I. INTRODUCTION

The Louisiana State Bar Association’s Rules of Professional Conduct Committee (“RPCC”) has been charged by the Supreme Court of Louisiana with the responsibility of evaluating all non-exempt lawyer advertisements, as well as all non-exempt unsolicited written communications to prospective clients, for compliance with the Louisiana Rules of Professional Conduct. Accordingly, such non-exempt advertisements and unsolicited written communications must be filed with the Louisiana State Bar Association for evaluation. Due to the high volume of advertisements and unsolicited written communications anticipated to be filed by Louisiana lawyers, the RPCC has delegated the evaluation function to the LSBA’s Ethics Advisory Service Subcommittee, which will be supported by full-time staff of the Louisiana State Bar Association, namely the LSBA Ethics Counsel. It should be noted that, under Rule 7.7(h), a finding by the Committee of either compliance or noncompliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.

This Handbook was produced by the RPCC and Ethics Counsel in an effort to assist lawyers and others in developing advertisements and unsolicited written communications that comply with the Louisiana Rules of Professional Conduct. However, while this Handbook represents the best effort of the Handbook Subcommittee of the RPCC to interpret the Rules, the Subcommittee acknowledges that it may not represent the views of the Office of Disciplinary Counsel or the Supreme Court of Louisiana.

For your convenience, this Handbook includes, among other things:

- An overview of applicable regulations broken down by the type of advertisement/communication to which they apply;
- A reproduction of the actual Louisiana Rules of Professional Conduct that deal with lawyer advertising and solicitation;
- Answers to frequently asked questions about lawyer advertising regulations;
- A Quick Reference Checklist for lawyer advertisers; and
- Examples of exempt and non-exempt, compliant and non-compliant print advertisements and unsolicited written communications.

Filings, inquiries and other communications regarding lawyer advertising should be directed to:

Louisiana State Bar Association
Rules of Professional Conduct Committee
c/o LSBA Ethics Counsel
601 St. Charles Avenue
New Orleans, LA 70130-3404

Telephone number 1-800-421-LSBA, ext. 144
Direct Line: (504) 619-0144
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II. LAWYER ADVERTISING

Jurisdictional Limitations

1. Advertisements Not Disseminated in Louisiana – Rule 7.1(b) 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.

2. Communications for Non-Profit Organizations – Rule 7.1(c) 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.

A. Prohibited Forms of Solicitation

1. Direct Contact with Prospective Clients - Rule 7.4(a) A lawyer may not contact a prospective client in-person, by person-to-person verbal telephone contact, telegraph, or facsimile, or through other means of direct contact (e.g., others acting at the lawyer’s request or on the lawyer’s behalf or otherwise), unless the prospective client is a family member, current client, or former client (“former client” does not include relationships in which the client was an unnamed member of a class action). This prohibition does not extend to written communications sent on an unsolicited basis made in compliance with Rule 7.4(b) [“direct mail’] and Rule 7.6(c) [“e-mail’].

2. Payment for Recommendations - Rule 7.2(c)(13) A lawyer may not give anything of value to a person for recommending the lawyer’s services. This prohibition does not prevent a lawyer from paying the reasonable cost of advertising or the payment of usual charges to a lawyer referral service or other legal service organization permitted by the Rules (e.g., a lawyer referral service operated by any local bar association or any other not-for-profit organization).

3. Statutory Prohibitions - Lawyers should also be aware that certain forms of solicitation may be prohibited under law. For example [please note that this is NOT an exhaustive list of examples]: La. R.S. 14:356 (no sheriff, clerk of court, constable, or their deputies, or any police officer or detective, whether commissioned without pay or otherwise, shall procure or solicit any legal business for any attorney at law under the expectation or promise, whether express or implied, of being paid in any manner); La. R.S. 14:356.1 (unlawful for any wrecker driver, owner, or any other person engaged in providing wrecker services to refer to an attorney at law any person involved in an accident in connection with which he has provided wrecker services, when the wrecker driver, owner, or other person receives any compensation for such referral); La. R.S. 14:356.3 (unlawful for any ambulance driver, owner, or any other person engaged in providing ambulance services to refer to an attorney at law any person involved in an accident in connection with which he has provided ambulance services, when the ambulance driver, owner, or other person receives any compensation for such referral); La. R.S. 37:213 (unauthorized practice of law); and La. R.S. 37:219 (unlawful payments by attorneys; unlawful solicitation of employment for legal practitioners).

B. Filing Requirement - Rule 7.7

Any lawyer or law firm disseminating information about the lawyer/law firm and/or their services through any public media or through unsolicited written communications to prospective clients must file a copy of such advertisement or communication for evaluation by the RPCC, unless the information is specifically exempted under Rule 7.8.

C. Exemptions from Filing Requirement - Rule 7.8

Certain types of advertisements and unsolicited written communications are exempt from the filing requirement. AN ADVERTISEMENT OR UNSOLICITED WRITTEN COMMUNICATION THAT IS EXEMPT DOES NOT NEED TO BE FILED FOR EVALUATION AND IS, THEREFORE, NOT SUBJECT TO A FILING FEE. Nevertheless, the fact that an advertisement is exempt from the filing and evaluation requirements of Rule 7.7 does NOT mean that it is exempt from the other provisions of the Rules.

Thus, all advertisements and unsolicited written communications sent to prospective clients must include, at a minimum: 1) the full name of at least one lawyer responsible for the content of the advertisement or unsolicited written communication; and 2) the geographic location, by city or town, of at least one “bona fide office” location of the lawyer who will actually perform the advertised services or, 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 LSBA registration.
The following are exempt forms of advertisements:

1. **“Safe Harbor Ads” - Rules 7.8(a) and 7.2(b)**
   An advertisement in any public media that contains no images, illustrations or information other than the following:
   
   a. 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, e-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 the 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 Rule 7.2(c)(5) (governing communication of specialized areas of practice);
   
   g. Prepaid or group legal service plans in which the lawyer participates;
   
   h. Fee for initial consultation and fee schedule, subject to Rule 7.2(c)(6) and (c)(7);
   
   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. 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 or Announcements of Contribution or Sponsorship - Rule 7.8(b)**
   A brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution. The announcement must still otherwise comply with Rule 7.2(a), i.e., including: 1) name of at least one lawyer responsible for the content of the announcement; and 2) disclosure, by city or town, of one or more bona fide office location(s) of the lawyer or lawyers who are actually sponsoring the announcement/program/event or, 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 LSBA registration statement.

3. **Listings or Entries in Law Lists or Bar Publications - Rule 7.8(c)**
   A listing or entry in a law list or bar publication, e.g., Martindale-Hubbell, directed primarily to lawyers. However, it should be noted that a paid advertisement in a law list or bar publication is not exempt under this provision of Rule 7.8(c) unless it contains only “permissible content” as defined within Rule 7.2(b) and/or is otherwise exempt under one of the other provisions of Rule 7.8.

4. **Mailings to Clients, Former Clients, Other Lawyers or Upon Request - Rule 7.8(d) and (e)***
   Communications mailed to existing clients, former clients, other lawyers, or requested by a prospective client.

5. **Professional Announcements - Rule 7.8(f)**
   Professional announcement cards (announcing new firms, new or changed associations, new associates, new partners, new offices and similar changes relating to a lawyer or law firm) that are mailed only to other lawyers, relatives, close personal friends, existing clients or former clients.

6. **Computer-Accessed Communications - Rule 7.8(g)***
   All World Wide Web sites and home pages accessed via the Internet as described in Rule 7.6(b).
D. How to File - Rule 7.7

1. When to File  All required filings must be submitted to the LSBA RPCC, through LSBA Ethics Counsel, for evaluation prior to or concurrently with the first dissemination of the advertisement or unsolicited written communication. Rules 7.7(b) and 7.7(c). Under Rule 7.7(b), any lawyer may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication by submitting to the Committee the material and fee specified below at least thirty (30) days prior to the first dissemination of the advertisement or unsolicited written communication. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer’s voluntary submission in compliance with Rule 7.7(b) shall be deemed to satisfy the regular filing requirement set forth in Rule 7.7(c).

2. Contents of Filing  A filing with the RPCC/LSBA Ethics Counsel (Rule 7.7(d)) shall consist of:

a. a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee, e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.;

Example regarding Television and Radio Advertisements: Lawyer wants to develop a television advertisement and first develops “storyboards” and a script for the advertisement. The Committee will accept “storyboards” and a script in satisfaction of the requirement of a copy of the advertisement, as noted in Rule 7.7(d)(1), in connection with a filing under Rule 7.7(b) [the advance written advisory opinion option]. Assuming that the “storyboards” and script filed with the Committee are found to comply with the Rules, the Committee will issue a written advisory opinion regarding the compliance of the anticipated advertisement on the condition that the final advertisement does not vary in substance from the “storyboards” and script that were filed with the Committee. After production of the advertisement, a copy of the advertisement in its final form must be submitted to the Committee prior to or concurrent with its first dissemination in order to fulfill the filing requirement of Rule 7.7(d). If the advertisement as filed in its final form does not vary in substance from the “storyboards” and script already filed with the Committee, the lawyer shall be deemed to have satisfied the filing requirements of Rules 7.7(b) and the Committee’s written advisory opinion shall have the evidentiary effects as indicated in Rule 7.7(h).

b. a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;

c. a printed copy of all text used in the advertisement;

d. an accurate English translation, if the advertisement or communication appears or is audible in a language other than English;

e. a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

f. a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used;

g. fees paid to the Louisiana State Bar Association at the time of filing under Rule 7.7(b) or Rule 7.7(c), in an amount set by the Supreme Court of Louisiana (Rule 7.7(d)(7)):

A) $175.00 for submissions filed prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication; or

B) $275.00 for submissions not filed until after the lawyer’s first dissemination of the advertisement or unsolicited written communication;

h. any additional information requested by the RPCC/LSBA Ethics Counsel. Rule 7.7(f).

E. Regulations Governing Content

1. Regulations for All Forms of Advertising and Unsolicited Written Communications

a. Name of Lawyer or Law Firm - Rule 7.2(a)  (i) All forms of lawyer advertising (i.e., advertisements through public media and unsolicited written communications) must include the full name of at least one lawyer responsible for the advertising content.
b. Location of Practice - Rule 7.2(a)(2) All forms of lawyer advertising must disclose the town or city of one or more “bona fide office” locations of the lawyer or lawyers who will actually perform the services advertised. If the office is outside a city or town, the advertisement must disclose the parish where the office is located.

1) “bona fide office” - 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.

2) No “bona fide office” – 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 LSBA annual registration statement.

3) Telephone Number Listed for Specified Geographic Area Without Bona Fide Office – 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 or unsolicited written communication.

c. Permissible Content - Rule 7.2(b) The following information, if true, shall be presumed not to be misleading or deceptive:

i. 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, e-mail addresses, office and telephone service hours, and a designation such as “attorney”, “lawyer” or “law firm”;

ii. 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, each individual lawyer’s 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;

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

iv. military service, including branch and dates of service;

v. foreign language ability;

vi. fields of law in which the lawyer practices, including official certification logos, subject to the requirements of Rule 7.2(c)(5);

vii. prepaid or group legal service plans in which the lawyer participates;

viii. fee for initial consultation and fee schedule, subject to the requirements of Rule 7.2(c)(6) and Rule 7.2(c)(7);

ix. common salutatory language such as “best wishes”, “good luck”, “happy holidays”, or “pleased to announce”;

x. punctuation marks and common typographical marks;

xi. a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background;

xii. a listing of the lawyer or law firm 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 Rule 7.2(b)(1).
d. Misleading Information  Lawyer advertisements and unsolicited written communications may not include information that:

i. Rule 7.2(c)(1)(A)  Contains a material misrepresentation of fact or law;

ii. Rule 7.2(c)(1)(B)  Is false, misleading or deceptive; or

iii. Rule 7.2(c)(1)(C)  Fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive.

Example of Misleading Information:

Bona Fide Offices  - An advertisement is misleading if it lists law firm offices in several cities when, in fact, there are no bona fide firm offices in those cities. Rule 7.2(a)(2) defines “bona fide office” as “a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location.”

The RPCC has developed the following criteria for evaluating whether an advertised location is a “bona fide office”:

1. Does the office have the lawyer’s or firm’s name on an outside office sign or on the building’s directory?

2. Is the advertised location staffed by law firm employees who answer phone calls at that location from prospective clients?

3. Is the advertised location staffed by receptionists, secretaries, clerks, or paralegals employed by the firm on a full-time basis?

4. Other than client interviews and conferences, do firm lawyers furnish legal services from the advertised location?

5. Is the advertised location staffed by at least one firm lawyer on a regular and continuing basis?

Specified Geographic Areas/Locations that are not “Bona Fide Offices” - When a lawyer or law firm maintains some form of office or other physical presence within a specified geographic area that does not meet the definition of a “bona fide office”, as stated in Rule 7.2(A)(2), and is not the location of the lawyer’s primary registration statement address, the lawyer or law firm may still advertise that location in connection with a telephone number as long as appropriate qualifying language also appears in the advertisement or unsolicited written communication: e.g., “Available for Consultation”, “Available by Appointment”, “By Appointment”, “By Appointment Only”, “Limited Service”, etc.

e. Unjustified Expectations - Rule 7.2(c)(1)(D), (E) & (F)  Lawyer advertisements and unsolicited written communications may not include statements that promise results or that state or imply that the lawyer or law firm can achieve results by means that violate the Rules of Professional Conduct or other law. Lawyer advertisements and unsolicited written communications may not contain references or testimonials to past successes or results obtained, except as allowed under Rule 7.9 regulating information about a lawyer’s services provided upon request.

It should be noted that these Rules DO allow advertisements and unsolicited written communications to contain testimonials that do NOT contain references to past successes or results obtained. For example, a permissible testimonial might be: “…John Smith is my lawyer. He was responsive to my needs and helped me with my legal problems....” However, the Rules would prohibit a testimonial such as “…John Smith is my lawyer. He helped me recover $100,000.00 for my auto accident. He can help you, too...”, since it contains references to past successes or results obtained (as well as promises results).

Additionally, Rule 7.9 permits a lawyer to offer potential clients—upon request from the potential client for information regarding the lawyer or law firm—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. For example, if a prospective client asks a lawyer for information about the lawyer’s experience and success rate with a certain type of case, the lawyer may offer factually verifiable statements concerning past results, if not otherwise false, misleading or deceptive, such as: “…I’ve
handled a number of cases very similar to yours. In one case, we were able to recover $100,000 and, in another case, we recovered $50,000...”

f. Improper Comparisons - Rule 7.2(c)(1)(G)
Lawyer advertisements and unsolicited written communications may not compare the lawyer’s services with the services of other lawyers, unless the comparison can be factually substantiated. For example, lawyer advertisements may not characterize the lawyer or law firm as: “the best”; “one of the best”; “one of the most ethical”; “one of the most experienced”.

g. Paid Testimonials or Endorsements - Rule 7.2(c)(1)(H)
Lawyer advertisements and unsolicited written communications may not include paid testimonials or endorsements UNLESS the fact of payment is disclosed.

h. Portrayals of Clients by Non-Clients – Rule 7.2(c)(1)(I)
Lawyer advertisements and unsolicited written communications may not include the portrayal of a client by a non-client.

i. Reenactment of Events or Scenes or Pictures That Are Not Actual or Authentic – Rule 7.2(c)(1)(I)
Lawyer advertisements and unsolicited written communications may not include the reenactment of any events or scenes or pictures that are not actual or authentic. This Rule does not prohibit the use of pictures, scenes or events that are actual or authentic, and which have not been “staged” for purposes of the advertisement or unsolicited written communication. Further, this Rule does not prohibit reenactments of actual or authentic events in advertisements or unsolicited written communications. Advertising that recreates actual scenes or events must be authentic and must fairly set forth all material facts.

NOTE: Discussions in the Handbook Subcommittee indicate that this Rule may be subject to more than one reasonable interpretation; caution is advised when considering use of elements that might fit within the description of this Rule.

j. Portrayal of a Judge or Jury – Rule 7.2(c)(1)(J)
Lawyer advertisements and unsolicited written communications may not include the portrayal of a judge or jury.

k. Portrayal of a Lawyer by a Non-Lawyer – Rule 7.2(c)(1)(J)
Lawyer advertisements and unsolicited written communications may not include the portrayal of a lawyer by a non-lawyer.

Lawyer advertisements and unsolicited written communications may not include the portrayal of a law firm as a fictionalized entity.

m. Fictitious Name Referring to Lawyers Not Associated Together in a Firm – Rule 7.2(c)(1)(J)
Lawyer advertisements and unsolicited written communications may not use a fictitious name to refer to lawyers not associated together in a law firm or that otherwise implies that lawyers are associated in a law firm if that is not the case.

n. Resembles a Legal Pleading, Notice, Contract or Other Legal Document – Rule 7.2(c)(1)(K)
Lawyer advertisements and unsolicited written communications may not resemble a legal pleading, notice, contract or other legal document.

o. Utilizes a Nickname, Moniker, Motto or Trade Name That States or Implies an Ability to Obtain Results in a Matter – Rule 7.2(c)(1)(L)
Lawyer advertisements and unsolicited written communications may not utilize a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter.

A nickname, moniker, motto or trade name will be considered to state or imply an ability to obtain a result if it:


3. Makes a comparison with another lawyer, law firm or lawyers in general, which cannot be factually substantiated. For example: “The Duke Law Firm: Better Than the Rest”; “The Premier Lawyers”; “After you’ve tried the rest, come to the best!”.
This Rule does not prohibit the use of nicknames, monikers, mottos or trade names, which are used to portray a generally-positive impression of the lawyer, law firm or their services and which reinforce traditional considerations relevant to selecting a lawyer or law firm. Such considerations may include, but are not limited to, the following:

1. Diligence. For example: “We Work Hard For You”; “We’re By Your Side”;

2. Experience. For example: “Put Our Years of Personal Injury Representation to Work for You”;

3. Advocacy. For example: “We Stand Up for You”; “The Jones Law Firm: We’re Tenacious; “Is Your Insurance Company Stonewalling? We’ll Stand Up for You”;


5. Benefits of Representation. For example: “We’ll Work Hard to Get You Everything the Law Allows”; “Know Your Rights Before You Settle”; “We’ll Look Out for You When Others May Not”.

p. Fails to Comply with Rule 1.8(e)(4)(iii) – Rule 7.2(c)(1)(K) Lawyer advertisements and unsolicited written communications must comply with Rule 1.8(e)(4)(iii) regarding prohibitions against advertising financial assistance to clients.

q. Prohibited Visual and Verbal Portrayals and Illustrations - Rule 7.2(c)(2) Lawyer advertisements and unsolicited written communications may contain visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things or events only if they are not false, misleading or deceptive.

r. Advertising Areas of Practice - Rule 7.2(c)(3) Lawyer advertisements and unsolicited written communications may not state or imply that the lawyer or law firm currently practices in an area of practice when that is not the case.

s. Stating or Implying Louisiana State Bar Association Approval - Rule 7.2(c)(4) Lawyer advertisements and unsolicited written communications may not make any statements that directly or impliedly indicate that the advertisement or communication has received any kind of approval from the Louisiana State Bar Association.

t. Communication of Fields of Practice and Board Certification - Rule 7.2(c)(5) Lawyer advertisements and unsolicited written communications may communicate the fact that the lawyer or law firm does or does not practice in particular fields of law. They may not state or imply that the lawyer is “certified,” “board certified”, an “expert” or a “specialist” in an area of law unless the lawyer is Board Certified in that practice area. The RPCC has also interpreted the rule to prohibit claims of “expertise” in an area of law unless the lawyer is Board Certified in that area of law.

A) Lawyers certified by the Louisiana Board of Legal Specialization should identify it as the certifying organization. Rule 7.2(c)(5)(A).

B) Lawyers 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 certification (Rule 7.2(c)(5)(B)) if:

1) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization [i.e., if the organization has not been approved by the Louisiana Board of Legal Specialization, the lawyer must so state in any communications containing reference to that certification]; and

2) the lawyer includes the full name of the organization on all communications pertaining to such certification. Rule 7.2(c)(5)(B).

Accredited by the American Bar Association - A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization [i.e., the lawyer is not required to state that the certifying organization has not been approved by the Louisiana Board of Legal Specialization].
If a lawyer is certified by another state bar, the lawyer may state that the lawyer is “certified,” “board certified,” a “specialist,” or an “expert” in an area of law (Rule 7.2(c)(5)(C)) only if:

a. the other state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and

b. the lawyer includes the name of the state bar in all communications pertaining to such certification.

General claims of specialization or expertise not related to a particular practice area are prohibited. In addition, an advertisement or unsolicited written communication may not state or imply that a law firm is “board certified”, “specializes” or has “expertise” in a particular area of law—only qualified individual lawyers can claim certification, “expertise” or specialization.

u. Disclosure of Liability for Costs and/or Expenses Other Than Fees - Rule 7.2(c)(6) Every lawyer advertisement and unsolicited written communication that contains information about the lawyer’s fee, including those that indicate no fee will be charged in the absence of a recovery, must also disclose whether the client will be liable for any costs and/or any other expenses in addition to the fee. Advertisements which state that the lawyer’s fee is contingent upon the outcome or that the fee will be a percentage of the recovery must also disclose whether the client will be liable for costs and/or expenses regardless of the outcome.

v. Honoring Advertised Fee - Rule 7.2(c)(7) Any advertised fee or range of fees for a particular service must be honored by the advertising lawyer for at least ninety (90) days from the date last advertised unless the advertisement specifies a shorter time period. However, for yellow pages advertisements or advertisements in other media that are not published more frequently than annually, the advertised fee or range of fees must be honored for no less than one year following publication.

w. Firm Names - Rule 7.2(c)(8) and Rule 7.10 A lawyer may not use or advertise under a firm name, logo, letterhead, professional designation, trade name or service mark that is false, misleading or deceptive. Therefore, a lawyer may not use or practice under a firm name, logo, letterhead, professional designation, trade name or service mark that implies a connection with a government agency or with a public or charitable services organization or other professional association OR that implies that the law firm is something other than a private law firm OR that otherwise violates the provisions of Rule 7.2(c)(1).

Similarly, a lawyer may not practice under a firm name, logo, letterhead, professional designation, trade name or service mark that includes the phrase “legal clinic” or “legal services” unless the practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services. In addition, a lawyer may not advertise under a firm name, logo, letterhead, professional designation, trade name or service mark unless the same name appears on the lawyer’s letterhead, business cards, office sign, fee contracts, and appears with the lawyer’s signature on pleadings and other legal documents. A firm name may not include the name of a lawyer who is not an associate, partner, shareholder or otherwise a member of the firm, except that the firm may continue to use the name or names of one or more retired or deceased partners, shareholders or members of the firm or of a predecessor firm where there has been a continuing line of succession in the firm’s identity.

Example of Misleading or Deceptive Firm/Trade Name:

The general practice law firm of Smith & Brown proposes to create a professional association to be called “The Personal Injury Firm”. This second lawfirm, which is wholly owned by Smith & Brown or its shareholders, will handle only personal injury matters. The Personal Injury Firm will have its own letterhead and members will sign pleadings under the name of the new firm. When handling personal injury matters, firm members will use business cards that include the name of “The Personal Injury Firm”. Otherwise, firm members will have and distribute business cards that include the original firm name of “Smith & Brown”. Separate books and records will be kept for the new practice. Smith & Brown intends to provide its new personal injury firm with employees, facilities, and equipment. In return, The Personal Injury Firm will pay Smith & Brown a fee based on the amount of profit earned by the new firm.
In essence, the new firm will operate parallel to Smith & Brown. Use of the “parallel law firm” name, “The Personal Injury Firm”, violates Rule 7.10(a) & Rule 7.10(c) because it is deceptive and misleading, contrary to Rule 7.2(c)(1). The members of the new firm are really still members of the other, on-going firm and, as such, this “name game” is potentially confusing, misleading and/or problematic regarding conflicts of interest. Use of the name “The Personal Injury Firm” perhaps also implies that lawyers working for that firm practice exclusively in the area of personal injury when, in fact, those same attorneys also work for Smith & Brown, a firm which maintains a general law practice with no special emphasis. For a variety of reasons, the full extent of the nature of a firm’s practice can play a significant role in a prospective client’s decision about which firm to hire. Accordingly, an implied practice restriction that does not actually exist is deceptive and misleading.

See also LSBA-RPCC Public Opinion 07-RPCC-012 (04/03/2007) entitled “Identification of a Law Practice - Fictitious or Trade Names; Multiple Business Identities”, available on-line, 24/7, at: http://www.lsba.org/2007MemberServices/ethicsadvisoryopinions.asp.

x. Foreign Language Disclosures - Rule 7.2(c)(9)
Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must appear in the same language in which the advertisement or unsolicited written communication appears. If an advertisement or unsolicited written communication uses more than one language, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

y. Appearance of Required Statements - Rule 7.2(c)(10)
Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. Examples of required words or statements include the following:

- **Rule 7.2(a)(1)** Name of at least one lawyer responsible for the content;

- **Rule 7.2(a)(2)** Disclosure, by town or city [or parish, if outside town or city], of one or more bona fide office location(s) [or city or town of lawyer’s primary registration statement address, if no bona fide office];

- **Rule 7.2(c)(5)** IF specialty/certification/expertise claimed, name of certifying organization [and, if not approved by the Louisiana Board of Legal Specialization or another state bar or accredited by the ABA, disclosure that certifying organization is not approved by the Louisiana Board of Legal Specialization];

- **Rule 7.2 (c)(6)** IF fee information included, disclosure of client’s liability for expenses/costs other than fees;

- **Rule 7.2(c)(7)** IF fees or a range of fees for a particular service are advertised but will be honored for a period of less than ninety (90) days from the date last advertised, the advertisement or communication must specify the shorter period that the advertised fee(s) will be honored [Note: fees listed in yellow page/telephone directory advertisements and or public media that are not published more frequently than only once a year must be honored for at least one (1) year following publication];

- **Rule 7.2(c)(12)** IF the case or matter will be or is likely to be referred to another lawyer or law firm, a statement so advising the prospective client;

- **Rule 7.4(b)(2)(B)(ii)** IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the word “ADVERTISEMENT” must appear at the top of each page and on the lower left corner of the face of the envelope in which the written communication will be enclosed. “ADVERTISEMENT” must be plainly marked in print size at least as large as the largest print used in the written communication.

IF the unsolicited written communication is a self-mailing brochure or pamphlet (or postcard) that will not be enclosed in an envelope, the “ADVERTISEMENT” mark must appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet, in print size at least as large as the largest print used in the written communication;

- **Rule 7.4(b)(2)(D)** IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship AND another lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, the written communication must contain a statement so advising the prospective client;
Rule 7.4(b)(2)(E) IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship that is prompted by a specific occurrence involving or affecting the intended recipient or a family member of that person, the written communication must disclose how the lawyer obtained the information prompting the communication;

Rule 7.5(b)(2)(C) IF the advertisement is in the electronic media such as television or radio, any non-lawyer spokesperson speaking on behalf of the lawyer or law firm must provide a spoken disclosure identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer;

Rule 7.6(b)(1) IF the advertisement or other communication about the lawyer or the lawyer’s services is on a Web site or home page accessed via the Internet, the lawyer must disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law, as well as the city or town of one or more bona fide office locations or, in the absence of a bona fide office location, the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2);

Rule 7.6(b)(2) IF the advertisement or unsolicited written communication is sent via electronic mail to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the subject line of the e-mail must state “LEGAL ADVERTISEMENT”;

Rule 7.9(b)(2) IF the lawyer is sending information to a potential client that has been requested by the potential client, the lawyer may furnish an engagement letter to the potential client; however, if the information 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” must appear on the client signature line;

Rule 7.9(c) IF the lawyer is sending information to a potential client that has been requested by the potential client AND the sending lawyer reasonably believes that a lawyer or law firm not associated with the sending lawyer will be associated or act as primary counsel in representing the client, the sending lawyer must provide an appropriate disclaimer to that effect;

Rule 7.10(d) IF the lawyer or law firm has offices in more than one jurisdiction, the lawyer or law firm may use the same firm name in each jurisdiction but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located;

Rule 7.10(g) IF the lawyer or law firm uses or continues to include in its name the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession, the lawyer or law firm may wish to consider including appropriate disclosure/qualifying language regarding the status of those members (e.g., “(Retired)”, “(Deceased)”, “(1950-1990)”, etc.), particularly if the full names of such deceased or retired members will be listed in the same fashion or alongside the full names of current members of the firm.

2. Additional Regulations for Unsolicited Written Communications to Prospective Clients - Rule 7.4

In addition to complying with the general regulations set forth in Section II, E. 1. above, all unsolicited written communications to prospective clients with whom the lawyer has no family or prior-lawyer-client relationship must comply with the following regulations:

a. 30-Day Waiting Period - Rule 7.4(b)(1)
(A) If a written communication concerns an action for personal injury or wrongful death
or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, the lawyer must wait at least thirty (30) days after the injury, death, accident or disaster to mail the communication.

b. Known Desire Not to Receive Such Communications – Rule 7.4(b)(1)(B) If it has been made known to the lawyer that a person does not want to receive any unsolicited written communications from the lawyer, the lawyer may not send such communications or knowingly permit them to be sent on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, associate or any other lawyer affiliated with the lawyer or the lawyer’s firm.

c. Coercion, Duress, Fraud, Overreaching, Harassment, Intimidation or Undue Influence – Rule 7.4(b)(1)(C) A lawyer may not send unsolicited written communications, directly or indirectly, or knowingly permit them to be sent on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, associate or any other lawyer affiliated with the lawyer or the lawyer’s firm to a prospective client for the purpose of obtaining professional employment if the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence.

d. Unlikely Exercise of Reasonable Judgment in Employing a Lawyer – Rule 7.4(b)(1)(E) A lawyer may not send unsolicited written communications, directly or indirectly, or knowingly permit them to be sent on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, associate or any other lawyer affiliated with the lawyer or the lawyer’s firm to a prospective client for the purpose of obtaining professional employment if the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

e. “ADVERTISEMENT” Mark - Rule 7.4(b)(2)(B)(ii) When a lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship for the purpose of obtaining employment, the top of each page of the written communication must be plainly marked “ADVERTISEMENT” in print size at least as large as the largest print used in the communication. For a self-mailing brochure or pamphlet (i.e., no envelope used/needed), the “ADVERTISEMENT” mark must appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet in print size at least as large as the largest print used in the communication.

f. No Restricted Form of Delivery or Resemblance to Legal Documents - Rule 7.4(b)(2)(C) A lawyer may not send unsolicited written communications, directly or indirectly, or knowingly permit them to be sent on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, associate or any other lawyer affiliated with the lawyer or the lawyer’s firm to a prospective client for the purpose of obtaining professional employment if it resembles a legal pleading, notice, contract or other legal document OR using registered mail, certified mail or other forms of restricted delivery.

g. Communications Regarding Specific Matters - Any unsolicited written communication concerning a specific matter shall include:

1) Disclosure if Another Lawyer Will Handle the Case or Matter – Rule 7.4(b)(2)(D) A statement advising the client if a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter;

2) Disclosure of How the Lawyer Obtained Information Prompting the Communication - Rule 7.4(b)(2)(E) If prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person, the communication shall disclose how the lawyer obtained the information prompting the communication. This disclosure requirement is intended to help the recipient understand the extent of the lawyer’s knowledge regarding the recipient’s particular situation and to minimize the possibility of the recipient being misled into believing that the lawyer has particularized knowledge about the recipient’s matter if the lawyer does not;
Example: A written communication may comply with this portion of the Rules by stating the information the lawyer has, e.g., “I obtained your name from a list of arrestees recently published by the local sheriff and the only information on that list are the names and addresses of arrestees and the fact that they were arrested.”

3) Nothing About the Nature of the Client’s Legal Problem – Rule 7.4(b)(2)(F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure, the nature of the client’s legal problem.

Note: Newsletters, if mailed/sent as unsolicited written communications to persons with whom the lawyer has no family or prior-lawyer client relationship, qualify as unsolicited written communications to prospective clients for the purpose of obtaining professional employment and, therefore, must comply with the requirements of Rule 7.4 and must be filed for evaluation in accordance with Rule 7.7, if not otherwise exempt under Rule 7.8.

3. Additional Regulations for Appearance on Television or Radio Advertisements - Rule 7.5

In addition to complying with the general regulations set forth in Section II., E., 1. above, advertisements appearing in the electronic media (other than computer-based advertisements), including but not limited to television or radio, must conform to the following:

Prohibited:

a. No False, Misleading or Deceptive Features - Rule 7.5(b)(1)(A) Television and radio advertisements cannot contain any feature, including, but not limited to, background sounds, that is false, misleading or deceptive.

Under this Rule, a feature, including a background sound, may not employ techniques that demonstrate a clear and convincing lack of relevance to the selection of counsel, including the portrayal of lawyers exhibiting characteristics clearly unrelated to traditional, rational considerations for selecting a lawyer or law firm.

Under this Rule, a feature, including a background sound, may employ techniques that reinforce traditional considerations for selecting a lawyer or law firm. Such traditional considerations may include, but are not limited to, experience, competence, diligence, loyalty, advocacy skills, costs of services and matters of accessibility and convenience.

With respect to background sounds, this Rule permits the use of songs, music or sound effects appropriate to on-screen visual or on-air audio depictions that are otherwise permissible under the Rules.

b. No Non-Firm Lawyers – Rule 7.5(b)(1)(B) Television and radio advertisements cannot contain lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm.

c. No Recognized Spokesperson’s Voice or Image – Rule 7.5(b)(1)(C) Television and radio advertisements cannot contain any spokesperson’s voice or image that is recognizable to the public in the community where the advertisement appears.

For purposes of this Rule, the “community where the advertisement appears” means the entire viewing or listening area as defined by the television or radio station on which the advertisement appears or will appear. Further, the use of the word “recognizable” in this Rule contemplates a determination that a substantial number of residents in the specified “community where the advertisement appears” are likely to recognize the image and/or voice of the spokesperson.

In addition, “spokesperson” does not include a lawyer who is a member of the advertising firm.

Permitted:

d. Images That Conform with the Rules – Rule 7.5(b)(2)(A) Television and radio advertisements MAY contain images that otherwise conform to the requirements of the Rules.
e. Firm Lawyer(s) – Rule 7.5(b)(2)(B)
Television and radio advertisements MAY contain 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.

f. Non-Lawyer Spokesperson – Rule 7.5(b)(2)(C) Television and radio advertisements MAY contain 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 provides a spoken disclosure identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer.

For purposes of this Rule, the “community where the advertisement appears” means the entire viewing or listening area as defined by the television or radio station on which the advertisement appears or will appear. Further, the use of the word “recognizable” in this Rule contemplates a determination that a substantial number of residents in the specified “community where the advertisement appears” are likely to recognize the image and/or voice of the spokesperson.

In addition, “spokesperson” does not include a lawyer who is a member of the advertising firm.

4. Additional Regulations for Computer-Accessed Communications - Rule 7.6

a. “Internet Presences” - Rule 7.6(b) This term refers to 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 (as defined in Rule 7.6(a)).

i. Jurisdictions in Which Lawyers are Licensed - Rule 7.6(b)(1) All Internet presences must disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law.

ii. Office Locations - Rule 7.6(b)(2) All Internet presences must disclose the city or town of one or more “bona fide office” location(s) of the lawyer or lawyers who will actually perform the services advertised, in accordance with Rule 7.2(a)(2). In the absence of a “bona fide office”, the internet presence must disclose the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2).

b. Electronic Mail Communications (E-mail) – Rule 7.6(c) This term refers to all unsolicited electronic mail (“e-mail”) communications sent directly or indirectly by a lawyer or law firm, or sent on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, associate or any other lawyer affiliated with the lawyer or lawyer’s firm, to a prospective client with whom the lawyer has no family or prior lawyer-client relationship for the purpose of obtaining professional employment.

i. Application of “Direct Mail” Rules - Rule 7.6(c)(1) All unsolicited e-mail to prospective clients must adhere to the following regulations governing unsolicited written communications (“direct mail”) under Rule 7.4:

- (b)(1) (general restrictions, including “30-Day Rule”);
- (b)(2)(A) (applying Rule 7.2);
- (b)(2)(B)(i) (name of at least one lawyer responsible for content);
- (b)(2)(C) (no resemblance to legal documents and no restricted form of delivery);
- (b)(2)(D) (requiring disclosure if matter to be handled by another lawyer);
•(b)(2)(E) (requiring disclosure of how lawyer obtained recipient’s name); and
•(b)(2)(F) (not revealing on the outside of the communication (e.g., in the subject matter line) the nature of the client’s legal problem).

ii. Office Locations - Rule 7.6(c)(2)
All unsolicited e-mail to prospective clients must disclose the city or town of one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised, in accordance with Rule 7.2(a)(2), or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2).

iii. “LEGAL ADVERTISEMENT” on Subject Line - Rule 7.6(c)(3) All unsolicited e-mail to prospective clients must state “LEGAL ADVERTISEMENT” on the subject line.

iv. Filing Requirements for E-mail Communications - Rule 7.7 Unsolicited e-mail communications sent directly or indirectly to prospective clients for the purpose of obtaining professional employment, unless specifically exempt under Rule 7.8 or otherwise under the Rules, must be filed for evaluation by the RPCC prior to or concurrently with first dissemination.

c. Other Computer-Accessed Advertisements - Rule 7.6(d) All other forms of lawyer advertisements disseminated via computer, including but not limited to, advertisements that appear on search engines, on the Web site of a person or entity other than that of the advertising lawyer or law firm, or on computer bulletin boards or “BLOGS”, must comply with the general requirements of Rule 7.2. These would include “banner” ads and must be filed for review by the RPCC, unless specifically exempt under Rule 7.8.


The RPCC/LSBA Ethics Counsel must complete its evaluation of a filing within thirty (30) days following receipt of a complete filing (as defined by Rule 7.7(d)), unless the RPCC/LSBA Ethics Counsel determines that further examination is warranted and the RPCC/LSBA Ethics Counsel so advises the filing lawyer within the thirty (30) day period. In such cases, the RPCC/LSBA Ethics Counsel shall complete the review as promptly as the circumstances reasonably allow. If the RPCC/ Ethics Counsel does not send the filing lawyer one of three (3) written communications within thirty (30) days following receipt of a complete filing—namely: 1) a “Further Examination Notice”, as described above; 2) a “Compliance Notice”, as described below in Section F. (2)(a); or 3) a “Notice of Non-Compliance”, as described below in Section F. (2)(b)—the advertisement will be deemed approved.

1) Initial Intake & Screening of Filings

For each separate and distinct advertisement or unsolicited written communication submitted for evaluation, a separate file is opened and a separate file number assigned. The filing is reviewed by Ethics Counsel to determine whether it is complete. A complete filing includes a copy of the ad/communication, a typewritten transcript of the ad, if any portion is not embodied in written/printed form, a sample envelope, if it will be mailed in an envelope, a statement of intended use and the appropriate filing fee. See Rule 7.7(d). Following the initial review for completeness, if the filing is complete, a letter is sent to the filing lawyer acknowledging receipt of the filing.

If the filing is incomplete, the filing lawyer is notified in writing of that fact and asked to submit the omitted materials. In the event that the filing lawyer does not submit the omitted materials as requested promptly, the RPCC/Ethics Counsel may find the filing non-compliant for insufficient information, as per Rule 7.7(f)—at which point, the filing lawyer will be advised in writing that dissemination or continued dissemination of the advertisement or unsolicited communication may result in professional discipline. The RPCC/Ethics Counsel will also report findings of non-compliance for insufficient information to the Office of Disciplinary Counsel unless, within ten (10) days of written notice from the RPCC/ Ethics Counsel, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

If the filing is complete, the RPCC/LSBA Ethics Counsel evaluates the advertisement/communication to determine whether it complies with the Rules. If, upon evaluation, the RPCC/Ethics Counsel determines that the filing falls into one of the exempt categories discussed in Section II., C., above, the filing lawyer will be notified by letter that the filing is exempt and that the filing fee is unnecessary (“Exempt Notice”) (unless the filing lawyer still wishes to pay the filing fee voluntarily and receive an evaluation for compliance from the RPCC/Ethics Counsel).
2) **Evaluation of Filings**

If the filing is complete and not exempt, the RPCC/Ethics Counsel next determines whether the advertisement/communication complies with the applicable advertising rules and notifies the filing lawyer of the results of the evaluation. The filing lawyer will either receive a written Compliance Notice, notifying the lawyer that the advertisement/communication filed with the LSBA is deemed in compliance with the Rules [“Compliance Notice”] OR a written Notice of Noncompliance, identifying the areas of noncompliance, if any, with advice to the filing lawyer that dissemination or continued dissemination of the advertisement or written communication may result in professional discipline [“Notice of Non-Compliance”].

a) **Compliance Notice**

If the filing lawyer receives a Compliance Notice, the lawyer should retain a copy of the advertisement/communication for five (5) years after its last dissemination, along with a record of when and where it was used. For identical unsolicited written communications sent to two or more prospective clients, a single copy of the communication, together with a list of the names and addresses of all persons to whom the communication was sent, should be kept by the filing lawyer for five (5) years after its last dissemination. With that, the lawyer’s obligations under Rule 7.7 have been satisfied with respect to that advertisement/communication. A finding of compliance, while not binding in a disciplinary proceeding, may be offered as evidence.

b) **Notice of Non-Compliance**

In the event of a determination of non-compliance, the written notification will also advise the filing lawyer that, unless the filing lawyer, within ten (10) days of the date of the Notice of Non-Compliance, certifies in writing that the advertisement or written communication has not and will not be disseminated, the RPCC/Ethics Counsel shall report the finding of non-compliance to the Office of Disciplinary Counsel, including in the report to the Office of Disciplinary Counsel a copy of the non-compliant advertisement/communication.

i) **Reasonable Revisions for Compliance**

If, in the opinion of the RPCC/Ethics Counsel, the non-compliant advertisement/communication might be simply/reasonably revised to achieve compliance, the Notice of Non-Compliance will also include recommendations from the RPCC/Ethics Counsel regarding those specific items that may be revised in order for the advertisement/communication to be compliant with the Rules. If the filing lawyer subsequently re-submits the same advertisement/communication revised only in accordance with the specific recommendations listed in the Notice of Non-Compliance, the revised advertisement/communication will be re-evaluated for compliance without the requirement of a completely new filing or payment of an additional filing fee. If the filing lawyer chooses not to revise or disseminate the advertisement/communication and certifies that choice to the RPCC/Ethics Counsel within ten (10) days of the date of the Notice of Non-Compliance, the filing is deemed terminated and Ethics Counsel’s file for this matter will be closed.

ii) **Need for Significant/Substantial Revision**

If, in the opinion of the RPCC/Ethics Counsel, the advertisement/communication may not be simply/reasonably revised in order to achieve compliance but would require significant/substantial revision in order to achieve compliance, the Notice of Non-Compliance will so state (indicating that this filing is deemed terminated and Ethics Counsel’s file is closed) but offer the filing lawyer an opportunity to contact Ethics Counsel to schedule an in-person appointment for one-on-one, in-depth advice and discussion regarding the kinds of advertisements/communications that would comply with the lawyer advertising rules. In this situation, the filing of a distinctly new or significantly-revised advertisement would constitute a new filing and require payment of a new filing fee.

3) **Optional Advance Written Advisory Opinion Process**

In addition to the “Regular Filing” procedure set forth above (and in Rule 7.7(c)) [i.e., for filings prior to or concurrent with the lawyer’s first dissemination of a non-exempt advertisement/communication], a lawyer may obtain an Advance Written Advisory Opinion concerning compliance of a contemplated advertisement or written communication in advance of disseminating the advertisement or communication by submitting the material and fee specified in Rule 7.7(d) [i.e., the same items required for a “Regular Filing”] at least thirty (30) days prior to such dissemination. See Rule 7.7(b). If the RPCC/Ethics Counsel finds that the advertisement or written communication complies with these Rules, the lawyer’s voluntary submission for an advance written advisory opinion shall be deemed to satisfy the “Regular Filing” requirement set forth in Rule 7.7(c), i.e., no further filing is needed for this advertisement or written communication.

Note regarding Television and Radio Advertisement:

The RPCC/Ethics Counsel will accept “storyboards” and a script in satisfaction of the requirement of a copy of the advertisement,
as noted in Rule 7.7(d)(1), in connection with a filing under Rule 7.7(b) [the advance written advisory opinion option]. Assuming that the “storyboards” and script filed with the RPCC/Ethics Counsel are found to comply with the Rules, the RPCC/Ethics Counsel will issue a written advisory opinion regarding the compliance of the anticipated advertisement on the condition that the final advertisement does not vary in substance from the “storyboards” and script that were filed with the RPCC/Ethics Counsel. After production of the advertisement, a copy of the advertisement in its final form must be submitted to the RPCC/Ethics Counsel prior to or concurrent with its first dissemination in order to fulfill the filing requirement of Rule 7.7(d). There is NO additional filing fee due in connection with this submission of the copy of the advertisement in its final form—its submission completes the filing initiated under this process. If the advertisement as filed in its final form does not vary in substance from the “storyboards” and script already filed with the RPCC/Ethics Counsel, the lawyer shall be deemed to have satisfied the filing requirements of Rules 7.7(b) and the written advisory opinion provided by the RPCC/Ethics Counsel shall have the evidentiary effects as indicated in Rule 7.7(h).

Note regarding telephone directory (and/or other periodic contract/subscription-limited advertising) [e.g. yellow pages directory advertising]: If an advance written advisory opinion is requested for an advertisement that is to be placed in a telephone directory or other similar publication, the advertisement/communication must be filed at least thirty (30) days prior to the contract or final printing deadline of the publication, rather than thirty (30) days prior to first dissemination of the printed publication [which would be too late to withdraw or alter advertisements found non-compliant with the Rules].

4) Changes to Advertising and Unsolicited Written Communications Already Filed/In Compliance

a) Voluntary Changes (i.e., made purposefully/voluntarily by the lawyer)
When a lawyer has already filed an advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel and a Compliance Notice was issued for that filing, if the lawyer makes subsequent changes to the advertisement or unsolicited written communication that do not simply involve the addition of “permissible content” as defined in Rule 7.2(b), the changed advertisement or unsolicited written communication effectively becomes a new advertisement or unsolicited written communication and, unless otherwise exempt under the specific exemptions listed in Rule 7.8, the new advertisement or unsolicited written communication must be filed as a new filing under Rule 7.7. A new filing fee of $175.00 will be due with the filing prior to or concurrent with the first dissemination of the new advertisement or unsolicited written communication. If the filing does not occur until after the lawyer’s first dissemination of the new advertisement or unsolicited written communication, a late filing fee of $275.00 is due at the time of filing.

b) Involuntary Changes (i.e., as a result of a Change of Circumstances beyond the control of the lawyer)

When a lawyer has already filed an advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel and a Compliance Notice was issued for that filing, if a change of circumstances occurs subsequent to the RPCC/Ethics Counsel’s evaluation and such change raises a substantial possibility that the advertisement or unsolicited written communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or unsolicited written communication or a modified advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel, along with an explanation of the change in circumstances. An additional fee (i.e., a re-filing fee) in the amount of one-half of the regular filing fee (i.e., $87.50) will be due with the re-filing, prior to or concurrent with the lawyer’s first dissemination of the advertisement or unsolicited written communication (or a modified version thereof) following the change in circumstances. If the lawyer does not re-file the advertisement or unsolicited written communication (or a modified version thereof) until after the lawyer’s first dissemination of the advertisement or unsolicited written communication following the change in circumstances, a late re-filing fee of one-half of the normal late filing fee (i.e., $137.50) will be due at the time of the late re-filing.
III. COMMONLY ASKED QUESTIONS

A. Q: Does my advertisement or unsolicited written communication have to be filed with the LSBA?

A: Not necessarily. Rule 7.8 contains a list of specific exemptions from the filing and evaluation requirements of Rule 7.7. If the advertisement or unsolicited written communication falls within any of those exemptions, no filing with the LSBA is required. Advertisements or unsolicited written communication that are not specifically exempt under Rule 7.8 must be filed with the LSBA, as per Rule 7.7(b) and Rule 7.7(c).

B. Q: Does my non-exempt advertisement or unsolicited written communication have to be evaluated by the LSBA before I can use it?

A: No. Rule 7.7(c) requires filing “either prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication.” Rule 7.7(b) also offers an optional process for filing at least thirty (30) days prior to first dissemination of the advertisement or unsolicited written communication in order for the filing lawyer to obtain a written advisory opinion concerning the compliance of the advertisement or unsolicited written communication. As such, while the lawyer may file prior to first dissemination, the Rules permit filing concurrent with first dissemination. However, once disseminated, any violation of the substantive rules governing lawyer advertisements subjects the advertising lawyer to potential discipline. Therefore, while concurrent filing is specifically permitted by Rule 7.7(c), prudence would suggest filing prior to first dissemination in order to avoid the risk of rule violations and/or disciplinary consequences that might occur if the lawyer waits to file concurrent with first dissemination.

C. Q: What is the amount of the filing fee?

A: The fee for submissions filed prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication, including filings under the optional advance written advisory opinion process (i.e., “regular filings”, under Rule 7.7(b), and “advance written advisory opinion filings”, under Rule 7.7(c)) is $175.00.

The fee for submissions not filed until after the lawyer’s first dissemination of the advertisement or unsolicited written communication (i.e., “late filings”) is $275.00.

D. Q: May the filing be faxed or e-mailed to expedite evaluation?

A: No. The review process cannot begin until the LSBA receives a check for the entire amount of the filing fee, made payable to “Louisiana State Bar Association”. While the LSBA will accept information related to filings by fax or e-mail, the filing is technically not complete and ready for evaluation until the LSBA has also received the full amount of the correct filing fee.

E. Q: What happens if I file an advertisement or unsolicited written communication but fail to submit the correct filing fee?

A: Lawyers who submit filings without fees or with insufficient fees will be notified of the deficiency and requested to supply the appropriate amount needed to complete the filing and continue with the evaluation process. Failure to submit the correct filing fee following a written request for same from Ethics Counsel may result in: a written finding of “Non-Compliance for Insufficient Information”; written notice of same to the Office of Disciplinary Counsel (unless the filing lawyer certifies in writing within ten (10) days that the advertisement/communication has not and will not be disseminated); and termination of the filing.

F. Q: Once my advertisement or unsolicited written communication has been filed and deemed in compliance, must I re-file the advertisement or unsolicited written communication if I decide to use it later in its identical form?

A: Generally, the answer is “no”. If you will use it again in the same media indicated at the time of your original filing, you do not need to re-file the advertisement or unsolicited written communication unless you make changes to the advertisement or unsolicited written communication other than changes to “permissible content” (“safe harbor” content) as detailed in Rule 7.2(b). For example, if you change only the street address and/or a listing of practice areas (i.e., exempt “safe harbor”/”permissible content” under Rule 7.2(b)), the advertisement/communication does not need to be re-filed.

If, however, you make changes to the advertisement or unsolicited written communication that are not just considered “permissible content” under Rule 7.2(b), the advertisement or unsolicited written communication is effectively now a distinctly new ad/communication and, as such, must be filed as a new filing unless otherwise exempt under Rule 7.8. Other changes requiring a new filing would include a plan to use the same advertisement or unsolicited written communication in a new/different medium not originally specified in your original filing as the change in medium may require evaluation/analysis under a different set of rules. For example, a lawyer would ordinarily need to re-file an advertisement specifically filed and first disseminated only as a newspaper ad if the lawyer subsequently decides to use the same ad as an unsolicited written...
communication—the new intended method of dissemination would constitute a new form of advertisement or unsolicited written communication and, therefore, require a new filing unless otherwise exempt under Rule 7.8.

G. Q: What happens if the Court changes these Rules after I have already filed an advertisement or unsolicited written communication that was deemed compliant?

A: If the Rules are amended by the Supreme Court of Louisiana, changes in the Rules may make a previously-compliant advertisement or unsolicited written communication non-compliant, or vice versa. Therefore, following a rule change, you should consider whether the changes affect your advertisement/communication and, if so, whether the advertisement or unsolicited written communication will need to be revised in order to comply with the changes in the Rules. If no revision is needed, no re-filing is required.

However, if this “change of circumstances” occurring subsequent to the original evaluation of the advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the “change of circumstances”, you must promptly re-file your advertisement/communication revised in keeping with the new changes in the Rules. The fee for re-filing under such an involuntary “change of circumstances” will be one-half of the amount the regular filing fee for new filings (i.e., $87.50).

H. Q: May I obtain a written advisory opinion before going to the expense of actually producing a radio or television advertisement?

A: Yes—Absolutely. An advance written advisory opinion based upon scripts and story boards can be sought prior to actual production, if submitted according to Rule 7.7(b) and 7.7(d). However, the advance written advisory opinion obviously will not cover any elements in the finished advertisement that are not clearly indicated in the previously-submitted scripts and story boards. A recording/digital file of the advertisement in its final form, readily-capable of duplication by the RPCC/Ethics Counsel, must be filed no later than the time of its first broadcast. Upon receipt of an advertisement in its final form, a final evaluation for compliance will be rendered.

I. Q: Must I submit a separate filing fee for each non-exempt advertisement I plan to run, even if the ads are all very similar?

A: Yes, unless: (1) the advertisements are identical in content and your statement of intent includes all media in which the ad/communication will appear, in keeping with Rule 7.7(d)(6); (2) the only differences pertain to “permissible content” detailed in Rule 7.2(b); or (3) the ads are clearly/obviously subsets of another advertisement already filed.

J. Q: What language in advertisements or unsolicited written communications is subject to size and other requirements?

A: Any words or statements required by the advertising rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. Rule 7.2(c)(10). Examples of required language include the following:

• Rule 7.2(a)(1) Name of at least one lawyer responsible for the content;

• Rule 7.2(a)(2) Disclosure, by town or city [or parish, if outside town or city], of one or more bona fide office location(s) [or city or town of lawyer’s primary registration statement address, if no bona fide office];

• Rule 7.2(c)(5) IF specialty/certification/expertise claimed, name of certifying organization [and, if not approved by the Louisiana Board of Legal Specialization or another state bar or accredited by the ABA, disclosure that certifying organization is not approved by the Louisiana Board of Legal Specialization];

• Rule 7.2(c)(6) IF fee information included, disclosure of client’s liability for expenses/costs other than fees;

• Rule 7.2(c)(7) IF fees or a range of fees for a particular service are advertised but will be honored for a period of less than ninety (90) days from the date last advertised, the advertisement or communication must specify the shorter period that the advertised fee(s) will be honored [Note: fees listed in yellow page/telephone directory advertisements and or public media that are not published more frequently than only once a year must be honored for at least one (1) year following publication];

• Rule 7.2(c)(12) IF the case or matter will be or is likely to be referred to another lawyer or law firm, a statement so advising the prospective client;

• Rule 7.4(b)(2)(B)(ii) IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the word “ADVERTISEMENT” must appear at the top of each page and on the lower left corner of the face of the envelope in
which the written communication will be enclosed. “ADVERTISEMENT” must be plainly marked in print size at least as large as the largest print used in the written communication;

IF the unsolicited written communication is a self-mailing brochure or pamphlet (or postcard) that will not be enclosed in an envelope, the “ADVERTISEMENT” mark must appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet, in print size at least as large as the largest print used in the written communication;

•Rule 7.4(b)(2)(D) IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, IF another lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, the communication must contain a statement so advising the prospective client;

•Rule 7.4(b)(2)(E) IF the lawyer is sending an unsolicited written communication to prospective clients with whom the lawyer has no family or prior lawyer-client relationship that is prompted by a specific occurrence involving or affecting the intended recipient or a family member of that person, the written communication must disclose how the lawyer obtained the information prompting the communication;

•Rule 7.5(b)(2)(C) IF the advertisement is in the electronic media such as television or radio, any non-lawyer spokesperson speaking on behalf of the lawyer or law firm must provide a spoken disclosure identifying the spokesperson as a spokesperson and disclosing that the spokesperson is not a lawyer;

•Rule 7.6(b)(1) IF the advertisement or other communication about the lawyer or the lawyer’s services is on a Web site or home page accessed via the Internet, the lawyer must disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law, as well as the city or town of one or more bona fide office locations or, in the absence of a bona fide office location, the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2);

•Rule 7.6(b)(1) IF the advertisement or unsolicited written communication is sent via electronic mail to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, the subject line of the e-mail must state “LEGAL ADVERTISEMENT”;

•Rule 7.9(b)(2) IF the lawyer is sending information to a potential client that has been requested by the potential client, the lawyer may furnish an engagement letter to the potential client; however, if the information 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” must appear on the client signature line;

•Rule 7.9(c) IF the lawyer is sending information to a potential client that has been requested by the potential client AND the sending lawyer reasonably believes that a lawyer or law firm not associated with the sending lawyer will be associated or act as primary counsel in representing the client, the sending lawyer must provide an appropriate disclaimer to that effect;

•Rule 7.10(d) IF the lawyer or law firm has offices in more than one jurisdiction, the lawyer or law firm may use the same firm name in each jurisdiction but the identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located;

•Rule 7.10(g) IF the lawyer or law firm uses or continues to include in its name the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession, appropriate disclosure/qualifying language regarding the status of those members should be used (e.g., “(Retired)”; “(Deceased)”; “(1950-1990)”); etc.).

K. Q: What rules apply to newsletters?

A: Newsletters, if disseminated as unsolicited written communications to persons with whom the lawyer has no family or prior-lawyer client relationship, qualify as unsolicited written communications to prospective clients for the purpose of obtaining professional employment and, therefore, must comply with the requirements of Rule 7.4 (or Rule 7.6(c), if disseminated electronically) and must be filed for evaluation in accordance with Rule 7.7, if not otherwise exempt under Rule 7.8.

L. Q: What rules apply to seminar announcements?

A: Seminar announcements appearing in public print media must comply with the rules governing other forms of print advertisements set forth in Rule 7.2. Unsolicited seminar announcements disseminated through the mail by a lawyer or law firm, directly or indirectly, to persons with whom the lawyer has no family or prior-lawyer cli-
ent relationship, must comply with Rule 7.4(b) governing unsolicited written communications. Exceptions may be made, however, if the lawyer has no financial responsibility for the seminar and no control over seminar advertisements. For example, if a lawyer will appear as a guest speaker at a seminar sponsored and financed by someone else (e.g., a third party CLE provider, a local bar, the LSBA, etc.), the advertisement may be exempt from the rules governing lawyer advertising.

M. Q: What rules apply to professional announcements?

A: Professional announcements appearing in the public print media must comply with the general rule governing communications concerning a lawyer’s services, namely Rule 7.2.

Provided they contain no illustrations or information beyond that set forth in Rule 7.2(b), professional announcements appearing in the public print media (e.g., newspapers) are exempt from the filing requirement under Rule 7.8(a).

Provided that they state only new or changed associations, new offices, and similar changes relating to a lawyer or law firm and are mailed only to other lawyers, relatives, close personal friends and existing or former clients, they are also exempt from the filing requirement under Rule 7.8(f). However, if they will also be mailed to prospective clients with whom the lawyer has no family or prior lawyer-client relationship, professional announcements must comply with the rules governing unsolicited written communications, i.e., Rule 7.4(b).

N. Q: What about information disseminated on the Internet?

A: Lawyer and law firm Web sites (“internet presences”) are exempt from the filing requirement of Rule 7.7, as per Rule 7.6(b).

However, Web sites are still subject to Rule 7.9, which, in turn, makes them subject to the requirements of Rule 7.2 unless otherwise provided in Rule 7.9. Essentially, the two Rules, when read together, prohibit the use of false, misleading or deceptive information on the Web site of the lawyer or law firm. Web sites are specifically subject to Rule 7.6(b)(1) and (2), which require lawyers to disclose on their Web sites “all jurisdictions in which the lawyer or members of the law firm are licensed to practice law” and “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”. Otherwise, Web sites are treated as information provided upon request and governed by Rule 7.9.

Unlike Web sites, unsolicited electronic mail (“e-mail”) communications directly or indirectly to prospective clients with whom the lawyer has no family or prior lawyer-client relationship must follow the requirements of Rule 7.6(c)(1) through 7.6(c)(3), especially including on the subject line the words “LEGAL ADVERTISEMENT”.

All other forms of computer-accessed communications—i.e., not a lawyer’s or law firm’s own Web site or unsolicited information disseminated by e-mail—are subject to the general rules applicable to all forms of lawyer advertising, namely Rule 7.2. Rule 7.6(b)(3) exempts from the filing requirement only those ads appearing on the Internet through a lawyer’s or law firm’s Web site or home page.
IV. QUICK REFERENCE CHECKLIST

The following quick reference checklist is intended to assist advertising lawyers develop advertisements and unsolicited written communications that comply with the Louisiana Rules of Professional Conduct. It is not a substitute for filing a non-exempt advertisement or unsolicited written communication, as required by Rule 7.7. Furthermore, a “NO” answer to all of the questions does not guarantee that the advertisement or unsolicited written communication will be found to comply with the rules governing lawyer advertising and solicitation.

If the answer to any of the following questions is “YES”, the advertisement or unsolicited written communication fails to comply with the Louisiana Rules of Professional Conduct.

GENERAL QUESTIONS FOR ALL ADVERTISEMENTS AND UNSOLICITED WRITTEN COMMUNICATIONS

1. Does the advertisement or unsolicited written communication fail to contain the name of at least one lawyer responsible for its content? Rule 7.2(a)(1).

2. Does the advertisement or unsolicited written communication fail to disclose the city or town of at least one bona fide office location of the advertising lawyer or law firm that will actually perform the services advertised or, if the bona fide office location is outside a city or town, the parish where the office is located, in the absence of a bona fide office, the city of town of the primary registration statement address as it appears on the lawyer’s annual registration statement? Rule 7.2(a)(2).

3. Does the advertisement or unsolicited written communication list 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 without including appropriate qualifying language? Rule 7.2(a)(2).

4. Does the advertisement or unsolicited written communication contain any misrepresentations of fact or law? Rule 7.2(c)(1)(A).

5. Does the advertisement or unsolicited written communication contain any information that is false, misleading or deceptive? Rule 7.2(c)(1)(B).

6. Does the advertisement or unsolicited written communication fail to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive? Rule 7.2(c)(1)(C).

7. Does the advertisement or unsolicited written communication contain a reference or testimonial to past successes or results obtained? Rule 7.2(c)(1)(D). [Exception: If the advertisement or communication will be provided only to prospective clients upon request and the statements regarding past results are factually verifiable. Rule 7.9(b).]

8. Does the advertisement or unsolicited written communication promise results? Rule 7.2(c)(1)(E).

9. Does the advertisement or unsolicited written communication state or imply that the lawyer or law firm can achieve results by means that violate the Louisiana Rules of Professional Conduct or other law? Rule 7.2(c)(1)(F).

10. Does the advertisement or unsolicited written communication compare the lawyer or law firm’s services with any other lawyers’ services in a manner that cannot be factually substantiated? Rule 7.2(c)(1)(G).

11. Does the advertisement or unsolicited written communication contain a paid testimonial or endorsement without disclosure of the fact of payment? Rule 7.2(c)(1)(H).

12. Does the advertisement or unsolicited written communication include the portrayal of a client by a non-client? Rule 7.2(c)(1)(I).

13. Does the advertisement or unsolicited written communication include pictures, scenes, events or reenactments that are not actual or authentic or that have been “staged” for purposes of the advertisement or unsolicited written communication? Rule 7.2(c)(1)(I). CAVEAT: The Handbook Subcommittee believes this Rule may be subject to more than one reasonable interpretation—please see also page 15, subparagraph i).

14. Does the advertisement or unsolicited written communication include the portrayal of a judge or a jury? Rule 7.2(c)(1)(J).

15. Does the advertisement or unsolicited written communication include the portrayal of a lawyer by a non-lawyer? Rule 7.2(c)(1)(J).

16. Does the advertisement or unsolicited written communication include the portrayal of a law firm as a fictionalized entity? Rule 7.2(c)(1)(J).

17. Does the advertisement or unsolicited written communication include 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? Rule 7.2(c)(1)(J).

18. Does the advertisement or unsolicited written communication resemble a legal pleading, legal notice, contract or other legal document? Rule 7.2(c)(1)(K).

19. Does the advertisement or unsolicited written communication utilize a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter? Rule 7.2(c)(1)(L).

20. Does the advertisement or unsolicited written communication offer or advertise a willingness to make advances or loan guarantees to/for clients, in violation of Rule 1.8(e)(4)(iii) of the Louisiana Rules of Professional Conduct? Rule 7.2(c)(1)(M).
21. Does the advertisement or unsolicited written communication contain any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things or events that are false, misleading or deceptive? Rule 7.2(c)(2).

22. Does the advertisement or unsolicited written communication state or imply that the lawyer or law firm currently practices in an area of law when that is not the case? Rule 7.2(c)(3).

23. Does the advertisement or unsolicited written communication contain any statement that directly or impliedly indicates that the communication has received any kind of approval from the Louisiana State Bar Association? Rule 7.2(c)(4).

24. Other than communicating the fact that the lawyer or law firm does or does not practice in particular fields of law:

   a. Does the advertising lawyer—who is NOT properly certified as a specialist—claim or indicate a specialization, certification or expertise in a field of law or area of legal practice? Rule 7.2(c)(5).

   b. Does the advertising lawyer—who IS properly certified as a specialist—claim a specialization, certification or expertise in an area of law other than that in which the lawyer is properly certified? Rule 7.2(c)(5).

   c. Does the advertising lawyer—who IS properly certified as a specialist—fail to identify the pertinent certifying organization? Rule 7.2(c)(5).

   d. Does the advertising lawyer—who IS properly certified as a specialist by an organization other than the Louisiana Board of Legal Specialization, another state bar or an organization accredited by the American Bar Association—fail to state that the certifying organization is “Not Approved by the Louisiana Board of Legal Specialization” in compliance with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization? Rule 7.2(c)(5).

25. If the advertisement or unsolicited written communication contains information about the lawyer’s fee(s)—and/or indicates that no fee will be charged in the absence of a recovery—does it fail to disclose whether the client will be liable for any costs and/ or expenses in addition to the fee? Rule 7.2(c)(6).

26. Does the advertisement or unsolicited written communication employ a name, logo, letterhead, professional designation, trade name or service mark that implies a connection with a government agency, public or charitable services organization or other professional association that implies that the lawyer or law firm is something other than a private law firm? Rule 7.2(c)(8) and Rule 7.10.

27. Does the advertisement or unsolicited written communication employ a name, logo, letterhead, professional designation, trade name or service mark that is not one actually used by the lawyer in practice? Rule 7.2(c)(8) and Rule 7.10(c).

28. Does the advertisement or unsolicited written communication employ a name, logo, letterhead, professional designation, trade name or service mark that is not the one that appears on the lawyer’s letterhead, business cards, office sign, and fee contracts, and appears with the lawyer’s signature on pleadings and other legal documents? Rule 7.2(c)(8) and Rule 7.10(c).

29. If the lawyer or law firm has offices in more than one jurisdiction and uses the same name in each jurisdiction, does the advertisement or unsolicited written communication intended to be broadcast or disseminated in Louisiana identify lawyers in offices of the firm but fail to identify the jurisdictional limitations of the lawyers not licensed to practice in Louisiana? Rule 7.2(c)(8) and Rule 7.10(d).

30. Does the advertisement or unsolicited written communication contain the name of a law firm that includes the name of a lawyer holding public office or formerly associated with the firm during any substantial period in which the lawyer is not actively and regularly practicing with the law firm? Rule 7.2(c)(8) and Rule 7.10(e).

31. Does the advertisement or unsolicited written communication contain any statement or implication that the lawyer or lawyers therein practice in a partnership or other organizational business entity when that is not fact? Rule 7.2(c)(8) and Rule 7.10(f).

32. Does the advertisement or unsolicited written communication contain any words required by these Rules that do not appear in the same language as the rest of the advertisement or unsolicited written communication? Rule 7.2(c)(9).

33. Does the advertisement or unsolicited written communication appear in more than one language but contain any words required by these Rules that do not appear in each language used in the advertisement or unsolicited written communication? Rule 7.2(c)(9).

34. Does the advertisement or unsolicited written communication contain any words required by these Rules that are not clearly legible, if written, or intelligible, if spoken aloud? Rule 7.2(c)(10).

35. Will the cost of the advertisement or unsolicited written communications be paid for—entirely or in part—directly or indirectly by a lawyer not in the same law firm as the lawyer or law firm that is featured or included in the advertisement or unsolicited written communication? Rule 7.2(c)(11).

36. If the case or matter will be, or is likely to be, referred to another lawyer or law firm, does the advertisement or unsolicited written communication fail to include a statement so advising the prospective client? Rule 7.2(c)(12).
ADDITIONAL QUESTIONS FOR UNSOLICITED WRITTEN COMMUNICATIONS

37. Specific rules regulate unsolicited written communications to persons with whom the lawyer has no family or prior-lawyer client relationship:

a. If the unsolicited written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication will be addressed or a relative of that person, has the accident or disaster occurred less than thirty days prior to the mailing of the communication? Rule 7.4(b)(1)(A).

b. Has it been made known to the lawyer or law firm that the person who is the intended recipient does not want to receive such communications from the lawyer? Rule 7.4(b)(1)(B).

c. Does the communication involve coercion, duress, fraud, overreaching, harassment, intimidation or undue influence? Rule 7.4(b)(1)(C).

d. Does the lawyer know, or should the lawyer reasonably know, that the physical, emotional or mental state of the person who is the intended recipient makes it unlikely that the person would exercise reasonable judgment in employing a lawyer? Rule 7.4(b)(1)(E).

e. Does the top of each page of the unsolicited written communication fail to have “ADVERTISEMENT” plainly marked in print size at least as large as the largest print used in the written communication? Rule 7.4(b)(2)(B)(ii).

f. If the unsolicited written communication will be enclosed in an envelope, does the lower left corner of the face of the envelope fail to have “ADVERTISEMENT” plainly marked in print size at least as large as the largest print used in the written communication? Rule 7.4(b)(2)(B)(ii).

g. If the unsolicited written communication is in the form of a self-mailing brochure, pamphlet or postcard, does the “ADVERTISEMENT” mark fail to appear above the address panel AND on the inside of the brochure, pamphlet or postcard, in print size at least as large as the largest print used in the written communication? Rule 7.4(b)(2)(B)(ii).

h. Does the unsolicited written communication resemble a legal pleading, legal notice, contract or other legal document? Rule 7.4(b)(2)(C).

i. Will the unsolicited written communication be sent by registered mail, certified mail or other forms of restricted delivery? Rule 7.4(b)(2)(C).

j. If the case or matter will actually be handled by a lawyer other than the lawyer whose name or signature appears on the unsolicited written communication, does the communication fail to include a statement so advising the prospective client? Rule 7.4(b)(2)(D).

k. If the unsolicited written communication has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person, does the communication fail to disclose how the lawyer obtained the information prompting the unsolicited written communication? Rule 7.4(b)(2)(E).

l. If the unsolicited written communication seeks employment by a specific prospective client in a specific matter, does the envelope or outside of a self-mailing brochure, pamphlet or postcard reveal the nature of the client’s legal problem? Rule 7.4(b)(2)(F).

ADDITIONAL QUESTIONS FOR TELEVISION OR RADIO

38. Specific rules regulate advertisements in the electronic media (with the exception of computer-based advertisements, specially regulated by Rule 7.6), including, but not limited to, television and radio:

a. Does the television or radio advertisement contain any feature, including, but not limited to, background sounds, that is false, misleading or deceptive? Rule 7.5(b)(1)(A).

b. Does the television or radio advertisement contain lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm? Rule 7.5(b)(1)(B).

c. Does the television or radio advertisement contain any spokesperson’s voice or image that is recognizable to the public in the community where the advertisement will appear/run? Rule 7.5(b)(1)(C).

d. Does the television or radio advertisement contain a non-lawyer spokesperson speaking on behalf of the lawyer or law firm but without a spoken disclosure provided by the spokesperson identifying himself/herself as a spokesperson and disclosing that he/she is not a lawyer? Rule 7.5(b)(2)(C).
ADDITIONAL QUESTIONS FOR COMPUTER-ACCESSED COMMUNICATIONS

39. Specific rules regulate computer-accessed communications, such as Internet presences (e.g., Web sites or home pages), unsolicited electronic mail (“e-mail”) and information concerning a lawyer’s or law firm’s services that appears on internet search engine screens and elsewhere (e.g., banner ads):

a. Internet Presences (e.g., a lawyer’s or law firm’s Internet Web site or home page):

   1) Does the Internet presence fail to disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice? Rule 7.6(b)(1).

   2) Does the Internet presence fail to disclose the city or town of one or more bona fide office location(s) OR, if outside a city or town, the parish(es) of the bona fide office location(s) OR, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, as per Rule 7.2(a)(2)? Rule 7.6(b)(2).

b. Unsolicited e-mail to persons with whom the lawyer has no family or prior lawyer-client relationship:

   1) If the unsolicited e-mail concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication will be addressed or a relative of that person, has the accident or disaster occurred less than thirty days prior to the mailing of the e-mail communication? Rule 7.4(b)(1)(A) and Rule 7.6(c)(1).

   2) Has it been made known to the lawyer or law firm that the person who is the intended recipient does not want to receive such e-mail communications from the lawyer? Rule 7.4(b)(1)(B) and Rule 7.6(c)(1).

   3) Does the e-mail communication involve coercion, duress, fraud, overreaching, harassment, intimidation or undue influence? Rule 7.4(b)(1)(C) and Rule 7.6(c)(1).

   4) Does the lawyer know, or should the lawyer reasonably know, that the physical, emotional or mental state of the person who is the intended recipient makes it unlikely that the person would exercise reasonable judgment in employing a lawyer? Rule 7.4(b)(1)(E) and Rule 7.6(c)(1).

   5) Does the e-mail communication fail to contain the name of at least one member in good standing of the Louisiana State Bar Association responsible for its content? Rule 7.4(b)(2)(B)(i) and Rule 7.6(c)(1).

   6) Does the e-mail communication resemble a legal pleading, legal notice, contract or other legal document? Rule 7.4(b)(2)(C) and Rule 7.6(c)(1).

   7) Will the e-mail communication be sent by some form of restricted delivery? Rule 7.4(b)(2)(C) and Rule 7.6(c)(1).

   8) If the case or matter will actually be handled by a lawyer other than the lawyer whose name or signature appears on the unsolicited e-mail communication, does the e-mail communication fail to include a statement so advising the prospective client? Rule 7.4(b)(2)(D) and Rule 7.6(c)(1).

   9) If the unsolicited e-mail communication has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person, does the e-mail communication fail to disclose how the lawyer obtained the information prompting the unsolicited e-mail communication? Rule 7.4(b)(2)(E) and Rule 7.6(c)(1).

   10) If the unsolicited e-mail communication seeks employment by a specific prospective client in a specific matter, does the subject line of the e-mail (i.e., the “outside”) somehow reveal the nature of the client’s legal problem? Rule 7.4(b)(2)(F) and Rule 7.6(c)(1).

   11) Does the unsolicited e-mail communication fail to disclose the city or town of one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised, in accordance with Rule 7.2(a)(2), or, in the absence of a bona fide office, the city or town of the lawyer’s primary registration statement address, in accordance with Rule 7.2(a)(2)? Rule 7.6(c)(2).

   12) Does the subject line of the unsolicited e-mail communication fail to state “LEGAL ADVERTISMENT”? Rule 7.6(c)(3).

c. All computer-accessed communications concerning a lawyer’s or law firm’s services, other than the Web site or home page of the lawyer or law firm or unsolicited e-mail communications to prospective clients, are subject to the general requirements of Rule 7.2 (see above): e.g., banner ads on computer search engine screens or other Web sites.
ARTICLE XVI. of the Articles of Incorporation of the Louisiana State Bar Association

RULES OF PROFESSIONAL CONDUCT

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, Web sites 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.

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 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 certification)” or a “specialist in (area of certification)” if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification.

A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

(C) Certification by Other State Bars. A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” “board certified,” an “expert in (area of certification)” or a “specialist in (area of certification)” if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

(6) Disclosure of Liability For Expenses Other Than Fees. Every advertisement and unsolicited written communication that contains information about the lawyer’s fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any costs and/or expenses in addition to the fee.

(7) Period for Which Advertised Fee Must Be Honored. A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(8) Firm Name. A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.

(9) Language of Required Statements. Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

(10) Appearance of Required Statements. Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud.

(11) Payment by Non-Advertising Lawyer. No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.

(12) Referrals to Another Lawyer. If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.

(13) Payment for Recommendations; Lawyer Referral Service Fees. A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:
(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Rule 7.3 [Reserved – Intentionally Left Blank]

Rule 7.4 Direct Contact With Prospective Clients

(a) Solicitation. Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer’s request or on the lawyer’s behalf or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer’s behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term “solicit” includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase “prior lawyer-client relationship” shall not include relationships in which the client was an unnamed member of a class action.

(b) Written Communication Sent on an Unsolicited Basis.

(1) 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 written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

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

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

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

(D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2; or

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

(2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

(A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2.

(B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules:

(i) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked “ADVERTISEMENT” in print size at least as large as the largest print used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the “ADVERTISEMENT” mark shall appear above the address panel of the brochure or pamphlet and on the inside of the brochure
or pamphlet. Written communications solicited by clients or prospective clients need not contain the “ADVERTISEMENT” mark.

(C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery.

(D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.

(E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.

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

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.

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 7.2 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.

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.

(2) Meetings. The Committee shall meet as often as is necessary to fulfill its duty to provide prompt opinions regarding submitted advertisements’ compliance with the lawyer advertising and solicitation rules.

(3) Procedural Rules. The Committee may adopt such procedural rules for its activities as may be required to enable the Committee to fulfill its functions.

(4) Reports to the Court. Within six months following the conclusion of the first year of the Committee’s evaluation of advertisements in accordance with these Rules, and annually thereafter, the Committee shall submit to the Supreme Court of Louisiana a report detailing the year’s activities of the Committee. The report shall include such information as the Court may require.

(b) Advance Written Advisory Opinion. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer’s voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.

(c) Regular Filing. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

(d) Contents of Filing. A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:

(1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);

(2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;

(3) a printed copy of all text used in the advertisement;

(4) an accurate English translation, if the advertisement appears or is audible in a language other than English;

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

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

(7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer’s first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer’s first dissemination of the advertisement or unsolicited written communication.

(e) Evaluation of Advertisements. The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable Rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the thirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

(f) Additional Information. If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of non-compliance for insufficient information.

(g) Notice of Noncompliance; Effect of Continued Use of Advertisement. When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

(h) Committee Determination Not Binding; Evidence. A finding by the Committee of either compliance or noncompliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.

(i) Change of Circumstances; Re-filing Requirement. If a change of circumstances occurring subsequent to the Committee’s evaluation of an advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or a modified advertisement with the Committee along with an explanation of the change in circumstances and an additional fee as set by the Court.

(j) Maintaining Copies of Advertisements. A copy or recording of an advertisement or written or recorded communication shall be submitted to the Committee in accordance with the requirements of Rule 7.7, and the lawyer shall retain a copy or recording for five years after its last dissemination along with a record of when and where it was used. If identical unsolicited written communications are sent to two or more prospective clients, the lawyer may comply with this requirement by filing a copy of one of the identical unsolicited written communications and retaining for five years a single copy together with a list of the names and addresses of all persons to whom the unsolicited written communication was sent.

Rule 7.8 Exemptions From The Filing and Review Requirement

The following are exempt from the filing and review requirements of Rule 7.7:

(a) any advertisement or unsolicited written communication that contains only content that is permissible under Rule 7.2(b).

(b) a brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this Rule and the Rule setting forth permissible content of advertisements, the following are criteria that may be considered:

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

(2) whether the announcement contains information concerning the lawyer’s or law firm’s area(s) of practice, legal background, or experience;

(3) whether the announcement contains the address or telephone number of the lawyer or law firm;

(4) whether the announcement concerns a legal subject;

(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.

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.

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 something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.

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

(d) Law Firm with Offices in More Than One Jurisdiction. A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

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

(f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.

(g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession.

[adopted by the Supreme Court of Louisiana, Order dated June 26, 2008, effective December 1, 2008]
VI. EXAMPLES OF COMPLYING AND NONCOMPLYING ADS

A. PRINT ADVERTISEMENTS

1. Print Advertisement That *COMPLIES* With Applicable Rules

[This Ad Is *EXEMPT* From The Filing Requirement (as per Rule 7.8(A)].]
2. Print Advertisement That **COMPLIES** With Applicable Rules

*NOT EXEMPT From The Filing Requirement of Rule 7.7* – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)
3. Print Advertisement That *COMPLIES* With Applicable Rules

*NOT EXEMPT from the filing requirement of Rule 7.7 – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)*
4. Print Advertisement That **COMPLIES** With Applicable Rules

*NOT EXEMPT from the filing requirement of Rule 7.7 – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)*
5. Print Advertisement That Does *NOT COMPLY*

**INJURED?**

Then You Need an Attorney!

We Will Recover $$ for You!

Call Us Today!

(985) 555-1234

Phone answered 24/7

Boudreaux & Bergeron, Attorneys At Law

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1. Photo may or may not violate the Rule, depending on whether it is a photo of an actual or authentic auto accident. To comply with this Rule, the lawyer may be required to submit additional information to the LSBA in support of the use of the photograph in the advertisement. Rule 7.2(c)(1)(I).

2. Illustration and statement that “Phone answered 24/7”, viewed together, may be false, misleading and/or deceptive, as lawyer is unlikely to answer phone 24/7. Rule 7.2(c)(1)(B).

3. Illustration and statement that “Phone answered 24/7”, viewed together, may be false, misleading and/or deceptive, as lawyer is unlikely to answer phone 24/7. Rule 7.2(c)(1)(B).

4. Illustration is false, misleading or deceptive – a lawyer MAY be needed at some point but is not absolutely necessary if one is injured. Rule 7.2(c)(1)(B).

5. Fails to state name of at least one lawyer responsible for advertisement content – Firm’s trade name is insufficient. Rule 7.2(a)(1).

Also, fails to include the city or town of one or more bona fide office location(s). Rule 7.2(a)(2).
6. Print Advertisement That Does **NOT COMPLY**
7. Print Advertisement That Does NOT COMPLY

Injured in an Accident?
Tired of Being Dogged by Insurance Adjusters?
Others Telling You Your Case is Just Another Dog with Fleas?

Call Me…
"The Golden Retriever"

I’ll Run Fast, Sniff Around and Bring Back Gold!!
"No Gold, No Fee Guarantee"

(225) 555-4321
Baton Rouge, Louisiana*

"The Golden Retriever"
D. Elmer Fudd, Attorney At Law
Practice Limited to Personal Injury Matters
Loyal, Honest and Friendly
I'm The Most Ethical Lawyer in Town

*Office Closed During Duck Season
B. UNSOLICITED WRITTEN (DIRECT MAIL) COMMUNICATIONS

1. Direct Mail That **COMPLIES** With Applicable Rules [*NOT EXEMPT from the filing requirement of Rule 7.7 – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)]
2. Direct Mail That **COMPLIES With Applicable Rules** [NOT EXEMPT from the filing requirement of Rule 7.7 – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)]

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**ADVERTISEMENT**

Harold W. Hill  
Attorney at Law  
River City Office Complex  
76 Trombone Street  
Shreveport, Louisiana 71014

April 30, 2008

Ms. Marian Paroo  
400 Library Avenue  
Bossier City, LA 71056

Dear Ms. Paroo:

My review of public records at the Clerk’s Office for Shreveport City Court indicates that a foreclosure suit may have been recently filed against you. My knowledge about the specifics of your case is limited to the information in the public record. Because a foreclosure action could have serious ramifications, it may be in your best interest to consult with an attorney.

I was admitted to The Louisiana State Bar Association in 1987 after graduating from Southern University Law School in 1986. I worked as an assistant parish attorney in the East Baton Rouge Parish Attorney’s Office for two years, then opened my own law practice here in Shreveport. I have worked exclusively on real property matters for the past five years and have handled over 100 foreclosures. I am also a member of the Shreveport Bar Association. Prior to law school, I worked as a music professor for several years at two local colleges. I invite you to compare my qualifications and experience to those of other attorneys you might be considering.

I offer a free initial consultation, and weekend and evening appointments are available for your convenience.

Sincerely,

Harold W. Hill

Ms. Marian Paroo  
400 Library Avenue  
Bossier City, LA 71056

**ADVERTISEMENT**
3. Direct Mail That **COMPLIES** With Applicable Rules [*NOT EXEMPT from the filing requirement of Rule 7.7 – contains content other than Rule 7.2(b) “permissible content” (i.e., more than just “safe harbor” content)]
July 1, 2008

Mr. Pierre Boulle
1313 Cornelius Court
New Orleans, Louisiana 70186

Dear Mr. Boulle:

Thank you for taking the time to review this letter. It has come to our attention that you were recently injured in a car accident. Because this firm specializes in personal injury matters, we would like the opportunity to consult with you about your accident. It may interest you to know that our firm has had many past successes in handling cases similar to yours, in some instances recovering over $400,000 for some of our clients.

You probably have many questions that you would like answered by a qualified attorney. I will be glad to discuss your case at no charge. If you choose to hire this firm, our fee will be based upon a percentage of the total recovery we obtain for you. This means you will pay us no fees unless we recover money.

Please call our office at your convenience. I look forward to meeting with you in the near future.

Very truly yours,

George Taylor
GT/dh
VII. APPENDICES

A. APPENDIX I:

“COMMERCIAL SPEECH DOCTRINE”

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

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

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

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

A. Ohralik v. Ohio State Bar Association, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978) -- upholding total ban of in-person solicitation when the primary motivation behind the contact is the lawyer’s pecuniary gain.

B. In re Primus, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) -- holding that when the lawyer is motivated by the desire to promote political goals rather than pecuniary gain, direct in-person solicitation is treated as ‘political speech’, rather than “commercial speech”, and is entitled to greater constitutional protection against state regulation.

C. In re R.M.J., 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 65 (1982) -- deciding that a state may not completely prohibit lawyers from accurately listing their areas of practice; however, certain disclosure language may be necessary to avoid potentially misleading the public.

D. Zauderer v. Office of Disciplinary Council, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) -- discussing lawyers’ use of illustrations in their advertising; also holding that a state may require an advertisement for contingent fees to state that an unsuccessful litigant may be responsible for court costs.

E. Shapero v. Kentucky Bar Ass’n, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) -- holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems; the state’s interest in preventing overreaching or coercion by a lawyer using direct mail can be served by restrictions short of a total ban.

F. Peel v. Attorney Registration & Disciplinary Commission, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990) -- holding that a state may not totally ban a lawyer from advertising certification as a trial specialist by a recognized national certification organization; however, appropriate disclosure statements may be required to avoid any potentially misleading implications.

G. Ibanez v. Florida Department of Business and Professional Regulation, 512 U.S. 136, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994) -- holding that it is not misleading for a lawyer/accountant to use the designations of CPA and CFP, without further clarification, on letterhead and advertisements as long as the designations are true.

H. The Florida Bar v. Went For It, Inc., 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995) -- holding that Florida’s 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the State’s substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system.

I. Friedman v. Rogers, 440 U.S. 1, 99 S.Ct. 887, 59 L.Ed.2d 100 (1979) – holding that “[t]he use of trade names is a form of commercial speech.” The Court in Friedman, upheld, however, a prophylactic prohibition on the use of trade names by optometrists due to specific concerns based upon actual experience which established possibilities for deception of the public.
B. APPENDIX 2:

PROCEDURES FOR ISSUING ADVISORY OPINIONS & EVALUATIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION

1. APPLICATION; SCOPE; AND USAGE

Advisory opinions issued by the Committee through LSBA Ethics Counsel on matters related to lawyer advertising and solicitation are purely informal, advisory in nature and shall not be binding on anyone, including the Office of Disciplinary Counsel. If a lawyer’s defense to a disciplinary matter includes reliance on the lawyer’s receipt of an advisory opinion issued to that lawyer by the Committee through LSBA Ethics Counsel, Ethics Counsel may release, upon consent of the lawyer, information concerning the opinion and/or a copy of the lawyer’s original request for the opinion, all of which would otherwise be deemed confidential under the long-standing policies of the LSBA's Ethics Advisory Service.

2. AUTHORITY TO ISSUE ADVISORY OPINIONS AND/OR CONDUCT EVALUATIONS OF ADVERTISEMENTS AND UNSOLICITED WRITTEN COMMUNICATIONS FILED WITH THE LSBA PURSUANT TO RULE 7.7

Ethics Counsel and Assistant Ethics Counsel, with the consent of Ethics Counsel, shall have the authority to evaluate lawyer advertisements and unsolicited written communications filed with the LSBA in accordance with Rule 7.7, to issue written Notices of Compliance and Non-Compliance, other related correspondence and/or informal Advisory Opinions in the type and manner as set forth in these procedures, as well as to do all things reasonably necessary to fulfill the responsibilities of the LSBA's Rules of Professional Conduct Committee under these Rules regarding lawyer advertising and solicitation.

(a) Ethics Counsel and Assistant Ethics Counsel.

Ethics Counsel and Assistant Ethics Counsel, with the consent of Ethics Counsel, may render oral and/or written advisory opinions that shall be identified as “Advisory Opinions”. Advisory Opinions shall be issued only to the members of The Louisiana State Bar Association in good standing and then only regarding the inquiring member’s own prospective conduct.

(1) Advisory opinions shall not be issued if it is known to Ethics Counsel or Assistant Ethics Counsel that the inquiry:

(A) is made by a person who is not a member of The Louisiana State Bar Association in good standing;

(B) concerns past conduct of the inquirer;

(C) involves the conduct of a lawyer other than the inquirer;

(D) asks a question of substantive law or procedure;

(F) is the subject of a pending disciplinary proceeding or pending litigation.

(2) Ethics Counsel and Assistant Ethics Counsel may decline to issue an advisory opinion if the inquiry:

(A) is the subject of a pending disciplinary matter or pending litigation;

(B) asks a question of substantive law or procedure;

(C) involves the conduct of a lawyer other than the inquirer;

(D) is made by a someone who is not a member in good standing of the Louisiana State Bar Association; or

(E) involves questions/issues which, in the discretion of Ethics Counsel, may not be properly commented upon by Ethics Counsel, the Committee and/or the LSBA.