

Attorney Advertising, Solicitation, and Professional Notices

The following questions and answers are designed to assist the Bar in identifying issues and relevant disciplinary rules pertaining to attorney advertising and solicitations. Counsel are advised in all cases to consult the New York Rules of Professional Conduct to guide their work in the practice of law.

Q. What rules govern attorney advertisements and solicitations under New York's Rules of Professional Conduct?

A. Rule 7.1 governs attorney advertisements. Attorney advertising may not contain a statement or claim that is false, deceptive or misleading, or that otherwise violates any Rule. Rule 7.1(a).

Rule 7.3 governs in-person and other types of communications that are defined as solicitations. Solicitations must also comply with the additional requirements of Rule 7.3, including, among other things, more stringent record keeping obligations.

Additional rules concerning identifying a practice or specialty, and concerning professional letterheads, signs and other notices, are set forth in Rules 7.4 and 7.5, respectively.

Q. What is an advertisement?

A. Under the Rules of Professional Conduct, an advertisement is a public or private communication made by, or on behalf of, a lawyer or law firm, about that lawyer or law firm's services, the primary purpose for which is the retention of the lawyer or law firm, except communications to current clients or other lawyers. Rule 1.0(a).

Q. What is a solicitation?

A. A solicitation is an advertisement initiated by, or on behalf of, a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose for which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain (pro bono matters are exempt). Rule 7.3(b).

Q. May I send articles, updates or speeches I have written to existing clients or other lawyers?

A. Communications to existing clients or other lawyers are not advertisements. Rule 1.0(a). A lawyer may write for publication on legal topics (or speak publicly) without affecting the right to accept employment so long as the lawyer does not undertake to give individual advice. Rule 7.1(r). In this context, "without affecting the right to accept employment" means that lawyers may ethically obtain business by giving speeches and writing articles about law.

Q. May I send articles, updates or speeches I have written to prospective clients?

A. If the primary purpose of the communication is the retention of the lawyer or law firm, the communication is advertising and must meet the requirements of Rule 7.1. If the communication is directed to, or targeted at, a specific recipient or group of recipients, or

their family members or legal representatives, and a significant motive is pecuniary gain, the communication must also meet the requirements of Rule 7.3 for solicitations.

Q. What information must my advertisement contain under the Rules?

A. All attorney advertisements must include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered. Rule 7.1(h). For additional requirements concerning solicitations, see Rule 7.3.

Any email containing attorney advertising must contain in the subject line the notation "ATTORNEY ADVERTISING." Rule 7.1(f).

Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any website related thereto) or made in person under Rule 7.3(a)(1) must be labelled "Attorney Advertising" on the first page, or on the home page in the case of a website. Rule 7.1(f). A self-mailing brochure or postcard also must contain the words "Attorney Advertising." Rule 7.1(f).

Q. What information is prohibited in attorney advertising under the Rules?

A. The following information is prohibited in attorney advertising:

An advertisement shall not:

- include an endorsement of, or testimonial about, a lawyer or law firm from a client with respect to a matter still pending without informed client consent confirmed in writing;

- include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;

- include a portrayal of a fictitious law firm, 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;

- use actors to portray a judge, the lawyer, or members of the law firm, or clients, or utilizing depictions of fictitious events or scenes, without disclosure of same;

- be made to resemble legal documents; or

- utilize meta tags or other hidden computer codes that, if displayed, would violate the Rules.

Rule 7.1(c), (g).

Q. What information may be included in attorney advertising under the Rules?

A. Subject to the requirement of Rule 7.1(a) that an advertisement not contain any statements or claims that are false, misleading or deceptive, or otherwise violate a Rule, advertisements may include information as to:

Biographical information:

- legal and nonlegal education, degrees and other scholastic distinctions;

- dates of admission to any bar;

- areas of the law in which the lawyer or law firm practices, as authorized by the Rules;

- public offices and teaching positions held;

- publications of law related matters authored by the lawyer;

- membership in bar associations or other professional societies or organizations, including offices and committee assignments;
- foreign language fluency;
- bona fide professional ratings;
- names of clients regularly represented, provided that the client has given prior written consent;

Non-legal services:

- non-legal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm;
- the existence of contractual relationships between the lawyer or law firm and a non-legal professional or service firm, to the extent permitted by Rule 5.8, and the nature and extent of the services available through those contractual relationships;

Financing arrangements and fees:

- bank references and credit arrangements accepted;
- prepaid or group legal service programs in which the lawyer or law firm participates;
- legal fees for initial consultation;
- contingency fee rates in civil matters when accompanied by a statement disclosing the information required under Rule 7.1(p) and Judiciary Law §488(3);
- range of fees for legal and non-legal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service;
- hourly rates; and fixed fees for specified legal and non-legal services.

See Rule 7.1(b)(1)-(4). In addition, an advertisement may provide the additional information described below only if the statement can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; the dissemination of the information does not contain statements or claims that are false, deceptive or misleading or otherwise violate a Rule; and it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome":

- statements that are reasonably likely to create an expectation about the results the lawyer can achieve;
- statements that compare the lawyer's services with the services of other lawyers;
- testimonials and endorsements of clients or former clients (except that client testimonials or endorsements with respect to a matter still pending remain prohibited without informed client consent in writing); or
- statements describing or characterizing the quality of the lawyer's or law firm's services.

Rule 7.1(d)-(e).

A lawyer or law firm may not state that the lawyer or law firm is a specialist or specializes in a particular area of law, except as follows:

A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

A lawyer who is certified as a specialist in a particular area of law or practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "The [name of the private certifying organization]

is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

A lawyer who is certified as a specialist in a particular area of law or practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: "Certification granted by the [identify state or territory] is not recognized by any governmental authority within the State of New York. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

Rule 7.4.

An advertisement that otherwise complies with the Rules may include a paid endorsement of or testimonial about a lawyer or law firm only if:

the advertisement discloses that the person is being compensated therefor (Rule 7.1(c)(2)), but if the endorsement or testimonial comes from a client with respect to a matter that is still pending, informed written consent must be obtained (Rule 7.1(e)(4)); and

the advertisement does not contain statements or claims that are false, deceptive or misleading, or otherwise violate a Rule; it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; and it is accompanied by the disclaimer, "Prior results do not guarantee a similar outcome." Rule 7.1(d)(e).

An advertisement that otherwise complies with the Rules may use actors or fictionalized events or scenes provided that the advertisement discloses their use. Rule 7.1(c)(3).

An advertisement may use statements that compare the lawyer's services with the services of other lawyers only if the statements can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated, the advertisement is not false, deceptive or misleading, and does not otherwise violate the Rules, and the comparative statement is accompanied by the disclaimer "Prior results do not guarantee a similar outcome." Rule 7.1(e).

An advertisement may include statements that are reasonably likely to create an expectation about the results a lawyer can achieve only if the statements can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated, the advertisement is not false, deceptive or misleading, and does not otherwise violate the Rules, and the comparative statement is accompanied by the disclaimer "Prior results do not guarantee a similar outcome." Rule 7.1(e).

Q. For how long must attorneys retain copies of their advertisements and solicitations?

A. A lawyer or law firm must retain copies of all advertisements for a period of not less than three years following initial dissemination, except that copies of advertisements contained in a computer-accessed communication shall be retained for not less than one year. Rule 7.1(k).

Websites containing advertising shall be preserved upon initial publication of the website, any major website redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days. Rule 7.1(k).

A lawyer or law firm making a solicitation must satisfy additional requirements, including filing a copy of the solicitation with the appropriate attorney disciplinary committee and, if the solicitation is directed to predetermined recipients, retaining a list containing the names and addresses of all recipients for a period of not less than three years following the last date of dissemination. See Rule 7.3(c)(1),(3).

Only advertisements that are also solicitations must be filed with a disciplinary committee. Rule 7.3(b),(c).

All solicitations directed to a recipient in New York must be filed with the appropriate disciplinary committee. The filing shall consist of a copy of the solicitation and a transcript of any audio portion (must include a translation if the solicitation is in a language other than English).

The filing requirement does not apply to solicitations directed to a close friend, relative, or former or existing client; a web site, unless it is targeted at a prospective client affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or professional cards or other announcements authorized by Rule 7.5(a).

Rule 7.3(c)(1),(5).

Copies of solicitations are to be filed with the attorney disciplinary committee of the judicial district or judicial department wherein the lawyer or law firm maintains its principal office. Where no such office is maintained, the filing shall be made in the judicial department where the solicitation is targeted. Rule 7.3(c).

Q. What rule governs the use of lawyer or law firm names?

A. Rule 7.5

A lawyer or law firm may use a telephone number that contains a domain name, nickname, moniker or motto that does not otherwise violate the Rules. Rule 7.5(f).

A lawyer or law firm may use a domain name for an internet web site that does not include the name of the lawyer or law firm, provide that all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm; the lawyer or law firm in no way attempts to engage in the practice of law by using the domain name; the domain name does not imply an ability to obtain results in a matter; and the domain name does not otherwise violate the Rules. Rule 7.5(e).

Lawyers cannot hold themselves out as having a partnership with one or more lawyers unless they are in fact partners. Rule 7.5(c). Whether an attorney is a partner, for purposes of disclosure to the public, is a question of law. See New York County Ethics Opinion 740; Simon, Professional Responsibility Report, December 2008. Similarly, a lawyer cannot imply that lawyers are associated in a law firm if that is not the case. Rule 7.1(c)(2).

If otherwise lawful, 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 firm or of a predecessor firm in a continuing line of succession. Rule 7.5(b).

A lawyer who assumes a judicial, legislative or public executive or administrative post or office may not permit the lawyer's name to remain in the name of the law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm, and during such period, other members of the firm cannot use the lawyer's name in the firm name, or in professional notices of the firm. Rule 7.5(b).

Q. May I practice under a trade name?

A. No. Rule 7.5(b). See generally New York County Lawyers' Association, Committee on Professional Ethics, Question No. 677, p. 2, March 30, 1990. The NYCLA opinion reviews decisional law: *In re Shephard*, 92 AD2d 978 (3d Dep't 1983) (use of the name "The People's Law Firm of Jan L. Shephard" is improper since it implies that the firm is publicly supported or provides free legal services); but see *In Re von Wiegen*, 63 N.Y. 2d 163 (1984) (using the motto "The Country Lawyer" was not improper when the lawyer's own name was inserted in addition to the motto, because there was no potential for deception about the identity of the lawyer in question).

Q. What kinds of solicitation are prohibited?

A. Solicitations by in-person or telephone contact, or real-time or interactive computer-accessed communication are prohibited unless the recipient is a close friend, relative, former client or existing client.

Solicitations by any form of communication are prohibited if:

- the communication or contact violates Rules 4.5(a)-(b) or 7.3(e) [governing communications after incidents involving potential claims for personal injury or wrongful death] or Rule 7.1(a) [prohibiting statements that are false, deceptive or misleading, or otherwise violate a Rule];

 - the recipient has made known to the lawyer a desire not to be solicited by the lawyer;

 - the solicitation involves coercion, duress or harassment;

 - the lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient makes it unlikely that the recipient will be able to exercise reasonable judgment in retaining the lawyer; or

 - the lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.

Rule 7.3(a).

No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death is permitted before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication is permitted before the 15th day after the date of the incident. Rule 7.3(e).

In addition, no unsolicited communication is permitted to any individual injured in the accident or to a family member or legal representative of such an individual, by a lawyer or law firm, or by any associate, agent, employee or other representative of a lawyer or law firm representing actual or potential defendants or entities that may defend and/or indemnify said defendants, before the 30th day after the date of the incident, unless a filing

must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication is permitted before the 15th day after the date of the incident. Rule 4.5(a).

A retainer agreement may be provided along with a solicitation only if the top of each page is marked "SAMPLE" in red ink in a type size equal to the largest type size used in the agreement and the words "DO NOT SIGN" appear on the client signature line. Rule 7.3(g).

A lawyer or law firm advertising any fixed fee for specified legal services must, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement must be available to the client at the time of retainer for any such service. Such legal services must include all those services that are recognized as reasonable and necessary under local custom in the area of practice in the community where services are performed. Rule 7.1(j).

If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm cannot charge more than the fee advertised for such services.

If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer may not charge more than the fixed fee for such stated legal services as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

Unless otherwise specified, if a lawyer broadcasts any fee information authorized under Rule 7.1, the lawyer is bound by any representation made therein for a period of not less than 30 days after such broadcast.

Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under Rule 7.1 in a publication that is published more frequently than once per month, the lawyer is bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under Rule 7.1 in a publication that is published once per month or less frequently, the lawyer is bound by any representation made therein until the publication of the succeeding issue. If the lawyer publishes any fee information authorized under Rule 7.1 in a publication that has no fixed date for publication of a succeeding issue, the lawyer is bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.