

Proposed Amendments to Rules Governing Lawyer Advertising (June 2006)

Editor's Note: Crossed out material represents suggested deletions; material in red represents recommended additions.

Section 1200.1 Definitions. [FNa1]

(a) Differing interests include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(b) Law firm includes, but is not limited to, a professional legal corporation, a limited liability company or partnership engaged in the practice of law, the legal department of a corporation or other organization and a qualified legal assistance organization.

(c) Person includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(d) Professional legal corporation means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(e) State includes the District of Columbia, Puerto Rico, and other Federal territories and possessions.

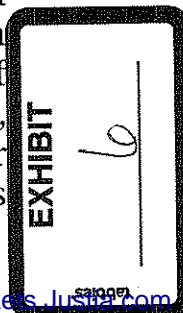
(f) Tribunal includes all courts, arbitrators and other adjudicatory bodies.

(g) [Reserved]

(h) Qualified legal assistance organization means an office or organization of one of the four types listed in section 1200.8(d)(1) through (4), inclusive, that meets all the requirements thereof.

(i) Fraud does not include conduct, although characterized as fraudulent by statute or administrative rule, which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

(j) Domestic relations matters means representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support, or alimony, or to enforce or modify a judgment or order in connection with any such claims, actions or proceedings.



(k) "Advertisement" means any public communication made by or on behalf of a lawyer or law firm about a lawyer or law firm, or about a lawyer's or law firm's services.

(l) "Solicitation" means any advertisement or other communication directed to or targeted at a specific recipient or group of recipients, including a prospective client, or a family member or legal representative of a prospective client, concerning the availability for professional employment of a lawyer or law firm.

(m) "Computer-accessed communication" means any advertisement or solicitation that is disseminated through the use of a computer or other electronic device, including, but not limited to, web sites or pages, search engines, electronic mail, banner advertisements, pop-up advertisements, chat rooms, list servers, instant messaging, domain names, or other internet presences, and any attachments or links related thereto.

[FN1] "Confidence" and "secret" are defined in section 1200.19(a) of this Part. "Sexual relations" is defined in section 1200.29-a of this Part. "Copy" is defined in section 1200.41(d)(10) of this Part.

Section 1200.6 [DR 2-101] ~~Publicity and advertising.~~

~~—(a) A lawyer on behalf of himself or herself or partners or associates, Advertising and Solicitation.~~

(a) The content of advertising and solicitation shall be predominantly informational, and shall be designed to increase public awareness of situations in which the need for legal services might arise and shall be presented in a manner that provides information relevant to the selection of an appropriate lawyer or law firm to provide such services.

(b) A lawyer or law firm shall not use or disseminate or participate in the ~~preparation~~ use or dissemination of any ~~public communication~~ advertisement or ~~communication to a prospective client containing statements or claims that~~ solicitation that:

(1) contains statements or claims that are false, deceptive or misleading; or

~~—(b) [Reserved]~~

(2) violates a disciplinary rule.

(c) Subject to ~~It is proper to include information, provided its dissemination does not violate~~ the provisions of subdivisions (a) and (b), an advertisement or solicitation may include information ~~of this section,~~ as to:

(1) legal and nonlegal education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by the code of professional responsibility; public offices and teaching positions held; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency;

(2) names of clients regularly represented, provided that the client has given prior written consent;

(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the ~~attorney~~ lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of

contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by section 1200.5-c of this Title Part and the nature and extent of services available through those contractual relationships; and

(4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by subdivision (4 t) of this section; range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.

~~(d) Advertising and publicity shall be designed to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel. Information other than that specifically authorized in subdivision (c) of this section that is consistent with these purposes may be disseminated providing that it does not violate any other provisions of this rule.~~ An advertisement or solicitation shall not:

(1) include an endorsement of, or testimonial about, a lawyer or law firm from a current client;

(2) include a paid endorsement of, or testimonial about, a lawyer or law firm;

(3) include the voice or image of a non-attorney spokesperson that is recognizable to the public other than the voice or image of a former client as permitted under subdivisions (e)(3) and (f) of this section;

(4) include the portrayal of a judge, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictitious 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;

(5) depict the use of a courtroom or courthouse;

(6) include 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;

(7) be made to resemble legal documents;

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

(e) Absent compliance with subdivision (f) of this section, an advertisement or solicitation may not contain the following:

1. statements that are reasonably likely to create an expectation about results the lawyer can achieve;

2. statements that compare the lawyer's services with the services of other lawyers;

3. testimonials or endorsements of former clients; or

4. statements describing or characterizing the quality of the lawyer's or law firm's services.

(f) It is permissible to provide the information set forth in subdivision (e) of this section provided:

1. its dissemination does not violate subdivisions (a) and (b) of this section;

2. it has been objectively verified by the lawyer or law firm as of the date on which the advertisement or solicitation is first disseminated; and

3. it is accompanied by the following disclaimer, which shall be spoken in television and radio advertisements and shall appear in writing in television advertisements and in any written or computer-accessed communications: "Prior results cannot and do not guarantee or predict a similar outcome with respect to any future matter, including yours, in which a lawyer or law firm may be retained."

(g) Television or radio advertisements, or recorded solicitations, shall be preceded or followed by a spoken statement that the advertisement or solicitation contains "an advertisement for legal services." Such a statement shall also appear in written form in television advertisements.

(h) Every written advertisement or solicitation, including computer-accessed communications, other than those appearing in a radio or television advertisement or in a telephone directory, newspaper,

magazine or other periodical, or made in person pursuant to section 1200.8(a)(1) of this Part, shall be labeled "Attorney Advertising" on the first page. Any packaging utilized to transmit the advertisement or solicitation shall be labeled "Attorney Advertising" in red ink. If the communication is in the form of a self-mailing brochure or pamphlet, the words "Attorney Advertising" shall appear in red ink on the address panel of the brochure or pamphlet. In the case of electronic mail, the subject line shall contain the notation "ATTORNEY ADVERTISING".

(i) A lawyer or law firm shall not utilize:

1. a pop-up advertisement in connection with computer-accessed communications; or

2. meta tags or other hidden computer codes that, if displayed, would violate a disciplinary rule.

(j) All advertisements or solicitations shall include the name, office address and telephone number of the lawyer or law firm whose services are being offered.

(k) All computer-accessed communications must disclose, in addition to the information required by subdivision (j) of this section, all jurisdictions in which the lawyer or members of the law firm are licensed to practice law and all bona fide office locations of the lawyer or law firm.

(l) Any words or statements required by this rule to appear in an advertisement or solicitation must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud.

~~(e)~~(m) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be delivered to the client at the time of retainer for any such service. Such legal services shall include all those services which are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

~~(f)~~(n) If ~~the~~ an advertisement is broadcast, it shall be prerecorded or taped and approved for broadcast by the lawyer, and a recording or videotape of the actual transmission shall be retained by the lawyer for a period of not less than ~~one~~ three years following such transmission. A

copy of all written advertisements and solicitations and computer-accessed communications shall be retained for a period of not less than three years following their dissemination, except that in the case of an internet web site a printed copy of each page shall be retained for a period of not less than one year from its first publication or modification.

(o) All advertisements ~~of legal services that are mailed, or are distributed other than by radio, television,~~ or solicitations other than those appearing in a telephone directory, ~~newspaper, magazine or other periodical,~~ which are utilized by a lawyer or law firm ~~that practices law seeking to be retained by a client in this State,~~ shall also be subject to the following provisions:

(1) A copy of each advertisement or solicitation shall at the time of its initial ~~mailing or distribution~~ dissemination be filed with the ~~Departmental Disciplinary C~~ attorney disciplinary committee of the appropriate judicial department. A filing shall consist of:

(i) a copy of the advertisement or solicitation in the form in which it was disseminated, e.g., videotape, video disc, audiotape, computer-accessed communication (other than an internet web site or page) or photograph or accurate depiction of publicly displayed advertising;

(ii) for radio and television advertisements, a transcript of the audio portion of the tape and a listing of all media outlets in which the advertisement will appear, the frequency of its use, and the time period during which the advertisement will be used;

(iii) for mailed or computer-accessed communications, a copy of the document sent with any enclosures and sample envelope if utilized;

(iv) if the advertisement or solicitation is in a language other than English, an accurate English-language translation.

(2) Such advertisement or solicitation shall contain no reference to the fact of filing.

(3) If such advertisement or solicitation is directed to a predetermined addressee recipient, a list, containing the names and addresses of all ~~persons~~ recipients to whom the advertisement or solicitation is being or will thereafter be ~~mailed or distributed~~ disseminated, shall be retained by the lawyer or law firm for a period of not less than ~~one~~ three years following the last date of ~~mailing or distribution~~ dissemination.

(4) The advertisements or solicitations filed pursuant to this subdivision shall be open to public inspection.

(5) The requirements of this subdivision shall not apply to such professional cards or other announcements the distribution of which is authorized by section 1200.7(a) of this Part.

~~(g)~~(p) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm ~~may~~ shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm ~~may~~ shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

~~(h)~~(q) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this disciplinary rule in a publication which is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this rule in a publication which is published once per month or less frequently, the lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this rule in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.

~~(i)~~(r) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

~~(j)~~(s) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.

~~(k) All advertisements of legal services shall include the name, office address and telephone number of the attorney or law firm whose services are being offered.~~

~~(l)(t) A lawyer or law firm advertising any contingent fee rates shall, at the time of the fee publication, disclose:~~ All advertisements or solicitations that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall disclose:

(1) that the client will remain liable for any costs, disbursements and other expenses incurred, regardless of the outcome of the matter; and

(2) ~~Whether percentages are~~ where reference is made to any contingent fee rate, whether that rate is computed before or after deduction of costs, disbursements and other expenses of litigation.

~~That, in the event there is no recovery, the client shall remain liable for the expenses of litigation, including court costs and disbursements.~~

Section 1200.1 Definitions. [FNa1]

(a) Differing interests include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(b) Law firm includes, but is not limited to, a professional legal corporation, a limited liability company or partnership engaged in the practice of law, the legal department of a corporation or other organization and a qualified legal assistance organization.

(c) Person includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(d) Professional legal corporation means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(e) State includes the District of Columbia, Puerto Rico, and other Federal territories and possessions.

(f) Tribunal includes all courts, arbitrators and other adjudicatory bodies.

(g) [Reserved]

(h) Qualified legal assistance organization means an office or organization of one of the four types listed in section 1200.8(d)(1) through (4), inclusive, that meets all the requirements thereof.

(i) Fraud does not include conduct, although characterized as fraudulent by statute or administrative rule, which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

(j) Domestic relations matters means representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support, or alimony, or to enforce or modify a judgment or order in connection with any such claims, actions or proceedings.

(k) "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

(l) "Computer-accessed communication" means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines,



Exhibit 1

electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

[FNa1] "Confidence" and "secret" are defined in section 1200.19(a) of this Part. "Sexual relations" is defined in section 1200.29-a of this Part. "Copy" is defined in section 1200.41(d)(10) of this Part.

Section 1200.6 [DR 2-101] Advertising.

(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:

- (1) contains statements or claims that are false, deceptive or misleading; or
- (2) violates a disciplinary rule.

(b) Subject to the provisions of subdivision (a), an advertisement may include information as to:

(1) legal and nonlegal education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by this Part; public offices and teaching positions held; publications of law related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;

(2) names of clients regularly represented, provided that the client has given prior written consent;

(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by section 1200.5-c of this Part and the nature and extent of services available through those contractual relationships; and

(4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by subdivision (p) of this section; range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.

(c) An advertisement shall not:

(1) include an endorsement of, or testimonial about, a lawyer or law firm from a client with respect to a matter still pending;

(2) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;

(3) include the portrayal of a judge, the portrayal of a fictitious law firm, 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;

(4) use actors to portray the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same;

(5) rely on techniques to obtain attention that demonstrate a clear and intentional lack of relevance to the selection of counsel, including the portrayal of lawyers exhibiting characteristics clearly unrelated to legal competence;

(6) be made to resemble legal documents; or

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

(d) An advertisement that complies with subdivision (e) of this section may contain the following:

(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;

(2) statements that compare the lawyer's services with the services of other lawyers;

(3) testimonials or endorsements of clients, where not prohibited by subdivision (c)(1) of this section, and of former clients; or

(4) statements describing or characterizing the quality of the lawyer's or law firm's services.

(e) It is permissible to provide the information set forth in subdivision (d) of this section provided:

(1) its dissemination does not violate subdivision (a) of this section;

(2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; and

(3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome."

(f) Every advertisement other than those appearing in a radio or television advertisement or in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to section 1200.8(a)(1) of this Part, shall be labeled "Attorney Advertising" on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words "Attorney Advertising" shall appear therein. In the case of electronic mail, the subject line shall contain the notation "ATTORNEY ADVERTISING."

(g) A lawyer or law firm shall not utilize:

(1) a pop-up or pop-under advertisement in connection with computer-accessed communications, other than on the lawyer or law firm's own web site or other internet presence; or

(2) meta tags or other hidden computer codes that, if displayed, would violate a disciplinary rule.

(h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.

(i) Any words or statements required by this rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud.

(j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services which are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

(k) All advertisements shall be pre-approved by the lawyer or law firm and a copy shall be retained for a period of not less than three years following its initial dissemination. Any advertisement contained in a computer-accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this section shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.

(l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

(m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this disciplinary rule in a publication which is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this rule in a publication which is published once per month or less frequently, the lawyer shall be bound by any representation made therein

until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this rule in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.

(n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(o) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.

(p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law §488(3).