

SUMMARY OF NEW LAWYER ADVERTISING RULES

EFFECTIVE MAY 1, 2013

The Supreme Court of Florida has issued new lawyer advertising rules, which will be effective at 12:01 a.m. on May 1, 2013. *In re: Amendments to the Rules Regulating The Florida Bar - Subchapter 4-7, Lawyer Advertising Rules*, 38 Fla. L. Weekly S47 (Fla. Jan. 31, 2013). The lawyer advertising rules have been reorganized and renumbered. The new lawyer advertising rules start at 4-7.11 and run through 4-7.23. Rules 4-7.1 through 4-7.10 will be noted as vacant in the Rules Regulating The Florida Bar. Below is a summary of the new lawyer advertising rules. Some language is taken directly from the new rule, but does not appear in quotation marks. Most of the rules also have commentary that explains and provides examples of how the rules should be interpreted that is not included in this summary.

Rule 4-7.11 Application of Rules

- (a) Lawyer advertising rules apply to all media, including newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, Internet banners, pop-ups, websites, social networking, and video sharing sites
- (b) Lawyer advertising rules apply to Florida Bar members and out-of-state lawyers who advertise that they provide legal services in Florida
- (c) Lawyer advertising rules apply to communications to referral sources

Rule 4-7.12 Required Content

- (a) Name and Office
 - (1) Name of advertising lawyer, law firm, lawyer referral service or lawyer directory
 - (2) Bona fide office by city, town, or county
- (b) Disclosure that the lawyer will refer the case to another lawyer when applicable
- (c) Required information must appear in all languages used in the ad
- (d) Required information must be reasonably prominent and clearly legible if written and intelligible if spoken

Rule 4-7.13 Deceptive and Inherently Misleading Advertisements

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(a) Deceptive and Inherently misleading ads include:

- (1) Material statements that are factually or legally inaccurate
- (2) Omissions of information necessary to prevent misleading consumers
- (3) Implication of a material nonexistent fact

(b) Examples of Deceptive and Inherently Misleading Ads:

- (1) Predictions or guaranties of success or specific results
- (2) Past results that are not objectively verifiable
- (3) Comparisons or characterizations of skills, experience, reputation or record that are not objectively verifiable
- (4) Areas of practice that the lawyer does not practice or intend to practice
- (5) Voices or images of a person that appears to be a lawyer or law firm employee without a prominent disclaimer “Not an employee or member of the firm”
- (6) Dramatizations without a prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT” and actors appearing as if in a professional or occupation without a prominent disclaimer “ACTOR. NOT ACTUAL [..]”
- (7) Any aspect of an ad that states or implies the lawyer will violate the law or ethics rules
- (8) Testimonials that the giver is not qualified to make, that are not the actual experience of the giver, that are not representative of what clients of the advertiser actually experience, that the lawyer has written or drafted, that the giver is paid for, and that do not include a disclaimer that prospective clients may not obtain the same or similar results
- (9) Stating or implying that The Florida Bar has approved the ad or the lawyer, except for saying the lawyer is a member of The Florida Bar or is board certified, if true

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- (10) Use of a judicial, executive, or legislative title before a person's name who is a former or retired judicial, executive or legislative officer

Rule 4-7.14 Potentially Misleading Advertisements

(a) Potentially misleading ads include:

- (1) Ads that have more than one interpretation, some of which are materially misleading
- (2) Accurate ads that may mislead a prospective client about a material matter
- (3) References to memberships, awards, and honors unless bona fide, recognized in the legal community, selection is on objective criteria
- (4) Use of the terms "board certified," "specialist" "expert" or variations of those terms unless the lawyer is certified by The Florida Bar, an organization accredited by the ABA (with a disclaimer that not certified by The Florida Bar), or another state bar with standards substantially the same as The Florida Bar
- (5) Information about fees charged unless accompanied by a disclosure of costs the client may be responsible for; lawyers who advertise specific fees must honor them for at least 90 days unless the ad itself states a shorter span, except the span for yellow pages and other annual publications may not be less than 1 year

(b) Ads with potentially misleading information may be used if the lawyer provides sufficient clarifying information in the ad

Rule 4-7.15 Unduly Manipulative or Intrusive Advertisements

- (a) Ads may not include images, sounds, videos or dramatizations designed to appeal to emotions rather than "a rational evaluation" of the lawyers qualifications
- (b) Ads may not include authority figures such as actual or judges and law enforcement or actors portraying them, to endorse the lawyer or act as a spokesperson

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- (c) Celebrities may not be used, except for a local announcer who regularly records ads and does not endorse the lawyer
- (d) Lawyers may not use economic incentives to hire the lawyer or view the ad, except for a discounted fee or free legal advice

Rule 4-7.16 Presumptively Valid Content

This rule lists the “safe harbor” or “tombstone” information that is presumed not to be misleading, potentially misleading, or unduly manipulative if used in ads for lawyers, law firms, and lawyer referral services. This rule remains largely unchanged from Rule 4-7.2(b) with the addition of membership and positions in any state bar (as opposed to only Florida) and adding “proudly serving your community” as common salutary language.

Rule 4-7.17 Payment for Advertising and Promotion

- (a) Ads may not be paid for by a lawyer who is not in the same law firm as the advertising lawyer
- (b) Lawyers may not pay for referrals, but lawyers may pay reasonable advertising costs of permissible ads, may pay the usual charges of a lawyer referral service, lawyer referral service or other legal service organization, and may buy a law practice as permitted by rule 4-1.17
- (c) Ads may not be paid for by a nonlawyer

Rule 4-7.18 Direct Contact with Prospective Clients [substantially similar to Rule 4-7.4, but with some amendments]

- (a) Lawyers and persons acting for lawyers cannot solicit prospective employees in person, by telephone, telegraph, facsimile, or any written communication that does not comply with direct mail rules, unless the lawyer is related to or has a prior professional relationship with the client, and a lawyer cannot charge a fee for any representation gotten in violation of the rule
- (b) Direct Mail and Direct Email:
 - (1) to prospective clients cannot be sent directly or indirectly if:

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- (A) Within 30 days of a personal injury, wrongful death, accident or disaster
- (B) The lawyer knows or should know the prospective client is represented by a lawyer in the matter
- (C) The lawyer knows the person does not want communications from the lawyer
- (D) There is coercion, duress, fraud, overreaching, harassment, intimidation or undue influence
- (E) The advertisement violates other advertising rule
- (F) The lawyer knows or should know the person is unlikely to use rational judgment because of the person's physical or mental condition
- (G) The lawyer knows or reasonably should know that the advertisement is for representation in a violence injunction and is being sent to the respondent before the respondent is served

(2) Direct Mail and Direct Email:

- (A) Must comply with lawyer advertising rules 4-7.11 through 4-7.17
- (B) Must be marked "Advertisement" in a color that contrasts with both the background and with other text on the face of the envelope or self-mailer and on each page of enclosures or each panel of a brochure; if a direct email, the subject line must begin with the word "Advertisement; direct mail and direct email sent at a prospective client's request does not need to include the "Advertisement" disclaimers
- (C) Must contain a statement of qualifications and experience
- (D) Any contract included must be marked "SAMPLE" in red ink at the top of each page and marked "DO NOT SIGN" in the client signature line

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(E) The first sentence of targeted direct mail or direct email must be “If you have already retained a lawyer for this matter, please disregard this letter”

(F) Must not be designed to look like pleadings or other legal documents

(G) Must include a disclaimer that another lawyer in the firm will handle the matter or that the case will be referred to a lawyer outside the firm where applicable

(H) Targeted direct mail and email must contain a disclosure of where the information was obtained that caused the lawyer to send the direct mail or email

(I) Targeted direct mail may not disclose the nature of the legal problem on the envelope or outside of a self-mailer

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

Rule 4-7.19 Filing Requirement

- (a) All ads required to be filed for review must be filed at least 20 days before their first use with The Florida Bar at its headquarters address
- (b) The Florida Bar reviews each filed ad for compliance with rules 4-7.11 through 4-7.15 and 4-7.18(b)(2). If no communication is sent within 15 days of receipt by the bar, the ad is deemed approved
- (c) Lawyers may obtain a preliminary opinion on ads by submitting a draft with the filing fee, but must still file the final version of the advertisement at no additional charge
- (d) Lawyers may obtain an opinion on exempt ads by complying with the submission requirements, but may not obtain an opinion on an entire website; instead, lawyers may file a specific page of a website
- (e) The Florida Bar will review ads for facial compliance with Rule 4-7.11 through 4-7.15 and 4-1.18(b)(2), but the lawyer is responsible for the ads’ accuracy

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- (f) A finding of compliance is binding on The Florida Bar in a grievance proceeding unless the ad contains a misrepresentation that cannot be discovered from the advertisement itself; The Florida Bar can change a finding of compliance; a lawyer may be disciplined for:
 - (1) Not filing ads timely
 - (2) Using an ad that does not comply with the lawyer advertising rules
 - (3) Filing an ad that contains a misrepresentation that cannot be ascertained from the face of the ad
 - (4) Using an ad that The Florida Bar originally found compliant more than 30 days after a subsequent notification of noncompliance by The Florida Bar
 - (5) Continued posting of noncompliant information on a website more than 15 days after a notice of noncompliance by The Florida Bar
- (g) The Florida Bar must notify a lawyer that use of a noncompliant ad may result in discipline
- (h) Filings must include:
 - (1) A copy of the ad in its actual form
 - (2) A transcript
 - (3) A printed copy of all spoken and written text
 - (4) An accurate English translation for any language other than English
 - (5) A sample envelope for direct mail ads other than self-mailers plus all enclosures
 - (6) A statement of the ad media to be used and when the ad will be used
 - (7) The name of the lawyer responsible for the ad's content
 - (8) A \$150 filing fee for each timely filed ad and a \$250 fee for each ad filed late

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- (9) Any information requested by The Florida Bar to verify information in the ad
 - (i) If circumstances change, the lawyer may be required to re-filed the ad at The Florida Bar headquarters address with a fee no greater than \$100
 - (j) Lawyers must keep each advertisement for 3 years after its last use; for direct mail, a single copy of the ad/letter with a list of recipients suffices if the ads are identical

Rule 4-7.20 Exemptions from the Filing and Review Requirement [substantially the same as Rule 4-7.8]

- (a) Ads other than direct mail and direct email that contain no information other than the safe harbor information listed in rule 4-7.16
- (b) Public service announcements
- (c) Listings in law lists or bar publications
- (d) Mailings sent only to existing and former clients and other lawyers
- (e) Information provided at the request of a prospective client
- (f) Professional announcements cards sent only to existing and former clients, other lawyers, relatives and close personal friends
- (g) Lawyer and law firm websites

Rule 4-7.21 Firm Names and Letterhead [substantially the same as Rule 4-7.10]

- (a) Lawyers may not have false or misleading names or letterhead
- (b) Lawyers may practice under trade names if they are not misleading
- (c) Lawyers who advertise under a trade must practice under the trade name, including on letterhead, business cards, office signage, fee contracts, and pleadings
- (d) Law firms with offices in multiple jurisdictions may use the same name in all jurisdictions, but must identify the lawyers' jurisdictional limitations as to particular office locations

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- (e) A lawyer who is a public officer, but not actively practicing in a law firm cannot appear in that law firm's name
- (f) Law firm names, letterhead, and business cards cannot state or imply that lawyers are partners when they are not
- (g) Lawyers who are employees of an insurance company who represent insureds may practice under the name of the lawyer/supervisor under specific circumstances, including that the employment relationship is disclosed

Rule 4-7.22 Lawyer Referral Services

- (a) Lawyers cannot take referrals from services unless the service:
 - (1) complies with lawyer advertising rules
 - (2) charges a fee that does not constitute improper fee-splitting between the lawyer and the service, unless an approved not-for-profit lawyer referral service under chapter 8
 - (3) refers clients only to those authorized to practice law in Florida
 - (4) has or requires the lawyer to have malpractice insurance of at least \$100,000 per claim
 - (5) reports the names of all participating lawyers to The Florida Bar quarterly
 - (6) reports the names of all those authorized to act for the service to The Florida Bar on a quarterly basis
 - (7) responds in writing to any inquiry by bar counsel within 15 days
 - (8) does not state or imply that the service is Florida Bar endorsed or approved, unless approved by The Florida Bar under chapter 8
 - (9) uses its legal name or a registered fictitious name
 - (10) includes a disclosure in all ads that it is a lawyer referral service
 - (11) includes a disclosure in all ads that lawyers pay the service for referrals

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- (b) Lawyers who accept referrals from a lawyer referral service are responsible for making sure all ads, including direct mail ads, comply with the lawyer advertising rules
- (c) Lawyer referral services are defined as any entity receiving anything of value in exchange for referring clients to a lawyer from a specific group of lawyers or any group or pooled advertising program using a common telephone number or URL where clients are referred only to participating lawyers; pro bono referral programs are not considered lawyer referral services for purposes of the rule

Rule 4-7.23 Lawyer Directory

- (a) Lawyer directories are entities that are paid to list lawyers in a common website, book or other publication where information about all participating lawyers is provided and prospective clients are not directed to a specific lawyer
- (b) Lawyers may not participate in a directory unless the directory:
 - (1) complies with lawyer advertising rules
 - (2) charges a fee that does not constitute improper fee-splitting between the lawyer and the directory
 - (3) lists only those authorized to practice law in Florida
 - (4) responds in writing to any inquiry by bar counsel within 15 days
 - (5) does not state or imply that the directory is Florida Bar endorsed or approved
 - (6) uses its legal name or a registered fictitious name
 - (7) includes a disclosure in all ads that it is a lawyer directory
- (c) Lawyers who advertise in lawyer directories are responsible for making sure any ads for the directory comply with lawyer advertising rules