

Appendix A

**CHAPTER 4 RULES OF PROFESSIONAL CONDUCT
4-7 INFORMATION ABOUT LEGAL SERVICES
RULE 4-7.19 EVALUATION OF ADVERTISEMENTS**

(a) Filing Requirements. Subject to the exemptions stated in rule 4-7.20, any lawyer who advertises services must file with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed with The Florida Bar in the manner specified by The Florida Bar as posted on its website.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements filed with it under this rule for compliance with the applicable provisions set forth in rules 4-7.11 through 4-7.15 and 4-7.18(b)(2). If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida later notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

(c) Preliminary Opinions. A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement prior to production of the advertisement by submitting to The Florida Bar a draft or script that includes all spoken or printed words appearing in the advertisement, a description of any visual images to be used in the advertisement, and the fee specified in this rule. The voluntary prior submission does not satisfy the filing and evaluation requirements of these rules, but once completed, The Florida Bar will not charge an additional fee for evaluation of the completed advertisement.

(d) Opinions on Exempt Advertisements. A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer

seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in this rule to The Florida Bar, except that a lawyer may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

(e) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules 4-7.11 through 4-7.15 and 4-7.18(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(f) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and, in those circumstances, must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement. A lawyer will be subject to discipline as provided in these rules for:

(1) failing to timely file the advertisement with The Florida Bar;

(2) disseminating a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;

(3) filing an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;

(4) disseminating an advertisement for which the lawyer has a finding of compliance by The Florida Bar more than 30 days after the lawyer has been notified that The Florida Bar has determined that the advertisement does not comply with this subchapter; or

(5) disseminating portions of a lawyer's Internet website(s) that are not in compliance with rules 4-7.14 and 4-7.15

only after 15 days have elapsed since the date of The Florida Bar's notice of noncompliance sent to the lawyer's official bar address.

(g) Notice of Noncompliance. If The Florida Bar determines that an advertisement does not comply with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(h) Contents of Filing. A filing with The Florida Bar as required or permitted by this rule must include:

(1) a copy of the advertisement in the form or forms in which it is to be disseminated, that is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);

(2) a transcript, if the advertisement is in electronic format;

(3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;

(4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of ~~\$150 for each advertisement timely filed as provided in this rule, or \$250 for each advertisement not timely filed, which~~ set by the bar's executive director as approved by the Board of Governors. The

Florida Bar will provide the Florida Supreme Court with 30 days' notice prior to the effectiveness of any increase in the amount of a fee or the imposition of any new fee. These fees will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(i) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs after The Florida Bar evaluates an advertisement that raises a substantial possibility that the advertisement has become false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement in the manner specified by The Florida Bar as posted on its website along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100.

(j) Maintaining Copies of Advertisements. A copy or recording of an advertisement must be submitted to The Florida Bar under this rule, and the lawyer must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy, together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

All advertisements must be filed for review under this rule, unless the advertisement is exempt from filing under rule 4-7.20. Even where an advertisement is exempt from filing under rule 4-7.20, a lawyer who wishes to obtain a safe harbor from discipline may submit the lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion before disseminating the advertisement. A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability, unless the advertisement contains

a misrepresentation that is not apparent from the face of the advertisement. Subdivision (d) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information necessary to determine whether an advertisement is false or misleading.

RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

The following are exempt from the filing requirements of rule 4-7.19:

(a) an advertisement in any of the public media that contains no illustrations and no information other than that set forth in rule 4-7.16;

(b) a brief announcement 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 law firm other than the permissible content of advertisements listed in rule 4-7.16, and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement, the following criteria 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 concerns a legal subject;

(3) whether the announcement contains legal advice;

and

(4) whether the lawyer or law firm paid to have the announcement published;

- (c) a listing or entry in a law list or bar publication;
- (d) a communication mailed only to existing clients, former clients, or other lawyers;
- (e) a written or recorded communication requested by a prospective client;
- (f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients;~~and~~
- (g) information contained on the lawyer's Internet website(s);
and
- (h) advertisements and other communications regarding legal services made by or on behalf of a legal aid organization, which is a not-for-profit business entity as defined elsewhere in these rules.