

**LOUISIANA STATE BAR ASSOCIATION
ETHICS ADVISORY SERVICE/ADVERTISING ADVISORY SUBCOMMITTEE
of the
RULES OF PROFESSIONAL CONDUCT COMMITTEE**

**INTERNAL OPERATING PROCEDURES
for
LAWYER ADVERTISING EVALUATIONS UNDER RULE 7.7
(August 2008, Revised 10/24/2008. Revised 01-2016)**

Section 7.7.1

All submissions and/or filings of lawyer advertising with the Louisiana State Bar Association pursuant to Rule 7.7 of the Louisiana Rules of Professional Conduct, effective 12/01/2008, shall be handled in accordance with Part II below. All other requests for general advice or information regarding lawyer advertising that do not seek an evaluation of or opinion about a specific advertisement or written communication shall be handled in accordance with Part I below.

Section 7.7.2

For purposes of these Internal Operating Procedures, “Committee” refers to the LSBA Rules of Professional Conduct Committee and “Subcommittee” refers to the LSBA Ethics Advisory Service/Advertising Advisory Subcommittee of the Rules of Professional Conduct Committee.

I. REQUESTS FOR GENERAL ADVICE/INFORMATION

Section 7.7.3

TELEPHONE REQUESTS FOR GENERAL ADVICE/INFORMATION

Ethics Counsel shall exercise discretion with respect to telephone requests regarding lawyer advertising. Requests that are of a simple/routine or repetitive nature and that do not seek an

evaluation of or an opinion about a specific advertisement or written communication may be answered by Ethics Counsel over the telephone and without prior consultation with a Duty Panel.

If Ethics Counsel determines that consultation with other Subcommittee members would be appropriate, necessary or advisable in connection with any telephone request received, Ethics Counsel should consult with one or more members of a Duty Panel in order to formulate a response to the request. (Unanimous approval of the Duty Panel shall not be required.)

Ethics Counsel may respond over the telephone to any such telephone request, but shall keep reasonably detailed records of the substance of each such request and the response that is given. Ethics Counsel shall advise each lawyer requesting telephone service about the limitations of the advice (i.e., that the advice is non-binding on anyone and not intended to be a Rule 7.7(e) evaluation of compliance or non-compliance by Ethics Counsel, the LSBA, the Subcommittee or the Committee with respect to any actual or contemplated advertisement or written communication).

Section 7.7.4

WRITTEN REQUESTS FOR GENERAL ADVICE/INFORMATION

Ethics Counsel shall exercise discretion with respect to written requests regarding lawyer advertising. Requests that are of a simple/routine or repetitive nature and that do not seek an evaluation of or an opinion about a specific advertisement or written communication may be answered by Ethics Counsel without prior consultation with a Duty Panel.

If Ethics Counsel determines that consultation with other Subcommittee members would be appropriate, necessary or advisable in connection with any written request received, Ethics Counsel should consult with one or more members of a Duty Panel in order to formulate a response to the request. (Unanimous approval of the Duty Panel shall not be required.)

Ethics Counsel may respond to any such request, but shall keep reasonably detailed records of each such request and the response that is given. Ethics Counsel shall advise each lawyer requesting general written advice/information regarding lawyer advertising about the limitations of the advice (i.e., that the advice is non-binding on anyone and is not intended to be a Rule 7.7(e) evaluation of compliance or non-compliance by Ethics Counsel, the LSBA, the Subcommittee or the Committee with respect to any actual or contemplated advertisement or written communication).

Section 7.7.5

DUTY PANEL CONSULTATION and REVIEW

In the event that Ethics Counsel determines that a written request under Section 7.7.4 would be more appropriately answered with consultation/guidance/assistance/evaluation provided by the Subcommittee, Ethics Counsel shall circulate the request and draft written response to a Duty Panel constituted as set forth below for review, modification and approval. If the panel members unanimously agree with the response, Ethics Counsel shall forward it to the lawyer who requested it. Unanimous panel approval must be obtained before a response is forwarded to a lawyer. Ethics Counsel and the Duty Panel shall discuss a request and its issues/problems in any manner acceptable to them to reach their conclusion. The request shall be answered by Ethics Counsel as directed by the unanimous vote of the panel.

If there is not unanimity among the panel members, Ethics Counsel shall submit the request to an “Advertising Executive Review Group”, comprised of five (5) members of the Rules of Professional Conduct Committee to be selected by the Chair of that Committee from time to time. In that situation, a simple majority of the Advertising Executive Review Group can determine the final response to be forwarded to the requesting lawyer. In the event that the Advertising Executive Review Group cannot reach a decision, the matter shall be submitted to the full Committee.

Section 7.7.6

ASSIGNMENT TO SUBCOMMITTEE MEMBERS BY ETHICS COUNSEL

If for any reason Ethics Counsel comes to the conclusion that a telephone request under Section 7.7.3 or a written request under Section 7.7.4 is one which commands the assignment of the request to a Subcommittee member, Ethics Counsel shall assign and send the request to a member of the Subcommittee for action. The selection of the Subcommittee member is to be made by random rotation to a member of a Duty Panel constituted as set forth herein below. Ethics Counsel shall send all relevant materials to the Subcommittee member assigned the matter, including—but not limited to—prior responses on the issue and any research available. Ethics Counsel shall assist the Subcommittee member assigned with the request. If necessary, the member shall contact the requesting lawyer to clarify facts/issues relevant to the request.

The Subcommittee member shall direct Ethics Counsel in preparing a draft response, which Ethics Counsel shall then distribute to the Duty Panel for its review, modification and approval as described above. If the panel members unanimously agree with the draft written response, the Subcommittee member shall forward it to the lawyer who requested it. Unanimous panel approval must be obtained before a response is forwarded to a lawyer. If there is not unanimity among the panel members, Ethics Counsel shall submit the request to the Advertising Executive Review Group, as detailed above in Section 7.7.5.

Section 7.7.7

DUTY PANELS

The panels referred to above shall consist of three (3) members of the Subcommittee. Except as otherwise provided regarding simple/routine or repetitive requests for general advice/information and filings of a simple/routine or repetitive nature, Duty Panels shall review written responses drafted by Ethics Counsel and shall author responses to select requests or filings assigned to them by Ethics Counsel. Members of the panel are appointed by the Chair of the Subcommittee, who may consult with Ethics Counsel in establishing panels. The Chair shall assign Duty Panels for a one year period, subject to confirmation by the Committee. Panel members and/or Ethics

Counsel may request that any matter be submitted to the Advertising Executive Review Group, as detailed above in Section 7.7.5.

Ethics Counsel has the discretion to reassign requests or filings that are not being handled promptly. Should a member of a Duty Panel be temporarily unavailable, Ethics Counsel may substitute another Subcommittee member. Any member of a Duty Panel who fails to respond within forty-eight (48) hours to a request by Ethics Counsel for approval of a draft response shall be considered temporarily unavailable. When a Duty Panel member is temporarily unavailable, Ethics Counsel may ask another member of the Subcommittee to substitute for that panel member in approving responses to any pending requests or filings.

Ethics Counsel shall forward to all members of the Subcommittee copies of all responses issued by letter – for their information, as an opportunity to review them and/or for possible discussion at plenary meetings. Ethics Counsel shall make every effort to distribute said copies to the members of the Subcommittee on a quarterly basis.

When a request or filing is completed, Ethics Counsel shall keep a copy of the response at the Bar offices for permanent record. These responses shall be kept on file at the Bar offices for a period of time to be determined by the Committee.

II. EVALUATION OF FILINGS OF LAWYER ADVERTISING UNDER RULE 7.7

Section 7.7.8

LSBA Ethics Counsel shall make certain that submissions and/or filings of lawyer advertising under Rule 7.7 of the Louisiana Rules of Professional Conduct are handled as expeditiously as possible.

LSBA Ethics Counsel shall provide a standardized “Filing Application Form”, as approved by the Committee, to all filing lawyers for use when submitting filings of lawyer advertising under

Rule 7.7 (see attached “Filing Application Form”). In addition to the “Filing Application Form”, whenever a filing lawyer submits an unsolicited written communication (such as a letter, brochure, newsletter, flier, e-mail, etc.), Ethics Counsel shall also provide a standardized “Filing Application Addendum”, as approved by the Committee, to the filing lawyer for use when submitting such filings of lawyer advertising under Rule 7.7 (see attached “Filing Application Addendum”).

Upon receipt of a filing, Ethics Counsel shall conduct an initial screening to determine that the filing is within the parameters of filings handled by the Subcommittee/Committee.

Section 7.7.9

FILINGS OF A SIMPLE/ROUTINE OR REPETITIVE NATURE

Ethics Counsel shall exercise discretion with respect to all filings of lawyer advertising. Filings that are of a simple/routine or repetitive nature may be processed, evaluated and a written response—including an Advance Written Advisory Opinion, as per Rule 7.7(b), and/or a written evaluation of compliance or non-compliance with the Rules, as per Rule 7.7(e)—provided by Ethics Counsel without prior consultation with a Duty Panel. Ethics Counsel shall also have authority on such filings to issue, without prior consultation with a Duty Panel, any necessary or related notices or correspondence, including, but not limited to, requests for additional information and/or findings of non-compliance for insufficient information, as per Rule 7.7(f).

Section 7.7.10

DUTY PANEL CONSULTATION and REVIEW

In the event that Ethics Counsel determines that a filing would be more appropriately processed with consultation/guidance/assistance/evaluation provided by the Subcommittee, Ethics Counsel shall circulate copies of the filing and a draft written response to a Duty Panel for review, modification and approval as set forth above in Section 7.7.7. If the panel members unanimously agree with the proposed response, Ethics Counsel shall forward it to the lawyer who submitted the filing. Unanimous panel approval must be obtained before a response is forwarded to a filing

lawyer. Ethics Counsel and the Duty Panel shall discuss a filing and its issues/problems in any manner acceptable to them to reach their conclusion. The filing shall be evaluated and a response prepared by Ethics Counsel as directed by the unanimous vote of the panel.

If there is not unanimity among the panel members, Ethics Counsel shall submit copies of the filing to the Advertising Executive Review Group as set forth above in Section 7.7.5. In that situation, a simple majority of the Advertising Executive Review Group can determine the final response to be forwarded to the filing lawyer.

Section 7.7.11

ASSIGNMENT TO SUBCOMMITTEE MEMBERS BY ETHICS COUNSEL

If for any reason Ethics Counsel comes to the conclusion that the filing is one which commands the assignment of the filing to a Subcommittee member, Ethics Counsel shall assign and send a copy of the filing to a member of the Subcommittee for action, as set forth above in Section 7.7.6.

If there is not unanimity among the panel members, Ethics Counsel shall submit the filing to the Advertising Executive Review Group, as detailed above in Section 7.7.5.

Section 7.7.12

RECORDS AND REPORTS

When a filing is completed, Ethics Counsel shall keep a copy of the filing and written response at the Bar offices for permanent record. These records shall be kept on file at the Bar offices for a period of time to be determined by the Committee.

Ethics Counsel shall keep reasonably detailed records regarding all filing fees and late fees received and/or refunded by the LSBA in connection with the lawyer advertising filing process under Rule 7.7.

Ethics Counsel shall keep reasonably detailed records regarding all filings and submissions of lawyer advertising under Rule 7.7 and shall prepare any/all reports for the Committee regarding the lawyer advertising process, including the annual report to the Court, as detailed in Rule 7.7(a)(4).

Section 7.7.13

RULE 7.7(g) REPORT(S) TO THE OFFICE OF DISCIPLINARY COUNSEL

With respect to all filings of lawyer advertising, where:

- A) A written **evaluation of non-compliance** has been provided to the filing lawyer by:
 - 1) Ethics Counsel, under Section 7.7.9; or 2) by Ethics Counsel after consultation with and review by a Duty Panel, under Section 7.7.10; or 3) by Ethics Counsel after assignment to a Subcommittee Member, under Section 7.7.11; and

- B) Where the filing lawyer cannot and/or has **not properly certified non-use/non-dissemination** as per Rule 7.7(g),

before any Rule 7.7(g) report of such evaluation(s) of non-compliance might be made to the Office of Disciplinary Counsel, Ethics Counsel shall submit all materials pertinent to each such filing(s) to the Advertising Executive Review Group, as defined in Section 7.7.5, for review and confirmation/ratification of the Committee's finding of non-compliance.

Only unanimity of the Advertising Executive Review Group can determine and confirm whether any such advertisement/unsolicited written communication is non-compliant so as to merit/require a Rule 7.7(g) report of that filing lawyer to the Office of Disciplinary Counsel. In the event that the Advertising Executive Review Group cannot reach a unanimous decision, the matter shall then be submitted to the full Committee for consideration—in executive session, given the highly confidential nature of these matters—at its next meeting, and a simple majority of the full Committee can determine and confirm/ratify whether the advertisement/unsolicited

written communication is non-compliant so as to merit/require a Rule 7.7(g) report of that filing lawyer to the Office of Disciplinary Counsel.

In all cases where the Advertising Executive Review Group is called upon to review and confirm/ratify the Committee's finding of non-compliance, and instead reaches unanimity as to a brand-new finding of compliance (i.e., effectively overruling the finding issued previously by Ethics Counsel):

Ethics Counsel shall be directed to prepare a new/revised written response of the Committee to the filing lawyer, noting the reevaluation by the Committee and its new/revised finding of compliance. In all such cases, that new/written response shall be signed by each and every member of the Advertising Executive Review Group so ratifying the revised finding of the Committee.

In all cases where the Advertising Executive Review Group is called upon to review and confirm/ratify the Committee's finding of non-compliance but cannot reach unanimity as to the finding of non-compliance, thereby triggering a review of the finding of non-compliance by the full Committee—in executive session:

Whenever a simple majority of the full Committee shall determine and confirm/ratify the finding of non-compliance, a Rule 7.7(g) report of that filing lawyer to the Office of Disciplinary Counsel shall be so issued.

Whenever the full Committee shall be unable, by a simple majority, to determine and confirm/ratify the finding of non-compliance, no Rule 7.7(g) report shall issue to the Office of Disciplinary Counsel.