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WHO WANTS TO BE A MILLIONAIRE? ETHICS OF LAWYER ADVERTISING

SPEAKER:
RICHARD LEMMLER

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Ethics of Lawyer Advertising in Louisiana

by Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association

“Marketing” or “Advertising” – Is There a Difference?

“Marketing” is a very broad concept generally referring to ideas, activities, plans, processes and goals for the creation, formulation, packaging, communication and delivery of ideas/information intended to offer some benefit or value to others, most often—but not exclusively—prospective, new customers and clients. “Advertising” is very simply a tool utilized in marketing but is not necessarily the only tool or method available for marketing. Advertising is almost always a public form of communication, broadcast to the general population—or, at least, to one or more targeted demographic groups. For-profit businesses, by nature, must almost always engage in marketing in order to bring in paying business and make a profit, although the level and intensity of marketing campaigns may vary widely, depending upon the type of business, service, product, customer, etc. Most for-profit businesses employ advertising as part of their marketing efforts. And most for-profit businesses—at least those who survive and thrive—have developed good, basic skills and comfort with respect to utilization of advertising.

Historically, professionals have also—perhaps unknowingly—engaged in marketing but not necessarily advertising. Prior to the late 20th Century, there was really no glut or overabundance of professionals, affording professionals the luxury and prestige of being sought out and sought after by clients, thereby relieving many of them from the need to advertise themselves and their professional services to the masses. For that reason (among others), there has been a long reluctance among many professionals, persisting even today, to utilize advertising, ultimately resulting in less-than-adequate comfort and facility both with commonly-available forms of advertising and the rules of professional conduct that regulate those forms of advertising. In short, due to the ever-swelling number of lawyers licensed these days, nearly all modern-day lawyers must engage in marketing themselves and their services, and very likely must utilize some form of advertising as part of their marketing efforts. For that reason, it is extremely important that the modern-day lawyer becomes familiar with the Rules that regulate professional conduct when advertising and how those Rules might apply to, at least, the most commonly-utilized forms of advertising.

I. Solicitation

Rule 7.4 of the Louisiana Rules of Professional Conduct is entitled “*Direct Contact With Prospective Clients*”. Rule 7.4(a), with the heading “*Solicitation*”, is the first Rule every lawyer must consider and respect when thinking about getting new clients and doing so ethically:

...(a) Solicitation. Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer’s request or on the lawyer’s behalf or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer’s behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term “solicit” includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision

(b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For purposes of this Rule 7.4, the phrase “prior lawyer-client relationship” shall not include relationships in which the client was an unnamed member of a class action...

1. From a Prospective Client With Whom the Lawyer has no Family or Prior Lawyer-Client Relationship

Simply, a lawyer shall not solicit legal business in-person, over the phone or through others, from anyone who is not a family member of the lawyer or who does not have a “prior lawyer-client relationship” with the lawyer: i.e., former clients and/or current clients.

PRACTICE TIP: Under current Rule 7.4—and even the old Rule—lawyers are basically completely free to solicit former and current clients for new/additional legal business. Making sure that your clients know what you do—and what else you can do if they ever need something in that area of law—is a great way to pick up new/additional legal business from people who already know how hard you work and how much you do to service a client. Those folks, in turn, are highly likely to be the source of referrals for brand-new clients.

It should also be noted that the current Rule defines and clarifies—in case anyone was wondering—that unnamed members of a class in a class action setting are not considered clients or former clients for purposes of this Rule, i.e., a lawyer cannot solicit legal business in-person from an unnamed member of a class action, even if the lawyer actually represents/represented named class representatives as clients in the matter.

PRACTICE TIP: Under current Rule 7.4—and even the old Rule—lawyers are also basically completely free to solicit their own family member for new/additional legal business. Making sure that your family members know what you do—and what else you can do if they ever need something in that area of law—is a great way to pick up new/additional legal business from people who already know how hard you work and how much you do to service a client. Those folks, in turn, are highly likely to be the source of referrals for brand-new clients.

A. In-Person Solicitation

The key to understanding what is prohibited and what is permissible when it comes to “in-person solicitation” lies primarily within the difference between “active” and “passive” encounters and interaction with persons with whom you have no family or prior lawyer-client relationship. For example, a lawyer who goes to a social event, say a church picnic, golf tournament or big Super Bowl party at some friend’s home, bringing a hand full of business cards or brochures and who proceeds to systematically “corner” or “target” nearly everyone in the room as a prospective recipient for a card/brochure (and maybe even gives a quick oral “sales pitch” about the lawyer’s legal services, etc.) is likely being too aggressive and, therein, too “active” with these in-person solicitation tactics. Doing so is a sure way—at some point eventually—to annoy someone beyond their basic threshold for tolerating nuisances and push them into filing a disciplinary complaint against you for improper in-person legal solicitation; it only takes one fellow lawyer/guest to get an unsolicited/unwanted/unappreciated card/brochure and/or sales pitch.

On the other hand, the same lawyer at the same social event who carries with him/her some business cards and/or brochures—just in case someone asks for more information about legal services—but who also is genuinely/sincerely interested in perhaps making some new friends and acquaintances while “working the room” is likely being “passive” enough in these actions to avoid an improper in-person solicitation challenge or complaint. However, given that the Louisiana State Bar Association now consists of approximately 21,500 licensed lawyers—many of whom are desperate to keep and maintain their own good clients—one must be careful and most diplomatic when “working a room” so as to avoid unintentionally inviting a challenge or complaint from some other lawyer (who may also be present and) who may already be the lawyer for some of the same folks that you are now attempting to meet and bedazzle at this event.

PRACTICE TIP: Nothing “turns off” a lot of prospective clients more than insincerity and/or an openly aggressive, obviously mercenary attitude. People can generally see through someone who is insincere and who is there only/simply to try and get new business; some people will take an instant dislike to one who encroaches on their personal/social enjoyment with unwanted business talk and selfish objectives, especially at inappropriate times. For example, joining a club or group activity is quite often eventually a good source of new legal clients for lawyers but, at the same time, joining the club for the sole purpose of soliciting new legal clients will generally be/become rather obvious and distasteful to the rest of the club and, as such, may end up “backfiring” on the lawyer who does so.

Join a club, group or organization because you are genuinely interested in what that club, group or organization does/stands for; participate actively in its events/activities and you will meet others who share your likes and enthusiasm for those same things. Some of those folks—and, if you’re lucky, most of those folks—will not also be lawyers and, in time, they will learn and want to hear more about what you do for a living and ask you questions about your law practice, etc. Thereafter, some of them will become your new clients and/or the source of referrals for other new clients. This is a time-honored method of client development at which most good law firm “rainmakers” truly excel. It seems very passive and slow but there is, in fact, a true art to doing this tactfully and effectively. Those who do it best make it look quite simple and effortless—and, in some ways, it is, since you are merely trying to be yourself and make friends with others who like the same things you do.

It should also be noted that even if some of the other members of the club, group or organization are also lawyers, that is not always necessarily a negative thing or problem. While many of those other lawyers may also be hoping for new legal clients and/or matters to come from the other members of the club, those lawyers may not always handle all of the same kinds of legal matters that you do and, as such, they may be a potentially good source of referrals of legal business to you, as well. Those other lawyers may also occasionally encounter conflicts of interest with respect to clients/matters and, as a consequence, may need to refer a client/matter to some other lawyer they know, trust and respect—like you. As your mother may have tried to instill in you as a child, be nice to everyone—and in this case, even (and especially) other lawyers—and people will know that you are approachable and will typically feel more comfortable talking to you about their confidential/private legal matters, if and when the need arises.

B. Telephone Solicitation

This was likely more of a problem prior to the advent and proliferation of all things Internet and may be, at this point, something unlikely to be tried/used by newer/younger lawyers. But maybe that’s not

necessarily the case, especially given the proliferation/omnipresence of cellular “smart” phones and various other personal electronic communication devices. Arguably, it may even be potentially more effective—if one does it—since, unlike with landlines, the “targets” are carrying their cellular devices nearly 24/7 and the dialing solicitor is perhaps unlikely to get as many “rings with no answer” calls.

It should be noted that the Rule (current and former) prohibits solicitation by “...*person to person verbal telephone contact*...” As such—and although not really recommended, given the general dislike of unwanted telephone solicitations and the per-minute usage charges that some folks pay for their cellular phones—the Rule does not prohibit automatic/electronic telephone dialing and playing of a pre-recorded message. Again, one should note the difference between “active” and “passive” solicitation. The pre-recorded message would, of course, still need to be compliant with the balance of the Rules, especially nothing false, misleading or deceptive and including the content required by Rule 7.2(a) [the full name of at least one lawyer responsible for the content of the communication and disclosure of a city/town of one or more bona fide office location(s)].

PRACTICE TIP: The cost of doing unsolicited, pre-recorded telephone messages to prospective clients (i.e., the risk of aggravation/alienation from the start) may far outweigh the benefit of trying to get legal business in this manner. Nevertheless, as it is permissible under the Rules, a lawyer who would choose to try this method of marketing would be well-advised to make sure that the message(s)/communication(s) used are fully compliant with the Rules before turning the “robo-dialer” loose on unsuspecting prospective clients, as there is a risk that at least one number dialed will be an irate lawyer who decides that a complaint to ODC about this “abuse” is merited—whether or not it may be. In other words, do your homework and cross all “T’s” and dot all “I’s” before using this method of marketing legal services, just in case you “pull the chain” of someone who does not appreciate your efforts to find new clients, even if allowed under the Rules.

C. Solicitation Through Others

Rule 7.4(a) talks in terms of “...*others acting at the lawyer’s request*...” “...*or on the lawyer’s behalf*...” “...*or otherwise*...” It goes on to note specifically that “...*a lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer’s behalf*...” In simplest terms, a lawyer himself/herself cannot solicit legal business in-person from prospective clients with whom the lawyer has no family or prior lawyer-client relationship, nor can the lawyer permit others to do so for the lawyer. That would include not only employees and compensated agents but also well-meaning friends, family, clients and former clients.

Naturally—and of course—one’s mother or father or brother or sister or cousin or next-door neighbor (hopefully) will be proud of you and your abilities, not only as a lawyer but as a person generally, so those folks will likely want to “talk you up” to others as much and as often as they can. This is all good and fine and an excellent source of new business for you as a lawyer; however, it does not hurt for the lawyer to ask (and occasionally remind) these folks to be careful not to pressure others too much into talking to and/or hiring the lawyer. Again, “active” versus “passive” solicitation will be at issue and reminding “Mama” or “Daddy” or “Brother” or “Sister” that you can always use new clients but not to push too hard or aggressively to get you those new clients is very important for you and your professional well-being.

Even a lawyer’s own office staff—e.g., your secretary or receptionist or paralegal or law clerk—can be and often are a good source of new client referrals. However, just like the well-meaning family members,

but more importantly because you and these folks—as your employees/paid agents—are held to a higher standard (under Rule 5.3 of the Louisiana Rules of Professional Conduct), a lawyer should encourage the office staff to let others know the kinds of things you and the law firm do and that new clients are always welcome and treated with respect, while also educating and cautioning them to avoid “stepping over the line” by “actively” approaching persons with whom you have no family or prior lawyer-client relationship and aggressively soliciting them as new legal clients for your office. This is something that should be done regularly and carefully, so that the office staff knows what your limitations are with regard to new client solicitation and that you, as lawyer, are ethically responsible for what they do because they are held to the same standards as you.

Rule 7.2(c)(13) states:

...(13) Payment for Recommendations; Lawyer Referral Service Fees. A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:...

...(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:...

...(i) refers all persons who request legal services to a participating lawyer; ...

...(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and...

...(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation...

Be wary, too, of third-party “for-profit” referral services, especially those owned/operated/managed by non-lawyers. These often sound like great opportunities to get new clients—and may, on first glance, and without consideration of the Rules and state statutes, in fact, produce new clients. Some other jurisdictions outside of Louisiana may actually allow these services. However, in Louisiana, assisting a non-lawyer to engage in the practice of law and/or sharing legal fees with non-lawyers (by helping them to re-sell your legal services) is highly problematic and likely constitutes violations of Rule 7.2(c)(13), Rule 5.4 and Rule 5.5, not to mention Louisiana Revised Statutes 37:212 and 37:213 (which contain the legislative definition of the practice of law, making it a crime to engage in the practice of law, and/or furnish legal services and/or lawyers—or advertise that you can furnish legal services and/or lawyers—if you are not a Louisiana- licensed lawyer).

Also, membership in clubs or groups or trade associations that engage in some form of bartering of goods and services and/or operate primarily based on reciprocal referrals pose a myriad of problems for lawyers, insofar as the other, non-lawyer members of the group/association may be making recommendations/referrals of new paying legal clients to the lawyer in exchange for the anticipated/expected/obligatory “*quid pro quo*” that the lawyer will, in turn, be making referrals of paying clients to the plumber or real estate agent or CPA or other varied members of the group. This system—which apparently works well for other trades and professions without a law license (and, as such, often creates a perceived sense of unfairness for many lawyers who might want to participate)—also poses problems for the lawyer under Rule 1.7 and Rule 1.8, from the perspective of

creating financial conflicts of interest between the lawyer and the clients who may be referred by the lawyer to others in the trade/referral group as consideration for the reciprocal referrals of other, new paying legal clients that are hoped for from the other members of the trade/referral group.

II. Fundamentals for Marketing A Law Practice

1. Business Name/Professional Identity

Rule 7.2(c) of the Louisiana Rules of Professional Conduct, in pertinent part, states:

...(c) Prohibitions and General Rules 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, the lawyer's services or the law firm's services..."

Rule 7.2(c)(1)(J), in pertinent part, states “...*A communication violates this Rule if it:...(J) includes...the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case...*”

As such, a lawyer should be careful to avoid claiming to practice in a law firm with other lawyers when that is not the case by, for example, using a business name/professional identity such as “...*John Smith and Associates, Attorneys at Law...*” or “...*Smith, Jones and Williams, Attorneys...*”, when Mr. Smith does not actually/technically practice as a single law firm in partnership with Ms. Jones and Mr. Williams—who are really just two other independent sole practitioners in the same building and who work together occasionally on cases with one another and/or with Mr. Smith.

Rule 7.2(c)(8) states “...*(8) Firm Name. A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10...*”

Rule 7.10 states:

...Rule 7.10 Firm Names and Letterhead

...(a) False, Misleading, or Deceptive. A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules...

...(b) Trade Names. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or is otherwise in violation of subdivision (c)(1) of Rule 7.2...

...(c) Advertising Under Trade Name. A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office signs, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents...

...(d) Law Firm with Offices in More Than One Jurisdiction. A law firm with offices in more than one jurisdiction may use the same name 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 any jurisdiction where an office is located...

*...(e) **Name of Public Officer or Former Member in Firm Name.** The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm...*

*...(f) **Partnerships and Organizational Business Entities.** Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact...*

*...(g) **Deceased or Retired Members of Law Firm.** If otherwise lawful and permitted under these Rules, 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 law firm, or of a predecessor firm in a continuing line of succession...*

PRACTICE TIP: Whatever business name/professional identity you choose for the practice of law, be careful to use it regularly and consistently on everything you do in connection with the practice of law. Do NOT try to use more than one business name/professional identity in connection with the practice of law simultaneously, as it may be challenged and/or become the subject of a disciplinary complaint, given the foregoing cited Rules.

2. Office Sign(s)

As of June 22, 2011, office signs for bona fide law office locations may be used without including Rule 7.2(a) “required content”. Rule 7.2(a)(3)(C) states:

...The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2:...

*...(C) **Office Sign(s) for Bona Fide Office Location(s).** A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer’s services or a law firm’s services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits...*

Also, as of June 22, 2011, office signs for bona fide law office locations do not need to be filed for evaluation with the LSBA under Rule 7.7. Rule 7.8(i) states:

...The following are exempt from the filing and evaluation requirements of Rule 7.7:...

*...(i) **Office Sign(s) for Bona Fide Office Location(s).** A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer’s services or a law firm’s services that is permanently affixed, hanging, erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits...*

While still the “norm” and most traditional form of law practice, having an established law office is not an absolute necessity these days. There are perhaps several different options/methods available for some lawyers to practice fully or partially “on the go” and likely a certain kind of client who does not need or want a lawyer who is tied to “bricks and mortar”. For those folks, an office is unnecessary. A telephone number, e-mail address and law firm website will almost certainly be important to facilitate communications and client interaction. However, for most lawyers, an office will still be desired by both lawyer and client, primarily as evidence of the lawyer’s stability and commitment to the practice of law as both a profession and a business, as well as a vehicle for regularly conducting that profession/business.

3. Telephone Number and Telephone Directory Listing(s)/Advertising

Once you have selected and settled on your business name/professional identity and put it on your office sign(s), you will, of course, also want to get a telephone number for your law office so that all of those new, regularly-paying clients can contact and hire you. A very basic—read “simple/boring”—listing will typically be included within the cost of the telephone line and may suffice for some folks for some time. If you already have good, steady clients and seem to have a ready, reliable source for new ones that is not specifically tied to advertising, the basic listing may be all that you need for some time. But, for most lawyers—who are not so blessed—something more than the basic “in-column” listing of name, city/town and telephone number will be desirable and may help with getting the occasional new client.

Unless you are independently wealthy and prepared to purchase and commit to paying thousands (if not tens of thousands) of dollars for something like the front cover or back cover of the annual telephone directory, purchasing a full-page, half-page or quarter-page telephone directory advertisement (color or not) that will appear juxtaposed against tens or dozens of others just like it in the same section of the directory is often just buying into the “arms race” principally encouraged by the telephone directory sales team. In doing so, you will quite likely be lost among the crowd and overlooked within the maze of multiple advertisements just like your own. The goal of advertising is to stand out and encourage someone—a prospective client—to select and contact you. The chances of someone like that digging through dozens of adjoining lawyer advertisements on many consecutive pages that are the same size and that appear generally similar to your own ultimately to find and contact you are, sadly, minimal to none.

If you are unwavering on the need to have such a “page-sized” advertisement “within the herd”, at least choose to be creative; spend some time thinking about and designing your advertisement to look different and catch someone’s eye. Do not, if at all possible, simply rely on the “cookie-cutter”/“stock” design capabilities of the telephone directory sales team and/or their art department. “New and different” only means more work for them, so you are not likely to end up with what works best for you but rather what works best for them. Consider emphasizing the area of law or kind of legal matter/problem that someone might have when looking for a lawyer, rather than using valuable advertising real estate to include a giant picture of yourself and/or your office building and/or staff and/or the scales of justice.

PRACTICE TIP: Unless you are blessed to be one of the best looking lawyers on the planet, resist the urge to feature your smile and dashing good looks and, instead, use that expensive advertising real estate to feature the fact that you do “PERSONAL INJURY” (or, better yet, “CAR ACCIDENTS” or “DEFECTIVE PRODUCTS”) or “FAMILY LAW” (or, better yet, “DIVORCE” or “CHILD CUSTODY” or “ADOPTIONS”), etc. Remember that some prospective clients may never before have needed or hired (or even met) a lawyer and, quite possibly, may not be familiar with or understand the meaning of the generic terms you and other lawyers might use for the areas of law in which you practice. They do know, however, the problem or issue that they are experiencing and for which they now need to find a lawyer (i.e., I

had a “car accident” or my doctor committed a “medical error” or I need a lawyer to handle a “real estate sale/closing”, etc.).

Your choice of words—and efforts to communicate effectively/meaningfully to your target audience—will likely help you stand out from the crowd of various “smiling faces”, “three-quarter profile portraits in business suits”, giant “gavels”, “scales of justice” “car crunches” and/or huge banners with gigantic printed type such as “JONES, SMITH AND WILLIAMS, ATTORNEYS AT LAW, LLC”. For someone who just needs a lawyer to help them with an unwanted, often unexpected problem, a business suit or the scales of justice do not necessarily suggest “I want to help” or “We handle that kind of problem” but may merely say “Don’t you think we look sharp in our suits?” or “I Know my law-related symbols!” or “We’re really proud of our 6-partner law firm name—that’s why we made it the largest thing within our advertisement!”. There will, no doubt, be some prospective clients who see these kinds of things differently—and maybe even as some sign of what one should be looking for in a “real” lawyer, like stability, strength, traditional values and/or competence—but remember, too, that everyone else who is advertising where your advertisement will be placed is probably also doing the exact same sorts of things because they think that’s what they should be doing (and because the directory art department did it for them that way), so do you really stand out from the herd because of these “traditional lawyer trappings”?

PRACTICE TIP: If the expensive page-sized advertisement is not in your budget and/or you believe that entering the “arms race” is likely unproductive/futile, your dollars for telephone directory advertising may be best spent on a modest/simple “locality” listing and/or small “in-column box” in the “locality” section of the telephone directory. Despite the increasing number of people who will first look to and use the internet to search for goods and services that are wanted/needed, there are still, at least for now, those who will turn to “paper” and, in many instances, they will be looking for a lawyer—any lawyer—that is closest to home or located in a particular area of town, say where it’s easy/free to park the car or safest to go for a consultation after getting off of work. They are not looking for any particular size or shape of lawyer or firm name—they just want someone who they can get to easily and who handles whatever problem they have at the moment. Distinguishing yourself by having a basic listing or small “in-column box” advertisement in the “locality” section will perhaps help those prospective clients find you much better, faster and more easily than having a half-page color advertisement included among various others just like it appearing within the “Attorneys” advertising section of the telephone directory.

PRACTICE TIP: If at all possible, try not to use your cell phone or personal telephone line as your main business telephone line. It will too often result in confusion for you and others as to when someone is calling you for personal matters and when someone is calling your for business matters. It will also appear, to many people, that you are not well-established and/or that you do not take your business and clients seriously enough to merit a dedicated business telephone line. Additionally, with a dedicated business line, you will know not to answer or have anyone else answer that line informally; anyone calling that line theoretically should be a potential client or client or opposing counsel or judge, etc., and, as such, is will be easier for you to know when you should be “wearing your lawyer hat”. There is nothing wrong—and, these days, it is perhaps a common professional courtesy—with giving someone your cell phone number, in addition to your dedicated office telephone number, as an added/extra means of trying to contact you, especially when you are leaving messages for someone to call you back. However, generally speaking, your personal cell phone should not be used as a substitute for a full-time dedicated office telephone number.

A. “Vanity” Numbers

Sometimes—and understandably given the goal of distinguishing yourself from “the pack”—lawyers will choose to create and purchase a “vanity” telephone number, i.e., a number whose digits, when translated into letters of the alphabet, spell out some catchy word or relevant term, e.g., “1-800-LAW-FIRM” or “LAW-GURU” or “(225) BIG-SHOT” or “(337) BAD-DUDE” or “(504) BIG-JERK”, etc. Sometimes clever and effective for catching the eyes of hoped-for prospective clients and useful for building a memorable “brand” but not necessarily required and not always smart, if chosen without careful consideration and review of the Rules.

Rule 7.2(c)(1)(F) states “...*A communication violates this Rule if it:...(F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law...*” For instance, a domestic lawyer who chooses a “vanity” number such as “1-800-GET-EVEN” or “(504) HUR-T...HIM” may not be wise or even appropriate under the Rules.

Rule 7.2(c)(1)(L) states “...*A communication violates this Rule if it:...(L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter...*” As such, our recommendation would be that a lawyer resist the urge to choose/use a “vanity” number like “1-800-BIG CASH” or “(225) WIN-GOLD” or “(318) SURE...WIN”, etc. Those are essentially unqualified promises of results, regardless of facts, law or merits. Such brazen/careless, and some would also say unprofessional, messages are not recommended, given Rule 7.2(c)(1)(L) [and Rule 7.2(c)(1)(E): “...*A communication violates this Rule if it:...(E) promises results...*”]

Naturally, context may, of course, matter and may make the difference as to whether or not something might be appropriate or inappropriate under the Rules; for instance, “(985) GET-FREE” theoretically may work under the Rules for a domestic lawyer looking for clients who simply want to get a divorce (since virtually no one will be refused/incapable of obtaining a divorce decree once legal prerequisites have been met) but may not be appropriate for a criminal defense lawyer advertising as such, since not every criminal defense client will simply be able to “get free” as a result of hiring the lawyer, no matter how hard the lawyer works (e.g., no bail or ROR and conviction of life in prison without parole).

4. Law Firm Website – “...Are You There Yet?”

A website for a law office is perhaps, arguably, one of the most important and still least expensive marketing tools for a present-day lawyer, possibly even exceeding telephone directory advertising in importance and effectiveness. It is highly likely that anyone under the age of 30 (maybe even 40) these days will choose to use the internet first—either on a smart phone, other personal electronic device (like an I-Pad) or computer—when searching for goods and services and contact information for those who provide such things. In an effort to try and stay current [but perhaps in an inevitable losing battle], old-fashioned telephone directory publishers have generally now included basic internet listings for their telephone customers (some even offer website design and hosting options for an additional fee), so it is possible that someone searching for a lawyer may still find—and maybe even contact—the lawyer who does not have a dedicated, firm-specific website.

But it is also very likely that once the searcher/prospective client determines that the lawyer does not have a dedicated website, he/she will perceive/believe that the lawyer may be something less than capable/competent/knowledgeable/experienced and/or legitimate, given the lawyer’s apparent

ignorance/unwillingness to use simple/basic internet tools that the searcher (and everyone else who does use them regularly) considers to be basic, fundamental, primary methods of information sharing and communication. This would be analogous to a lawyer in the mid to late twentieth century refusing to have a telephone number, instead suggesting that an office with a sign outside is all that is needed for clients to find, visit and communicate with the lawyer—i.e., “*If people want to talk to me, they can just come to my office to see me; I’m really too busy (and too important) to waste my time answering a bunch of phone calls and calling people back...*” That sounds absurd to just about all of us these days but refusing to have a web presence for your law firm may sound just as absurd—and antiquated/pompous—to the younger, more internet-based folks of today.

Building a website—or hiring someone to build one for you—does not have to be a daunting or insurmountable obstacle. Having a law firm website/webpage of some kind may be better than having none at all. On the other hand, setting up a simple/generic webpage with no other pages or information—and leaving it that way, unchanged/unrevised for months or years at a time—may appear to some as if you don’t care how you look and/or that you don’t know the first thing about the internet, etc., which may suggest that you may not be able to relate meaningfully to someone who is more “internet-savvy”. Doing simple but periodic reviews and updates/“renovations” of your law firm website (webpage) may be helpful from a marketing standpoint and appear to others that you are “on top of things” and “up-to-date”—which, quite likely, are qualities that most clients find desirable in a lawyer.

Rule 7.8(g) of the Louisiana Rules of Professional Conduct states “...*The following are exempt from the filing and review requirements of Rule 7.7:...(g) Computer-accessed communications as described in subdivision (b) of Rule 7.6...*”

Rule 7.6(b) states:

...(b) Internet Presence. All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:...

...(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law...

...(2) shall 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; and...

...(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9...

Rule 7.9 states:

Rule 7.9 Information about a Lawyer’s Services Provided Upon Request

...(a) Generally. Information provided about a lawyer’s or law firm’s services upon request shall comply with the requirement of Rule 7.2 unless otherwise provided on this Rule 7.9...

...(b) Request for Information by Potential Client. Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm: ...

...(1) *The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client...*

...(2) *The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client 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" shall appear on the client signature line...*

...(3) *Notwithstanding the provisions of subdivision (c)(1)(D) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm if, either alone or in the context in which they appear, such statements are not otherwise false, misleading or deceptive...*

...(c) **Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm.** *A statement and any information furnished to a prospective client, as authorized by subdivision (b) if this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct of the lawyer in similar matters may be considered...*

B. "Vanity" Website Names/E-mail Addresses

Like "vanity" telephone numbers, lawyers should be careful in choosing to create and use a "vanity" website name/address and/or e-mail address. For example, "IGetResults.com" or "BigSettlementsRUs.com" are probably not good choices for law firm web addresses. Similarly, choosing an e-mail address like BestLawyerinLA@lawfirm.com or TopPersonalInjuryLawyerinNO@PILaw.com may not be wise (given Rule 7.2(c)(1)(G): "...A communication violates this Rule if it: ... (G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated..."). Comparing yourself to other lawyers with such bold, unjustifiable claims is a sure way to get one of those other lawyers to file a disciplinary complaint against you.

5. Law Firm Stationery – Business Cards, Letterhead, Envelopes – "...Undeveloped Real Estate?..."

In addition to an office sign, telephone number and law office website, law firm stationery (i.e., business cards, letterhead and envelopes) may arguably be the most essential "tools" needed by any practicing lawyer who is "hanging out shingle". Like the office and telephone number, professional stationery—in the eyes of most clients, other lawyers, judges and vendors/merchants/businesses with whom the lawyer will need to do business—represents a level of seriousness and sincere commitment to the profession and business of being a lawyer. In some instances, it may even be the only picture of and exposure to you that some long-distance clients, lawyers and judges ever get/have of you as a lawyer. As your "mama" probably told you when you were a child, first impressions are often the most important ones and sometimes the only opportunity you have to make a good impression on someone else. As such, you

should take time to design and choose your law firm stationery, as it may be the first and only thing that some people ever see of you as a lawyer. Wouldn't you want to make sure you are putting your best foot forward?

PRACTICE TIP: Something of which only a few lawyers seem to take advantage is the opportunity to distinguish oneself from other lawyers and to market oneself a bit more by using the law firm stationery itself. As with telephone directory advertising (and even with other forms of advertising), many lawyers choose to use a plain-vanilla "Name-Rank-and-Serial-Number" format for their law firm stationery, e.g.:

Richard P. Lemmler, Jr.
Attorney At Law
Notary Public
601 St. Charles Avenue, New Orleans, LA 70130
(504) 619-0144
RLemmler@LSBA.org

While there is nothing wrong with using this basic/plain format (i.e., it is entirely compliant with the Rules and works well for seemingly a majority of lawyers), the Rules also do not prohibit, or even discourage, one from including additional information on one's stationery. For example, there may be some real benefit to including on the letterhead and business cards the area or areas of law in which one practices (or, more pointedly/clearly, the various types of legal services one offers/provides), e.g.:

Richard P. Lemmler, Jr.
Attorney At Law
Notary Public
601 St. Charles Avenue, New Orleans, LA 70130
(504) 619-0144
RLemmler@LSBA.org

General Civil Law Practice, Including But Not Limited to:
♦ Business Advising/ Formations ♦ Contracts ♦ Debt Collections ♦ Estate Planning, Wills & Successions ♦ Incorporations /LLCs ♦ Landlord-Tenant Matters ♦ Personal Injury (such as Auto/Truck Accidents, Maritime/Offshore Accidents, Medical/Surgical Errors) ♦ Real Estate Sales/Purchase Agreements & Closings

PRACTICE TIP: One may also wish to consider utilizing the back of one's business card for a variety of additional/helpful/useful information, such as a map to one's office location and/or a list of useful telephone numbers or internet links or a checklist for auto accidents or real estate closings or new business formations, etc. Again, just something extra/different to distinguish yourself—and your business card—from other lawyers may perhaps end up getting a client or two to share it with a new prospective client and/or keep it safe/handy because of its added utility/distinction.

A. Specialization/Expertise/Certification vs. Communicating Practice in Particular Fields of Law

Rule 7.2(c)(5), as amended 06/02/2016, states:

Ethics of Lawyer Advertising in Louisiana
Richard P. Lemmler, Jr., Ethics Counsel
Louisiana State Bar Association

...(5) **Communication of Fields of Practice.** A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.2(c)(1) to communications concerning a lawyer’s services. A lawyer shall not state or imply that the lawyer is “certified” or “board certified” except as follows:

(A) **Lawyers Certified by the Louisiana Board of Legal Specialization.** A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified” or “board certified in (area of certification).”

(B) **Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar.** A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified” or “board certified in (area of certification)” if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

(C) **Certification by Other State Bars.** A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified” or “board certified in (area of certification)” if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

Lawyers—as persons with advanced education who make their living essentially by looking carefully at and distinguishing the details of the facts, law and evidence in each matter handled for a client—should be more than capable of choosing and using words to describe themselves and their legal services that do not trigger Rule 7.2(c)(5), i.e., words that are descriptive and truthful but are not misleading as forms of the words “specialize”, “specialist”, “expert”, “expertise”, “certified”, etc. Sadly, that does not occur as often as it should, particularly when it comes to law firm websites. One should take the time—no, one must make the time—to review

carefully all content being posted on one's own law firm website (as well as in all other advertising/marketing materials) in an effort to ensure that there are not issues under the Rules.

Lawyers, for some reason, are particularly lax in checking for and eliminating from their own websites and other advertising claims of "expertise"—the Rules, in particular Rule 7.2(c)(5), as amended 06/02/2016—do not currently provide for any use of the words "expert" or "expertise", or any variations thereof, by lawyers when describing themselves as lawyers and/or their legal services.

Likewise, the language of current Rule 7.2(c)(5)—unlike most of the other lawyer advertising-related Rules—does not mention or include entire law firms as law firms in permitting claims of specialty law practice and/or specialized legal skills, i.e., the Rules do not currently authorize law firms to make blanket claims of firm-wide specialization. Rule 7.2(c)(5), as amended 06/02/2016, says specifically "...**A lawyer** may state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields,..."—unlike many of the other advertising rules, it does not say "...a lawyer or a law firm..." One must believe and accept—unless and until the Court might clearly say otherwise—that this was not simply an oversight or that the "or a law firm" language was implied or intended as well. This difference and distinction does exist.

And this is quite logical, in keeping with the balance of the Rules and not unreasonable, insofar as only lawyers as individuals actually acquire and accumulate the experience, knowledge and skills that would truthfully, appropriately be attributable to a legal "specialist." Entire law firms are not somehow vicariously made legal specialists by virtue of the presence/association of just a single lawyer who happens to possess sufficient knowledge, skills and experience to be a legitimate legal "specialist." Put another way, it would be generally misleading and deceptive for a whole law firm to claim broadly—and without any qualification or limitation—that the whole law firm "specializes" in one or more field(s) of law, given that law firms normally consist not only of lawyers but also a variety of non-lawyer support staff possessing a broad range of skills and experience in legal work—and no license(s) to practice law. Those non-lawyers cannot and should not be considered—or, worse, described/marketed/portrayed—as "specialists" in any field(s) of law, so such a broad/blanket claim of firm-wide legal "specialization" would potentially mislead and confuse members of the public into believing that even a non-lawyer legal assistant or paralegal or law clerk was somehow also a "specialist" in that field of law.

III. Marketing Tools for a Law Practice

1. Brochure(s)

See Rule 7.4(b) (*infra*).

2. Gift/Promotional Items

Rule 7.2(a)(3)(B) states:

...(3) The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2:

...(B) Gift/Promotional Items. Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4;...

Rule 7.8(h) states:

...(h) Gift/Promotional Items. The following are exempt from the filing and review requirements of Rule 7.7:...(h) Items such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4;...

3. Mailings – “Snail Mail” (i.e., U.S. Mail)

a. Unsolicited Written Communications

Rule 7.4(b) states:

...(b) Written Communication Sent on an Unsolicited Basis.

...(1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:...

...(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than thirty days prior to the mailing of the communication;...

...(B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;...

...(C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;...

...(D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2; or...

...(E) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer...

...(2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements: ...

...(A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2...

...(B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules: ...

...(i) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content...

...(ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print size used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet. Written communications solicited by clients or prospective clients, or written communications sent only to other lawyers need not contain the "ADVERTISEMENT" mark...

...(C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery...

...(D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client...

...(E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person, shall disclose how the lawyer obtained the information prompting the communication...

...(F) *An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client’s legal problem...*

i. Family & Persons With Whom the Lawyer Has a Prior Lawyer-Client Relationship

Unsolicited written communications sent by a lawyer or law firm to family members and/or persons with whom the lawyer or law firm has a prior lawyer-client relationship do not have to have the “ADVERTISEMENT” mark at the top of each page or on the lower left corner of the face of the envelope, or on self-mailing brochures (e.g., postcards, newsletters, firm brochures, etc., not mailed within an envelope).

ii. Others

See Rule 7.4(b) (*supra*). A lawyer who indiscriminately sends unsolicited written communications to a conglomerate/mass/jumbled list of “contacts” should be careful to comply with Rule 7.4(b)(2)(B), even if some of those “contacts” are known to be former/current clients and/or other lawyers, because there are still others included on the list who are not family members of the lawyer and/or with whom the lawyer does not have a prior lawyer-client relationship.

Note, too, that unsolicited written communications, in particular, are more likely to invite close scrutiny from other lawyers—especially if a client or clients of the other lawyer is/are being “courted” and/or are seemingly being “preyed upon” by the apparent “poacher”/“usurper”. These more “active”/“targeted” forms of marketing (as opposed to the more “broadcast”/“passive” forms of marketing like advertisements in the broadcast public media) are perhaps not as easily overlooked, ignored and/or dismissed by those who may be most offended and/or affected by them, ie., in particular, other lawyers. For this reason alone, one must take great pains, if using this form of marketing of your legal services, to dot all “I’s” and cross all “T’s” with regard to the Rules, lest you invite an unwanted/unexpected challenge and/or disciplinary complaint.

b. Solicited Written Communications

See Rule 7.9 (*supra*).

4. Charitable Sponsorships/Public Service Announcements

Rule 7.2(a)(3)(A) states:

...(3) *The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2: ...*

...(A) **Sponsorships.** *A brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a*

specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or the law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution, in keeping with Rule 7.8(b)...

Rule 7.2(b), in pertinent part, states:

*...(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...*

*...(2) **Public Service Announcements.** A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule...*

Rule 7.8(b) states:

...The following are exempt from the filing and review requirements of Rule 7.7:...

...(b) a brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this Rule and the Rule setting forth permissible content of advertisements, the following are criteria that may be considered: ...

...(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;...

...(2) whether the announcement contains information concerning the lawyer's or law firm's area(s) of practice, legal background, or experience;...

...(3) whether the announcement contains the address or telephone number of the lawyer or law firm;...

...(4) whether the announcement concerns a legal subject;...

...(5) whether the announcement contains legal advice; and...

...(6) whether the lawyer or law firm paid to have the announcement published...

5. E-Mail

a. Unsolicited Electronic Communications

Rule 7.6(c) states:

*...(c) **Electronic Mail Communications.** A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:...*

...(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;...

...(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyer who will actually perform the services advertised 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; and...

...(3) the subject line of the communication states "LEGAL ADVERTISEMENT." This is not required for electronic mail communications sent only to other lawyers...

i. Family & Persons With Whom the Lawyer Has a Prior Lawyer-Client Relationship

ii. Others

b. Solicited Electronic Communications

See Rule 7.8(e) and Rule 7.9 (*supra*).

6. Radio Advertisements

Rule 7.5 states:

Rule 7.5 Advertisements In the Electronic Media Other Than Computer-Accessed Communications

*...(a) **Generally.** With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2...*

*...(b) **Appearance on Television and Radio.** Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.*

*...(1) **Prohibited Content.** Television and radio advertisements shall not contain:...*

...(A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive; or...

...(B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm...

...(2) **Permissible Content.** Television and radio advertisements may contain: ...

...(A) images that otherwise conform to the requirements of these Rules;

...(B) a lawyer who is a member of the advertising law firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm...

7. Television Advertisements

See Rule 7.5 (*supra*).

There are generally two “camps” or schools of thought on television advertisements for lawyers—and they are typically polar opposites. Some lawyers (now, almost stereotypically and in a formulaic fashion) believe it is important and effective to offer evidence—in the form of testimony from real clients and/or actors portraying clients, as well as references to big dollar amounts for what the Rules require to be truthful/verifiable recoveries—of the lawyer’s prowess and ability to turn bad situations into happy endings. The other philosophy attempts to combat the formulaic stereotype by offering candid, straightforward information, presumably to demonstrate and emphasize that the lawyer is a consummate professional, serious but realistic about the serious problems that clients are facing when they need a lawyer. This group eschews the use of dollar amounts and/or client testimonials—real or fake—opting instead for frank, sincere talk from one or more of the firm’s lawyers.

8. Basic Listing(s)/Entry(ies) in Lawyer Lists/Lawyer-Rating Publications (vs. Advertisements vs. Publication-Authored, *Gratis* Feature Articles)

Rule 7.8(c) states “...*The following are exempt from the filing and review requirements of Rule 7.7: ... (c) A listing or entry in a law list or bar publication...*”

A basic listing or entry in a law list or bar publication is intended to be just that – very basic, simple information about the lawyer, i.e., “name-rank-and serial number”. For example:

Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130, (504) 619-0144, RLemmler@LSBA.org.

Something that goes substantively beyond this—especially if it includes “sales pitches” and/or philosophical commentary, such as what the lawyer/firm believes clients deserve, how hard the lawyer works and how much he cares about clients, etc.—will likely be considered a full-blown advertisement, rather than a basic listing or entry, in a law list, bar publication, etc.

Articles about the lawyer or firm written/authored by the publication and without any charge/cost to the lawyer/firm are not likely to be considered “advertisements” under the Rules.

IV. Getting Help

a. **LSBA Website:** <http://www.LSBA.org/LawyerAdvertising>

- Includes full text of the Rules on lawyer advertising and solicitation, as well as all pertinent Court orders and press releases
- Includes Internal Operating Procedures of the Rules of Professional Conduct Committee for lawyer advertising filings and evaluations under Rule 7.7
- On-Line/Interactive *Filing Application Form* and *Filing Application Addendum* form

b. **LSBA Handbook on Lawyer Advertising and Solicitation:** also available on-line

c. **LSBA Ethics Counsel:** Richard P. Lemmler, Jr., Ethics Counsel, (504) 619-0144,
RLEMMLER@LSBA.ORG

Eric K. Barefield, Ethics Counsel, (504) 619-0122,
EBAREFIELD@LSBA.ORG