

# Chapter 9

## Lawyer Advertising & Solicitation Rules

### Frequently Asked Questions & Answers

*On June 26, 2008, the Supreme Court of Louisiana issued an Order repealing and reenacting the entirety of the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association (i.e., the lawyer advertising and solicitation Rules of the Louisiana Rules of Professional Conduct). Those new Rules, containing, among other things, new provisions requiring filing and evaluation of all non-exempt advertisements and unsolicited written communications, ultimately became effective on October 1, 2009. In an effort to offer some basic information and practical guidance about the Rules pertaining to lawyer advertising and solicitation, what follows is a collection of questions about lawyer advertising and solicitation that are asked most frequently by lawyers—as well as the answers/advice provided in response by LSBA Ethics Counsel.*

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

A. A: More than likely, yes, it will need to be filed with the LSBA—but there are items that are considered exempt from required filing and evaluation. 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 communications 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). There is a **Filing Application Form** that must be completed, signed by the lawyer responsible for the content of the advertisement or unsolicited written communication and submitted to the LSBA Ethics Counsel with each filing. For unsolicited written communications, there is also a second form, **Filing Application Addendum**, that must also be completed, signed and submitted to the LSBA Ethics Counsel with each filing. These forms are readily-available online at [www.LSBA.org/goto/LawyerAdvertising](http://www.LSBA.org/goto/LawyerAdvertising); copies of the forms have also been included for ease of reference at the end of this section.

**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 do permit filing concurrent with first dissemination. However, an item is technically not “filed” with the LSBA Ethics Counsel unless/until it has been received by the LSBA Ethics Counsel, so “concurrent” filing requires that the advertisement or unsolicited written communication must be physically received by the LSBA Ethics Counsel on the same day that the advertisement or unsolicited written communication will be first disseminated. In other words, filing is not accomplished merely by placing an item in the U.S. Mail—an advertisement or unsolicited written communication is not filed unless/until physically received, in hard-copy form, by the LSBA Ethics Counsel.

An additional concern with concurrent filing is that, once an advertisement or unsolicited written communication had been 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 as early as possible 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 emailed 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 email, the filing is technically not complete and ready for evaluation until the LSBA has also received the full amount of the correct filing fee. For that reason, filings should be made either using U.S. Mail, commercial courier (e.g., UPS, FEDEX, etc.) or hand-delivery to the LSBA Bar Center, 601 St. Charles Avenue, New Orleans, LA 70130, Monday – Friday (legal holidays excluded), between the hours of 8:30 a.m. to 4:30 p.m.

**E. Q: What happens if I file an advertisement or unsolicited written communication but fail to submit the correct filing fee or any of the other elements needed for a complete filing?**

A: Lawyers who submit filings without fees or with insufficient fees, and/or filings that are missing other necessary components (see Rule 7.7(d) for a complete list), will be notified in writing of the deficiency and requested to supply the appropriate item(s) needed to complete the filing and continue with the evaluation process. Failure to submit the requested item(s) following a written request for same from LSBA 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 [although, for the sake of completeness, the lawyer is encouraged to send a final copy of the new version to LSBA Ethics Counsel, referencing the file number of the previous versions, so that the new version can be included within the existing file].

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 advertisement/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 an entirely new/different medium not originally specified in your original filing, as the change in medium may now 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 advertisement if the lawyer subsequently decides to use the same advertisement 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 and new evaluation, unless otherwise exempt under Rule 7.8.

**G. Q: What happens if the Supreme Court of Louisiana changes the Rules on lawyer advertising and solicitation 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. You can always check with the LSBA Ethics Counsel for clarification and/or additional information.

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 of 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; in fact, you are strongly encouraged to do so. An advance written advisory opinion based upon scripts and/or storyboards 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 storyboards. A hard-copy of the recording/digital file of the advertisement in its final form, readily-capable of duplication by the LSBA Ethics Counsel (e.g., a DVD or CD or flash drive), 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 advertisements are all very similar?**

A: Yes, separate/distinct advertisements must each be filed individually, along with payment of the appropriate filing fee for each filing, 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 advertisements are clearly/obviously subsets of another advertisement already filed. Final determination as to whether items may be eligible for “set/subset” treatment will rest with LSBA Ethics Counsel.

**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 board 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 Recognized 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 for the purpose of obtaining undefined employment 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 all such locations 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 also appear above the address panel of the brochure or pamphlet (i.e., immediately above the name and mailing address of the intended recipient(s)) 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 7.6(c)(3)** IF the advertisement or other communication about the lawyer or the lawyer’s services is on a website 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 email 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 client 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 outside the scope of 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)(2)(B).

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

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

However, websites 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 (i.e., law firm websites must still be compliant with the Rules even though there is no requirement for filing with and evaluation by the LSBA). Essentially, the two Rules, when read together, prohibit the use of false, misleading or deceptive information on the website of the lawyer or law firm. Websites are specifically subject to Rule 7.6(b)(1) and (2), which require lawyers to disclose on their websites “all jurisdictions in which the lawyer or members of the law firm are licensed to practice law” and to 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”. Otherwise, websites are treated as “information provided upon request” and are governed by Rule 7.9.

Unlike websites, unsolicited electronic mail (“email”) 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 website or unsolicited information disseminated by email—are currently, by order of the Court signed September 22, 2009, not subject to enforcement of the rules applicable to lawyer advertising and solicitation. Examples would include electronic lawyer advertisements displayed on websites managed/owned by third parties, various forms of electronic social media, etc.