

Louisiana Lawyer Advertising – 2016

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1. Effective Date of “New”/Current Rules on Lawyer Advertising and Solicitation

➤ October 1, 2009

On June 26, 2008, the Supreme Court of Louisiana signed an Order repealing and reenacting the Rule 7 series of Article XVI of the Articles of Incorporation of the Louisiana State Bar Association, i.e., the lawyer advertising and solicitation rules within the Louisiana Rules of Professional Conduct. The Court’s Order effectively adopted—nearly verbatim—the written recommendations made to the Court in June 2007 by the LSBA with the overwhelming approval of the LSBA House of Delegates. The Court’s June 26th Order indicated the new Rules would become effective on December 1, 2008.

However, since then, the Court deferred that effective date, first to April 1, 2009 and, then again on February 18, 2009, to October 1, 2009, in light of constitutional challenges that have been raised in the federal courts. On June 4, 2009 and June 30, 2009, the Court adopted amendments to the new Rules, again all effective October 1, 2009. The Court signed an Order on September 22, 2009 suspending enforcement of new Rule 7.5(b)(2)(c), new Rule 7.6(d) and new Rule 7.7 (only as it pertains to filing requirements for internet advertisements).

As a result of a ruling by the U.S. Fifth Circuit Court of Appeals issued on January 31, 2011, the Supreme Court of Louisiana signed two additional Orders on April 27, 2011 and April 29, 2011; collectively, those Orders: 1) suspend enforcement of Rule 7.2(c)(1)(D) [prohibiting references or testimonials to past successes or results obtained]; 2) suspend enforcement of the portion of Rule 7.2(c)(1)(J) that prohibits “...*the portrayal of a judge or jury*...”; and 3) entirely delete and replace Rule 7.2(c)(10) [regarding the appearance of required statements, disclosures and disclaimers].

2. What’s Covered by the Rules on Advertising And Solicitation

a. “Advertisements”

- Rule 7.2 contains general rules regarding all communications concerning a lawyer’s services (“...*the following shall apply to any communication conveying information about a lawyer, a lawyer’s services or a law firm’s services*...”)
- Rule 7.1 provides for permissible forms of advertising by lawyers:

Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to:

- Print Media, such as a
 - Telephone Directory,
 - Legal Directory,
 - Newspaper or Other Periodical
- Outdoor advertising, such as billboards and other signs
- Radio
- Television
- Computer-Accessed Communications
- Recorded Messages the public may access by dialing a telephone number
- Written Communication in accordance with Rule 7.4 [unsolicited written communications]

b. Unsolicited Written Communications

- Rule 7.4(a), in defining solicitation, notes that 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—“**...except as provided in subdivision (b)...**” of the Rule. The term “solicit” includes “*...any written form of communication directed to a specific recipient not meeting the requirements of subdivision (b) of this Rule, and any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6...*”
- The definition of “Advertisement”, for purposes of these Rules, when reading all of the Rules together:

Any communication conveying information about a lawyer, a lawyer's services or a law firm's services, including, but not limited to, those in the public media, such as print media, billboards and outdoor signs, radio, television, computer-accessed communications and unsolicited written communications directed to a specific recipient with whom the lawyer has no family or prior lawyer-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, when done in accordance with Rule 7.4 or Rule 7.6(c).

- Advertisements Not Covered by the Rules:

- Advertisements broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules in that jurisdiction and is NOT intended for broadcast or dissemination within the state of Louisiana (Rule 7.1(b)).

- Communications for Non-Profit Organizations – by lawyers on behalf of non-profit organizations that are NOT motivated by pecuniary gain

3. What's Required In Every Advertisement/Unsolicited Written Communication

a. Required Content

Rule 7.2 states, in pertinent part, “...*the following shall apply to **any communication conveying information about a lawyer, a lawyer’s services or a law firm’s services**...*”:

- (1) **Full Name of at least One Lawyer** – All advertisements and unsolicited written communications pursuant to these Rules **shall include the name of at least one lawyer responsible for their content**; and
- (2) **City/Town (or Parish) of One or More Bona Fide Office Location(s)** – All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed.
 - a. If no bona fide office, lawyer must list the city/town (or parish) of the primary registration statement address from lawyer’s annual registration statement supplied to LSBA (with dues, etc.)

4. Non-Exempt vs. Exempt Advertisements/Communications

a. Non-Exempt

- Means the advertisement/unsolicited written communication must be filed with the LSBA for evaluation
- Does NOT necessarily/automatically mean the advertisement/communication is not in compliance with the balance of the Rules; the Court has simply required the lawyer to have the LSBA evaluate the advertisement before use/dissemination

i. Regular Filing – REQUIRED, Unless Optional Process Utilized

Rule 7.7(c), in pertinent part, states:

...Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in

*compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be **filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication**...*

➤ **PRIOR TO or CONCURRENTLY with FIRST DISSEMINATION**

ii. Advance Written Advisory Opinion – OPTIONAL – Instead of Regular Filing

Rule 7.7(b), in pertinent part, states:

...Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination...

➤ **AT LEAST 30 DAYS PRIOR TO FIRST DISSEMINATION**

b. Exempt

- Means the advertisement/unsolicited written communication does NOT need to be filed with the LSBA for evaluation prior to first use/dissemination – the evaluation of compliance is left to the individual lawyer or law firm
- Does NOT necessarily/automatically mean the advertisement/communication is “in compliance” with the balance of the Rules; the Court has simply allowed the lawyer to make the evaluation of the advertisement before first use/dissemination
- Rule 7.8 contains a list of exemptions from filing and review required by Rule 7.7:
 - **“Safe Harbor” content** – any advertisement or unsolicited written communication that contains only content that is permissible under Rule 7.2(b).

(A) Name of the lawyer or law firm, listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney”, “lawyer” or “law firm”;

(B) Date of admission to the LSBA and any other bars, current membership or positions held in the LSBA, its sections or committees, former membership or positions held in the LSBA, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

(C) Technical and professional licenses granted by the State or other recognized licensing authorities and education degrees received, including dates and institutions;

(D) Military Service, including branch and dates of service;

(E) Foreign language ability;

(F) Fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;

(G) Prepaid or group legal service plans in which the lawyer participates;

(H) Fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule [if it contains information about fees, must also disclose whether client will be liable for any costs and/or expenses in addition to the fee];

(I) Common salutatory language such as “best wishes,” “good luck,” “happy holidays,” or “pleased to announce”;

(J) Punctuation marks and common typographical marks; and

(K) Photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background.

- Brief Announcement in any public media identifying 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 as long as it is limited to permissible content listed in Rule 7.2(b) and the fact of the sponsorship or contribution.
- Listing or entry in a law list or bar publication.

- Communication mailed only to existing clients, former clients or other lawyers
- Any written communications requested by a prospective client (see Rule 7.9)
- 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
- Computer-accessed communications as described in subdivision (b) of Rule 7.6 [all web sites and home pages accessed via the internet controlled, sponsored or authorized by a lawyer or law firm – i.e., lawyer’s own website]

➤ **What Keeps a Basic Print Advertisement From Being Exempt?**

- Pictures, Illustrations, Graphics, Photographs Other than a photo of the lawyer or lawyers against a plain background and/or official certification logos of certifying agencies
- Words, Phrases, Sayings, and/or other Content Beyond What is Specifically Noted in Rule 7.2(b)

5. Most Common Mistakes in Lawyer Advertisements/Unsolicited Written Communications

- a. Not Using and Submitting a Completed ***Filing Application Form***, required by the Committee for ALL filings of lawyer advertisements/unsolicited written communications (see “Internal Operating Procedures” of the Committee, available on-line)
- b. Not Sending a Filing Fee When Submitting a Filing – Fee is \$175.00 for each separate/individual advertisement/communication (Rule 7.7(d))
 - i. Sending the Wrong Amount of Fees
- c. Not Listing the Full Name of at Least One Lawyer Responsible for the Content (Rule 7.2(a)(1))
 - i. Listing a Firm Name Consisting of Only Last Names of Lawyers
- d. Not Including the City/Town of One of More Bona Fide Office Location(s) (Rule 7.2(a)(2))
 - i. Listing Only the Street Address or Telephone Number

- e. Not Qualifying the Listing of a Telephone Number in a Geographic Area Other than One Containing a Bona Fide Office (Rule 7.2(a)(2))
 - i. Can use qualifying language such as “By Appointment Only”, “By Appointment”, “Limited Office Hours”, “Phone Rings at Main Office Location”, etc.
- f. Listing a Specialist/Certification Without Identifying the Certifying Organization (Rule 7.2(c)(5))
 - i. Official Seal/Logo for Louisiana Board of Legal Specialization actually contains the full name of the organization – may be used as “safe harbor” content
- g. Not Including the “ADVERTISEMENT” Mark on Unsolicited Written Communications (Rule 7.4(b)(2)(B)(ii))
 - i. Not placing the “ADVERTISEMENT” mark at the actual top of the page
 - ii. Not placing the “ADVERTISEMENT” mark at the top of each page
 - iii. Not placing the “ADVERTISEMENT” mark in the lower left corner of the face of the envelope
 - iv. Not using a print size at least as large as the largest print used in the communication
 - (1) Even stylized print used for the actual “letterhead” portion of a lawyer’s stationery counts as a print size used in the communication
- h. Including Information About Fees Without Disclosing Whether the Client Will be Liable for Any Costs and/or Expenses in Addition to the Fee (Rule 7.2(c)(6))
 - (1) “No Fees, Costs and/or Expenses If No Recovery” vs. “No Fees if No Recovery”—must disclose client’s liability for costs and/or expenses in addition to information about the fees
- i. Not Disclosing How the Lawyer Obtained Information Prompting the Unsolicited Written Communication (Rule 7.4(b)(2)(E))
 - (1) For example: “Based on the arrest records for the parish jail...” or “Our review of new lawsuit filings at the Clerk of Court’s Office reveals...” or “From our search of real estate conveyance records, we see...”
- j. Not Sending a Sample Envelope for the Unsolicited Written Communication (Rule 7.7(d)(5))

- (1) Lower left corner of the face of the envelope should contain the “ADVERTISEMENT” mark in print size at least as large as the largest print used in the communication
- k. Not Sending a Typewritten Transcript for an Audiovisual Advertisement (Rule 7.7(d)(2))
- l. Filing Websites – they are Exempt from filing and evaluation, as per Rule 7.6(b)
- i. Websites (and any other Exempt advertisement/communication) MAY still be filed with the LSBA for evaluation and/or advance written advisory opinion, if the lawyer desires to have the LSBA perform the evaluation for compliance
- If the lawyer chooses to file an Exempt advertisement/communication and seek to have the LSBA perform the evaluation—despite the Exempt nature of the advertisement/communication—the same filing fee (\$175.00) and ***Filing Application Form*** must still be submitted to the LSBA
- m. Not Making Required Information Clearly Legible/Audible (Rule 7.2(c)(10))

6. Getting Help

- a. **LSBA Website:** <http://www.lsba.org/lawyeradvertising>
- Includes full text of the Rules, as well as all pertinent Court orders and press releases
 - Includes “Internal Operating Procedures” of the 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



FILING APPLICATION FORM

LAWYER ADVERTISING AND UNSOLICITED WRITTEN COMMUNICATIONS

Effective October 1, 2009, Rule 7.7 of the Louisiana Rules of Professional Conduct requires that a lawyer **file** with the Rules of Professional Conduct Committee of the Louisiana State Bar Association a copy of each advertisement and unsolicited written communication, unless exempt by Rule 7.8, prior to or at the time of its first dissemination. Alternatively, an Advance Written Advisory Opinion may be obtained by filing a copy of the advertisement or unsolicited written communication at least thirty (30) days prior to its first dissemination or mailing. (If an Advance Written Advisory Opinion is requested for an advertisement that is to be placed in a telephone directory or similar publication, the advertisement must be filed at least thirty (30) days prior to the printing deadline of the publication, rather than thirty (30) days prior to the dissemination date of the printed publication.) [Rev. 09-30-2010]

For Committee Use Only

EC Filing #:

INSTRUCTIONS FOR FILING ADVERTISEMENTS AND UNSOLICITED WRITTEN COMMUNICATIONS

How To Submit A Complete Filing Application Packet

1. Complete Application Form in full. Please print or type. The Form may be reproduced. Applicant must be a Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction.
2. Attach one (1) copy of the advertisement or unsolicited written communication:
 - For an unsolicited written communication (e.g., letter, mailing, etc.), attach a sample of the actual communication and of any envelope or packaging in which it will be mailed.
 - For a television or radio ad (or any other ad not embodied in written/printed form), attach a typewritten transcript of the ad or communication and a printed copy of any/all text used within the ad that is not contained or appearing within the transcript
 - For a television or radio ad, include ad title or number, and a copy/recording of the actual ad on DVD or CD.
 - If requesting an Advance Written Advisory Opinion for a TV or radio ad that has not yet been produced, a typewritten production script and storyboards may be submitted for review without the copy/recording of the actual ad [which must still be submitted prior to or at the time of the ad's first dissemination in order to complete the filing and evaluation process].
 - If a language other than English is used, attach a complete, typewritten, accurate English translation of the ad or communication, along with a copy of the ad or communication as it appears using the intended language.

- For internet sites or communications, include URL address and a hard-copy print-out of each/all page(s) of website(s)/communications to be evaluated.

3. Enclose check or money order in the amount of **\$175.00** payable to "Louisiana State Bar Association" for each separate advertisement or unsolicited written communication. Late Filings are \$275.00. An application is considered filed upon receipt by the LSBA.

4. **Mail the completed Filing Application Packet to:**

**Rules of Professional Conduct Committee
c/o Ethics Counsel
Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130**

NOTE:

A separate application packet must be submitted for each separate advertisement or unsolicited written communication. If submitting more than one filing application packet at a time, TV or radio commercials may be combined onto one DVD or CD. Filing fees may also be combined and submitted within one check. Incomplete filing application packets will result in delays in processing and evaluation.

Lawyer*: _____ LSBA Bar #*: _____

*Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction, responsible for content of the advertisement or unsolicited written communication. If not licensed to practice law in Louisiana, please indicate state(s) of licensure & corresponding state license #(s).

Firm: _____

Lawyer/Firm's Principal Office Address**: _____

** If the Lawyer has no regular office, use the Lawyer's Primary LSBA Annual Registration Statement Address _____

Phone: _____ Fax: _____ E-mail: _____

For questions concerning filing requirements, please visit our website, www.LSBA.org, or call 1-800-421-LSBA, ext. 144.

NATURE OF ADVERTISEMENT OR UNSOLICITED WRITTEN COMMUNICATION:

Check all that apply

- A. ____ Letter (**Complete Addendum Form**) D. ____ Brochure/Newsletter (**Complete Addendum Form**) G. ____ Other (billboards, etc.)
- B. ____ Telephone Directory E. ____ Television/Radio (circle as appropriate)
- C. ____ Magazine/Newspaper F. ____ Firm Website/Internet Advertisement (circle as appropriate) URL: _____

Does Applicant seek an Advance Written Advisory Opinion? Yes ____ No ____ (if "Yes", filing must be at least 30 days before first use)

Date the advertisement/unsolicited written communication was or will be first disseminated: _____

Is this the first time you are filing/submitting this ad/communication with the LSBA? Yes ____ No ____

If you answered **No**, please indicate the date last filed/submitted with the LSBA: _____Is it likely that a client or case resulting from the advertisement/communication will be referred to another lawyer or law firm?
Yes ____ No ____

Does the advertisement or communication contain any information about or reference to fees? Yes ____ No ____

Does the advertisement or communication refer to or disclose the existence of an office other than the firm's principal office?
Yes ____ No ____If you answered **Yes**, does a lawyer regularly/consistently work from the other office(s)? Yes ____ No ____

Does the advertisement or communication indicate that any lawyer in the firm is certified, an expert and/or a specialist in one or more specific areas of law? Yes ____ No ____

If you answered **Yes**, is each lawyer for whom a specialty is claimed board certified in the area(s) of practice advertised?
Yes ____ No ____

Has another lawyer or law firm paid for any part of the advertisement or communication? Yes ____ No ____

In which geographic location(s) do you anticipate the advertisement/communication will be disseminated?

Please state the anticipated frequency of use of the advertisement or unsolicited written communication in each medium in which it will appear:

Please state the anticipated time period during which the advertisement or unsolicited written communication will be used:

Identify all lawyers depicted in the submitted material: _____

Identify any actual clients depicted in the submission: _____

Identify any actor(s) or non-lawyer spokesperson(s) used in the advertisement or communication: _____

If any non-lawyer(s) (including actual clients, actors, announcers, voice-talents, etc.) are used or depicted within the submission, did/will the non-lawyer(s) receive any payment or other compensation for the appearance/use within the advertisement? Yes ____ No ____

Are depictions of events, scenes or pictures used within the advertisement actual or authentic (i.e., as opposed to "stock" and/or digitally-created/modified/enhanced images/video, dramatizations, etc.)? Yes ____ No ____

Please include any additional information that you believe might be useful/important/pertinent to our review of your filing:

CERTIFICATION

I have reviewed the advertisement or unsolicited written communication submitted as required by Rule 7.7 of the Louisiana Rules of Professional Conduct, effective October 1, 2009. The representations contained therein and the information contained within this Application are true and correct to the best of my knowledge, information, belief and understanding. [Rev. 09-30-2010]

Signature of Lawyer-Applicant_____
Date



FILING APPLICATION ADDENDUM

LAWYER ADVERTISING AND UNSOLICITED WRITTEN COMMUNICATIONS

FOR PROPOSED UNSOLICITED WRITTEN COMMUNICATIONS

(letters, brochures, pamphlets, newsletters, e-mails, etc.)

For Committee Use Only

EC Filing #:

Lawyer*: _____ LSBA Bar #: _____

*Lawyer licensed/admitted in a U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction, responsible for content of the unsolicited written communication. If not licensed to practice law in Louisiana, please indicate state(s) of licensure & corresponding state license #(s).

Firm: _____

Lawyer/Firm's Principal Office Address**: _____

** If the Lawyer has no regular office, use the Lawyer's
Primary LSBA Annual Registration Statement Address _____

Phone: _____ Fax: _____ E-mail: _____

The attached letter, brochure, pamphlet, newsletter, e-mail or other unsolicited written communication will be used as follows.
(Please check all that apply.) [If at all possible, please submit sample(s) exactly as it/they will appear when used/disseminated as intended.]

_____ Mailed unsolicited to prospective clients with whom I/we have no family or prior lawyer-client relationship. If yes, please complete the following:

_____ Mailed as a self-mailing brochure;

_____ Mailed in an envelope alone (attach copy of sample envelope as it will appear when sent); or

_____ Mailed in an envelope along with a written solicitation letter that complies with Rule 7.4(b) of the Louisiana Rules of Professional Conduct, effective 10/01/2009. (A sample copy of such letter must be attached/provided as part of this submission or must have been previously submitted and deemed in compliance by evaluation according to Rule 7.7.)

_____ Letter & Sample Envelope attached to this submission; or

_____ Letter previously evaluated and deemed in compliance - Ethics Counsel's File # _____.

_____ Mailed to other lawyers or law firms.

_____ Mailed to current and/or former clients or prospective clients who have requested the information.

_____ Made available or displayed in public places (other professional offices, businesses, etc.).

_____ Other use (please describe): _____

Signature of Lawyer-Applicant

Date

For questions concerning filing requirements, please visit our website, www.LSBA.org, or call 1-800-421-LSBA, ext. 144.

[Rev. 09-30-2010]