

**Current and Proposed Florida Bar Rules
Regulating Social Media, the Internet and Face
to Face Marketing With Clients:
What You Need to Know**

**Joseph A. Corsmeier, Esquire
Law Office of Joseph A. Corsmeier, P.A.
jcorsmeier@jac-law.com
(727) 799-1688**



Topics for Today

- Overview of current Florida Bar Rules related to lawyer websites and online and face to face marketing
- Review of Comprehensive Advertising Rule Amendments Pending at Florida Supreme Court
- Emerging issues in lawyer internet advertising and marketing
- The future of lawyer social media and internet marketing and advertising



Short Bar Advertising Rules Timeline

- ✓ **1987-** Florida Supreme Court implements Florida Rules of Professional Conduct
- ✓ **1999-** SC implements current Bar Rule 4-7.6 (websites etc.)
- ✓ **2004-** Appointment Bar Advertising Task Force to review all advertising rules and recommend revisions
- ✓ **2006-** SC adopts some Bar proposed changes to advertising rules but makes no changes to Rule 4-7.6 and requests further study
- ✓ **2008-** Bar files SC petition with proposed changes to Rule 4-7.6



Short Bar Advertising Rules Timeline

- ✔ **February 2009** - SC rejects Bar's proposed changes with suggestions for regulation
- ✔ **November 19, 2009** -, SC makes substantive changes to Rule 4-7.6 to become effective 1/1/10
- ✔ **December 2009**- BOG approves 6 month moratorium
- ✔ **June 2010**- SC stays effective date of implementation of any Bar advertising rule amendments until 90 days after the Court issues opinion implementing new rules.
- ✔ **May 2011**- Bar Board of Governors reviews and approves comprehensive advertising rule amendments
- ✔ **July 2011**- Bar files comprehensive advertising rule amendments with SC
- ✔ Waiting for SC opinion...



Current Bar Rule 4-7.6

Computer-Accessed Communications

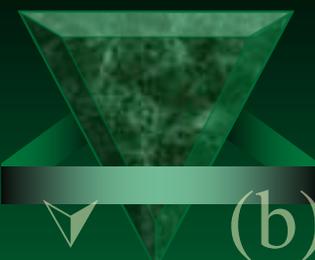
(a) A computer-accessed communication is “information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer” and include:

Home pages

World wide web sites

Unsolicited e-mail

Information concerning a lawyer’s services that appears on search engine screens and



Current Bar Rule 4-7.6

- ▼ (b) Web sites and home pages that are controlled or sponsored by a lawyer and contain information concerning the lawyer's services:
 - ▼ Shall disclose jurisdictions in which the lawyer is licensed to practice law.
 - ▼ Shall disclose a bona fide office location, and
 - ▼ Are considered to be information provided upon request.



Current Bar Rule 4-7.6

- ▼ (c) E-mail: A lawyer shall not send unsolicited e-mail directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:
- ▼ requirements of Rule 4-7.4 regarding solicitation are met,
 - ▼ the communication discloses a bona fide office location of the lawyer who will actually perform the advertised services, and,
 - ▼ The e-mail's subject line states "legal

Current Bar Rule 4-7.2

▼ Communications Concerning a Lawyer's Services

- ▼ The following shall apply to any communication conveying information about a lawyer's or a law firm's services except as provided in subdivisions (e) and (f) of rule 4-7.1 (but not 4-7.6):
 - ▼ (a) Required Content of Advertisements and Unsolicited Written Communications
 - ▼ (1) *Name of Lawyer or Lawyer Referral Service.* "...shall include the name of at least 1 lawyer or the lawyer referral service responsible for their content."

Current Bar Rule 4-7.2

▼ (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.
- ▼ Military service.
- ▼ Foreign language ability
- ▼ Areas of law (including certifications.
- ▼ Fee schedule & acceptance of credit cards.
- ▼ “Legal” & “American” pictures/drawings



Current Bar Rule 4-7.2

- (c) Prohibitions and General Regulations 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 or the lawyer's services. A communication violates this rule if it:
 - (A) contains a material misrepresentation of fact or law;
 - (B) is false or misleading;
 - (C) fails to disclose material information necessary to prevent the information supplied

Current Bar Rule 4-7.2

- (D) is unsubstantiated in fact;
- (E) is deceptive;
- (F) contains any reference to past successes or results obtained;
- (G) promises results;
- (H) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (I) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
- (J) contains a testimonial.
- This includes lawyer websites, lawyer videos,



Current Bar Rule 4-7.2

- Fee disclosure - If fees are mentioned, must disclose if client must pay expenses.
- Must honor advertised fees for at least 90 days.
- Firm names cannot violate Rule 4.7-9.
- Required statements must appear in same language as communication & must be legible.
- Lawyers cannot pay for ads of other lawyers not in same firm.
- If advertise a service that you will actually refer to another lawyer, must disclose this.
- Can't pay for referral/recommendation.

Current Bar Rule 4-7.4



Direct Contact with Prospective Clients

The term “solicit” includes any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 4-7.6.



Current Bar Rule 4-7.8

- ▼ **Evaluation of Advertisements and Exemptions**
- ▼ Rule 4-7.8(f) computer-accessed communications described in 4-7.6(b) are exempt from Rule 4-7.7 filing and review requirements.

Current Bar Rule 4-7.9

Firm Names and Letterheads

- Can't be false, misleading or deceptive.
- Trade names allowed if not deceptive, do not imply connection with government agency or public or charitable legal services organization and do not imply that firm is other than private law firm.
- Advertising under fictitious name prohibited unless the name is the firm name that appears on letterhead, business cards, etc., and appears with lawyer's signature on pleadings and other legal documents.
- Can't imply partnership unless there factually is one.
- Names of lawyers holding public office cannot be used in firm name unless lawyer is practices with firm.



Proposed Comprehensive Revised Rules

- ✓ Comprehensive Proposed revised Advertising Rules were approved by BOG and a Petition was filed with Florida Supreme Court on 7/5/11.
- ✓ The Petition remains pending.
- ✓ Under a previous Order of SC, any rule revisions would become effective 90 days after Court's Opinion is rendered.

Proposed Comprehensive Revised Rules

- ✔ What would change under 2011 Advertising Rule Revisions?
- ✔ Proposed advertising Rules would apply to all forms of communication under revised Rule 4-7.4
- ✔ All advertisements would be subject to the restrictions in Rule 4-7.2 (as modified)
- ✔ Lawyer websites would be subject to all of the same substantive advertising regulations as advertising in other media.
- ✔ Case results would be permitted with restrictions
- ✔ Testimonials/endorsements would be permitted with restrictions
- ✔ Dramatizations, descriptions of quality of services etc. would still prohibited.

Proposed Comprehensive Revised Rules

- ✓ Lawyer websites would still be exempt from filing with Bar.
- ✓ Bar will not review an entire website even if submitted voluntarily.
- ✓ Bar will review individual pages, illustrations etc. if voluntarily submitted.
- ✓ When a website violation is found, lawyer would be notified and given an opportunity to correct the website before any disciplinary action is commenced.

Proposed Comprehensive Revised Rules

- Proposed Rule 4-7.1(a) would expand the definition of an advertisement:
- “(u)nless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media.
- Terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.3(b)

- Deceptive and inherently misleading advertisements include, but are not limited to:
 - (1) Statements that can be interpreted as a guarantee of results
 - (2) references to past results unless information is objectively verifiable subject to Rule 4-7.4
 - (3) comparisons of lawyer's or statements, words or phrases that characterize lawyer's or

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.3(b)

- Deceptive and inherently misleading advertisements include, but are not limited to:
 - (6) dramatization of actual or fictitious event unless disclaimer which states “DRAMATIZATION. NOT AN ACTUAL EVENT.” Actor is spokesperson can’t pretend that he or she is a LAWYER, doctor etc. unless there is disclaimer: “ACTOR. NOT AN ACTUAL (DOCTOR, LAWYER, POLICE OFFICER ETC)”

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.3(b)(8) Testimonials

- Deceptive and inherently misleading advertisements include, but are not limited to:
 - advertisements that contain matters on which the person making the testimonial is unqualified to evaluate;
 - matters that are not the actual experience of the person making the testimonial;
 - are not representative of what clients of that lawyer or law firm generally experience;

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.4 Potentially Misleading Advertisements

- (a) Potentially misleading advertisements include, but are not limited to:
- (3) references to a lawyer's membership in or recognition by an entity purportedly based on ability or skill unless the entity is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria and includes a reasonable cross section of legal community.

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.5 Unduly Manipulative or Intrusive Advertisements

- ✓ Lawyer may not engage in unduly manipulative or intrusive advertisements:
- ✓ (a) can't appeal to emotions rather than rational evaluation.
- ✓ (b) can't use celebrity voice; however, can use voice or image of local announcer, disc jockey, or radio personality who regularly records advertisements as long as he or she does not endorse or offer testimonial (Jack Harris rule)

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.6 Presumptively Valid Content

- Tombstone advertisement content (presumptively valid content in advertisements) has been moved to Rule 4-7.6.
- Proposed rule would allow lawyers to advertise membership on committees, sections or leadership of other state Bars
- Proposed rule adds “proudly serving our community” as example of presumptively valid language.
-

Proposed Comprehensive Revised Rules

- ✓ Proposed Rule 4-7.7 Payment for Advertising and Promotion
 - ✓ (a) Lawyer can't pay for advertisement of another lawyer (but lawyer can still pay referral fee to another lawyer).
 - ✓ (b) Lawyer can't give anything of value to a person for recommending the lawyer's services (except lawyer can pay for the cost of the advertising etc.)
 - ✓ (c) A non-lawyer can't pay for lawyer's advertisement.

Proposed Comprehensive Revised Rules

- ✓ Proposed Rule 4-7.8 Direct Contact with Prospective Clients
 - ✓ (b)(1) “unsolicited” deleted from subsection and all information provided at the request of a prospective client would be required to comply with requirements of the direct mail rule (to insure that an advertisement that is passed to another person has the “safeguards” of the direct mail rule.
 - ✓ (b)(2(B) “advertisement” would not be required to be in red but must be in contrasting color on each page or panel

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.9 Evaluation of Advertisements

- (a) Must provide copy of all advertisements to Bar for review at least 20 days prior to dissemination (unless exempt under Rule 4-7.10). (no more pre-approval of TV and radio ads.)
- (b) Bar required to review and provide response within 15 days. Lawyer can't be prosecuted for disseminating after the 15 days and before the Bar responds.
- (c) Lawyer can ask for advisory opinion at no extra charge prior to production of advertisement

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.9 Evaluation of Advertisements

- (f)(5) Bar can prosecute for website violations only after 15 days from the date of the Bar's notice of non-compliance advising lawyer that it violates Bar rules.
- This is called a "takedown" provision and would be a safe harbor if lawyer's website is changed and complies within the 15 day period.

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.11 Firm Names and Letterhead

- No substantive changes.
- Proposed comment states that sole practitioner can't use "and Associates", "Group" or "Team" in law firm name citing to *The Florida Bar v. Fetterman*, 439 So.2d 835 (Fla. 1983).

Proposed Comprehensive Revised Rules

Proposed Rule 4-7.13 Lawyer Directory. Entirely new rule.

- (a) Definition of lawyer directory: broad definition
- (b) Lawyer would be prohibited from advertising in lawyer directory unless the directory:
 - (1) does not violate the Bar rules in its communications with the public and does not have direct contact with potential clients which violates Bar rules,
 - (2) does not share fees with lawyer,
 - (3) lists only persons who are admitted in

Emerging Issues: Social and Business Networking

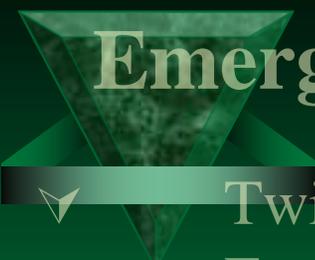


- Many traditional rules regarding attorney advertising may not really work...
- Profiles and communications on the web. Should they be considered information upon request or be subject to Rule 4-7.2?



Emerging Issues: Business Social Networking

- ✔ AVVO (or other lawyer directory) website-lawyer profile
- ✔ Do the current Bar rules apply? Yes, if claimed.
- ✔ Would revised Bar rules apply? Yes, if claimed.
- ✔ Should lawyer “claim” his or her profile?
- ✔ How many have done this?
- ✔ If profile not “claimed”, has very low rating but lawyer probably not responsible for content.
- ✔ If lawyer claims profile, would arguably be responsible for its content and should monitor it.
- ✔ Can a lawyer solicit testimonial from client for AVVO profile? No under current rules, yes under proposed rules.
- ✔ Can lawyer post case results? No under current, yes under proposed.



Emerging Issues: Business Social Networking

- ✓ Twitter
- ✓ Facebook
- ✓ LinkedIn
- ✓ ABA Legally Minded
- ✓ Lawyer blogs
- ✓ Etc...
- ✓ Same analysis: if the lawyer claims it or says it, the lawyer is responsible for content and other applicable rules



Emerging Issues: Internet Video

- ✓ 139 million plus U.S. Internet users watch online videos (3 out of 4 users)
- ✓ Good way to show attorney's personality
- ✓ 2007 FindLaw study found that 58% of consumers indicate video increases their likelihood of contacting a law firm
- ✓ What rules apply to online video?
- ✓ Same analysis. If lawyer says it or adopts it, the lawyer owns it and must comply with Bar advertising rules



Chat Rooms

- ✔ **Florida Bar Ethics Opinion A-00-1 (8/15/00)**
- ✔ Attorney may not solicit prospective clients through Internet chat rooms arguably would include lawyer blogs and other formats that invite reciprocal communication)).
- ✔ Defined chat rooms as “real time communications between computer users.”
- ✔ Followed approach taken in a number of other states.
- ✔ Opinion does not prohibit a Florida lawyer from participating in chat rooms when it is “*completely unrelated to seeking professional employment*, such as when the chat concerns the attorney's personal interests or hobbies.”



Future of Lawyer Websites and Internet Regulation

- What will the Florida Supreme Court do and when will they do it?
- The Court has previously refused to implement Bar's proposed advertising rules.
- Members of the Court have stated previously that websites and other internet communications by lawyers should be regulated in the same way as print and other advertisements.
- Proposed rules are to apply to all lawyer communications in all forms.
- Court may request oral argument.
- Stay tuned...



Tips on How to Avoid or Minimize Bar Complaints and Resources

- Bar website www.floridabar.org has Bar Rules, Ethics Opinions, and more...
- Bar online Advertising Handbook
- Bar Ethics Department (800) 235-8619.
- Consult with lawyer with experience in the area of lawyer ethics and Bar Rules
- Keep up with developments with Ethics Alerts via e-mail. Send me an e-mail and ask to be added to list: jcorsmeier@jac-law.com



The End!

▼ Thanks for listening

▼ ...and be careful out there!