

Regular Session, 2006

ENROLLED

SENATE CONCURRENT RESOLUTION NO. 113

BY SENATOR MARIONNEAUX AND REPRESENTATIVE CAZAYOUX

A CONCURRENT RESOLUTION

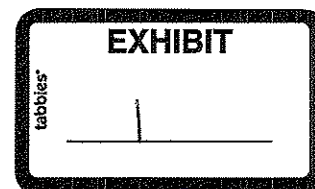
To urge and request the Louisiana Supreme Court, through its Chief Justice, to establish a committee to study attorney advertising and the need and feasibility of creating a standing committee to evaluate such advertising, provide written advisory opinions thereon, develop a handbook on advertising, and recommend amendments to the Rules of Professional Conduct.

WHEREAS, Article V, Section 5(B) of the Constitution of Louisiana provides that the Louisiana Supreme Court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar; and

WHEREAS, the manner in which some members of the Louisiana State Bar Association are advertising their services in this state has become undignified and poses a threat to the way attorneys are perceived in this state; and

WHEREAS, the Louisiana Legislature in this 2006 Regular Session considered the passage of Senate Bill No. 617 which would have created and provided for a Standing Committee on Attorney Advertising to address ethical concerns posed by lawyer advertising and to present a more positive message to the citizens of this state; and

WHEREAS, the committee would have been tasked to evaluate all advertising 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 Louisiana State Bar Association, 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; and



WHEREAS, it was determined that further study of attorney advertising and the feasibility of a standing committee as proposed in Senate Bill No. 617 was warranted.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby urges and requests that the Louisiana Supreme Court, through its Chief Justice, establish a committee to study attorney advertising and the need and feasibility of creating a standing committee to evaluate such advertising, provide written advisory opinions thereon, develop a handbook on advertising, and recommend amendments to the Rules of Professional Conduct.

BE IT FURTHER RESOLVED that it is urged and requested that such committee include, but not be limited to, the following persons:

(1) One member of the Senate who is a licensed and practicing attorney appointed by the president of the Senate.

(2) One member of the House of Representatives who is a licensed and practicing attorney appointed by the speaker of the House of Representatives.

(3) The chairman of the Louisiana Attorney Disciplinary Board or his designee.

(4) The president of the Louisiana State Bar Association or his designee, which is recommended to be the chairman of the Committee on the Rules of Professional Conduct of the Louisiana State Bar Association or his designee.

(5) The chairman of the Public Access and Consumer Protection Committee of the Louisiana State Bar Association or his designee.

(6) A representative of the Louisiana Supreme Court designated by the Chief Justice.

BE IT FURTHER RESOLVED that the committee shall report its findings, and any recommendations, to the Louisiana Supreme Court on or before March 1, 2007.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

**LOUISIANA STATE BAR ASSOCIATION
RULES OF PROFESSIONAL CONDUCT COMMITTEE
MEETING MINUTES
THURSDAY, SEPTEMBER 21, 2006 AT 12:00 NOON**

Agenda Item 1. Roll Call

Participants:

Richard C. Stanley, Chair
Shaun Gerard Clarke, Committee Member
Sam Gregorio, Committee Member
Clare F. Jupiter, Committee Member
Leslie J. Schiff, Committee Member, via conference call
Joseph L. Shea, Jr., Committee Member
Edward Walters, Jr., Committee Member
Timothy F. Averill, Supreme Court Liaison, Ex-officio
Charles B. Plattsmier, Disciplinary Liaison, Ex-officio
Marta Ann Schnabel, LSBA President
Cheri Cotogno Grodsky, Director of Professional Programs, LSBA
William N. King, Practice Assistance Counsel, LSBA
Richard P. Lemmler, Jr., Ethics Counsel, LSBA

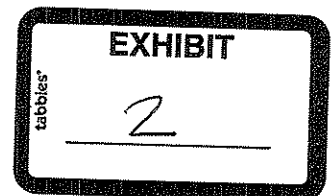
Not Participating:

Dane S. Ciolino, Committee Member
S. Guy deLaup, Committee Member
E. Phelps Gay, Committee Member
Harry S. Hardin, III, Committee Member
Lila Tritico Hogan, Committee Member
Christine Lipsey, Committee Member

The Chair, Richard C. Stanley, called the meeting to order. Business was conducted in accordance with the agenda below.

Rick Stanley advised that the Supreme Court appointed a Committee to study attorney advertising. Four members of the Rules of Professional Conduct Committee are on the Court's Committee. The following individuals are on the Supreme Court Committee and the Rules Committee : Sam Gregorio, Chuck Plattsmier, Larry Shea and Rick Stanley. There was a joint resolution of the Legislature that requested that the Court's Committee have a report by Spring 2007. The Court Committee has imposed a deadline of March 1, 2007 to complete its work. The Court's Committee wants input from the Rules Committee concerning review of the advertising rules. The process will involve the LSBA presenting the matter to the LSBA House of Delegates with special rules of debate. The review of the advertising rules will be by expedited process.

The Chair noted that from time to time the vote on a particular rule may not be unanimous. In such instances, the Chair recommended that any dissenting member at that member's discretion should feel free to report



their views by email, which will be made part of the RPC's records and transmitted to the Court Committee. There was no objection to this suggested procedure from the Committee members.

Stanley noted that members of the Supreme Court Committee have been invited to attend the Rules of Professional Conduct Committee meetings.

Agenda Item 2. Proposed Rules 7.1, 7.2 and 7.3

7.1(a) - The Committee voted to strike the last sentence "Regardless of medium, a lawyer's advertisement shall provide only useful, factual information presented in a non-sensational manner."

The Committee voted to change the word "subchapter" to "these rules".

7.1(b) - The Committee voted to make no changes to this section.

There was a Motion and a second to suggest to the Court to amend Rule XIX, Section 6 to expand ODC jurisdiction in a manner that parallels Rule 8.5. The motion passed with no opposition.

7.2(a)(1) - The Committee voted to delete the word "written".

7.2(a)(2) - The Committee voted to delete the word "written".

7.2(b)(1) - The Committee voted to delete "A" and add the words "An advertisement or" to the beginning of the second sentence before the word "communication".

7.2(b)(1)(A) - no change

7.2(b)(1)(B) - no change

7.2(b)(1)(C)-no change

7.2(b)(1)(D) - no change

7.2(b)(1)(E) - no change

The Committee voted to add a new sections (F) (G) (H) (I) and (J) to read as follows:

(F) includes a portrayal of a client by a nonclient or the reenactment of any events or scenes or pictures or persons that are not actual or authentic;

(G) includes the portrayal of a judge, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionilized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;

(H) depicts the use of a courtroom;

(I) resembles a legal pleading, notice, contract or other legal document;

(J) utilizes a nickname, moniker, motto or trade name that implies an ability to obtain results in a matter.

There was discussion about adding section (K) “utilizes a jingle”. There was a Motion and a second to add such language. The motion did not pass. The vote was 3 to 3 as follows:

In favor of- Larry Shea, Leslie Schiff and Sam Gregorio

Against- Edward Walters, Clare Jupiter and Rick Stanley. **This issue may be considered at a later meeting.**

7.2(b)(2) - no changes

7.2(b)(3) - delete the word “written”.

7.2(b)(4) - no changes.

7.2(b)(5) - The Committee voted in favor of the following language: A lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm states or implies that it currently practices law in that area of practice, when that is not the case.

7.2(b)(6) - no changes.

7.2(c)(1) - no changes.

7.2(c)(2) - no changes.

7.2(c)(3)(B)(i) - There was discussion regarding adding the words “or by the ABA”. The Committee did not vote in favor of this added language.

The Committee directed Richard Lemmler to make the rules consistent by adding “advertisement or communication” throughout the proposed rules.

Agenda Item 3. Public Hearings

Public hearings will be conducted in Shreveport, Baton Rouge, Lafayette and New Orleans. The following committee members will participate:

Shreveport - Larry Shea, Sam Gregorio, Chuck Plattsmier and Marta-Ann Schnabel.

Baton Rouge - Edward Walters, Sam Gregorio, Leslie Schiff, Clare Jupiter, Chuck Plattsmier and Marta-Ann Schnabel.

New Orleans - Rick Stanley, Dane Ciolino, Chuck Plattsmier and Marta-Ann Schnabel.

Lafayette - Leslie Schiff, Sam Gregorio, Chuck Plattsmier and Marta-Ann Schnabel.

The next meeting has been moved to 11:00 a.m.

Other matters

Marta-Ann Schnabel will contact the Board of Specialization for information.

Richard Lemmler will get information about the Frey case and will add language and attach the Frey decision to the proposed changes.

Adjournment

**LOUISIANA STATE BAR ASSOCIATION
RULES OF PROFESSIONAL CONDUCT COMMITTEE
MEETING MINUTES
TUESDAY, SEPTEMBER 26, 2006 AT 11:00 A.M.**

Agenda Item 1. Roll Call

Participants:

Richard C. Stanley, Chair
Shaun Gerard Clarke, Committee Member, via conference call
E. Phelps Gay, Committee Member
Sam Gregorio, Committee Member, via conference call
Harry S. Hardin, III, Committee Member
Clare F. Jupiter, Committee Member
Leslie J. Schiff, Committee Member
Joseph L. Shea, Jr., Committee Member
Edward Walters, Jr., Committee Member
Timothy F. Averill, Supreme Court Liaison, Ex-officio
Charles B. Plattsmier, Disciplinary Liaison, Ex-officio
Cheri Cotogno Grodsky, Director of Professional Programs, LSBA
William N. King, Practice Assistance Counsel, LSBA
Richard P. Lemmler, Jr., Ethics Counsel, LSBA

Not Participating:

Dane S. Ciolino, Committee Member
S. Guy deLaup, Committee Member
Christine Lipsey, Committee Member

The Chair, Richard C. Stanley, called the meeting to order. Business was conducted in accordance with the agenda below.

Agenda Item 2. Approval of September 21, 2006 Meeting Minutes

No action was taken. The minutes will be circulated by email to the Committee for approval.

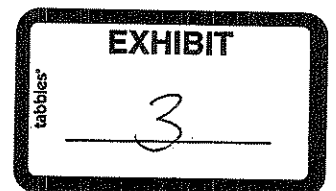
Agenda Item 3. Proposed Rules 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7

7.2(b)(1) - There was a Motion and a second to add a section (K) with language as follows: "fails to comply with Rule 1.8(e)(4)(iii)."

7.2(c)(1) - Approved/No changes

7.2(c)(2) - Strike "written"

7.2(c)(3)(A) - The Committee is not in favor of changing the language of this section. The Committee is in favor of recommending to the Court to encourage the Board of Legal Specialization to address accreditation of other agencies in a timely fashion.



7.2(c)(3)(i) - The Committee voted to delete the original language and substitute “the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and”

7.2(c)(3)(C) - Approved/no changes

7.2(c)(3)(4) - Strike the word “written”

There was a motion and a second that regarding “advertising” “communication” or “written”, to go back to Florida’s original usage.

7.2(c)(5) - Approved/no changes

7.2(c)(6) - Approved/no changes

7.2(c)(7) - Approved/no changes

7.2(c)(8) - Approved

7.2(c)(9) - Approved

7.2(c)(10) - Approved

7.2(c)(11) - The Committee voted to revise and add the following language [as underlined] to the second sentence - “If the words or statements appear in text, then the text also must be legible and no smaller than one-quarter the size of the largest type otherwise appearing in the advertisement, or eight-point typeface, whichever is larger.”

7.2(c)(12) - There was a motion and a second to delete (G) and accordingly re-number the subsequent subsections, this motion passed and to also add “and” at the end of section (J).

7.3(a) - Approved/no changes

7.3(b) - The Committee voted to delete the words “Except as otherwise provided in this subdivision”.

7.4(a) - There was a motion to delete the language “A lawyer shall not enter into an agreement for charge, or collect a fee for professional employment obtained in violation of this Rule.” There was a motion to delete this language by Sam Gregorio. There was no second to this motion. Rick urged the committee members to send a minority report to him or Cheri Grodsky if committee members want to.

7.4(b)(1)(A) - Approved/no changes

7.4(b)(1)(B) - There was a motion to delete this section. There was a second. The motion to delete passed with a 7/2 vote as follows:

Delete - Larry Shea, Leslie Schiff, Clare Jupiter, Phelps Gay, Shaun Clarke, Harry Hardin

and Rick Stanley.

In favor of keeping the language - Ed Walters and Sam Gregorio.

The subsequent sections should be re-numbered accordingly.

7.4(b)(1)(C) - Approved

7.4(b)(1)(D) - Approved

7.4(b)(1)(E) - Approved

7.4(b)(1)(F) - Approved

7.4(b)(2)(A) - Approved

7.4(b)(2)(B) - Approved

7.4(b)(2)(C) - Approved

7.4(b)(2)(D) - There was a Motion to delete language. There was a second. Those in favor of keeping the language were: Larry Shea, Leslie Schiff, Edward Walters, Harry Hardin, Shaun Clarke and Sam Gregorio. Those in favor of deleting the language were: Clare Jupiter and Phelps Gay. The motion did not pass.

7.4(b)(2)(E) - There was a motion to delete the language. The motion passed. Subsequent sections will be re-numbered accordingly. Also, the language of current Louisiana Rule 7.3(b)(3)(A)(iii) will be put in place of (C) ["Such communications shall not resemble a legal pleading, notice, contract or other legal document and shall not be delivered via registered mail, certified mail or other restricted form of delivery."].

7.4(b)(2)(F) - Approved

7.4(b)(2)(G) - There was a motion to delete this section. There was no opposition. Subsequent sections will be re-numbered accordingly.

7.4(b)(2)(H) - Approved.

7.4(b)(2)(I) - The Committee voted to strike the second sentence that reads as follows: "The disclosure required by this rule shall be specific enough to help the recipient understand the extent of the lawyer's knowledge regarding the recipient's particular situation."

7.4(b)(2)(J) - Approved

1.18(a) - There was discussion about this rule. The Committee is in favor of adding "For purposes of this Rule" to distinguish the focused use of the term "prospective client" in this Rule from its broader use throughout the advertising-related rules. This change will be recommended to the Court Committee. The recommendation is that, in conjunction with the proposed amendments to the advertising Rules, Rule 1.18(a) should be amended to read "(a) For purposes of this Rule, a person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client."

7.5(a) - Approved

7.5(b)(1)(A) - Approved

7.5(b)(1)(B) - Approved

7.5(b)(1)(C) - Approved

7.5(b)(1)(D) - Approved

7.5(b)(2)(A) - Approved

7.5(b)(2)(B) - Approved

7.5(b)(2)(C) - There was a motion to delete (b)(2)(C) and (b)(1)(C). The vote was 6 to 3 to delete both sections. Section (b)(1)(D) will be re-numbered as “(C)” and “or” will be moved up and added at the end of Section (b)(1)(B). There was then a motion to add a modified version of the original language back into section (b)(2). The vote was 5/4 in favor. Section (b)(2)(C) will be modified to read: “(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson shall provide a spoken disclosure identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer.”

7.6 - Adopted as written, with spelling correction of the word “ADVERTISEMENT” in 7.6(c)(3).

7.6(a) - Approved/no changes

7.6(b) - Approved/no changes

7.6(c) - Richard Lemmler will make sure that the cross-referenced numbering is correct.

7.7

President, Marta-Ann Schnabel will need to be present for discussion of 7.7. There was discussion about staggering the terms of this Committee. There was also discussion about whether the Supreme Court should approve membership of this Committee. There was also discussion about whether there will be a separate Committee for advertising or whether it will be a subcommittee.

7.7(a) - Add language “, or any subcommittee designated by the Rules Committee (hereinafter collectively referred to as ‘the Committee’):” after the word Committee before the number 1

7.7(a)(3) - In the heading, add the word “Procedural” before “Rules”

7.7(a)(4) - Change “three months” to “six months”

7.7(a)(5) - There was a motion and a second to delete this entire section

7.7(b) - This section will be reworked by Richard Lemmler for consideration at the next meeting.

It was suggested that this section be divided into two, adding a “(i)” and a “(ii)” where appropriate so that the distinction between a normal, timely filing and an optional advance advisory opinion (which also serves as a timely filing) might be made clearer.

7.7(c)(5) - the Committee voted to delete the amounts of “one hundred fifty (\$150) dollars” and “two hundred fifty (\$250) dollars” since we do not know the cost at this time. The Committee voted to add “solely” before the words “to offset”. Marta-Ann Schnabel will have to be present and provide input.

Other matters

Public Hearings

The public hearings will be held as follows:

October 30, 2006 Shreveport after 10:00 a.m. - location to be determined

November 8, 2006 Lafayette - location to be determined

November 9, 2006 New Orleans Loyola Law School

November 12, 2006 Baton Rouge

Times and locations will be confirmed shortly.

Public hearings will be publicized via the following: blast e-mail, local bars, newspaper and LSBA web-site.

A court reporter will be present at all of the public hearings. There will also be a power point to highlight the major changes. The format will be the same as Ethics 2000.

Supreme Court Committee on Advertising-Survey

There was discussion that the Supreme Court Committee on Advertising will conduct a survey. Larry Shea will furnish the name of the survey company to Tim Averill. The Court Committee will commission a survey. The next meeting date of the Supreme Court Committee is October 23, 2006. The meeting will be held in Baton Rouge at the First Circuit Court of Appeal.

Next Meeting Date

The next meeting date of the Rules of Professional Conduct Committee will be October 3, 2006 at noon.

Information Item

A letter dated September 14, 2006 from the Federal Trade Commission to Michael Colodner was distributed to the Committee as an informational item.

Florida

Richard Lemmler will speak with Florida to discuss any litigation of their Rules.

Adjournment

PROPOSED

LOUISIANA RULES OF PROFESSIONAL CONDUCT

INFORMATION ABOUT LEGAL SERVICES

PROPOSED

RULE 7.1 GENERAL

(a) Permissible Forms of Advertising. Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with Rule 7.4.

(b) Advertisements Not Disseminated in Louisiana. These Rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the Rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Louisiana.

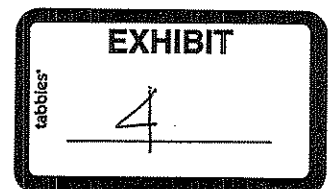
PROPOSED

RULE 7.2 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Information.

(1) Name of Lawyer. All advertisements and written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.



(2) **Location of Practice.** All advertisements and written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. 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, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. If an advertisement or written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office, appropriate qualifying language must appear in the advertisement.

(b) Prohibited Statements and Information.

(1) **Statements About Legal Services.** A lawyer shall not make or permit to be made a false, misleading, deceptive, or unfair communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

(A) contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;

(B) contains any reference to past successes or results obtained or is otherwise likely to create an unjustified expectation about results the lawyer can achieve except as allowed in the Rule regulating information about a lawyer's services provided upon request;

(C) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(D) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(E) contains a testimonial;

(F) includes a portrayal of a client by a non-client or the reenactment of any events or scenes or pictures that are not actual or authentic;

(G) includes the portrayal of a judge, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;

(H) depicts the use of a courtroom;

(I) resembles a legal pleading, notice, contract or other legal document;

(J) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or

(K) fails to comply with Rule 1.8(e)(4)(iii).

(2) Misleading or Deceptive Factual Statements. Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this Rule shall not:

(A) be directly or impliedly false or misleading;

(B) be potentially false or misleading;

(C) fail to disclose material information necessary to prevent the information supplied from being actually or potentially false or misleading;

(D) be unsubstantiated in fact; or

(E) be unfair or deceptive.

(3) **Descriptive Statements.** A lawyer shall not make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications; provided that this provision shall not apply to information furnished to a prospective client at that person's request or to information supplied to existing clients.

(4) **Prohibited Visual and Verbal Portrayals.** Visual or verbal descriptions, depictions, or portrayals of persons, things, or events shall not be deceptive, misleading, or manipulative.

(5) **Advertising Areas of Practice.** A lawyer or law firm shall not state or imply in advertisements or communications that the lawyer or law firm currently practices in an area of practice when that is not the case.

(6) **Stating or Implying Louisiana State Bar Association Approval.** A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.

(c) General Regulations Governing Content of Advertisements.

(1) **Use of Illustrations.** Illustrations, including photographs, used in advertisements shall contain no features that are likely to deceive, mislead, or confuse the viewer.

***RULE 7.5 ADVERTISEMENTS IN THE ELECTRONIC MEDIA OTHER THAN
COMPUTER-ACCESSED COMMUNICATIONS***

(a) Generally. With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.

(b) Appearance on Television or Radio. Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.

(1) *Prohibited Content.* Television and radio advertisements shall not contain:

- (A) any feature that is deceptive, misleading, manipulative, or that is likely to confuse the viewer or listener;
- (B) any spokesperson's voice or image that is recognizable to the public in the community where the advertisement appears;
- (C) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm; or
- (D) any background sound other than instrumental music.

(2) *Permissible Content.* Television and radio advertisements may contain:

- (A) images that otherwise conform to the requirements of these Rules;
- (B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or
- (C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson's voice or image is not recognizable to the public in the community where the advertisement appears, and that spokesperson shall provide a spoken disclosure identifying the

spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer.

PROPOSED

RULE 7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of these Rules, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on World Wide Web search engine screens and elsewhere.

(b) Internet Presence. All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

- (1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;
- (2) shall disclose one or more bona fide office location(s) of the lawyer or law firm, in accordance with subdivision (a)(2) of Rule 7.2; and
- (3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

(c) Electronic Mail Communications. A lawyer shall 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, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E), (b)(2)(F) and (b)(2)(G) of Rule 7.4 are met;

(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) the subject line of the communication states "LEGAL ADVERTISEMENT."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2.

PROPOSED

RULE 7.7 EVALUATION OF ADVERTISEMENTS

(a) Louisiana State Bar Association Rules of Professional Conduct Committee.

With respect to said Committee, it shall be the task of the Committee, or any subcommittee designated by the Rules of Professional Conduct Committee (hereinafter collectively referred to as "the Committee"): 1) to evaluate all advertisements filed with the Committee for compliance with the Rules governing lawyer advertising and solicitation and to provide written advisory opinions concerning compliance with those Rules to the respective filing lawyers; 2) to develop a handbook on lawyer advertising for the guidance of and dissemination to the members of the Louisiana State Bar Association; and 3) to recommend, from time to time, such amendments to the Rules of Professional Conduct as the Committee may deem advisable.

(1) Recusal of Members. Members of the Committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or by other lawyers in their firms.

- (5) whether the announcement contains legal advice; and
 - (6) 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) Any written communications 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.
- (g) Computer-accessed communications as described in subdivision (b) of Rule 7.6.

PROPOSED

RULE 7.9 INFORMATION ABOUT A LAWYER'S SERVICES PROVIDED UPON REQUEST

(a) Generally. Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rule 7.2 unless otherwise provided in this Rule 7.9.

(b) Request for Information by Potential Client. Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

- (1) The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client.

(2) The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client includes a contingency fee contract, the top of each page of the contract shall be marked "SAMPLE" in print size at least as large as the largest print used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

(3) Notwithstanding the provisions of subdivision (b)(1)(B) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are not otherwise misleading.

(c) Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm. A statement and any information furnished to a prospective client, as authorized by subdivision (b) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

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RULE 7.10 FIRM NAMES AND LETTERHEAD

(a) False, Misleading, or Deceptive. A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.

(b) Trade Names. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is

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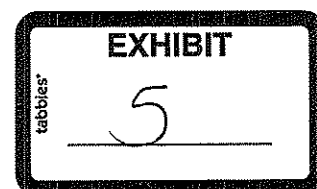
INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 GENERAL

(a) Permissible Forms of Advertising. Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with Rule 7.4.

(b) Advertisements Not Disseminated in Louisiana. These Rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the Rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Louisiana.

(c) Communications for Non-Profit Organizations. Publications, educational materials, websites and other communications by lawyers on behalf of non-profit organizations that are not motivated by pecuniary gain are not advertisements or unsolicited written communications within the meaning of these Rules.



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RULE 7.2 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

(1) **Name of Lawyer.** All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) **Location of Practice.** All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. 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, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.

(b) Permissible Content of Advertisements and Unsolicited Written

Communications. If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

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

(A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney”, “lawyer” or “law firm”;

(B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together 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 Louisiana where the lawyer is licensed to practice;

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

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

(E) foreign language ability;

(F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;

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

(H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;

(I) common salutatory language such as "best wishes," "good luck," "happy holidays," or "pleased to announce";

(J) punctuation marks and common typographical marks; and

(K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background.

(2) **Public Service Announcements.** A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(1) **Statements About Legal Services.** A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

(A) contains a material misrepresentation of fact or law;

(B) is false, misleading or deceptive;

(C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;

(D) contains a reference or testimonial to past successes or results obtained, except as allowed in the

Rule regulating information about a lawyer's services provided upon request;

(E) promises results;

(F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;

(I) includes a portrayal of a client by a non-client or the reenactment of any events or scenes or pictures that are not actual or authentic;

(J) includes the portrayal of a judge or a jury, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;

(K) resembles a legal pleading, notice, contract or other legal document;

(L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or

(M) fails to comply with Rule 1.8(e)(4)(iii).

(2) Prohibited Visual and Verbal Portrayals and Illustrations. A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions,

depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.

(3) Advertising Areas of Practice. A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.

(4) Stating or Implying Louisiana State Bar Association Approval. A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.

(5) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is “certified,” “board certified,” an “expert” or a “specialist” except as follows:

(A) Lawyers Certified by the Louisiana Board of Legal Specialization. A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” “board certified,” an “expert in (area of certification)” or a “specialist in (area of certification).”

(B) Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar. A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified,” “board certified,” an “expert in (area of

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***RULE 7.5 ADVERTISEMENTS IN THE ELECTRONIC MEDIA OTHER THAN
COMPUTER-ACCESSED COMMUNICATIONS***

(a) Generally. With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.

(b) Appearance on Television or Radio. Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.

(1) *Prohibited Content.* Television and radio advertisements shall not contain:

(A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive;

(B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm; or

(C) any spokesperson's voice or image that is recognizable to the public in the community where the advertisement appears;

(2) *Permissible Content.* Television and radio advertisements may contain:

(A) images that otherwise conform to the requirements of these Rules;

(B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or

(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson is not recognizable to the public in the community where the advertisement appears and that spokesperson shall

provide a spoken disclosure identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer.

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RULE 7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of these Rules, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on World Wide Web search engine screens and elsewhere.

(b) Internet Presence. All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;

(2) shall disclose one or more bona fide office location(s) of the lawyer or law firm or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

(c) Electronic Mail Communications. A lawyer shall 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, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;

(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised or, in the absence of a bona fide office, the city or town of the lawyer's primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) the subject line of the communication states "LEGAL ADVERTISEMENT."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2.

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***RULE 7.9 INFORMATION ABOUT A LAWYER'S SERVICES PROVIDED
UPON REQUEST***

(a) Generally. Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rule 7.2 unless otherwise provided in this Rule 7.9.

(b) Request for Information by Potential Client. Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client.

(2) The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client includes a contingency fee contract, the top of each page of the contract shall be marked "SAMPLE" in print size at least as large as the largest print used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

(3) Notwithstanding the provisions of subdivision (c)(1)(D) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are not otherwise false, misleading or deceptive.

(c) Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm. A statement and any information furnished to a prospective client, as authorized by subdivision (b) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or

act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.