

Ethics and Advertising:  
A compilation of North Carolina rules and opinions

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This paper is a compilation of the North Carolina State Bar rules and opinions on ethics and advertising.

As with all other areas governed by the North Carolina State Bar, rules change and additional opinions are handed down. To keep current, check advertising/marketing/solicitation rules on the North Carolina State Bar webpage (nbar.gov). Also the North Carolina State Bar publishes its “Journal” 4 times a year, and each issues includes 1) proposed opinions, and 2) the status of whether previously proposed opinions have been adopted or not.

The State Bar is there to help. If you have a question, you can call the “ethics hotline” at 919/828-4620.

Also, the State Bar ethics counsel will respond to specific questions involving a law firm web page. The State Bar will not review entire contents of a web page, but it will respond to specific questions, particularly questionable language or images.

### 1. **The Advertising Rules**

#### **Rule 7.1 “Communications Concerning a Lawyer’s Services”**

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (3) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.

(b) A communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.

#### **Rule 7.2 “Advertising”**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a not-for-profit lawyer referral service that complies with Rule 7.2(d), or a prepaid or group legal services plan that complies with Rule 7.3(d); and
- (3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule, other than that of a lawyer referral service as described in paragraph (d), shall include the name and office address of at least one lawyer or law firm responsible for its content. [**BUT SEE** substantial change in interpretation of Rule 7.2 (c) in 2017 FEO 3 below]

(d) A lawyer may participate in a lawyer referral service subject to the following conditions....

Rule 7.3 “Direct Contact with Potential Clients”

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a potential client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.

(c) Targeted Communications. Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), every written, recorded, or electronic communication **from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter** shall include the statement in capital letters, “THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES” (the advertising notice), which shall be conspicuous and subject to the following requirements:

(1) Written Communications. Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in a font that is as large as any other printing on the front or the back of the envelope. If more than one color or type of font is used on the front or the back of the envelope, the font used for the advertising notice shall match

in color, type, and size the largest and widest of the fonts. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the enclosed written communication in a font as large as or larger than any other printing contained in the enclosed written communication. If more than one color or type of font is used on the enclosed written communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing on the envelope or the enclosed written communication shall be more conspicuous than the advertising notice.

(2) Electronic Communications. The advertising notice shall appear in the "in reference" or subject box of the address or header section of the communication. No other statement shall appear in this block. The advertising notice shall also appear, at the beginning and ending of the electronic communication, in a font as large as or larger than any other printing in the body of the communication or in any masthead on the communication. If more than one color or type of font is used in the electronic communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing in the electronic communication shall be more conspicuous than the advertising notice.

(3) Recorded Communications. The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal plan subject to the following:....

(emphasis added).

#### Rule 7.4 "Communication of Fields of Practice and Specialization"

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer shall not state or imply that the lawyer is certified as a specialist in a field of practice, unless

(1) the certification was granted by the North Carolina State Bar;

(2) the certification was granted by an organization that is accredited by the North Carolina State Bar;

(3) the certification was granted by an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and

(4) the name of the certifying organization is clearly identified in the communication.

Rule 7.5 “Firm Names and Letterheads”

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not false or misleading in violation of Rule 7.1. Every trade name used by a law firm shall be registered with the North Carolina State Bar for a determination of whether the name is misleading.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation 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 the jurisdiction where the office is located.

(c) A law firm maintaining offices only in North Carolina may not list any person not licensed to practice law in North Carolina as a lawyer affiliated with the firm unless the listing properly identifies the jurisdiction in which the lawyer is licensed and states that the lawyer is not licensed in North Carolina.

(d) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm, whether or not the lawyer is precluded from practicing law.

(e) Lawyers may state or imply that they practice in a partnership or other professional organization only when that is the fact.

**2. The Advertising Opinions**

Address of law firm in advertisements	Requirement in Rule 7.2 (c) to use “the name and office address of at least one lawyer or law firm” modified to allow reference to the law firm web site.  Opinion issued in context of billboard ad, but opinion expressly provides that “[t]he opinion is not limited to billboard advertisements; it applies to all forms of legal advertisement.”	2017 FEO 3
Billboards	In the context of a billboard advertisement, the advertisement may use a “URL” (example given was <a href="http://www.ABCtowndw.com">www.ABCtowndw.com</a> ) that directs a consumer to the law firm web page, instead of “the name and office address of at least one lawyer or law firm” as dictated by a strict reading of Rule 7.2 (c). The opinion noted that the Rules of	2017 FEO 3

	Professional Conduct are rules of “reason” and that a literal reading of the rules was not necessarily the appropriate answer. Instead, the opinion points out that a consumer actually gets more information from the web page than from just the information set forth in Rule 7.2 (c).	
Business cards	<p>Upon request, a lawyer may give multiple business cards or firm brochures to a third party so long as no understanding that the recipient will engage in in-person solicitation on behalf of the attorney.</p> <p>A lawyer may include a business card in a thank-you letter and suggest that the recipient, “if so willing, pass it along to someone who the client thinks might need similar services.”</p>	2007 FEO 4
Business cards	A lawyer may not distribute business cards in connection with a “for-profit” networking organization (whose stated purpose is to provide referrals).	2006 FEO 7
Gifts to potential clients	A lawyer may not offer a computer tablet to a prospective client (“Opinion rules that a lawyer may not offer a computer tablet to a prospective client in a direct mail solicitation letter.”)	2015 FEO 3
Gifts/advertising content	<p>Opinion considers law firm name on a license plate and rules that a non-state issued license plate on the front of lawyer’s vehicle does not need to comply with the address requirement under Rule 7.2 (c).</p> <p>Opinion differentiates an “advertisement” from a gift/promotional item and rules that just a law firm name or logo is acceptable on such items. Examples given: pens, pencils, hats, and coffee mugs. This exemption from Rule 7.2 (c) extends to a non-state issued license plate displaying a law firm name.</p>	2012 FEO 14
Gifts to clients/non-clients with whom the lawyer has an existing professional relationship	<p>Gifts of nominal value (such as holiday fruit basket, flowers, gift certificate) – so long as no “quid pro quo” for the referral of clients.</p> <p>See Rule 7.2(b)</p>	2007 FEO 4

Gifts to potential clients	A lawyer may not offer promotional merchandise in direct mail solicitation.	2004 FEO 2
Gifts to referral sources	Rule 7.2 prohibits gifts to a person for recommending a lawyer's services.	2007 FEO 4
Group coupon	A lawyer may advertise on a website providing discounts subject to certain disclosures and certain guidelines in opinion.	2011 FEO 10
Networks-litigation support	Opinion rules that "a lawyer may not participate as a network lawyer for a company providing litigation or administrative support services for clients with a particular legal/business problem unless certain conditions are satisfied."	2012 FEO 10
Networks-for profit	Opinion rules that "a lawyer may be a member of a for-profit networking organization provided the lawyer does not distribute business cards and is not required to make referrals to other members."	2006 FEO 7
Networks – on-line matching service	Opinion rules that a lawyer may participate in an on-line matching service that is similar to a lawyer referral service and a legal directory, subject to certain conditions, such as no fee- sharing with the service and all communications are truthful.	2004 FEO 1
Networks – directory on internet	Opinion rules that "a lawyer may participate in a directory of lawyers" on the internet if the information is truthful.	RPC 241
Photographs in advertising – use of stock photographs	Opinion rules that a dramatization disclaimer is not required in the use of a stock photograph in an advertisement so long as the stock photograph is not misleading.	2010 FEO 9
Self-laudatory recognitions – use on letterhead	Opinion rules that "a lawyer may list membership in Million Dollar Advocates Forum, or another organization with a self-laudatory name, on his letterhead only if a disclaimer of similar results and information about the criteria for membership also appears on the letterhead."	2010 FEO 11

Self-laudatory recognitions - advertisement	Opinion rules that a lawyer may advertise that he is a member of an organization with a self-laudatory title (Million Dollar Advocates Forum), provided certain conditions are met.	2003 FEO 3
Self-laudatory recognitions (Best Lawyers, Super Lawyers, Legal Elite, etc.) on law firm web page	The opinion rules that any reference on the website to self-laudatory names in a lawyer's biography on a web page must still comply with 2003 FEO 3. The opinion notes that a disclaimer must be included if the biographical information may create an unjustified expectation.	2009 FEO 16
Self-laudatory names ("Super Lawyers," etc.)	Opinion rules that a lawyer may advertise the lawyer's inclusion in the list of lawyers, such as Super Lawyers, subject to certain conditions.	2007 FEO 14
Self-laudatory advertisements – the "Best"	Opinion rules that a lawyer may not participate in a referral service that advertises its participants are "the best."	RPC 135
Seminars (hosted by law firm)	An attorney may host an education seminar for non-clients. The attorney may advertise the seminar pursuant to Rule 7.2.	2007 FEO 4
Seminars (hosted by law firm)	NOTE: this opinion was decided prior to the 1989 amendment permitting targeted direct mail advertisements.  1988 opinion ruled that a seminar was permitted for members of the public who were randomly selected.	RPC 36
Seminars – engaging non-lawyer to organize and speak at seminar	Opinion rules that "a lawyer may hire a nonlawyer independent contractor to organize and speak at educational seminars so long as the nonlawyer does not give legal advice."	2008 FEO 6
Social function (hosted by law firm)	A law firm may host a <b>social, non-education</b> , function. The attorney may invite non-clients but may NOT solicit business from the non-clients.  Note: inquiry submitted used the "non-education" qualifier.	2007 FEO 4 and RPC 146



<p>Social media – use of search engine’s keywords</p>	<p>It is professional misconduct to use a competitor’s name to be used in key word advertising.</p>	<p>2010 FEO 14</p>
<p>Social media – Facebook, Twitter, Google, Instagram, Myspace (and “any other social media application that allows public display of connections, endorsements, or recommendations between lawyers and judges)</p>	<p>Opinion on “LinkedIn” [2014 FEO 8] also applies to Facebook and other social media sites (Twitter, Google, Instagram, Myspace, etc.) (see Inquiry #7)</p>	<p>2014 FEO 8</p>
<p>Social media - LinkedIn</p>	<p>Opinion sets forth guidelines for interactions on LinkedIn with a judge – ruling that such interaction is evaluated in the same manner as other personal interactions. Opinion rules that “a lawyer may accept an invitation from a judge to be a ‘connection’ on a professional networking website, and may endorse a judge. However, a lawyer may not accept a legal skill or expertise endorsement or a recommendation from a judge.”</p> <p>Inquiry #5 seeks a ruling on whether an attorney may accept endorsements from non-judges. The response to this inquiry is “yes” – subject to the content of the endorsement being truthful and not misleading.</p>	<p>2014 FEO 8</p>
<p>Social media – “recommendations” on website (such as “LinkedIn”)</p>	<p>Opinion rules that “a lawyer may ask a former client for a recommendation to be posted on the lawyer’s profile on a professional networking website and may accept a recommendation if certain conditions are met.”</p> <p>The opinion compares a recommendation to a client testimonial. Thus, a “recommendation” must comply with rules for client testimonials. See, e.g., 2012 FEO 1. Guidelines are included in the opinion.</p>	<p>2012 FEO 8</p>

Solicitation - definition	“A solicitation is a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website, or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.”	Rule 7.3 [Comment 1]
Solicitation – “cold calls”	Prohibited	RPC 20
Solicitations – prior business relationship	Permitted (“Opinion rules that the business relationships with health care professionals created by a lawyer previously employed as a health care consultant constitute prior professional relationships within the meaning of Rule 7.3(a) thus permitting the lawyer to directly solicit legal employment by in-person, live telephone, or real-time electronic contact with the health care professionals.”)	2015 FEO 7
Solicitation – claimants in class action lawsuit	Opinion rules that solicitation of claimants in a class action lawsuit must contain the words “This is an advertisement for legal services” to comply with Rule 7.3(c).	2004 FEO 5
Specialization – legal advertisement where lawyer seeking employment in area of law where lawyer does not currently practice	Opinion rules that “a lawyer may place an advertisement for employment in practice areas in which the lawyer does not have experience only if the lawyer intends to provide competent representation either by promptly obtaining competence through study and investigation or by associating a lawyer who is competent in those particular areas of law. If, at the time the advertisement is placed, it is likely the lawyer will associate more experienced lawyers to handle the resulting cases, that fact should be disclosed to the public in the advertisement.”	2010 FEO 6

Specialization – combined number of years of experience	Opinion rules that “it is misleading to advertise the number of years of experience of the lawyers with a firm without indicating that it is the combined legal experience of all of the lawyers with the firm.”	2004 FEO 7
Targeted communication – someone known to be in need of legal services in a particular matter		Must comply with Rule 7.3 (c) (referred to as “extra precautionary measures” in 2017 FEO 1)
Targeted communication – general (not to someone known to be in need of legal services in a particular matter)		Exempt from Rule 7.3 (c)
Targeted direct mail – technical requirements	Opinion clarifies technical rules for targeted direct mail letters. For example, targeted mail to a potential client known to be in need of legal services must state “THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES.”	2007 FEO 15
Targeted direct mail – technical requirements	Opinion rules that “a lawyer may put extraneous statements on the envelope of a solicitation letter provided the statements do not mislead the recipient and the font used for the statements is smaller than the font used for the advertising disclaimer required by Rule 7.3(c).”	2006 FEO 6
Targeted direct mail – promotional merchandise	Opinion rules that “an attorney may not offer promotional merchandise in a targeted direct mail solicitation letter as an inducement to call the attorney’s office.” This opinion does not prohibit enclosures of nominal value such as a magnet or a pen.	2004 FEO 2

Telephone advertising – auto-dial messages	Opinion rules that “a lawyer may advertise by autodialing potential clients and playing a recorded telephone message with information about a legal issue or the lawyer’s legal services provided the message does not include a mechanism to connect the recipient directly to the lawyer or an agent of the lawyer.”	2006 FEO 17
Testimonials	Testimonials that endorse characteristics of a lawyer’s legal services may be used without the use of a disclaimer. Testimonials that refer to results require a disclaimer. No dollar amounts can be used.	2012 FEO 1
Testimonials	With the client’s consent, an attorney may use client endorsements – provided that the client’s statements are “soft” endorsements that do not create an unjustified expectation. Rather, a “soft” endorsement describes characteristics of the lawyer’s services and not the results achieved.	2007 FEO 4
Text Message - advertising	<p>Lawyers may advertise through a text message service that allows the user to initiate live telephone communication in response to a text message generated by an advertising service where users register to receive text messages about various products and services.</p> <p>Note: a postscript in the opinion notes that the opinion assumes that the text message is not a targeted communication to “someone known to be in need of legal services in a particular matter” (since those communications need to comply with Rule 7.3 (c) and others do not).</p>	2017 FEO 1

Verdicts – advertising verdicts and settlements on law firm web page	Opinion rules that “a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer.” The opinion also rules that any reference on the website to self -laudatory names in a lawyer’s biography on a web page must still comply with 2003 FEO 3. The opinion notes that a disclaimer must be included if the biographical information may create an unjustified expectation.  NOTE: this opinion overrules 2000 FEO 1 to the extent inconsistent with 2009 FEO 16.	2009 FEO 16
Verdicts - advertising	Earlier opinion on advertising verdicts contained extensive requirements be included to put the verdict “in context.”	2000 FEO 1 (note: overruled by 2009 FEO 16)
Virtual address of law firm	Opinion rules that “a law firm may use a leased time-shared office address or a post office address to satisfy the address disclosure requirement for advertising communications” subject to certain requirements.	2012 FEO 6
Virtual law firm	Opinion discusses issues with respect to a virtual law firm where there is no face-to-face consultation with a client.	2005 FEO 10
Web page (live chat)	Live chat permitted subject to guidelines in opinion.	2011 FEO 8
Web page (group legal advertising)	Opinion rules that, with certain disclosures, “a lawyer may participate in an online group legal advertising service that gives a participating lawyer exclusive rights to contacts arising from a particular territory.” The opinion notes that the lawyers pay a fee per contact per month to cover the cost of the advertising and marketing materials.	2013 FEO 10
Web page – responding to message board	Opinion rules that “a lawyer may respond to an inquiry posted on a web page message board provided there are certain disclosures.”	2000 FEO 3
Web page - advertising	Opinion permitted web advertising.	RPC 239

## Bibliography

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March 2014	Journal	Suzanne Lever	Friends in High Places [LinkedIn and judges]
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June 2011	Journal	Suzanne Lever	Internet Angst or I went to Law School, not MIT
December 2010	Journal	Suzanne Lever	Trade Names
September 2010	Journal	Suzanne Lever	You Can Have Too Many Friends [social networking]
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Fall 2009	Journal	Mike Dayton	Avoiding Ethical Traps for Law Firm Websites
December 2006	Journal	Deanna S. Brocker and Douglas J. Brocker	The Ethical Website
March 2006	Journal	Alice Neece Mine	Misleading Communications: The Bad, The Ugly, and The ???
2005	Journal	Alice Neece Mine	Walking the Ethical Line with Lawyer Advertising
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March 1999	Journal	Thomas L. Lunsford, II	You’ve Got Mail