

Legal Marketing: Florida Bar's Proposed Online Ad Rules Bar Free Speech

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That rumble you hear in Florida is not a typical summer thunderstorm, but a storm of protest from Florida attorneys regarding the **Florida Bar's proposed new online ad rules**.

If you're not aware: the new rules would ban online testimonials, summaries of case results and what the Bar terms "deceptive, misleading, manipulative or confusing" audio or visual content. In addition, consumers visiting a Florida attorney's website would have to click through a series of disclaimers to even get to the site.

Many Florida attorneys think that these latest rules proposed by the Florida Bar are a violation of their First Amendment right to free speech. Florida-based First Amendment attorneys are organizing a loose coalition of some of the state's largest firms, who received a recent extension from the Florida Supreme Court in which to submit commentary on the proposed ad rules.

First, let me say that I have an axe to grind and I recognize I'm not entirely neutral in this area because it directly impacts my business, which is teaching attorneys effective ways to market their law firms and in many cases actually providing outsourced marketing services to small law firms. These services often include lead generation and conversion from referrals and Internet marketing efforts.

Now that we have my biases out of the way, here's my take on these proposed Florida law firm marketing rules:

1. These rules are overly restrictive on lawyers and may run afoul of First Amendment rights.

While I'm not an attorney nor am I an ethics expert, on the face of it these rules seem to go beyond the point of being ridiculous! I thought it was rather sad to see the ACLU completely back off once they were granted an exemption. Aren't they supposed to be the champions of free speech for everyone—even to the point of protecting hate speech?

While I have disagreed with various stands the ACLU has taken in the past, I would wholeheartedly get behind them to force the Florida Bar to back down.

As a side note, I could be mistaken on this point, but if I understand it correctly, the Florida Bar does not actually set new advertising rules for attorneys. Instead it is the Florida State Supreme Court. If you know differently, please let me know.

2. They completely ignore the realities of Internet marketing and using websites and blogs to generate more business and new leads.

At one point, the Florida Bar required a law firm to have every change to their website reviewed and approved by the bar. These changes had to be submitted in writing along with a \$50 fee per change. Then to go even further, they came out and said a blog is essentially a website. Imagine having to pay your bar association \$50 and wait 2-4 weeks before you can post to your blog. Seriously, what were they thinking?!? They finally backed off that one.

It's going to be a little dicey if all Florida lawyers are suddenly “required” to use a 3-point disclaimer on every post they place on Twitter or Facebook.

3. These rules do not take into account the hyper-competitive nature of the legal industry due to the concentration of lawyers.

I came across an article recently that estimated Florida will soon overtake New York as home to the 2nd largest number of attorneys of any state in the U.S., second only to California, which has about 213,000 attorneys. Yes, I realize that hyper-competition is not a great reason to be lax on ethical rules and regulations, but commonsense should tell you that with the down economy, the job loss in the legal industry, and the increase in competition will drive some lawyers to cross the line by taking cases they are not competent to handle or overcharging clients trying to make ends meet. I not making excuses for this kind of behavior, but someone with a clear mind must realize there are always unintended consequences of actions like this.

4. These rules do absolutely nothing to “protect the consumer” or the general public.

Is there a growing body of people in Florida we don't know about who are complaining that “all these legal websites are confusing and misleading”? If so, I'd like to know who they are. Perhaps they are the same ones in Broward County who couldn't figure out how to punch the ballot hard enough to remove the chad?

All these rules seem to do is make it harder for small law firms to aggressively compete on the Internet. Let's face it; most large law firms do not really even try to generate new leads from their websites. The majority of them are simply “brochure” sites. They look pretty, but are completely ineffective for doing anything other than credibility building.

This is absolutely not the case for small firms! Many of them are completely dependant on their websites for lead generation, especially in the area of consumer law (personal injury, bankruptcy, family law, criminal law, and estate planning to some extent).

5. Florida already has the most restrictive legal marketing rules and regulations of any state and yet they want to make them even more limiting?

It's almost taking law firm marketing back to the Stone Age—or at least pre *Bates v State Bar of Arizona* (1977). State bars have long shown a tendency to over regulate law firm marketing. The line should be clear—do not put anything out there using any marketing format that is misleading, false or makes promises you cannot keep.

6. Why do they selectively focus on the Internet rather than the more pervasive abuses that take place everyday on attorney television ads?

I have a client in a major Florida city who emphatically states that virtually every single ad one of the major personal injury law firms puts on television violates long-standing ethics rules, yet nothing is done to that law firm. You may relegate this to professional jealousy, but I can assure you I have seen many of those ads and they absolutely run afoul of the current Florida rules.

Certainly, the Bar should be more concerned about TV ads, where people who aren't even looking for an attorney or legal representation are forced to watch them (unless they have a DVR). The only way a person surfing the Internet will come across a lawyer's website is if they clicked on a link from Google or a legal directory or a paid ad that led them there. It's not as if they were reading an article on CNN.com or Sports Illustrated and BAM—there's a law firm marketing ad! Come on, people!

7. If these Stone Age rules actually take place, it may greatly increase the importance of fully utilizing social media and attorney rating sites like Avvo.com and Yelp.com.

Many attorneys don't realize that since Avvo.com, Yelp.com and Yellowpages.com (along with other review sites) are 3rd party sites not owned or controlled by a Florida law firm that they are exempt from the Florida bar rules. Therefore, attorneys can and should actively seek to encourage clients to write and submit testimonials on Avvo.com, Yelp.com and other online legal directories.

Even the Federal Trade Commission doesn't agree with the Bar's proposed restrictions on not allowing any kind of client testimonials. In their response to the Bar, the FCC stated client testimonials "can convey valuable information to consumers and help spur consumers."

My hope is that law firms will line up to file suit to get these rules thrown out! Easier said than done, but kudos to the first law firm that does so. Please let me know who it is so I can profile them on this blog.

What are your thoughts on these proposed rules? Any Florida attorneys out there?

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Join us on Wednesday, July 21, when Stephen will address a meeting of the [Phoenix Legal Networking Group](#) on **Unlocking the Secrets of Social Media for Lawyers: Facebook and Twitter.**

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- Who is using Facebook (this will surprise you)
- What kind of practice areas are getting clients from Facebook
- How to get started fast
- Why Twitter is growing so fast
- How to leverage Twitter to drive traffic to your blog or website
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The event will be held from **5-7 p.m. on Wednesday, July 21 at Monti's, 100 S. Mill Ave. in Tempe.** Cost is only \$20 per person.

To register for this seminar, co-hosted by FindLaw, Attorney at Law Magazine and The Rainmaker Institute, click [here](#).

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Stephen Fairley is a nationally recognized law firm marketing expert and has helped more than 6,000 attorneys from hundreds of law firms across the country to discover the secrets of generating more referrals and filling their practice.

He is the international best-selling author of 10 books and 5 audio programs.

He has appeared in the American Bar Association Journal, Entrepreneur, Inc., Fortune Small Business, Harvard Management Update, Business Advisor, the Chicago Tribune, Crain's Chicago Business, and on the front covers of AdvantEdge and Choice magazines.

Stephen is a member of the prestigious National Speaker's Association and his Rainmaker seminars have been sponsored by more than 20 of the largest state and local bar associations in the country.

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