request for appeal should conform to the following requirements:

- The request should be on letter-sized paper and double-spaced;
- The request should clearly and concisely state the issues to be reviewed; and
- The request and accompanying argument may be no more than 5 pages in length.

A timely request for SCA review will be docketed for consideration by the SCA at its next meeting. The SCA meets regularly in an effort to promptly handle appeals. Each agenda item presented to the SCA will include the advertisement or direct mail to be reviewed, staff's original non-compliance letter, the request for review and any supporting argument, other relevant information in the file, and any recommendation from staff. Following discussion, the SCA votes to sustain, reverse, or modify staff's advisory opinion. The SCA may defer its decision pending receipt of additional information or for further discussion. Florida Bar staff will promptly notify the filer in writing of the SCA's decision.

Decisions of the SCA may be appealed to the Board of Governors by sending a written request for review to Ethics Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, within 30 days of notice of the action that is the subject of the appeal. See, Procedures 4(h), 5 and 6, Florida Bar Procedures For Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation. (See Appendix 3). The request should clearly state the issues for review and may include a written argument explaining why the filer believes the committee's decision is incorrect.

### **Revise and Resubmit the Filing**

A filer may choose to revise and resubmit the advertisement or direct mail communication to address the concerns outlined in the noncompliance letter. The filer need not submit an additional fee for review of a resubmission that makes changes only to cited areas of noncompliance. The revision must refer to the original file number. Florida Bar staff will notify the filer in writing whether the revision complies.

## **Use the Original Submission**

A filer who continues to use an advertisement or an unsolicited direct mail or email communication that has received an unfavorable staff or SCA disposition does so at the filer's own risk. If a complaint is filed, the lawyer may be subject to discipline for use of the noncomplying advertisement or unsolicited direct mail communication.

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## **Enforcement**

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### **Statewide Advertising Grievance Committee**

The majority of cases prosecuted against lawyers for advertising violations come from complaints to the bar's Lawyer Regulation Department filed by members of the public, including other lawyers. Additionally, a lawyer may be referred to Lawyer Regulation by the SCA or The Florida Bar Board of Governors for repeated violations. Although rare, a lawyer may be referred to Lawyer Regulation by Florida Bar staff for failing to respond to bar staff's requests for information. Complaints are prosecuted from Lawyer Regulation Headquarters in Tallahassee. If grievance committee review is necessary, the case is forwarded to the statewide advertising grievance committee. A statewide grievance committee was appointed in 2004 to hear only advertising cases, for consistency.

### **Compliance Review Program**

Periodically, the SCA directs Florida Bar staff to engage in a compliance review program in which staff reviews the yellow pages directories across the state of Florida to determine if lawyers have filed those advertisements for review. Staff requests filings from lawyers who have not filed their non-exempt advertisements for review together with the late fee.

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## **Formal Advertising Opinions**

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### **Proposed Advisory Opinions**

Procedure 4 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation provides that the SCA may consider rendering a written opinion for publication on appeal of a written staff opinion by the attorney who requested the staff opinion, at the request of the board of governors, upon SCA review of staff opinions, or upon SCA review of existing formal opinions. Except for appeals of written staff opinions, the SCA must publish in The Florida Bar News an official notice of its intent to consider rendering a written opinion, stating the time and place at which the SCA's deliberations will occur, identifying the subject matter of the issue and any proposed text and inviting written comments from interested bar members. If an opinion is issued, the SCA shall publish an official notice of the adoption of the advisory advertising opinion in The Florida Bar News, including the full text of the opinion. Any subsequent notice shall contain the full text of any revised advisory advertising opinion.

Members of the bar may provide written comments as to any proposed formal advertising opinion. After consideration of any written comments, the SCA will vote whether to adopt, modify or decline to issue a formal written opinion.

### **Appeal to the Board of Governors**

Procedure 5 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation allows members who timely filed comments to request Board of Governors review of the proposed formal advertising opinion within 30 days after the date of the letter informing the member of the SCA's decision.

### **Board of Governors Opinions**

Procedure 2(c) of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation permits the Board of Governors to issue its own advisory advertising opinions. Procedure 6 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation governs how such opinions are issued. If the Board of Governors decides to render an advisory advertising opinion it will refer the request to the Board Review Committee. The Board Review Committee must publish in *The Florida Bar News* an official notice of its intent to consider rendering a written opinion, stating the time and place at which the Board Review Committee's deliberations will occur, identifying the subject matter of the issue and any proposed text and inviting written comments from interested bar members. If an opinion is issued, the Board Review Committee shall publish an official notice of the adoption of the advisory advertising opinion in *The Florida Bar News*, including the full text of the opinion. Any subsequent notice shall contain the full text of any revised advisory advertising opinion. Members of the bar may provide written comments on any proposed advisory advertising opinion. After consideration of any written comments, the Board Review Committee will vote whether to adopt, modify or decline to issue a formal written opinion. The Board of Governors must take action regarding all opinions issued under this procedure.

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### **Record Retention – Rule 4-7.19(j)**

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Lawyers must retain copies of each advertisement actually disseminated for 3 years after their last dissemination with a record of when and where they were used. Rule 4-7.19(j). For direct mail and email advertisements that are identical except for name and address of recipients, the lawyer may retain 1 letter together with a list of the names and addresses of all recipients. *Id.*

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### **Public Records – 15-4.2**

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The files of the SCA are public records. Every lawyer advertisement filed with The Florida Bar is a public record; limited exceptions include "proposed advertisements and proposed direct mail communications filed for advisory review when the submitting attorney advises the committee that the materials constitute protected trade secrets or proprietary information." Rule 15-4.2, Rules Regulating The Florida Bar. Once an advertisement is used, it no longer is a proposed

advertisement and becomes available for inspection and copying. Until the date of publication, the advertisement(s) is marked "proprietary" in the SCA's files and is not made available for public inspection and copying. If the advertisement is never disseminated and the filer wishes to maintain the proprietary status of the file, the filer should notify SCA staff so that the advertisement will remain marked proprietary.

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## FREQUENTLY ASKED QUESTIONS

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### **GENERAL:**

#### **What information must I include in my advertisement?**

All lawyer advertisements must contain the name of at least 1 lawyer or the law firm, all lawyer referral services advertisements must contain the name of the lawyer referral service and all lawyer directory advertisements must contain the name of the lawyer directory. Rule 4-7.12(a)(1).

All advertisements must give at least one bona fide office location by city, town, or county of the lawyer who will perform the legal services advertised. Rule 4-7.12(a)(2).

The above are the minimum requirements for advertisements. Other requirements may apply depending on the content of your advertisement. For example, if you intend to refer the case out, this must be stated in the advertisement. Rule 4-7.12(b). As another example, if your advertisement discusses your fee, there must also be a statement of whether the client is responsible for any additional costs. Rule 4-7.14(a)(5). These are just two examples. You should look to the content of each particular advertisement and the applicable rules for the requirements for that particular advertisement.

#### **I'm not Board Certified. Can I include my areas of practice in my ad?**

Yes, you can always include your areas of practice as long as they are areas in which you actually practice. Rules 4-7.16(a)(6) and 4-7.13(b)(4). You can also state that you limit your practice to one or more areas of law. 4-7.14(a)(4). However, if you are not board certified in a particular area of law, you cannot state that you are board certified in that area of law. Rule 4-7.14(a)(4). You must be able to objectively verify any claims that you specialize, are an expert, or variations of those terms, in an area of law.

#### **Do I still need to include the disclaimer language about the hiring of a lawyer is an important decision . . . ?**

No, the hiring disclosure, "*The hiring of a lawyer is an important decision that should not be based solely upon advertisements . . .*" is no longer required by the lawyer advertising rules although you may continue to use it if you wish. *In re: Amendments to the Rules Regulating The Florida Bar*, 971 So. 2d 763 (Fla. 2007).

#### **What information is subject to the language requirements of Rule 4-7.12(c) and legibility requirements of Rule 4-7.12(d)?**

Any information or disclosures required under Subchapter 4-7 must appear in the same language in which the advertisement appears. Rule 4-7.12(c). If an advertisement uses more than one language, the required information or other disclosure must appear in each language used in the advertisement. *Id.* However, the Standing Committee on Advertising has determined that if the

only information in a different language is a statement saying only that you speak a foreign language, such as “se habla Español,” the requirement to have all required information in each language used is not triggered.

Any information required by the lawyer advertising rules to be in an advertisement must be reasonably prominent and clearly legible when appearing in writing and must be intelligible if spoken. Rule 4-7.12(d). For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the same size as the largest text used in the advertisement, or the same size as the text a required disclaimer qualifies. However, required information, may need to be printed in a different color or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where required information appears as on-screen text, required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. If a disclaimer is required in a television advertisement, it must be on-screen at the same time and for a reasonable amount of time as compared to the information the disclaimer qualifies. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required, the disclaimer must be spoken reasonably close to the information requiring the disclaimer. Required information, including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies. Examples of required language include the following:

**All Advertisements:**

- Rule 4-7.12(a)(1) Name must appear in advertisement
- Rule 4-7.12(a)(2) Geographic disclosure
- Rule 4-7.12(b) If the case is to be referred to another lawyer, statement notifying the prospective client must appear in advertisement
- 4-7.13(b)(5) disclaimer that not employee
- 4-7.13(b)(6) dramatization disclaimer
- 4-7.13(b)(8) testimonial disclaimer
- Rule 4-7.14(a)(5) Cost disclosure

Rule 4-7.14(a)(4) Name of certifying organization of board certification if from an organization other than The Florida Bar, and, if the organization is not another state bar, the statement “Not Certified as a Specialist by The Florida Bar.”

Rule 4-7.14(a)(5) Time price honored, if the advertisement lists a price that is valid for a period of less than 90 days (Note: Prices listed in yellow page advertisements and any other advertisement used in a media that is published only once a year must be honored for at least 1 year.)

#### **Additional Requirements for Direct Mail and Email Advertisements:**

Rule 4-7.18(b)(2)(B) The word “advertisement” must appear (1) on outside of direct mail advertisements on face of the envelope or the mailing panel of a self-mailer and (2) on every page of the advertisement or every inside panel of a self-mailing brochure. The “advertisement” mark must be reasonably prominent and in ink that contrasts with both the background on which it is printed and the other text used in the advertisement. For email advertisements, the subject line must begin with the word “advertisement.”

Rule 4-7.18(b)(2)(C) Statement of lawyer, law firm or lawyer referral service qualifications are required in all direct mail and email advertisements

Rule 4-7.18(b)(2)(E) Targeted direct mail and email advertisements must include as the first sentence “If you have already retained a lawyer for this matter, please disregard this letter.”

Rule 4-7.18(b)(2)(G) If case is to be referred to another lawyer, direct mail and email advertisements must contain a statement notifying the prospective client of the intended referral

Rule 4-7.18(b)(2)(H) Targeted direct mail and email advertisements must contain statement on how the lawyer obtained the information about the prospective client’s legal matter.

#### **What is the difference between a targeted and a non-targeted direct mail or email ad?**

A targeted direct mail advertisement is one that is prompted by a specific occurrence. For example, if you are sending a direct mail or email advertisement to someone you know has been arrested or you know that the person’s house is in foreclosure, that is a targeted direct mail advertisement. On the other hand, direct mail or email advertisements sent out generally, such as bulk mailers to a specific zip code, are non-targeted unless you know the recipients have a specific legal problem.

Targeted direct mail and email advertisements have additional requirements that do not apply to non-targeted direct mail advertisements. The first sentence of a targeted direct mail or email advertisement must be “If you have already retained a lawyer for this matter, please disregard this letter.” Rule 4-7.18(b)(2)(E). In a targeted direct mail or email advertisement, you must disclose how you obtained the information prompting the advertisement. Rule 4-7.18(b)(2)(H).

Finally, there can be nothing on the outside of a targeted direct mail advertisement that reveals the nature of the client's legal problem. Rule 4-7.18(b)(2)(I).

**I want to send my direct mail advertisement on a post card. Is that OK?**

Only if it is not a targeted direct mail advertisement. A targeted direct mail advertisement cannot reveal the nature of the prospective client's legal problem on the outside pursuant Rule 4-7.18(b)(2)(I). Based on prior decisions of the Standing Committee on Advertising, a targeted direct mail advertisement cannot be sent as a postcard, because required disclosures (that the person has a matter, how the information about the matter was obtained, and experience in the area of law being advertised) and other information on the postcard reveal the nature of the prospective client's legal problem to anyone viewing the postcard. To comply with this rule, the postcard either must be placed in an envelope, or must be converted to a self-mailing, fold-over brochure in which all information disclosing the nature of the legal problem is on the inside of the mailer and the fold over is secured shut. If the postcard will be enclosed in an envelope, it must be prominently marked "advertisement" on the face of the envelope in a color that contrasts with both the background and other text used on the envelope in accordance with Rule 4-7.18(b)(2)(B).

**I'm running an advertisement in another state, not Florida. Do the Florida lawyer advertising rules still apply?**

Florida's lawyer advertising rules do not apply to advertisements aired or disseminated in a jurisdiction other than Florida if the Florida Bar member is admitted in the other jurisdiction, the advertisement complies with the appropriate rules of that jurisdiction, and the advertisement is not intended for use in Florida.

**Can a non-Florida lawyer appear in an advertisement in Florida?**

Out-of-state lawyers may only advertise to provide legal services in Florida when they are authorized by other law to provide those services in Florida, such as lawyers who are authorized by Federal law to practice before the Immigration & Naturalization Service, before the U.S. Patent Office, before the Internal Revenue Service, and before the Social Security Administration anywhere in the United States. Out-of-state lawyers may not advertise to provide legal services in Florida for state matters, such as personal injury, probate, traffic, or criminal law. See Rule 10-2.1(c). An out-of-state lawyer's expectation that the lawyer will be admitted pro hac vice in a particular matter does not authorize the out-of-state lawyer to advertise to provide legal services in Florida. *Id.* Out-of-state lawyers should consider contacting The Florida Bar's Unlicensed Practice of Law Department at (850) 561-5840 to inquire whether or not they are authorized to provide the advertised services.

**I want to mail or email an advertisement to other lawyers. Do the lawyer advertising rules apply?**

Rule 4-7.18(b)(3) states that communications between lawyers are not subject to Rule 4-7.18(b)(2), which sets forth specific requirements for direct mail or email advertisements. Additionally, such communications do not have to be filed for review. Rule 4-7.20(d).

### **I want to send out a newsletter. What rules apply?**

Newsletters sent by mail or email must comply with Rule 4-7.18(b). Newsletters must also be filed for review in accordance with Rule 4-7.19, unless they are mailed only to other lawyers, current clients, former clients and people who have requested the newsletter. Rules 4-7.20(d) and (e). Any subsequent edition of a previously filed newsletter must be filed for review as a new advertisement if it includes any new information about the lawyer or law firm, unless it is information of the type described in Rule 4-7.16 ("Presumptively Valid Content"). However, if no new information about the lawyer or law firm is added to subsequent editions of a previously filed newsletter, or if the only new information about the lawyer or law firm appearing in subsequent editions is information covered by Rule 4-7.16(a), these subsequent editions need not be filed for review. See, [Florida Advertising Opinion A-99-01](#).

### **What rules apply to seminar announcements?**

Seminar announcements generally must comply with the lawyer advertising rules. Seminar announcements disseminated through the mail or email must comply with Rule 4-7.18(b) governing written communications. Exceptions may be made, however, if the lawyer has no financial responsibility for the seminar and no control over seminar advertisements. For example, if a lawyer will appear as a guest speaker at a seminar sponsored and financed by someone else, the advertisement may be exempt from the regulations governing lawyer advertising. Whether and which rules apply must be decided on a case-by-case basis, according to the Standing Committee on Advertising.

### **I want to send out professional announcements. What rules apply?**

Professional announcements appearing in the public print media must comply with the regulations governing other forms of print advertisement. Provided they contain no illustrations or information beyond that set forth in Rule 4-7.16, professional announcements appearing in the public print media are exempt from the filing requirement under Rule 4-7.20(a).

If the announcements are to be mailed, Rule 4-7.20(f) makes an exception from the filing requirement for "professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients." If the announcements are mailed or emailed to prospective clients, professional announcements must comply with the rules governing direct mail and email advertisements, Rule 4-7.18(b).

### **I want to advertise to referral sources. Do the lawyer advertising rules still apply?**

Yes. Rule 4-7.11(c) states that the lawyer advertising rules apply to communications made to referral sources.

### **I represent adoptive parents. I want to run an advertisement looking for birth mothers. Do the lawyer advertising rules apply to this ad?**

No, if you are placing an advertisement on behalf of existing clients who are seeking a birth mother. This is because you are not seeking to represent the birth mother.

**I want to run an advertisement looking for witnesses to my client’s case. Do the lawyer advertising rules apply to this ad?**

No, if you are truly only looking for witnesses on behalf of an existing client and the witnesses are not also potential clients. If the witnesses are also potential clients and you want to be able to represent them (presuming no conflicts of interest exist), then the lawyer advertising rules apply as you are not solely seeking witnesses. You are also seeking potential clients.

**INTERNET ADVERTISING:**

**What rules apply to my website?**

Generally, Rules 4-7.11 through 4-7.17 govern the content of your website. However, your website does not have to be filed for review. Rule 4-7.20(g).

**What rules apply to social media?**

It depends. To the extent you are using your social networking pages solely for social purposes, to maintain social contact with family and close friends, they are not subject to the lawyer advertising rules. However, if you have social networking pages that you use to promote you or your law firm’s practice, then such pages are subject to the lawyer advertising rules, but the Standing Committee on Advertising has determined that such pages are not required to be filed for review. You should review the Standing Committee on Advertising’s Guidelines for Social Networking Sites.

**What rules apply to YouTube and similar sites?**

It depends. If you post videos on YouTube or other video sharing site that are used solely for purposes that are unrelated to the practice of law, those videos are not subject to the lawyer advertising rules. On the other hand, videos that are used to promote you or your law firm’s practice are subject to the lawyer advertising rules. The Standing Committee on Advertising has determined that such videos do not have to be filed for review. You should review the Standing Committee on Advertising’s Guidelines for Video Sharing Sites.

**FILING:**

**Do I have to file my advertisement for review before I can use it?**

Yes, all advertisements must be filed for review at least 20 days before the advertisements are used. Rule 4-7.19(a). The only exemption is if your advertisement falls within one of the filing exemptions found in Rule 4-7.20.

**What is a “Tombstone” ad?**

A “Tombstone” advertisement is an advertisement in the public media that only contains the presumptively valid content found in Rule 4-7.16. Such advertisements do not have to be filed for review under Rule 4-7.20(a).

For lawyers and law firms, presumptively valid content includes the names of the lawyers, the firm name, contact information, areas of practice, bar memberships, former employment positions as a lawyer, jurisdictions in which the lawyer is admitted, other licenses the lawyer has, military service, foreign language ability, acceptance of credit cards, whether the lawyer belongs to any prepaid or group legal service plans and certain listed illustrations. You should review Rule 4-7.16(a) for the complete list.

For Lawyer Referral Services, presumptively valid content includes its name, location, contact info, referral fee charge, hours of operating, how referrals are made, areas of law in which referrals are offered, and the geographic area in which the lawyers practice. Lawyer Referral Services should look to Rule 4-7.16(b) for the complete list.

### **Are direct mail or direct email advertisements ever exempt from filing?**

No, unless they are sent only to other lawyers, family members, current client or past clients. Rule 4-7.20(d).

### **Do I have to file my website?**

No. Websites are not required to be filed for review under Rule 4-7.20(g). However, if you have a concern about a certain portion of your website, Rule 4-7.19(d) allows you to file a specific page, provision, statement, illustration or photograph from your website for review. You have to pay the filing fee and otherwise include all of the information required under Rule 4-7.19(h) to have a complete filing. You cannot file your entire website for review. Rule 4-7.19(d).

### **Do I have to file my Facebook page? What about YouTube, LinkedIn or Similar Sites?**

No. Under the Standing Committee on Advertising Guidelines for Social Networking Sites and the Guidelines for Video Sharing Sites the SCA has concluded that a lawyer does not have to file the lawyer or law firm's own page on a social media site. However, you should keep in mind this is for Facebook, YouTube, LinkedIn and other similar pages/accounts for you or your law firm. If you post a banner or other advertisement on a social networking site or video sharing site or on a third party's social networking page, that is an advertisement that is subject to filing under Rule 4-7.20.

### **How do I file my ad? What do I need to include?**

Rule 4-7.19(a) says you must file your advertisement at the Bar's headquarters in Tallahassee. To file your advertisement you need to send it to:

The Florida Bar, Ethics and Advertising Department  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Rule 4-7.19(h) sets out what you need to include:

- A copy of the advertisement. You need to send it in the form in which it will be used and that is readily capable of being duplicated by the Bar. For example, a video of a

television commercial on a DVD or flash drive, an audio recording of a radio advertisement, a letter or brochure for a direct mail advertisement or a copy of a print advertisement.

- A transcript for an advertisement in electronic format, such as TV and radio.
- A printed copy of all text used in the advertisement, including both spoken and on-screen text. This can be done as part of the transcript for TV and radio advertisements.
- An accurate English translation, if any part of an advertisement not in English.
- A sample envelope for advertisements that are to be mailed.
- A statement listing the media in which the advertisement will appear, the anticipated frequency of use of the advertisement and the anticipated time period that the advertisement will be used.
- The name of at least one lawyer responsible for the content of the advertisement.
- The filing fee. The filing fee is \$150 for advertisements timely filed and \$250 for advertisements that are not timely filed.

**Must I submit a separate review fee for each advertisement I plan to run, even if the advertisements are all very similar?**

Yes, unless the advertisements are identical in content.

**Can I file by fax or email?**

No. The review process cannot begin until the Bar receives a check for the entire amount of the filing fee.

**How long does the review process take?**

Bar staff has 15 days from the day we receive a complete filing to issue an opinion whether an advertisement complies with the rules. Rule 4-7.19(b). A complete filing means you have included all of the information required to be included under Rule 4-7.19(h). If your filing was not complete we still must communicate with you within 15 days of your submission, but the communication will generally be to ask for the missing information or fee. Rule 4-7.19(b).

**Can I get an expedited opinion?**

No. While we appreciate the importance of your advertisement to your business, due to the volume of advertisements submitted, staff cannot promise to have the review process completed sooner than the 15 day time period. We do try to complete the review process in a timely manner and it does not always take the full 15 days. Please also note that advertisements must be filed 20 days before they are first used. Rule 4-7.19(a).

**If I revise my advertisement, do I have to pay the filing fee again?**

No, as long as the only revisions you made were to comply with staff's notice of noncompliance. If you make any other change to the advertisement, the submission will be considered a new advertisement and you will have to pay the filing fee. Any change includes, but is not limited to, any change to wording, illustrations, photographs, typographical marks, layout, or color scheme.

**Once my advertisement has been approved, must I resubmit the advertisement if I decide to use the advertisement later in its identical form?**

Generally, the answer is no. If, however, you plan to use the same advertisement in a different medium, you must resubmit the advertisement if the change in medium requires analysis under a different rules. For example, you would ordinarily need to resubmit an advertisement originally appearing in a newspaper if you later want to use the same advertisement in a direct mail campaign. The re-submission is required because direct mail advertisements have to comply with the additional requirements of Rule 4-7.18 whereas print advertisements do not have to comply with Rule 4-7.18.

Additionally, when the rules are amended by the Florida Supreme Court, changes in the rules may make a previously complying advertisement noncompliant or vice versa. Therefore, after a rule change you should consider whether the changes affect your advertisement and, if so, resubmit your advertisement. If you have made no changes to the advertisement, you need not submit a new filing fee. Rather, you can submit the advertisement under the original file number given it when it was filed the first time.

**Can I get a preliminary opinion on my advertisement before I go to the expense of having it produced?**

Yes. To get a preliminary opinion on a radio, TV or other video advertisement, you can submit a transcript, including both all planned spoken and on-screen text, and a description of the visuals and/or background sounds. To get a preliminary opinion on another kind of advertisement, you can submit a draft of the advertisement. To get a preliminary opinion on any kind of advertisement, you also must submit the filing fee of \$150 required by Rule 4-7.19(h)(8). Presuming you've sent everything needed under Rule 7-1.19(h), you will receive a preliminary opinion on your submission. However, you still must submit the final version of the advertisement for review at least 20 days before it is first used. Rule 4-7.19(a) and (c). Once you submit a final version of the advertisement for review, you will receive a final opinion. You do not have to pay the filing fee again.

**Do I have to file an advertisement going only to other lawyers?**

No, such advertisements do not have to be filed under Rule 4-7.20(d).

**Do I have to file an advertisement only going to my current and former clients?**

No, such advertisements do not have to be filed under Rule 4-7.20(d).

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## QUICK REFERENCE CHECKLIST - PRINT ADS

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification? Rule 4-7.14(a)(4)
  - Does the advertising lawyer who is board certified claim certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim certification in an area of law? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible? or not reasonably prominent Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)

- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

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## QUICK REFERENCE CHECKLIST - T.V. & RADIO

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name illegible or inaudible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or inaudible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure or inaudible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
  - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)

- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

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## QUICK REFERENCE CHECKLIST - WEBSITES

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. Websites are not required to be filed with The Florida Bar for review. However, they are required to comply with the substantive lawyer advertising rules in Rules 4-7.12 through 4-7.17 and 4-7.21. A specific aspect of a website such as a specific page, provision, statement, illustration, or photograph may be filed with The Florida Bar for review on a voluntary basis under Rule 4-7.19(d) with a filing fee of \$150. A filing of an entire website will not be accepted by The Florida Bar. *Id.*

Even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)

- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible? or not reasonably prominent Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)

- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
  - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)

- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

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## **QUICK REFERENCE CHECKLIST - INTERNET ADS OTHER THAN ELECTRONIC MAIL OR WEBSITES (e.g., BANNER AND POP-UP ADS)**

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal professional as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
  - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)

- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

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## QUICK REFERENCE CHECKLIST - DIRECT MAIL

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible? or not

reasonably prominent Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)

- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)

- Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
  - If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
  - Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
  - Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
  - Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
  - Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
  - Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
  - Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
  - Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
  - If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

- Does the direct mail advertisement fail to prominently mark the face of the envelope and each page of the direct mail advertisement “Advertisement” in a color that contrasts with both the background and other text? Rule 4-7.18(b)(2)(B) Is the word “Advertisement” on the envelope and each page illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word “Advertisement” fail to appear in that language on the face of the envelope and each page? Rule 4-7.12(c)
- If sent as a self-mailer, does the direct mail advertisement fail to prominently mark the address panel and each other panel of the self-mailer “Advertisement” in a color that contrasts with both the background and other text? Rule 4-7.18(b)(2)(B) Is the word “Advertisement” on the address panel and each other panel of the self-mailer illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word “Advertisement” fail to appear in that language on the address panel and each other panel? Rule 4-7.12(c)
- Does the direct mail advertisement fail to include a written statement of the advertising lawyer or law firm’s background, training and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement include a contract that is not marked "SAMPLE" at the top of each page in red ink in type size one size larger than the largest used in the contract and "DO NOT SIGN" in the client signature line? Rule 4-7.18(b)(2)(D) Are “SAMPLE” and “DO NOT SIGN” illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, do the words “SAMPLE” and “DO NOT SIGN” fail to appear in that language? Rule 4-7.12(c)
- If the direct mail advertisement concerns a specific matter, does it fail to include as its first sentence "If you have already retained a lawyer for this matter, please disregard this letter." Rule 4-7.18(b)(2)(E) Is this first sentence illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the first sentence fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement or any of its enclosures appear to resemble legal documents? Rule 4-7.18(b)(2)(F)
- If a lawyer other than the one whose name or signature appears in the direct mail advertisement will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the direct mail advertisement so indicate? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)
- If the direct mail advertisement has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(H) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the

advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)

- Does the direct mail advertisement disclose the nature of the prospective client's legal problem on the envelope (or outside if sent as a self-mailing brochure)? Rule 4-7.18(b)(2)(I)
- If the direct mail advertisement concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident or disaster? Rule 4-7.18(b)(1)(A)
- If the direct mail advertisement concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the direct mail advertisement being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

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## QUICK REFERENCE CHECKLIST - ELECTRONIC MAIL

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The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or lawyer referral service responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(7)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(8) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising lawyer referral service is approved by The Florida Bar? Rule 4-7.13(b)(9)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(10)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. Lawyers and law firms claiming specialization or expertise in an area of law must be able to objectively verify those claims.
  - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
  - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
  - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
  - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
  - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible? or not reasonably prominent Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)

- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)
- Does the e-mail fail contain a subject line that begins with the word "ADVERTISEMENT"? Rule 4-7.18(b)(2)(B) Is the word "ADVERTISEMENT" in the subject line illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the word "ADVERTISEMENT" fail to appear in that language? Rule 4-7.12(c)
- Does the e-mail fail to include a written statement of the advertising lawyer or law firm's background, training and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the e-mail include a contract that is not marked "SAMPLE" at the top of each page in red ink in type size one size larger than the largest used in the contract and "DO NOT SIGN" in the client signature line? Rule 4-7.18(b)(2)(D) Are "SAMPLE" and "DO NOT SIGN" illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, do the words "SAMPLE" and "DO NOT SIGN" fail to appear in that language? Rule 4-7.12(c)
- If the e-mail concerns a specific matter, does it fail to include as its first sentence "If you have already retained a lawyer for this matter, please disregard this letter." Rule 4-7.18(b)(2)(E) Is this first sentence illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the first sentence fail to appear in that language? Rule 4-7.12(c)
- Does the written communication appear to resemble legal documents? Rule 4-7.18(b)(2)(F)
- If a lawyer other than the one whose name or signature appears in the e-mail will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the e-mail so indicate? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)

- If the e-mail has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(H) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)
- If the e-mail concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident or disaster? Rule 4-7.18(b)(1)(A)
- If the e-mail concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the e-mail being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

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## ADVERTISING RULES

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### 4-7 INFORMATION ABOUT LEGAL SERVICES

#### RULE 4-7.11 APPLICATION OF RULES

(a) **Type of Media.** Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms "advertising" and "advertisement" as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) **Lawyers.** This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term "lawyer" as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) **Referral Sources.** This subchapter applies to communications made to referral sources about legal services.

#### Comment

##### Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm's website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm's website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm's website that relate to the provision of legal services in jurisdictions other than Florida.

##### Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or

disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer "cases not accepted in Florida" is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is "Not a Member of The Florida Bar" or "Admitted in [jurisdiction where admitted] Only" or the lawyer's limited area of practice, such as "practice limited to [area of practice] law." *See Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

#### **RULE 4-7.12 REQUIRED CONTENT**

(a) **Name and Office Location.** All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) **Referrals.** If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to such effect.

(c) **Languages Used in Advertising.** Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) **Legibility.** Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

## Comment

### **Name of Lawyer or Lawyer Referral Service**

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

### **Geographic Location**

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is "available for consultation" or "available by appointment" or has a "satellite" office at a location where the lawyer does not have a bona fide office, if the statement is true.

### **Referrals to Other Lawyers**

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: "Your case may be referred to another lawyer."

### **Language of Advertisement**

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

## **RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS**

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) **Deceptive and Inherently Misleading Advertisements.** An advertisement is deceptive or inherently misleading if it:

- (1) contains a material statement that is factually or legally inaccurate;
- (2) omits information that is necessary to prevent the information supplied from being misleading; or
- (3) implies the existence of a material nonexistent fact.

(b) **Examples of Deceptive and Inherently Misleading Advertisements.** Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

- (1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;
- (2) references to past results unless such information is objectively verifiable, subject to rule 4-7.14;
- (3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;
- (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
- (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";
- (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [ . . . . ]";
- (7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;
- (8) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

(C) that is not representative of what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(9) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or

(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge...."

## **Comment**

### **Material Omissions**

An example of a material omission is stating "over 20 years' experience" when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states "over 20 years' experience" when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

### **Implied Existence of Nonexistent Fact**

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

## **Predictions of Success**

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: "I will save your home," "I can save your home," "I will get you money for your injuries," and "Come to me to get acquitted of the charges pending against you."

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client's rights, protect the client's assets, or protect the client's family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "strive," "dedicated," "mission," and "philosophy." For example, the statement, "My goal is to achieve the best possible result in your case," is permissible. Similarly, the statement, "If you've been injured through no fault of your own, I am dedicated to recovering damages on your behalf," is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, "I will get you acquitted of the pending charges," would violate the rule as it promises a specific legal result. In contrast, the statement, "I will pursue an acquittal of your pending charges," does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: "When the government takes your property through its eminent domain power, the government must provide you with compensation for your property."

## **Past Results**

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a

lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, "I have successfully represented clients," or "I have won numerous appellate cases," may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words "successful" or "won" in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word "successful" to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

### **Comparisons**

The prohibition against comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

### **Characterization of Skills, Experience, Reputation or Record**

The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. Such statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal. Similarly, the statement, "My goal is to provide high quality legal services," is permissible.

### **Areas of Practice**

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

### **Dramatizations**

A re-creation or staging of an event must contain a prominently displayed disclaimer, "DRAMATIZATION. NOT AN ACTUAL EVENT." For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the re-construction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under Rule 4-7.15.

### **Implying Lawyer Will Violate Rules of Conduct or Law**

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in "combative and vicious tactics" that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

### **Testimonials**

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

### **Florida Bar Approval of Ad or Lawyer**

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar

endorses a particular lawyer. Statements prohibited by this provision include, "This advertisement was approved by The Florida Bar." A lawyer referral service also may not state that it is a "Florida Bar approved lawyer referral service," unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar.

### **Judicial, Executive, and Legislative Titles**

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person's name. For example, the statement "John Jones was governor of the State of Florida from [ . . . years of service . . . ]" would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge shall not use the title in any form in a court pleading. If a former or retired judge uses her previous title in a pleading, she could be sanctioned.

### **RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS**

A lawyer may not engage in potentially misleading advertising.

(a) **Potentially Misleading Advertisements.** Potentially misleading advertisements include, but are not limited to:

- (1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base such membership or recognition on a lawyer's ability or skill, unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified, a specialist, an expert, or other variations of those terms unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating the Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.

In the absence of such certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law; or

(5) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

(b) **Clarifying Information.** A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

## Comment

### **Awards, Honors, and Ratings**

Awards, honors and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

### **Claims of Board Certification, Specialization or Expertise**

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to indicate that. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as a "specialist," "specializing," "certified," "board certified," being an "expert," having "expertise," or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified, has expertise in, or specializes in any area of practice.

A lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may so state that, but may not state that the lawyer is certified, an expert in, or specializes in personal injury. Similarly, a lawyer who is board certified in marital and family law may not state that the lawyer specializes in divorce.

### **Fee and Cost Information**

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not

responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

#### **RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS**

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

- (a) uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client;
- (b) uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer;
- (c) contains the voice or image of a celebrity, except that a lawyer may use the voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm; or
- (d) offers consumers an economic incentive to employ the lawyer or review the lawyer's advertising; provided that this rule does not prohibit a lawyer from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and does not prohibit the lawyer from offering free legal advice or information that might indirectly benefit a consumer economically.

#### **Comment**

##### **Unduly Manipulative Sounds and Images**

Illustrations that are informational and not misleading are permissible. As examples, a graphic rendering of the scales of justice to indicate that the advertising lawyer practices law, a picture of the lawyer, or a map of the office location are permissible illustrations.

An illustration that provides specific information that is directly related to a particular type of legal claim is permissible. For example, a photograph of an actual medication to illustrate that the medication has been linked to adverse side effects is permissible. An x-ray of a lung that has been damaged by asbestos would also be permissible. A picture or video that illustrates the nature of a particular claim or practice, such as a person on crutches or in jail, is permissible.

An illustration or photograph of a car that has been in an accident would be permissible to indicate that the lawyer handles car accident cases. Similarly, an illustration or photograph of a construction site would be permissible to show either that the lawyer handles construction law matters or workers' compensation matters. An illustration or photograph of a house with a foreclosure sale sign is permissible to indicate that the lawyer handles foreclosure matters. An illustration or photograph of a person with a stack of bills to indicate that the lawyer handles bankruptcy is also permissible. An illustration or photograph of a person being arrested, a person in jail, or an accurate rendering of a traffic stop also is permissible. An illustration, photograph, or portrayal of a bulldozer to indicate that the lawyer handles eminent domain matters is permissible. Illustrations, photographs, or scenes of doctors examining x-rays are permissible to show that a lawyer handles medical malpractice or medical products liability cases. An image, dramatization, or sound of a car accident actually occurring would also be permissible, as long as it is not unduly manipulative.

Although some illustrations are permissible, an advertisement that contains an image, sound or dramatization that is unduly manipulative is not. For example, a dramatization or illustration of a car accident occurring in which graphic injuries are displayed is not permissible. A depiction of a child being taken from a crying mother is not permissible because it seeks to evoke an emotional response and is unrelated to conveying useful information to the prospective client regarding hiring a lawyer. Likewise, a dramatization of an insurance adjuster persuading an accident victim to sign a settlement is unduly manipulative, because it is likely to convince a viewer to hire the advertiser solely on the basis of the manipulative advertisement.

Some illustrations are used to seek attention so that viewers will receive the advertiser's message. So long as those illustrations, images, or dramatizations are not unduly manipulative, they are permissible, even if they do not directly relate to the selection of a particular lawyer.

### **Use of Celebrities**

A lawyer or law firm advertisement may not contain the voice or image of a celebrity. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.

## **RULE 4-7.16 PRESUMPTIVELY VALID CONTENT**

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) **Lawyers and Law Firms.** A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";

(2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;

(3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;

(4) military service, including branch and dates of service;

(5) foreign language ability;

(6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (a)(4) of rule 4-7.14 regarding use of terms such as certified, specialist, and expert;

(7) prepaid or group legal service plans in which the lawyer participates;

(8) acceptance of credit cards;

(9) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (a)(5) of rule 4-7.14 regarding cost disclosures and honoring advertised fees;

(10) common salutary language such as "best wishes," "good luck," "happy holidays," "pleased to announce," or "proudly serving your community";

(11) punctuation marks and common typographical marks;

(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an

unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.

(b) **Lawyer Referral Services.** A lawyer referral service may advertise its name, location, telephone number, the referral fee charged, its hours of operation, the process by which referrals are made, the areas of law in which referrals are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred. A lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar may advertise the logo of its sponsoring bar association and its nonprofit status.

### Comment

The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.

## **RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION**

(a) **Payment by Other Lawyers.** No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) **Payment for Referrals.** A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) **Payment by Nonlawyers.** A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

### Comment

#### **Paying for the Advertisements of Another Lawyer**

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

## **Paying Others for Recommendations**

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rules 4-7.22 and 4-7.23. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

### **RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) **Solicitation.** Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit, or permit employees or agents of the lawyer to solicit on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) **Written Communication.**

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each page of such communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet and on each panel of the inside of the brochure or pamphlet. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement." Brochures solicited by clients or prospective clients need not contain the "advertisement" mark.

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members.

## **Comment**

### **Prior Professional Relationship**

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional

relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

### **Disclosing Where the Lawyer Obtained Information**

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

### **Group or Prepaid Legal Services Plans**

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

## **RULE 4-7.19 EVALUATION OF ADVERTISEMENTS**

(a) **Filing Requirements.** Subject to the exemptions stated in rule 4-7.20, any lawyer who advertises services shall file with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee.

(b) **Evaluation by The Florida Bar.** The Florida Bar will evaluate all advertisements filed with it pursuant to this rule for compliance with the applicable provisions set forth in rules

4-7.11 through 4-7.15 and 4-7.18(b)(2). If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

(c) **Preliminary Opinions.** A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement prior to production of the advertisement by submitting to The Florida Bar a draft or script that includes all spoken or printed words appearing in the advertisement, a description of any visual images to be used in the advertisement, and the fee specified in this rule. The voluntary prior submission does not satisfy the filing and evaluation requirements of these rules, but once completed, The Florida Bar will not charge an additional fee for evaluation of the completed advertisement.

(d) **Opinions on Exempt Advertisements.** A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in subdivision (h) of this rule to The Florida Bar, except that a lawyer may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

(e) **Facial Compliance.** Evaluation of advertisements is limited to determination of facial compliance with rules 4-7.11 through 4-7.15 and 4-7.18(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(f) **Notice of Compliance and Disciplinary Action.** A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement. A lawyer will be subject to discipline as provided in these rules for:

- (1) failure to timely file the advertisement with The Florida Bar;
- (2) dissemination of a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;
- (3) filing of an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;
- (4) dissemination of an advertisement for which the lawyer has a finding of compliance by The Florida Bar more than 30 days after the lawyer has been notified that The Florida Bar has determined that the advertisement does not comply with this subchapter; or

(5) dissemination of portions of a lawyer's Internet website(s) that are not in compliance with rules 4-7.14 and 4-7.15 only after 15 days have elapsed since the date of The Florida Bar's notice of noncompliance sent to the lawyer's official bar address.

(g) **Notice of Noncompliance.** If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(h) **Contents of Filing.** A filing with The Florida Bar as required or permitted by subdivision (a) must include:

(1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);

(2) a transcript, if the advertisement is in electronic format;

(3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;

(4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(i) **Change of Circumstances; Refiling Requirement.** If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the

change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100.

(j) **Maintaining Copies of Advertisements.** A copy or recording of an advertisement must be submitted to The Florida Bar in accordance with the requirements of this rule, and the lawyer must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

### **Comment**

All advertisements must be filed for review pursuant to this rule, unless the advertisement is exempt from filing under rule 4-7.20. Even where an advertisement is exempt from filing under rule 4-7.20, a lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion prior to disseminating the advertisement. A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. Subdivision (d) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is false or misleading.

### **RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT**

The following are exempt from the filing requirements of rule 4-7.19:

(a) an advertisement in any of the public media that contains no illustrations and no information other than that set forth in rule 4-7.16;

(b) a brief announcement that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than the permissible content of advertisements listed in rule 4-7.16, and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement, the following criteria may be considered:

(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;

(2) whether the announcement concerns a legal subject;

- (3) whether the announcement contains legal advice; and
- (4) whether the lawyer or law firm paid to have the announcement published;
- (c) a listing or entry in a law list or bar publication;
- (d) a communication mailed only to existing clients, former clients, or other lawyers;
- (e) a written or recorded communication requested by a prospective client;
- (f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients; and
- (g) information contained on the lawyer's Internet website(s).

#### **RULE 4-7.21 FIRM NAMES AND LETTERHEAD**

(a) **False, Misleading, or Deceptive Firm Names.** A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) **Trade Names.** A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) **Advertising Under Trade Names.** A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) **Law Firm with Offices in Multiple Jurisdictions.** A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) **Name of Public Officer in Firm Name.** The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) **Partnerships and Business Entities.** A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) **Insurance Staff Attorneys.** Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

- (1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;
- (2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;
- (3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;
- (4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and
- (5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

## **Comment**

### **Misleading Firm Name**

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. *See Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

### **Trade Names**

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

### **Insurance Staff Lawyers**

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed

in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

#### **RULE 4-7.22 LAWYER REFERRAL SERVICES**

(a) **When Lawyers May Accept Referrals.** A lawyer may not accept referrals from a lawyer referral service, and it is a violation of these Rules Regulating the Florida Bar to do so, unless the service:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that constitutes a division or sharing of fees, unless the service is a not-for-profit service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) carries or requires each lawyer participating in the service to carry professional liability insurance in an amount not less than \$100,000 per claim or occurrence;

(5) furnishes The Florida Bar, on a quarterly basis, with the names and Florida bar membership numbers of all lawyers participating in the service;

(6) furnishes The Florida Bar, on a quarterly basis, with the names of all persons authorized to act on behalf of the service;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the service or a lawyer who accepts referrals from the service;

(8) neither represents nor implies to the public that the service is endorsed or approved by The Florida Bar, unless the service is subject to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively states in all advertisements that it is a lawyer referral service; and

(11) affirmatively states in all advertisements that lawyers who accept referrals from it pay to participate in the lawyer referral service.

(b) **Responsibility of Lawyer.** A lawyer who accepts referrals from a lawyer referral service is responsible for ensuring that any advertisements or written communications used by

the service comply with the requirements of the Rules Regulating the Florida Bar, including the provisions of this subchapter.

(c) **Definition of Lawyer Referral Service.** A "lawyer referral service" is:

(1) any person, group of persons, association, organization, or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers; or

(2) any group or pooled advertising program operated by any person, group of persons, association, organization, or entity wherein the legal services advertisements utilize a common telephone number or website and potential clients are then referred only to lawyers or law firms participating in the group or pooled advertising program.

A pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration, is not a lawyer referral service within the definition of this rule.

#### **RULE 4-7.23 LAWYER DIRECTORY**

(a) **Definition of Lawyer Directory.** A lawyer directory is any person, group of persons, association, organization, or entity that receives any consideration, monetary or otherwise, given in exchange for publishing a listing of lawyers together in one place, such as a common Internet address, a book or pamphlet, a section of a book or pamphlet, in which all the participating lawyers and their advertisements are provided and the viewer is not directed to a particular lawyer or lawyers. A local or voluntary bar association that lists its members on its website or in its publications is not a lawyer directory under this rule. This rule does not apply to traditional telephone directories.

(b) **When Lawyers May Advertise in a Directory.** A lawyer may not advertise in a directory unless the directory:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that constitutes a division or sharing of fees;

(3) lists only persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the directory or a lawyer who pays to be listed in the directory;

(5) neither represents nor implies to the public that the directory is endorsed or approved by The Florida Bar;

(6) uses its actual legal name or a registered fictitious name in all communications with the public; and

(7) affirmatively states in all advertisements that it is a legal directory or lawyer directory.

(c) **Responsibility of Lawyer.** A lawyer who advertises in a lawyer directory is responsible for ensuring that any advertisements or written communications used by the directory comply with the requirements of the Rules Regulating the Florida Bar, and that the directory is in compliance with the provisions of this subchapter. It is a violation of these Rules Regulating the Florida Bar and a failure of such responsibility if the lawyer knows or should have known that the directory is not in compliance with applicable rules or if the lawyer failed to seek information necessary to determine compliance.

# **APPENDIX**

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## APPENDIX 1: "COMMERCIAL SPEECH DOCTRINE"

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In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976), the United States Supreme Court opined that commercial speech is entitled to some protection. Based on the public's right to receive the free flow of commercial information, the Court held that commercial speech is protected First Amendment speech and may not be prohibited absolutely. Subsequently, in *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), the Court extended the "Commercial Speech Doctrine" to lawyer advertising, holding that a total prohibition on the advertisement of routine legal services is unconstitutional.

Lawyer advertising, as a form of commercial speech, receives a level of constitutional protection that is above unprotected speech (e.g., false, deceptive or misleading statements or advertisements concerning unlawful activities) but below that provided completely protected speech (e.g., political statements). Under the "Commercial Speech Doctrine," a state may totally prohibit misleading advertising and may impose restrictions if the particular content or method of advertising is inherently misleading or if experience demonstrates that the advertising is subject to abuse. *In re R.M.J.*, 102 S.Ct. 929, 937 (1982). If the content of the advertisement is not misleading, the state may regulate it only when there is a substantial government interest being served. *Id.* However, the state may place reasonable restrictions upon the time, place, and manner of lawyer advertising, so long as the content or subject matter is not regulated. *See, Bates*, 97 S.Ct. at 2709.

The standard for regulating the content of commercial speech was first articulated by the Supreme Court in *Central Hudson Gas and Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). There the Court found that the content of non-misleading commercial speech can be constitutionally regulated only when a substantial government interest is at stake, the regulation directly advances that interest, and the regulation is no more extensive than is necessary to serve that interest. In *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), the Court clarified the Central Hudson test for regulating commercial speech by announcing that only a "reasonable fit" must be necessary between the state interest and the regulation. The "fit" need not be perfect, only reasonable.

The following decisions on lawyer advertising by the Supreme Court are recommended reading for a comprehensive understanding of the application of the "Commercial Speech Doctrine" to attorney advertising:

- A. *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978) -- upholding total ban of in-person solicitation when the primary motivation behind the contact is the attorney's pecuniary gain.
- B. *In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) -- holding that when the attorney is motivated by the desire to promote political goals rather than pecuniary gain, direct in-person solicitation is treated as "political speech," rather than "commercial speech," and is entitled to greater constitutional protection against state regulation.

- C. *In re R.M.J.*, 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 65 (1982) -- deciding that a state may not completely prohibit attorneys from accurately listing their areas of practice; however, certain disclosure language may be necessary to avoid potentially misleading the public.
- D. *Zauderer v. Office of Disciplinary Council*, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) -- discussing lawyers use of illustrations in their advertising; also holding that a state may require an advertisement for contingent fees to state that an unsuccessful litigant may be responsible for court costs.
- E. *Shapiro v. Kentucky Bar Ass'n*, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) -- holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems; the state's interest in preventing overreaching or coercion by an attorney using direct mail can be served by restrictions short of a total ban.
- F. *Peel v. Attorney Registration & Disciplinary Commission*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990) -- holding that a state may not totally ban an attorney from advertising certification as a trial specialist by a recognized national certification organization; however, appropriate disclosure statements may be required to avoid any potentially misleading implications.
- G. *Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994) -- holding that it is not misleading for attorney/accountant to use the designations of CPA and CFP, without further clarification, on letterhead and advertisements as long as the designations are true.
- H. *The Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995) -- holding that Florida's 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the State's substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system.
- I. *Friedman v. Rogers*, 440 U.S. 1, 99 S.Ct. 887, 59 L.Ed.2d 100 (1979) -- holding that "[t]he use of trade names is a form of commercial speech." The Court in *Friedman*, upheld, however, a prophylactic prohibition on the use of trade names by optometrists due to specific concerns based upon actual experience which established possibilities for deception of the public.
- J. *The Florida Bar v. Fetterman*, 439 So. 2d 835, 840 (Fla. 1983) -- finding the trade name "The Law Team, Fetterman and Associates" to be "neither inherently nor operatively misleading" where the firm employed more than 1 full time associate when the name was adopted and continued to employ at least 1 full time associate on staff.
- K. *The Florida Bar v. Herrick*, 571 So. 2d 1303, 1305 (Fla. 1990) -- concluding that "[S]tate rules [on attorney advertising and solicitation] may be no broader than reasonably necessary to prevent the perceived evil."

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## **APPENDIX 2: ADDITIONAL RULES REGULATING THE SCA**

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### **CHAPTER 15. REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS**

#### **15-1. GENERALLY**

##### **RULE 15-1.1 PURPOSE**

The Florida Bar, as an official arm of the Supreme Court of Florida, is charged with the duty of enforcing the rules governing lawyer advertising and solicitation and with assisting members of The Florida Bar to advertise their services in a manner beneficial to both the public and the legal profession. The board of governors, pursuant to the authority vested in it under rule 2-8.3, shall create a SCA to advise members of The Florida Bar on permissible advertising and solicitation practices. It shall be the duty of the committee to administer the advertising evaluation program set forth in subchapter 4-7.

#### **15-2. SCA**

##### **RULE 15-2.1 MEMBERSHIP AND TERMS**

The SCA shall consist of 4 members of The Florida Bar and 3 nonlawyers representing the public. Members of the committee shall be appointed by the president-elect of The Florida Bar, as provided in rule 2-8.1. The president-elect shall designate the chair and vice-chair, with the advice and consent of the board of governors. Members of the committee shall serve staggered 3-year terms. No member may serve more than 2 consecutive terms. A quorum shall consist of a majority of the members.

##### **RULE 15-2.2 FUNCTIONS**

It shall be the task of the committee to evaluate all advertisements filed with the committee for compliance with the rules governing advertising and solicitation and to provide written advisory opinions concerning compliance to the respective filers, to develop a handbook on advertising for the guidance of and dissemination to members of The Florida Bar, and to recommend to the board of governors from time to time such amendments to the Rules of Professional Conduct as the committee may deem advisable.

##### **RULE 15-2.3 REIMBURSEMENT FOR PUBLIC MEMBERS**

The nonlawyer public members of the standing committee shall be reimbursed for reasonable travel and related expenses associated with attendance at meetings of the committee.

## **RULE 15-2.4 RECUSAL OF MEMBERS**

Members of the committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or other lawyers in their firms.

## **15-3. PROCEDURE**

### **RULE 15-3.1 MEETINGS**

The committee shall meet as often as is necessary to fulfill its duty to provide a prompt opinion regarding a submitted advertisement's compliance with the advertising and solicitation rules.

### **RULE 15-3.2 RULES**

The committee may adopt such procedural rules, subject to review by the board of governors, for its activities as may be required to enable the committee to fulfill its function.

## **15-4. REPORT OF COMMITTEE**

### **RULE 15-4.1 GENERALLY**

Within 3 months after the conclusion of the first year of the review program, the committee shall submit to the board of governors a report detailing the year's activities of the committee. The report shall include such information as the board of governors may require.

### **RULE 15-4.2 RECORDS**

**(a) Maintenance of Records.** The committee shall keep records of its activities for 3 years.

**(b) Public Access to Records.** All records of the committee shall be open for public inspection and copying with the following exceptions:

- (1) proposed advertisements and proposed direct mail communications filed for advisory review when the submitting attorney advises the committee that the materials constitute protected trade secrets or proprietary information;
- (2) the media, frequency, and duration of an advertisement when the submitting attorney advises the committee that the information constitutes protected trade secrets or proprietary information;
- (3) the names and addresses of recipient of direct mail communications;

- (4) information made confidential by rule of the Supreme Court of Florida;
- (5) attorney-client communications between the bar, its committees and staff and those attorneys retained by the bar in anticipation of, or during, civil litigation; and
- (6) work product prepared by an attorney retained by the bar in anticipation of, or during, civil litigation.

**(c) Inspection of Copyrighted Material.** Copyrighted work may be inspected but not reproduced.

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## APPENDIX 3: FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION

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### FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION

#### 1. APPLICATION; SCOPE; AND USAGE

Staff opinions, standing committee on advertising opinions, and opinions of the board of governors are advisory only and are not the basis for action by grievance committees, referees, or the board of governors except on application of the respondent in disciplinary proceedings. If a respondent's defense includes reliance on the receipt of a staff opinion, ethics counsel may release to the bar counsel, grievance committee, referee, or board of governors information concerning the opinion or the opinion request that would otherwise be confidential under these rules. Information concerning requests for staff opinions are confidential, except as otherwise provided in bylaw 2-9.4, Rule 15-4.2, and these procedures. If public statements are made by the inquirer about any advisory opinion or opinion request, confidentiality of the request and the opinion is waived and ethics counsel may disclose the opinion and information relating to the request.

The proposed advisory advertising opinion process should not be used to circumvent procedures to adopt or amend Rules Regulating The Florida Bar.

#### 2. AUTHORITY TO ISSUE ADVERTISING OPINIONS

Ethics counsel and assistant ethics counsel, the standing committee on advertising, and the board of governors have the authority to evaluate lawyer advertisements in accordance with rule 4-7.19 and to issue advisory advertising opinions in the type and manner as set forth in these procedures.

**(a) Ethics Counsel and Assistant Ethics Counsel.** Ethics counsel and assistant ethics counsel may render oral and written opinions that will be identified as "staff opinions." Staff opinions may be issued only to the members of The Florida Bar in good standing inquiring as to their own contemplated conduct.

(1) Staff opinions will not be issued if it is known to staff that the inquiry:  
(A) is made by a person who is not a member of The Florida Bar in good standing;

(B) concerns past conduct of the inquirer;  
(C) involves the conduct of a lawyer other than the inquirer;  
(D) asks a question of law;  
(E) asks a question of rule or court procedure; or  
(F) is the subject of a proceeding brought under the Rules Regulating The Florida Bar.

(2) Staff may decline to issue an opinion if the inquiry:  
(A) is the subject of current litigation; or  
(B) asks a question for which there is no previous precedent or underlying bar policy on which to base an opinion.

**(b) Standing Committee on Advertising.** The standing committee on advertising (SCA)

may render written opinions, amend existing opinions, or withdraw existing opinions on:

- (1) appeal of a written staff opinion by the inquiring lawyer;
- (2) request of the board of governors regarding application of the lawyer advertising rules to a particular set of facts;
- (3) review of staff opinions by the SCA; or
- (4) review of existing advisory advertising opinions by the SCA.

Opinions of the SCA will be identified as advisory advertising opinions.

**(c) Board of Governors.** The board of governors may render written opinions, amend existing opinions, or withdraw existing opinions:

- (1) on appeal of SCA action; and
- (2) on its own initiative when the board of governors determines that the application of the lawyer advertising rules to a particular set of facts is likely to be of widespread interest or unusual importance to a significant number of Florida Bar members.

Opinions of the board of governors will be identified as advisory advertising opinions.

### **3. PROCEDURES FOR ISSUANCE OF AND DECLINING TO ISSUE STAFF OPINIONS**

#### **(a) Request for Staff Opinion.**

(1) *Oral Staff Opinions.* Members of the bar in good standing may request an oral staff opinion, other than an advertising filing required by rule 4-7.19, by calling ethics counsel in Tallahassee, at 1-800-235-8619 or 1-850-561-5780. Oral opinions may be confirmed in writing only in accord with the procedures for issuance of written staff opinions. All information relating to the request for an oral staff opinion is confidential as provided elsewhere in these procedures.

(2) *Written Staff Opinions.* Members of the bar in good standing may request a written staff opinion, other than an advertising filing required by rule 4-7.19, by writing Ethics Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 or by electronic mail to eto@flabar.org. All requests for written staff opinions must set forth all operative facts on which the request is based and contain an affirmative statement that the criteria of procedure 2(a) are met. Except for advertising filings required by rule 4-7.19, all material and information relating to the request for a written staff opinion are confidential as provided elsewhere in these procedures.

**(b) Declining to Issue Staff Opinions.** Ethics counsel must decline to issue a staff opinion if any criteria of procedure 2(a)(1) apply. Ethics counsel may decline to issue a staff opinion if any criteria of procedure 2(a)(2) apply.

**(c) Appeal to SCA.** Members of the bar in good standing filing advertisements for evaluation under rule 4-7.19 or requesting a written staff opinion may appeal the opinion or the decision not to issue the opinion to the SCA as provided elsewhere in these procedures. Appeals to the SCA are public information. Oral staff opinions and decisions not to issue an oral opinion may not be appealed.

### **4. PROCEDURE FOR ISSUANCE OF SCA OPINIONS**

**(a) Scheduling SCA Review.** Timely appeals, requests of the board of governors, SCA review of staff opinions, and SCA review of existing advisory advertising opinions will be scheduled for SCA consideration at the next available meeting of the SCA if any official notice requirements are met.

**(b) Authority of SCA Chair.** The chair of the SCA has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be

allowed. In addition, the chair may appoint a subcommittee to conduct the review.

**(c) Notice of SCA Review.**

(1) *Adoption and Modification of Opinions.* In the event that the SCA decides to consider rendering a written opinion for publication at the request of the board of governors, on SCA review of staff opinions, or on SCA review of existing formal opinions, the SCA must publish in *The Florida Bar News* an official notice of its intent to consider rendering a written opinion. The notice must state the time and place at which the SCA's deliberations will occur and must invite written comments from interested bar members in good standing. Initial publication must fully identify the subject matter of the issue and any proposed text, if then available, and invite written comment. If an opinion is issued, the SCA must publish an official notice of the adoption of the advisory advertising opinion in *The Florida Bar News*, including the full text of the opinion. Any subsequent notice must contain the full text of any revised advisory advertising opinion.

(2) *Withdrawal of Opinions.* In the event that the SCA decides to consider withdrawing an advisory advertising opinion, the SCA must publish in *The Florida Bar News* an official notice of its intent to consider withdrawing the advisory advertising opinion. The notice must state the time and place at which the SCA's deliberations will occur, summarize the advisory advertising opinion, and invite written comments from interested bar members in good standing.

**(d) Comments.** Any member in good standing may file written comment with ethics counsel within 30 days of the date of publication of official notice of the SCA's intent to consider rendering an advisory advertising opinions, official notice of the SCA's adoption of a proposed advisory advertising opinion, official notice that the SCA has revised a proposed advisory advertising opinion, or official notice that the SCA intends to withdraw an advisory advertising opinion.

All comments filed under this subdivision must be in the form of written statements with relevant facts, arguments in support, and citations to relevant authority, if any.

**(e) Record on Review.** Ethics counsel will prepare and distribute to the SCA an agenda covering each matter for review. Any person may request and receive a copy of the agenda. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies.

(1) *Appeals of Written Staff Opinions.* The agenda item will include the original request for the opinion, the written staff opinion, and the written request for SCA review.

(2) *Requests of Board of Governors.* The agenda item will include the request, relevant material and authorities, any proposed text for consideration, and any timely comments.

(3) *Review of Staff Opinions.* The agenda item will include the original request for the opinion, the written staff opinion, and the written request for SCA review.

(4) *Review of Existing Advisory Advertising Opinions.* The agenda item will include the existing advisory advertising opinion, relevant material and authorities, and the written request for SCA review.

**(f) SCA Action.** By majority vote of those present, the SCA may:

(1) *Appeals of Written Staff Opinions.*

- (A) affirm the opinion, in whole or in part;
- (B) reverse the opinion, in whole or in part;
- (C) return the opinion to ethics counsel with instructions as to redrafting; or
- (D) determine to issue, amend, or withdraw an advisory advertising opinion.

- (2) *Requests of Board of Governors.*
  - (A) decline to issue an advisory advertising opinion;
  - (B) agree to issue, amend, or withdraw an advisory advertising opinion; or
  - (C) provide informal information or comments to the inquirer.
- (3) *Review of Staff Opinions.*
  - (A) affirm the opinion, in whole or in part;
  - (B) reverse the opinion, in whole or in part;
  - (C) return the opinion to ethics counsel with instructions as to redrafting; or
  - (D) determine to issue, amend, or withdraw an advisory advertising opinion.
- (4) *Review of Existing Advisory Advertising Opinions.*
  - (A) affirm the advisory advertising opinion, in whole or in part;
  - (B) reverse the advisory advertising opinion, in whole or in part;
  - (C) determine to issue, amend, or withdraw an advisory advertising opinion.

**(g) Notice of SCA Action.** Notice of SCA action regarding formal opinions of the SCA will be published in *The Florida Bar News*. Notice of the SCA's actions will be provided by ethics counsel to:

- (1) *Appeals of Written Staff Opinions.* The inquiring bar member who requested review of a written staff opinion or an advertisement filed in accordance with rule 4-7.19;
- (2) *Requests of Board of Governors.* The inquirer, all bar members who timely commented on a referral from the board of governors, any bar member who requests review within 30 days of the publication of the notice of SCA action, and the bar's executive director;
- (3) *Review of Staff Opinions.* All bar members who timely commented on notice of the SCA's review of staff opinions.
- (4) *Review of Existing Advisory Advertising Opinions.* All bar members who timely commented on notice of the SCA's review of existing advisory advertising opinions.

**(h) Appeal of SCA Action.** Any bar member who timely commented to the SCA and any bar member who timely appealed a written staff opinion may appeal action of the SCA to the board of governors as provided elsewhere in these procedures.

## 5. PROCEDURE FOR REVIEW OF SCA ACTION

**(a) Referral to Board Review Committee on Professional Ethics.** Timely appeals from SCA action will be referred to the Board Review Committee on Professional Ethics (BRC).

**(b) Scheduling BRC Review.** Timely appeals will be scheduled for BRC consideration at the next meeting of the BRC if the appeal or request is made more than 30 days in advance of such meeting.

**(c) Authority of BRC Chair.** The chair of the BRC has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be allowed. In addition, the chair may appoint a subcommittee to conduct the review.

**(d) Record on Review.** Ethics counsel will prepare and distribute to the BRC a file on each matter for review. Any person may request and receive a copy of the agenda item. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies. The agenda item will include the record before the SCA and the request for BRC review.

- (e) BRC Action.** By majority vote of those present, the BRC may:
  - (1) affirm the SCA action, in whole or in part;
  - (2) reverse the SCA action, in whole or in part; or
  - (3) return the matter to the SCA with instructions as to redrafting.

**(f) Review of BRC Action.** The BRC will report its actions to the board and the action will be placed on the agenda of the board for review and approval as a consent item if affirming SCA action. Any member of the board may request that any BRC action be taken up for discussion by the full board. By majority vote of those present, the board may:

- (1) affirm the SCA action, in whole or in part;
- (2) reverse the SCA action, in whole or in part; or
- (3) return the matter to the SCA with instructions as to redrafting.

**(g) Notice of Board of Governors Action.** Notice of board of governors action regarding formal advisory advertising opinions will be published in *The Florida Bar News*. Notice of the board's actions will be provided by ethics counsel to the members who timely requested board of governors review.

## **6. PROCEDURE FOR ISSUANCE OF BOARD OF GOVERNORS OPINIONS**

**(a) Referral to BRC.** Board of governors decisions to render an advisory advertising opinion will be referred to the BRC to develop a specific set of facts on which the opinion will be based, comply with notice provisions in this procedure, and adopt a written advisory opinion applying the lawyer advertising rules to the set of facts.

**(b) Scheduling BRC Review.** Advisory advertising opinions will be scheduled for BRC consideration if the decision to consider rendering an opinion is made more than 30 days in advance of such meeting and any official notice requirements are met.

**(c) Authority of BRC Chair.** The chair of the BRC has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be allowed. In addition, the chair may appoint a subcommittee to conduct the review.

**(d) Notice of BRC Opinion.** In the event that the board of governors refers an issue to the BRC to render a written opinion for publication, the BRC will publish in *The Florida Bar News* an official notice of its intent to consider rendering a written opinion. The notice will state the time and place at which the BRC's deliberations will occur and invite written comments from interested bar members in good standing. Initial publication will identify the subject matter of the issue and any proposed text, if then available, and invite written comment. If an opinion is issued, the BRC will publish an official notice of the adoption of the advisory advertising opinion in *The Florida Bar News*, including the full text of the opinion. Any subsequent notice will contain the full text of any revised advisory advertising opinion.

**(e) Comments.** Any bar member in good standing may file written comment with ethics counsel within 30 days of the date of publication of official notice of the BRC's intent to consider rendering a proposed advisory opinion, official notice of the BRC's adoption of an advisory opinion, or official notice that the BRC has revised a proposed advisory opinion.

All comments filed under this subdivision must be in the form of written statements with relevant facts, arguments in support, and citations to relevant authority, if any.

**(f) Record on Review.** Ethics counsel will prepare an agenda item for each matter for review. Any person may request and receive a copy of the agenda item. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies. The agenda item will contain the statement of facts on which the proposed advisory opinion will be made, relevant material and authorities, and the text of the proposed advisory opinion, if then available.

**(g) BRC Action.** By majority vote of those present, the BRC may:

- (1) determine to issue an opinion; or
- (2) determine not to issue an opinion.

**(h) Review of BRC Action.** The BRC will report its actions to the board. By majority vote of those present, the board may:

- (1) affirm the BRC action, in whole or in part;
- (2) reverse the BRC action, in whole or in part; or
- (3) return the matter to the BRC with instructions as to redrafting.

**(i) Notice of Board of Governors Action.** Notice of board of governors action regarding formal advisory opinions will be published in *The Florida Bar News*. Notice of the board's actions will be provided by ethics counsel to the bar members who timely filed comments.

## **7. TIME FOR APPEALS**

All appeals allowed under these procedures are commenced by mailing the required items to Ethics Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, within 30 days of notice of the action that is the subject of the appeal. Failure to timely commence an appeal bars the appeal.

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## **The Florida Bar Standing Committee on Advertising Guidelines for an Attorney's Statement of Qualifications and Experience**

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Rule 4-7.18(b)(2)(C) requires that every direct written communication to a prospective client be accompanied by a factual statement detailing the attorney's background, training, and experience.

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

- Specific experience in the area or areas of law for which professional employment is sought;
- If advertising for matters that may end up in trial, the number of similar cases actually tried by the advertising attorney; and
- Date of admission to The Florida Bar. May also include the fact and date of admission of other bars and courts;
- Number of years of experience as a licensed attorney in the area(s) of law referred to in the advertisement;

Additionally, the SCA recommends including the following:

- Law school(s) attended, and date(s) of graduation. May also include: legal degree(s) earned; other academic degree(s) earned (including date(s) of degree(s) and institution(s) conferring degree(s));
- Prior legal employment or legal positions held (e.g., former assistant state attorney; formerly associated at 30-lawyer civil trial law firm);
- The legal organization(s) and/or professional organization(s) of which the advertising attorney is a member.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

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## **The Florida Bar Standing Committee on Advertising Guidelines for a Firm's Statement of Qualifications and Experience**

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Rule 4-7.18(b)(2)(C) requires that every direct written communication to a prospective client be accompanied by a factual statement detailing the firm's background, training, and experience.

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

- Specific experience of the firm in the area or areas of law for which professional employment is sought, including the number of lawyers who practice in these areas, and the length of time the law firm has been practicing in the area advertised;
- Length of time the law firm has been in existence.
- The number of attorneys within the firm.
- The areas of practice of the firm.
- If advertising for matters that may end up in trial, the number of similar cases actually tried by the advertising firm; and

Additionally, the SCA recommends including the following:

- Law school(s) attended, and date(s) of graduation for the attorney(s) of the firm who will be providing services in the advertised area of practice. May also include: legal degree(s) earned; other academic degree(s) earned (including date(s) of degree(s) and institution(s) conferring degree(s));
- Date of admission to The Florida Bar for the attorney(s) of the firm who will be providing services in the advertised area of practice. May also include the fact and date of admission of other bars and courts;
- Prior legal employment or legal positions held (e.g., former assistant state attorney; formerly associated at 30-lawyer civil trial law firm) for the attorney(s) of the firm who will be providing services in the advertised area of practice;
- Number of years of experience as a licensed attorney in the area(s) of law referred to in the advertisement of the attorney(s) of the firm who will be providing services in the advertised area of practice;
- The legal organizations and/or professional organization(s) to which the advertising attorney(s) or the firm belongs.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

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## **The Florida Bar Standing Committee on Advertising Guidelines for a Lawyer Referral Service's Statement of Qualifications and Experience**

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Rule 4-7.18(b)(2)(C) requires that every written communication to a prospective client be accompanied by a factual statement detailing the background, training, and experience of the lawyers to whom the recipient may be referred.

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

The number of attorneys participating in the lawyer referral service.

- The areas of practice of the participating attorneys available for potential clients to choose from.
- For each area of practice, the number of participating attorneys who practice in that area, together with a range of years of experience of those attorneys in that area of practice.
- If advertising for matters that may end up in trial, a range of the number of similar cases actually tried by participating attorneys.
- The minimum requirements the referral service has established for membership in the service.
- The length of time the referral service has been in existence.
- Geographic locations of attorneys participating in the lawyer referral service.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

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## The Florida Bar Standing Committee on Advertising Guidelines for Networking Sites

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(Revised May 9, 2016)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including e-mail and instant messaging. Twitter is a networking site in which brief posts of no more than 140 characters are sent to followers, or persons who have specifically requested to receive the postings of particular persons on Twitter. Twitter postings are generally public, but a person who posts via Twitter can choose to have Twitter postings sent only to that person's followers and not generally accessible to the public.

The SCA has reviewed the networking media, and issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes, to maintain social contact with family and close friends, are not subject to the lawyer advertising rules.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guaranties of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Invitations sent directly from a social media site via instant messaging to a third party to view or link to the lawyer's page on an unsolicited basis for the purpose of obtaining, or attempting to

obtain, legal business must meet the requirements for written solicitations under Rule 4-7.18(b), unless the recipient is the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the page sent via e-mail must comply with the direct e-mail rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons who have requested information from the lawyer, or persons with whom the lawyer has a prior professional relationship. Instant messages and direct e-mail must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct e-mail rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Although lawyers are responsible for all content that the lawyers post on their own pages, a lawyer is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules. If a third party posts information on the lawyer's page about the lawyer's services that does not comply with the lawyer advertising rules, the lawyer must remove the information from the lawyer's page. If the lawyer becomes aware that a third party has posted information about the lawyer's services on a page not controlled by the lawyer that does not comply with the lawyer advertising rules, the lawyer should ask the third party to remove the non-complying information. In such a situation, however, the lawyer is not responsible if the third party does not comply with the lawyer's request.

Lawyers who post information to Twitter whose postings are generally accessible are subject to the lawyer advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as above. A lawyer may post information via Twitter and may restrict access to the posts to the lawyer's followers, who are persons who have specifically signed up to receive posts from that lawyer. If access to a lawyer's Twitter postings is restricted to the followers of the particular lawyer, the information posted there is information at the request of a prospective client and is subject to the lawyer advertising rules, but is exempt from the filing requirement under Rule 4-7.20(e). Any communications that a lawyer makes on an unsolicited basis to prospective clients to obtain "followers" is subject to the lawyer advertising rules, as with any other social media as noted above. Because of Twitter's 140 character limitation, lawyers may use commonly recognized abbreviations for the required geographic disclosure of a bona fide office location by city, town or county as required by Rule 4-7.12(a).

Finally, the SCA is of the opinion that a page on a networking site is sufficiently similar to a website of a lawyer or law firm that pages on networking sites are not required to be filed with The Florida Bar for review.

In contrast with a lawyer's page on a networking site, a banner advertisement posted by a lawyer on a social networking site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).

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## The Florida Bar Standing Committee On Advertising Guidelines for Video Sharing Sites

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(Revised May 9, 2016)

Video sharing sites accessed via the Internet have proliferated in the last several years. There are numerous video sharing sites. A video sharing site is a site accessed via the Internet that permits video viewing, uploading and sharing via search or direct link. Probably the most well-known video sharing site is YouTube, on which registered users are permitted to upload videos, but all visitors are permitted to view.

The SCA has reviewed the video sharing media, and issues the following guidelines for lawyers using them.

Videos of individual lawyers on video sharing sites that are used solely for purposes that are unrelated to the practice of law are not subject to the lawyer advertising rules.

Videos appearing on video sharing sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These videos and all information the lawyer or law firm posts with them must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guaranties of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Invitations to view or link to the lawyer's video sent on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business must comply with requirements for direct written solicitation under Rule 4-7.18(b), unless the recipient is the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the video sent via e-mail must comply with the direct e-mail rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons with whom the lawyer has a prior professional relationship or persons who have requested information from the lawyer. Instant messages and direct e-mail must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct e-mail rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Finally, the SCA is of the opinion that videos posted solely on video sharing sites are information at the request of the prospective client and therefore not required to be filed with The Florida Bar for review. Rule 4-7.20(e).

In contrast with a video posted on a video sharing site, a banner advertisement posted by a lawyer on a video sharing site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).