



Law Firms & Title Agencies Regulatory Similarities & Differences

**LEGAL EDUCATION DEPARTMENT
Attorneys' Title Fund Service, LLC**

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All references herein to title insurance policy forms and endorsements are intended to refer to the policy forms and endorsements issued by Fund members as duly appointed title agents of Old Republic National Title Insurance Company.

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Law Firms & Title Agencies Regulatory Similarities & Differences

Robert J. “Bob” Rohan
Regulatory Compliance Counsel

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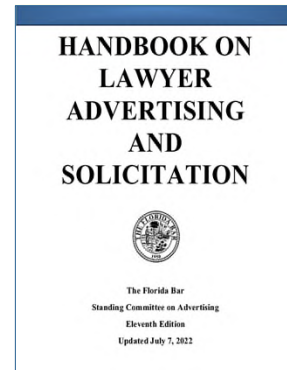


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Advertising

The Florida Bar Standing Committee on Advertising

- Ch. 4 Rules of Professional Conduct (Rules Regulating The Florida Bar)
 - 4-7 *Information About Legal Services*
 - 4-7.11(a) all forms of communication; including (c) communication with referral sources
 - 4-7.19 Evaluation of Advertisements



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Advertising

The Florida Bar Standing Committee on Advertising

- 4-7.12 Required Content
 - Name/office location; referrals; languages; legibility
- 4-7.16 Presumptively Valid Content
 - Lawyer/law firm; lawyer referral services
- 4-7.20 Exemptions from Filing and Review Requirements
 - Clients, former clients and other lawyers; charitable sponsorships/PSAs; information on website



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Advertising

The Florida Bar Standing Committee on Advertising on Advertising

- Social media and other networking sites
- Instant messaging(IM)/Twitter
- Lawyer/law firm promotions
 - Same rules as print media
 - Invitation to view or link must meet requirements of Rule 4-7.18(b) for written solicitation

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR NETWORKING SITES

(Revised August 19, 2020)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including email and instant messaging. Twitter is a networking site in which brief posts of no more than 140 characters are sent to followers, or persons who have specifically requested to receive the postings of particular persons on Twitter (Note: Twitter subsequently changed its character limitations). Twitter postings are generally public, but a person who posts via Twitter can choose to have Twitter postings sent only to that person's followers and not generally accessible to the public.

The SCA has reviewed the social networking media and issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes (i.e. to maintain social contact with family and close friends) and not for the purpose of marketing legal services, are not subject to the lawyer advertising rules. However, lawyers are still bound by the Rules Regulating the Florida Bar.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.17 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guarantees of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(4). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the Handbook on Lawyer Advertising and Solicitation on the Florida Bar website.



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Advertising

The Florida Bar Standing Committee on Advertising on Advertising

- Electronic mail (email)
 - Subject to written solicitation rules; exceptions for those who have requested information
 - Subject line must begin with word "Advertisement"
 - Pre-approval may be required

QUICK REFERENCE CHECKLIST - ELECTRONIC MAIL

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered "NO," it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure legible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are "literally accurate, but could reasonably mislead a prospective client regarding a material fact?" Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm's skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)



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Advertising

What's in a name?

- Rule 4-7.21 Firm Names and Letterhead
 - (b) trade/fictitious name must not be deceptive
 - (c) trade/fictitious name on letterhead, business cards, fee contracts, pleadings and legal documents signed by lawyer
- Sec. 626.8413, F.S. Title insurance agents; certain names prohibited
 - Words “title insurance,” “title company,” “title guaranty,” or “title guarantee” forbidden unless followed by “agent” or “agency”



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Advertising

Title Agency FAQs

- Advertisements promote agency, not another business
 - Soliciting customers for others could be unfair trade practice/inducement
 - Joint participation if each pays fair share
 - Rule 69B-186.010(5)(d), F.A.C.
- Advertise rebates if truthful/not misleading
 - “Discounted premium” is misleading and inaccurate
 - “Lowest rates” is misleading (rates are promulgated)



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Marketing

UDAAP

- Unfair, deceptive, or abusive acts or practices
 - Dodd-Frank added “abusive” to existing law; authorized CFPB to enforce (12 U.S.C.A. Sec. 5531)
 - Attorney providing “financial advisory services” is covered person
- Florida Deceptive and Unfair Trade Practices Act (Secs. 501.201 – 501.213, F.S.) excludes persons or activities regulated by OIR or DFS
- Pt. IX, Ch. 626, F.S. Unfair Insurance Trade Practices



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Marketing

Unfair Insurance Trade Practices Act

- Unfair methods of competition and unfair or deceptive acts or practices defined (Sec. 626.9541, F.S.)
 - Misrepresentation, announcement or false advertising which is untrue, deceptive, or misleading
 - No rebate or abatement of premium; special favor or advantage; or monetary consideration or inducement in connection with title insurance
 - Exceptions for attorneys' fees; underwriter/agent premium split; “Butler” rebates



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Marketing

Unlawful Rebates and Inducements Related to Title Insurance Transactions (Rule 69B-186.010 F.A.C.)

- Paid to/for prospective purchaser of title insurance for/by referrer of settlement service
 - Inspection, appraisal, survey; charitable or tax-deductible contributions; gift cards
- Paid to referral sources
 - Memberships; securities; employment; printing; office equipment; cell phone; food/beverage/rooms at events promoting business of referrer; no/low cost “leads”
- Paid to/for real estate sales associates
 - Open house; panoramic tours; advertising

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The Fund

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Marketing

Rule 69B-186.010 F.A.C. exceptions

- Promotional items with limited value; but not specific monetary value gifts (e.g., gift card)
- Educational material exclusively related to title insurance; not conditioned on referral; does not defray expenses typically incurred by referrer
- Compensation for goods/services performed at f/m/v
- Joint participation in marketing activities
- Payments to agents by insurer for services performed
- Bona fide salary or compensation

The Fund

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Marketing

RESPA "Section 8"

- Prohibits kickbacks and unearned fees
 - (a) Business referrals
 - Thing of value
 - (b) Splitting charges
 - Other than distinct and necessary services
 - (c) Fees, salaries, compensation, or other payments
 - Qualified exceptions (e.g., attorneys, underwriters, lenders, real estate brokers, affiliated business arrangements)
 - (d) Penalties for violations etc.
 - Private cause of action (3x settlement fee)



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Marketing

RESPA "Section 8" FAQs

- Consumer Financial Protection Bureau (CFPB)
 - Interpretation
 - Examples
 - Gifts and Promotional Activity
 - Marketing Services Agreements (MSAs)
- Enforcement actions
- Bulletins and guides
- States can enforce

VERSION 1 | LAST UPDATED 10/7/2023

cfpb Consumer Financial Protection Bureau

Real Estate Settlement Procedures Act FAQs

The questions and answers below pertain to compliance with the Real Estate Settlement Procedures Act (RESPA) and certain provisions of Regulation X.

RESPA Section 8 General

QUESTION 1:
What are the provisions of RESPA Section 8?

ANSWER (UPDATED 10/7/2023):
RESPA Section 8 prohibits certain actions related to federally related mortgage loans.
RESPA Section 8(a) prohibits kickbacks for business referrals related to or part of settlement services involving federally related mortgage loans. 12 USC § 2607(a); 12 CFR § 1024.14(b).
RESPA Section 8(b) prohibits unearned fee arrangements, i.e., splitting charges made or received for settlement services, except for services actually performed, in connection with federally related mortgage loan transactions. 12 USC § 2607(b); 12 CFR § 1024.14(c).
RESPA Section 8(c) identifies certain payments that are not prohibited by Section 8. 12 USC § 2607(c); 12 CFR § 1024.14(g).

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/statements/fin-16-001/policy-statement-compliance-aids/>. This explains the Bureau's approach to Compliance Aids.

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Marketing

Affiliated Business Arrangements (AfBAs)

- Safe harbor from RESPA's Section 8 prohibition of kickbacks and unearned fees if specific requirements are met
 - Properly created AfBA
 - Written disclosure from referrer
 - Profit solely from ownership interest



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Marketing

AfBA notice requirements

- Provided at time of referral
 - Explains nature of affiliated arrangement
 - Estimates charge or range of charges
 - Consumer not required to accept referral unless referral to lender's chosen attorney, appraiser or credit reporting agency; or to law office owned title agency

Appendix D to Part 1024
Affiliated Business Arrangement Disclosure Statement Format Notice

To: _____

From: _____

(Entity Making Statement)

Property: _____

Date: _____

This is to give you notice that [referring party] has a business relationship with [settlement service provider(s)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinancing of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[provider and settlement service] _____

[charge or range of charges] _____

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Marketing

Privacy notices

- Gramm-Leach-Bliley Act
 - “Financial institution” defined to include settlement agents
 - Attorney exemption (case law)
- Send OR Privacy Policy Notice with every commitment and title policy
 - Even if agent is lawyer
 - Licensed agency should provide their own notice

OLD REPUBLIC TITLE		
FACTS		WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are no longer our customer, we continue to share your information as described in this notice.	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share
Go to www.oldrepublictitle.com (Contact Us)		

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Lawyers And Law Firms



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Licensure

- Attorney exemption (Sec. 626.8417(4), F.S.)
 - Admitted in Florida
 - Good standing with The Florida Bar
 - Current on membership fees
 - Not retired, resigned, delinquent, inactive due to incapacity, or suspended (Rule 1-3.2(a)(1))
- Not subject to statutory requirements related to title insurance licensing and appointment



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Licensure

- Law firm exemption (Sec. 626.8417(6), F.S.)
 - Attorney-owned entity must be licensed and appointed unless engaged in active practice of law
- Authorized business entities for the practice of law (Rule 4-8.6)
 - Professional service corporations, professional limited liability companies, sole proprietorships, general partnerships, or limited liability partnerships organized or qualified under applicable law



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Appointment

- Authority given by insurer or employer to transact business or adjust claims
 - Sec. 626.015(4), F.S.
 - Attorneys exempt from statutory appointment requirements
- Agreement for Appointment of Policy-Issuing Agent

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Appointment

- Application process
 - Contact information
 - Business background
 - Title insurance history
 - Professional liability insurance
- Separate applications for firm; attorney signatories
- The Fund's New Member Training (NMT) program may be prerequisite

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Appointment

- Agency agreement
 - Credit reports and background checks authorized
 - Activity guidelines (duties)
 - Limitations on authority
 - Liability insurance ("E&O")
 - Also required by Sec. 627.796, F.S.
 - Audits authorized
 - Termination policy

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Through ATTORNEYS' TITLE FUND SERVICES, LLC

AGREEMENT FOR APPOINTMENT OF POLICY-ISSUING AGENT
FOR OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

THIS AGREEMENT ("this Agreement") is made and entered into as of _____, 20____, by and between Old Republic National Title Insurance Company ("Company") and [Agent Name] ("Agent").

IN CONSIDERATION of the mutual benefits accruing, and subject to the terms and conditions hereof, the parties hereto agree as follows:

1. DEFINITIONS

A. **Agent**. The legal entity that is a party to this Agreement and that entity's principals, officers, directors, shareholders, partners, managers, members, associates and employees.

B. **Agent's Subcontractors**. Agent's sub-agents, vendors, service providers, contractors and subcontractors, including their respective principals, officers, directors, shareholders, partners, managers, members, associates and employees.

C. **Agent's Title Insurance Business**. Agent's business of acting as a non-exclusive policy issuing agent for loans within the scope of the agency relationship established in Section 2 of this Agreement. Agent's Title Insurance Business does not include Agent's other business activities which may include, but are not limited to, Agent's insurance of title reports, opinions, commitments, searches, property reports, information reports, settlement services or the provision of any other real estate services.

D. **Closing Protection Letter**. A letter provided by Insurer providing title insurance coverage for certain loans described in the Letter when those loans arise as a result of the errors or closing activities and services of the Settlement agent named in the letter.

E. **Confidential Information**. Information or data supplied in confidence by or on behalf of one party ("Disclosing Party") to the other party ("Receiving Party"), or to an officer, director, employee, agent or subcontractor of the Receiving Party. Confidential Information includes all information which a reasonable person should consider confidential for the nature of its disclosure or due to the nature of the information itself, and may include technical and non-technical information, this Agreement, Underwriting Materials, Customer Information, know-how, designs, techniques, plans or any other information relating to any project, work, or process, future development, marketing or business plans, or financial or personnel matters relating to either party. "Confidential Information" does not include information that: (1) is in the public domain by no fault of the Receiving Party; (2) is developed independently by the Receiving Party without knowledge of the Confidential Information; or (3) is or comes into the Receiving Party's rightful possession without use or disclosure restrictions.

F. **Endorsement Risk**. A title insurance risk that presents a high degree of risk of Loss or involves the use of non-typical forms which Insurer has identified in the Underwriting Materials.

G. **Law or Laws**. Any federal, state or local governmental statute, rule, covenant, ordinance, permit, regulation, rule, order or court decision.

H. **Loss or Losses**. "Loss" or "Losses" means: (1) any payment made by Insurer arising out of or in any way related to a claim under any Title Insurance Product or Closing Protection Letter issued on behalf of Agent including, but not limited to: (i) payments to or in favor of a third party; (ii) payment of attorney's fees, costs, and expenses incurred in the investigation of claims, in the negotiation of settlements, or in litigation and/or arbitration or other legal proceedings; (iii) any payment made by Insurer arising out of or in any way related to an investigation, report, opinion or proceeding by any federal, state or local regulatory body, including but not limited to fines, penalties, disgorgement or other civil or criminal sanctions.

Agreement for Appointment - ATTS - 6/1/2016 Page 1 of 14



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Audits

The Florida Bar

- Rule 5-1.2(g) – “for cause”
 - Trust account certificate not filed
 - NSF trust account check
 - Filing petition for relief from creditors
 - Filing of felony charges
 - Violations/errors not self-reported

(g) Audits. Any of the following are cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by this rule;
- (2) report of trust account violations or errors to staff counsel under this rule;
- (3) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (4) filing of a petition for creditor relief on behalf of a lawyer;
- (5) filing of felony charges against a lawyer;
- (6) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;
- (7) filing of a claim against a lawyer with the Clients' Security Fund;
- (8) request by the chair or vice chair of a grievance committee or the board of governors;
- (9) on court order; or
- (10) on entry of an order of disbarment, on consent or otherwise.

(h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule will be at the cost of the lawyer audited only when the audit reveals that the lawyer was not in substantial compliance with the trust accounting requirements. It will be the obligation of any lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited in them. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

RRTFB April 15, 2021



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Audits

The Florida Bar

- Rule 5-1.2(g) – “for cause”
 - Adjudication/hospitalization under The Florida Mental Health Act
 - Claim filed with Clients’ Security Fund
 - Request by grievance committee or board of governors; court order; upon disbarment

(g) Audits. Any of the following are cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by this rule;
- (2) report of trust account violations or errors to staff counsel under this rule;
- (3) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (4) filing of a petition for creditor relief on behalf of a lawyer;
- (5) filing of felony charges against a lawyer;
- (6) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;
- (7) filing of a claim against a lawyer with the Clients’ Security Fund;
- (8) request by the chair or vice chair of a grievance committee or the board of governors;
- (9) on court order; or
- (10) on entry of an order of disbarment, on consent or otherwise.

(h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule will be at the cost of the lawyer audited only when the audit reveals that the lawyer was not in substantial compliance with the trust accounting requirements. It will be the obligation of any lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited in them. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

RRTFB April 15, 2021



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Audits

The Florida Bar

- Rule 5-1.2(b) – Records
 - Clearly labeled “trust account” in name of lawyer/law firm
 - Deposit slips
 - Cash receipts book for coin/currency
 - Canceled trust account checks

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, “lawyer” denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. “Law firm” denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) Minimum Trust Accounting Records. Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained:

(1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a “trust account”;

(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

RRTFB February 1, 2018



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Audits

The Florida Bar

- Rule 5-1.2(b) – Records
 - Documentary support for escrow account disbursements and transfers
 - Wire transfer records
 - Cash receipts/disbursements journal
 - Individual ledgers for clients/matters
 - Bank statements

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) **Applicability.** The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

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(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

RRTFB February 1, 2018



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Audits

The Florida Bar

- Rule 5-1.2(d) – Procedures
 - Monthly
 - reconciliation of trust account statements to checkbook and journal balances
 - comparison of reconciled balance with individual ledgers

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) **Applicability.** The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) **Minimum Trust Accounting Records.** Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained:

(1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account";

(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

RRTFB February 1, 2018



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Audits

The Florida Bar

- Rule 5-1.2(d) – Procedures
 - Annually
 - list of balances for each client/matter
 - filing of trust account certificate
 - Authorize bank notification to Bar when overdrawn or check dishonored

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RRTFB February 1, 2018



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Audits

The Florida Bar

- Rule 5-1.1(g) – IOTA
 - Nominal/short-term funds belonging to clients/third persons
 - Lawyer determines if nominal or short-term
 - Interest paid to The Florida Bar Foundation, Inc.
 - Notice to Foundation
 - **New: Competitive interest rate defined by rule**

THE FLORIDA BAR FOUNDATION
 8000 Commonwealth Parkway South
 Suite 400
 Fort Myers, FL 33903
 813-939-7000 • 800-541-2125
 www.floridabar.org
 www.thefund.org

Notice to Bar Foundation

IOTA ACCOUNT
 The Florida Bar Foundation (FBA) Operations Department (FBA Operations) is a not-for-profit corporation. Please provide your IOTA account number exactly as assigned by your eligible institution (do not omit any numbers).

ELIGIBLE INSTITUTION FBI USE ONLY

Name _____
 Address _____
 City _____ State _____ Zip Code _____
 Contact optional Telephone optional

LAWYER/LAW FIRM FBI USE ONLY

Name _____
 Law Firm if applicable _____
 Address _____
 City _____ State _____ Zip Code _____
 Contact Telephone Email Address optional

How the FBA is establishing this IOTA account in compliance with 5-1.1(g) Rules Regulating The Florida Bar (2015) (FBA Rules) for all nominal or short-term funds of clients or third persons that "the lawyer has determined cannot reasonably be treated for the benefit of the client or third person." Clients or third persons must have full access to the funds determined to be non-client funds by the individual client or third person in order to ensure such funds are not commingled with IOTA accounts. For further guidance in determining IOTA eligible funds, visit the Foundation's website at www.thefund.org.

Signature _____
 Print name _____
 Date _____

FBA Form 200 (revised 10/17) (1 of 2)

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Important Trust Account Information

Rule Amendments

Rule 5-1.1, subdivision (g)(1)(E) is amended to expand the definition of an interest or dividend-bearing trust account to include a business or consumer deposit account, and in subdivision (g)(5)(A), language is added that requires eligible institutions to maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance qualifications. And, in subdivision (g)(5)(B), language is added requiring eligible institutions to tie interest rates for IOTA accounts to specific indexed rate points. The court declined to adopt "proposed technical amendment to rule 5-1.1(g)(3) and the proposed amendment to rule 5-1.1(g)(5)(B) requiring a minimum net interest rate of 25 basis points."

The amendments became effective May 15, 2023, at 12:01 a.m.

The court acted in [Case No. SC22-1292](#).

What Next?

Lawyers should document reasonable attempts to get the best interest rate including contacting the [Florida Bar Foundation](#) to get assistance in determining interest rates offered by banks who hold IOTA accounts.

If you have additional questions about the recent rule amendment, contact the [Ethics Hotline](#) at 800.235.8619.



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THE FLORIDA BAR FOUNDATION
LEADERSHIP AND FUNDING FOR JUSTICE IN FLORIDA

875 Concorde Parkway South
Suite 100
Maitland, FL 32751
407-960-3265
Fax 407-960-3265
www.TheFloridaBarFoundation.org

NOTICE TO ELIGIBLE INSTITUTION FORM

Eligible Institution (enter institution name below): _____

The undersigned Lawyer/Law Firm is establishing an IOTA account in compliance with 5-1.1(g) Rules Regulating The Florida Bar (IOTA Program) for all nominal or short-term funds of clients or third persons that s/he, the lawyer has determined cannot practically be invested for the benefit of the client or third person. Client or third-person trust funds that lawyers or law firms determine can earn income for the individual client or third person, in excess of the costs to secure such income, cannot be deposited into IOTA accounts. For further guidance in determining IOTA eligible funds, visit the website at www.floridabar.org/iota/faq.

The IOTA account must remain in my/law firm's name and must be labeled as a trust account.¹ The IOTA account must bear the Foundation's Taxpayer Identification Number (see reverse for W-9 Form for IOTA Accounts). IRS Form 1099 is required to be filed for IOTA accounts. IOTA accounts are NOT subject to back-up withholding.

Lawyer/Law Firm Name: _____

IOTA Account Number: _____

You (the Institution) are authorized to open my/law firm's IOTA account as the highest paying² of the following account types that your institution offers:

A. Interest Checking / Negotiable Order of Withdrawal (NOW) account.

B. Interest Checking/NOW account with Sweep Option and Daily Repurchase Agreement collateralized by United States Government Securities as the investment vehicle. (Due to minimum balance requirements, the sweep option is only available to accounts identified by the Eligible Institution and The Florida Bar Foundation.)

C. Money Market Fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, consisting solely of United States Government Securities and with total assets of at least \$250,000,000.00.

¹Interest Rate Comparability Requirement. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account qualifications. If any, 5-1.1(g) (5)(A) Rules Regulating The Florida Bar. Interest or dividends calculated on the balance of the deposited funds in the IOTA account, in accordance with the eligible institution's standard practice for non-IOTA account customers, less Reasonable Service Charges and Fees as defined by the Foundation. If any, must be remitted, at least quarterly, to The Florida Bar Foundation (see Reasonable Service Charges and Fees Policy on reverse). Remittance made via ACH and Electronic Transfer is encouraged.

By (all IOTA account signatories): _____ Date: _____

(Signature) _____ (Signature) _____
(Name) _____ (Name) _____
(Signature) _____ (Signature) _____
(Name) _____ (Name) _____

FBF Form 100 (revised 2022) (1 of 2)

ELIGIBLE INSTITUTION ACCEPTANCE:

(Authorized Signature) _____ (Date) _____

Form W-9 Request for Taxpayer Identification Number and Certification Give form to the requester. Do not send to the IRS.

Account Number _____ Taxpayer I.D. Number **59-1004604**

PAYOR (Bank): _____ Under penalties of perjury, I certify that:

☒ The above Tax I.D. Number is correct.
☒ Exempt from backup withholding
☒ I am a U.S. person

PAYEE: The Florida Bar Foundation
175 Lookout Place, Suite 100
Maitland, Florida 32751

Signature of U.S. person _____

**THE FLORIDA BAR FOUNDATION
REASONABLE SERVICE CHARGES AND FEES POLICY
ADOPTED JUNE 23, 1993**

The following charges and fees have been defined as "reasonable" and are the only service charges or fees permitted to be deducted from interest or dividends earned on IOTA accounts:

- ◆ Per check charge¹
- ◆ Per deposit charge¹
- ◆ Fee in lieu of minimum balance
- ◆ Federal deposit insurance fee

Eligible institutions also may recoup special costs for their participation in IOTA through deduction of a reasonable IOTA handling/administrative fee.

¹ This charge includes fees for intra-account transfers between a lawyer's or law firm's accounts at the same institution.

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Audits

The Florida Bar

- Continuing legal education
 - Three-year cycle – 33 hours
 - At least 5 in legal ethics, professionalism, bias elimination, substance abuse, or mental illness awareness
 - At least 1 of 5 in professionalism
 - At least 3 in technology
 - No carryover
 - Basic Skills within 12 months of admission

Cycle Dates: 11/1/2020 - 10/31/2023			
Cycle Status: ✔ COMPLETE			
Credit Type	Required	Claimed	Remaining
General	33.0	36.0	0.0
Technology	3.0	5.0	0.0
PR	5.0	6.5	0.0
Professionalism	1.0	1.0	0.0
Basic Skills	Status	Date	
Phase I	Compliant	9/30/1988	
Phase II	Compliant	10/1/1988	



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Audits

The Florida Bar

- Miscellaneous
 - Disbursements against uncollected funds (5-1.1(j))
 - Overdraft protection for trust account prohibited (5-1.1(k))
 - Law firm plan (more than one lawyer) for supervision/compliance with trust accounting rule (5-1.2(c))
 - Inventory Attorney (1-3.8(e))
 - 6-year retention period (5.1-2(f))

The Practice Resource Center of The Florida Bar

TRUST ACCOUNT
 (Sample) Bank Notification Letter

Date _____

Your Financial Institution
Address _____

Re: James Esquire, Attorney at Law
Trust Account Number _____

Dear Financial Institution,

Pursuant to Rule 5-1.2(d)(4), Rules Regulating The Florida Bar, all members of The Florida Bar are required to authorize and request the bank where the lawyer is a signatory on a trust account to notify the bar of any trust check that is returned or the account is overdrawn, absent bank error.

This letter is to authorize and request your institution to automatically notify:

Staff Counsel
 The Florida Bar
 651 East Jefferson Street
 Tallahassee, FL 32309-2300

In the event that, absent bank error:

- any trust account is overdrawn; or
- any trust check is dishonored or returned due to insufficient funds or uncollected funds.

If you have any questions, please do not hesitate to contact me.

Respectfully,

James Esquire _____

manage your practice. *fuel* your business.

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EXAMPLE TRUST ACCOUNT PLAN A	EXAMPLE TRUST ACCOUNT PLAN B
LAW FIRM TRUST ACCOUNT PLAN FOR CALENDAR/FISCAL YEAR 20_____ In compliance with Rule 5-1.2, Rules Regulating The Florida Bar, the _____ law firm presents its trust account plan setting forth those persons responsible for maintaining and monitoring the firm's trust account(s). Checks: Prepared by (partner A's assistant or office manager) and signed by _____ partner B for checks up to \$10,000. As a firm policy, checks over \$10,000 must be signed by both _____ partners A and B. Deposit Slips: Prepared by (partner A's assistant) and reviewed by _____ partner A or B. (The name of the individual partner(s) or owner(s) responsible for the various functions must be filled in the blanks). Electronic transfers: Prepared by (partner A's assistant and office manager) and _____ authorized by _____ policy, electronic tr _____ A and B. Monthly reconciliations: Reviewed and approved by _____ Annual reconciliations: Reviewed and approved by _____ partners A and B. Monthly client ledger card reconciliations: Completed by (partner A or partner A's assistant, bookkeeper, office manager) and reviewed and approved by _____ partner A, majority shareholder. Annual client ledger card reconciliations: Completed by (office manager, bookkeeper, partner A's assistant) and reviewed by independent CPA firm _____, which audits the firm's trust account annually. The annual reconciliation is reviewed and approved by both _____ partners A and B. Questions relating to trust accounts: Questions regarding the firm's trust account should be addressed to _____ partner A, majority shareholder. If _____ partner A cannot answer the question(s), such question(s) will be answered by both _____ partners A and B.	LAW FIRM TRUST ACCOUNT PLAN FOR CALENDAR/FISCAL YEAR 20_____ In compliance with Rule 5-1.2, Rules Regulating The Florida Bar, the _____ law firm presents its trust account plan setting forth those lawyers responsible for maintaining and monitoring the firm's trust account(s) in the _____ (city), _____, Florida branch office of the firm. The firm is set up so that each office is responsible for its own trust accounting review and responsibility. Checks: Prepared by (office manager, CPA, or business manager), signed by _____ partner Y, managing partner, for checks up to \$10,000. Pursuant to firm policy, checks over \$10,000 must be signed by _____ partners Y and Z, of the firm's board of directors. (The name of the individual partner(s) or owner(s) responsible for the various functions must be filled in the blanks). Deposit Slips: Prepared by (office manager, CPA, or business manager) and reviewed by _____ partner Y, managing partner. Monthly reconciliations: Reconciliation is then reviewed and approved by the firm's board of directors, composed of _____ partners Y, Z and P. Monthly client ledger card reconciliations: Prepared by (office manager, business manager) and reviewed and approved _____ partner Y, managing partner. Annual client ledger card reconciliations: Prepared by (office manager, CPA, or business manager) and reviewed by independent CPA firm _____ (name) _____, which audits the trust account client ledger cards annually. The reconciliation is reviewed and approved by the firm's board of directors, composed of _____ partners Y, Z and P. Questions relating to trust accounts: Questions regarding the firm's trust account(s) should be addressed to _____ partner Y, managing partner. If partner Y cannot answer the question(s), such question(s) will be addressed to and answered by the firm's board of directors, composed of _____ partners Y, Z and P.

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FORM (fill in and mail to) The Florida Bar Department of Lawyer Regulation 651 East Jefferson Street Tallahassee, Florida 32399-2300 DESIGNATION OF INVENTORY ATTORNEY I hereby designate: _____ (print record Bar name of designated inventory attorney) (print The Florida Bar number) who has indicated a current willingness to serve as my inventory attorney should the need for protection of my clients' legal rights arise. Dated this _____ day of _____, 20_____ (signature) (typed or printed name as recorded in Bar records) _____ Florida Bar Number	PLAPPERT TAKES STOCK OF HIS INVENTORY ATTORNEY OPPORTUNITIES May 11, 2021 By Jim Ash Senior Editor Top Stories 'I was a fairly new lawyer without much work. I thought at the time, it will give me more experience, and some more exposure, so I'll do it'  Stanley W. Plappert Most lawyers who take the plunge into professional service have a hard time describing the satisfaction they get from helping others—or why they keep volunteering again and again. Ocala attorney Stanley W. Plappert, president of the Florida Legal Advocacy Group, P.A., is no different—but his service is all too rare. Plappert has become a go-to "inventory attorney"—someone who volunteers to manage the files of a lawyer who is unable to continue practicing law. Helping the courts and the Florida Bar protect the interests of stranded clients requires diplomatic and detective skills and can involve many tedious and uncompensated hours. But somebody has to do it, Plappert says. "Number one, it's good for the public, because the Bar is looking after the clients who have been orphaned or abandoned," he said. And the other reason? Because somebody asked, Plappert said. "I try to help when I can and where I can," he said. Over the years, Bar staff attorneys who are responsible for petitioning the court to appoint an inventory attorney have come to rely on Plappert's willingness to serve. "Mr. Plappert's incredible service to the Bar and the public assures that the clients' property is protected," said a staff attorney who preferred to remain anonymous. "The Bar is so grateful for his 'can-do' approach, and we know that we can rely on him when other sources of assistance are unavailable."

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LEGAL fuel

The Practice Resource Center of The Florida Bar

SAMPLE ADMINISTRATIVE FORM

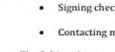
PRE-NEED INVENTORY ATTORNEY AGREEMENT CONSENT TO CLOSE OFFICE

This consent agreement is entered into between _____, hereinafter referred to as "Subject Attorney," and _____, hereinafter referred to as "Inventory Attorney."

The Subject Attorney authorizes the Inventory Attorney to take all actions necessary to close my law practice due to my disability, incapacity or death. These actions include but are not limited to:

Making application to the appropriate circuit court for appointment as an inventory attorney under 1-3.8, R. Regulating Fla. Bar;

- Entering my office and utilizing my equipment and supplies as needed to close my practice;
- Opening and processing my mail;
- Taking possession and control of all property comprising my law office, including client files and records;
- Examining files and records of my law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying my files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by my clients;
- Filing notices, motions, and pleadings on behalf of my clients where their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;
- Winding down the financial affairs of Subject Attorney's practice, including providing Subject Attorney's clients with a final accounting and statement for services rendered Inventory Attorney, return of client funds, collection of fees on Subject Attorney's behalf payment of business expenses, and closure of business accounts when appropriate;
- Advertising Subject Attorney's law practice or any of its assets to find a buyer for the practice;



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The Practice Resource Center of The Florida Bar

• Signing checks on my trust account and providing an accounting to my clients of funds in trust; and,

• Contacting my professional liability carrier concerning claims and potential claims.

The Subject Attorney's bank or financial institution may rely on the authorizations in this Agreement unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

Subject Attorney authorizes Inventory Attorney to provide legal services to Subject Attorney's former clients providing Inventory Attorney has no conflict of interest and obtains the consent of Subject Attorney's former clients to do so. Inventory Attorney has the right to enter into an attorney-client relationship with Subject Attorney's former clients and to have clients pay Inventory Attorney for his or her legal services. Inventory Attorney agrees to check for conflicts of interest, and when necessary, to refer the clients to another attorney.

The Inventory Attorney agrees to preserve confidential information and the attorney-client privilege of my clients and to make disclosure only to the extent reasonably necessary to carry out the purpose of this consent. The Inventory Attorney is appointed as my agent for purposes of preserving my clients' confidential information, the attorney-client privilege, and the work product privilege. This authorization does not waive any attorney-client privilege.

I appoint the Inventory Attorney as signatory, or in substitution of my signature, on my lawyer trust account(s) upon my disability, incapacity or death.

I understand that the Inventory Attorney will not process, pay, or in any other way be responsible for payment of my personal bills.

Subject Attorney and Inventory Attorney acknowledge that the duties specified under this Agreement are subject to and controlled by the requirements of 1-3.8, R. Regulating Fla. Bar.

[Subject Attorney]

STATE OF _____)
) ss.
County of _____)

[Date]

The foregoing instrument was acknowledged before me on this ____ day of ____, 20____, by _____ (name of person acknowledging).

(NOTARY SEAL)

Signature
Name (Typed, Printed, or Stamped)
My commission expires: _____

Personally known ____ OR Produced Identification ____
Type of Identification Produced _____



LEGAL fuel

The Practice Resource Center of The Florida Bar



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The Practice Resource Center of The Florida Bar

manage your practice. **fuel** your business.

Agents and Agencies




JIMMY PATRONIS
 FLORIDA'S CHIEF FINANCIAL OFFICER

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[MYFLORIDACFO.COM > DIVISION > AGENTS > LICENSURE > GENERAL > FREQUENTLY ASKED QUESTIONS](#)

Frequently Asked Questions

Do you have a question about being an insurance agent in Florida?

Below are sorted lists of our most common frequently asked questions (FAQs). Click a topic to review its FAQs and answer(s). If you have any questions, comments, or suggestions for additional FAQ topics, please email us at AgentLicensing@MyFloridaCFO.com.

Please click a topic:

- AGENT AND ADJUSTER GENERAL LICENSING AND COMPLIANCE
- AGENCY LICENSING AND COMPLIANCE
- BAIL BOND AGENTS
- BAIL BOND AGENCY
- CONTINUING EDUCATION (CE)
- EAPPOINT AND APPOINTMENTS
- EXAMINATIONS
- NAVIGATORS
- PROVIDERS (EDUCATION)
- PUBLIC ADJUSTERS
- TITLE AGENTS
- TITLE AGENCY
- TITLE CLOSINGS
- TITLE ESCROW ACCOUNTS
- WARRANTY LICENSES

Frequently Asked Questions

All Title Agencies must pay a Title Administrative Surcharge the beginning of every year.

1. What should I know to open a title agency?

Read our tips and guidance on opening a title agency.

2. Are there any restrictions for the name of my title agency?

Yes, Florida Statutes s. 626.8413 states a title agency "...shall not adopt a name which contains the words 'title insurance,' 'title guaranty,' or 'title guarantee,' unless such words are followed by the word 'agent' or 'agency' in the same size and type as the words preceding them..."

3. Will a background check be performed?

Yes. Please refer to our Fingerprinting Information page for more information.

In addition, insurers appointing a title agency for the first time will secure on the officers of the agency a detailed credit and character report for the 5-year period immediately prior to the date of application for appointment. Information contained in credit and character reports furnished to the department are confidential and exempt from the public disclosure requirements. [s. 626.842, Florida Statutes]

4. What are the requirements to be an agent in charge (or attorney in charge)?

The agent in charge (or attorney in charge) for a title insurance agency must be a licensed and appointed title insurance agent or an attorney in good standing with the Florida Bar. The licensed title insurance agent or attorney must be designated in the title insurance agency's MyProfile account with the Department.

Title agencies (including any branch offices) are subject to the provisions of section 626.0428, F.S. Each branch location that does title insurance work must designate an agent in charge and notify the department of the identity of the person and Florida license number (or Florida Bar number) designated as well as the location of the branch. This is completed through the title agency's MyProfile account.

The agent/attorney in charge can be the same as another location as long as there are not any title insurance transactions taking place while the agent in charge is not present unless another licensed and appointed title agent is present at the location.

[Want to stay up to date on compliance matters?](#)

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Licensure – Agent Qualifications

- Natural person at least 18 years of age
- Citizen or work-authorized legal alien residing in FL
- Nonresident agent licensing based on reciprocity
- 40-hour approved classroom course (3-hours ethics); or
- 12-months under licensed title agent, insurer or attorney who conducts closings and issues title insurance policies
- U.S. Military, veterans and spouses exempt from pre-licensing coursework requirement
- Pass examination, be fingerprinted, and pay fees



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Licensure – Agent

Maintenance

- Apply within one year of passing examination
- Complete 10 hours DFS-approved continuing education every two years (including 3 hours on ethics, rules, or compliance with state and federal regulations related to title insurance and closing services)
 - Appointment will be terminated if agent fails to meet continuing education requirement
 - Extension of time may be granted
- License expires if no appointment for 48 months



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Appointment – Agent

Logistics

- License, appointment and employment by licensed title agency or insurer required
- Appointing entity files with DFS
 - Licensee investigated/found to be of good moral character/reputation and fit to engage in insurance business
 - Pays fees and costs
 - Must report post-appointment felony committed by licensee
- Appointment perpetual, subject to biennial renewal accompanied by renewal fee and tax



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Agent audits – DFS

Continuing education

- Two-year cycle – 10 hours
 - Includes 3 in ethics, rules, or compliance with state and federal regulations related to title insurance and closing services
 - Or completion of Certified Land Closer or Certified Land Searcher professional designation program (24 hours)
 - Excess hours carry over

MYFLORIDA.CFO.COM • DIVISION • AGENTS • LICENSURE • GENERAL • FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions

Do you have a question about being an insurance agent in Florida?

Below are sorted lists of our most common frequently asked questions (FAQs). Click a topic to review its FAQs and answer(s). If you have any questions, comments, or suggestions for additional FAQ topics, please email us at AgentLicensing@MyFloridaCFO.com.

Please click a topic:

- AGENT AND ADJUSTER GENERAL LICENSING AND COMPLIANCE
- AGENCY LICENSING AND COMPLIANCE
- BAIL BOND AGENTS
- BAIL BOND AGENCY
- CONTINUING EDUCATION (CE)

1. I'm a new agent. When are my continuing education hours due?
Your requirement to complete continuing education hours start the day you are licensed, in which you have a full 24 months, due on the last day of your birth month, and then, every two years thereafter. [Rule 69B-228.22(1)(a), F.A.C.]



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Licensure – Agency

Application

- Name and residence address of each majority owner, partner, officer and director
- Name of agency and principal business address
- Location of each office, name used at each, and name of licensed title agent or attorney in full time charge at each office
- Filing and licensing fees



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Licensure – Agency

Agent in charge

- Licensed and appointed title agent or Florida attorney in good standing
 - Multiple locations allowed
 - Activities requiring licensure only when licensed agent physically present
- If affiliation ends new agent designated within 30 days
 - Failure causes agency license to automatically expire on 91st day



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Appointment – Agency

Logistics

- Appointing entity notifies DFS of appointment
 - Certifies agency has adequate fidelity bond, surety bond and errors and omissions insurance
 - Pays fees and costs
- Agency annually proves to appointing entity surety bond in effect and unimpaired
- Appointment perpetual, subject to biennial renewal accompanied by renewal fee and tax



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Appointment – Agency

Agreement

- Specifies statutory requirements for appointment of agency
 - E&O (\$250,000/\$10,000)
 - Fidelity bond (\$50,000)
 - Surety bond (\$35,000)
- Agents not required to be individually insured

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Agency audits – Underwriter

Periodic

- Annual policy inventory
 - Sec. 627.7773(1), F.S.
- Monthly reconciliation of escrow accounts furnished to underwriter
 - Rule 69O-186.009, F.A.C.



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Agency audits – DFS

On demand

- Sec. 627.7845(2), F.S.
 - Evidence supporting determination of insurability and reasonable title search produced upon demand
 - Within 7 years after product issued
- Sec. 626.8473(5), F.S.
 - Separate records of receipts and disbursements of escrow, settlement or closing funds
- Rule 69O-186.008(3), F.A.C.
 - Written consents of buyer and seller for deposits into interest-bearing accounts



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Agency audits – DFS

Reconciliation report

- Rule 69O-186.009, F.A.C.
 - Monthly escrow account reconciliation report
 - Sent to insurer with appropriate documentation (bank statement, list of outstanding checks, and trial balance of escrow ledger)
 - Reports kept 5 years; copy to DFS upon request
 - Separate ledger card (per transaction) kept for 3 years



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Agency audits – DFS

Recurring responsibilities

- Sec. 627.782(8), F.S.
 - Agency and insurer data call
 - Revenue, loss and expense
 - May 31
- Sec. 624.501(27)(e)(2), F.S.
 - \$200 administrative surcharge
 - January 30 (not Jan. 31st!)

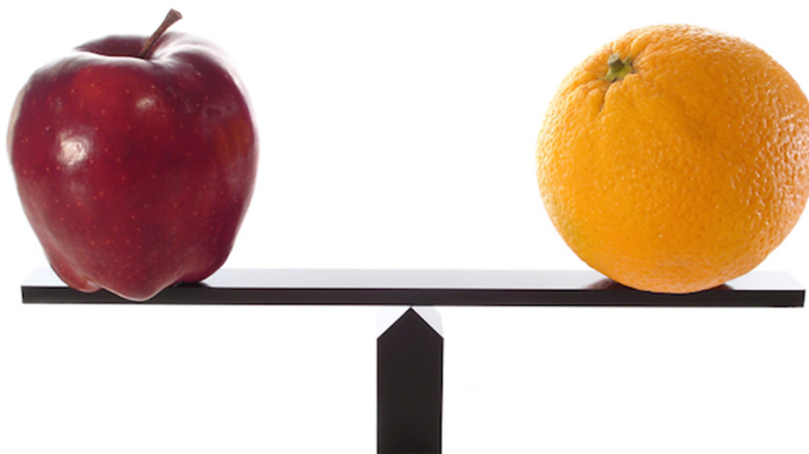
Data Call

Data Call:
Florida's Title
Insurance Data Call

Data Call:
Data Call with
DoubleTime



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Similarities

- Licensing
- Underwriter
- Trust/escrow account maintenance
- Referral restrictions
- Title insurance compensation



The Fund

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Differences

- Professional independence
- Professional oversight
- Client/customer relationships
- Advertising regulation
- Data call
- Interest on escrow account earnings



The Fund

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**Thank you
for attending**





Through ATTORNEYS' TITLE FUND SERVICES, LLC.



**AGREEMENT FOR APPOINTMENT OF POLICY-ISSUING AGENT
FOR OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

THIS AGREEMENT ("this Agreement") is made and entered into as of _____ [Date]
by and between Old Republic National Title Insurance Company ("Insurer") and
_____ [Agent Name] ("Agent").

IN CONSIDERATION of the mutual benefits accruing, and subject to the terms and conditions hereof, the parties hereby agree as follows:

1. DEFINITIONS

A. Agent. The legal entity that is a party to this Agreement and that entity's principals, owners, officers, directors, shareholders, partners, managers, members, associates and employees.

B. Agent's Subcontractors. Agent's sub-agents, vendors, service providers, contractors and subcontractors, including their respective principals, owners, officers, directors, shareholders, partners, managers, members, associates and employees.

C. Agent's Title Insurance Business. Agent's business of acting as a non-exclusive policy issuing agent for Insurer within the scope of the agency relationship established in Section 2 of this Agreement. Agent's Title Insurance Business does not include Agent's other business activities which may include, but are not limited to, Agent's issuance of title reports, opinions, certificates, searches, property reports, information reports, Settlement services or the provision of any other real estate service.

D. Closing Protection Letter. A letter provided by Insurer providing title insurance coverage for certain losses described in the letter when those losses arise as a result of the escrow or closing activities and services of the Settlement agent named in the letter.

E. Confidential Information. Information or data supplied in confidence by or on behalf of one party ("Disclosing Party") to the other party ("Receiving Party"), or to an officer, director, employee, agent or subcontractor of the Receiving Party. Confidential Information includes all information which a reasonable person should consider confidential in the context of its disclosure or due to the nature of the information itself, and may include technical and non-technical information, this Agreement, Underwriting Materials, Customer Information, know-how, designs, techniques, plans or any other information relating to any project, work in process, future development, marketing or business plans, or financial or personnel matters relating to either party. "Confidential Information" does not include information that: (i) is in the public domain by no fault of the Receiving Party; (ii) is developed independently by the Receiving Party without knowledge of the Confidential Information; or (iii) is or comes into the Receiving Party's rightful possession without use or disclosure restrictions.

F. Extrahazardous Risk. A title insurance risk that presents a high degree of risk of Loss or involves the use of non-typical forms which Insurer has identified in the Underwriting Materials.

G. Law or Laws. Any federal, state or local governmental statute, code, enactment, ordinance, permit, regulation, rule, order or court decision.

H. Loss or Losses. "Loss" or "Losses" mean: (i) any payment(s) made by Insurer arising out of or in any way related to a claim under any Title Insurance Product or Closing Protection Letter issued on behalf of Agent including, but not limited to: (i) payments to an insured or a third party; (ii) payment of attorney's fees, costs, and expenses incurred in the investigation of claims, in the negotiation of settlements, or in litigation and/or administrative or other legal proceedings; (iii) any payment made by Insurer arising out of or in any way related to an investigation, inquiry, action or proceeding by any federal, state or local regulatory body, including but not limited to fines, penalties,



sanctions, reimbursement, restitution, attorney's fees or costs; and (iv) cost of storage of Agent files including future costs required under any storage period required by Law.

I. Marks. "Marks" means Insurer's: (i) corporate name; (ii) trademark/service mark (thirteen stars encircling the initials "OR"); (iii) corporate seal; (iv) logos; (v) icons; and (vi) President and Secretary signatures.

J. Notify. "Notify" means giving written notice to a party sent to the physical address for the party receiving notice in Exhibit A via: (i) registered or certified United States mail, return receipt requested, postage prepaid; or (ii) overnight delivery by any nationally recognized overnight delivery service with proof of delivery. Any notice or notification required to be given under this Agreement will be deemed given on the expiration of three (3) business days after the United States mailing or overnight delivery.

K. Premium. The title insurance premiums and endorsement fees charged and collected by Agent for the issuance of Title Insurance Products.

L. Rate Manuals. The manuals, books, schedules, bulletins and other documents, in whatever medium provided by Insurer to Agent, which set out the rates to be charged by Agent for the Title Insurance Products.

M. Settlement. Closing, consummation, escrow or settlement of real estate transactions.

N. Title Insurance Products. Title insurance commitments, title insurance policies, endorsements to title insurance commitments and policies and other contracts under which Insurer indemnifies a third party for the condition of title to real property. "Title Insurance Products" does not include Closing Protection Letters.

O. Title Insurance Forms. An individual Title Insurance Product.

P. Underwriting Materials. All bulletins, directives, policies and procedures established by Insurer or Attorneys' Title Fund Services, LLC, whether available on Insurer's websites or not, or to which Agent has been directed, regarding the search and examination of title, the clearance of objections or exceptions to title, and other procedures for the issuance of the Title Insurance Products.

Q. Validating Officer. Authorized signatory, licensed agent, authorized officer, or other individual who is qualified and authorized to bind Agent and Insurer in the act of signing commitments and/or final title policies.

2. APPOINTMENT OF AGENT AND SCOPE OF AGENCY

A. Insurer appoints Agent a non-exclusive policy-issuing agent for Insurer for the sole purpose of issuing Insurer's Title Insurance Products covering real property located in the States and counties identified in Exhibit A. This Agreement creates a limited agency relationship between Insurer and Agent under which Agent is granted the authority only to issue Insurer's Title Insurance Products and to collect the Premium and Closing Protection Letter fees, if any, on behalf of Insurer.

B. The parties acknowledge that Agent may engage in the Settlement of transactions in which Insurer's Title Insurance Products are issued. The Settlement of such transactions is a business activity of Agent that is not required under this Agreement and is separate and distinct from the issuance of Insurer's Title Insurance Products. The scope of the limited agency created by this Agreement does not extend to any Settlement business conducted by Agent and/or Agent's Subcontractors nor does it extend to any other activity or business conducted by Agent or Agent's Subcontractors that does not involve the issuance of Insurer's Title Insurance Products including, but not limited to, Agent's issuance of title reports, opinions, certificates, searches, property reports, information reports or the provision of any other real estate service.

C. Agent does not have any express or implied authority under this Agreement to bind Insurer to any duty, responsibility or liability in connection with any activity or business conducted by Agent and/or Agent's Subcontractors that does not involve the issuance of Insurer's Title Insurance Products and the collection of the Premium and Closing



Protection Letter fees, if any.

3. AGENT'S ESCROW AND/OR TRUST ACCOUNTS

A. Agent will not receive or acknowledge receipt of any funds, including Settlement funds, in the name of Insurer, but will receive and acknowledge receipt of such funds for its own account. In accordance with applicable Law and as may be required by Insurer, Agent will maintain adequate records as to any escrow, trust and closing funds being handled by Agent in transactions in which Insurer's Title Insurance Products are issued, and Agent will keep all such funds properly segregated in an escrow and/or trust account in a federally insured institution.

B. In the event a shortage is revealed or discovered in Agent's accounts of funds entrusted to Agent by others or in the remittances due Insurer then Insurer may declare immediately due and payable any debts owed by Agent, including any funds for which Insurer may be responsible or have a liability. On demand by Insurer or as required by applicable Law, Agent will immediately make good the shortage.

4. AGENT'S DUTIES

Agent will:

A. Receive and process requests for Title Insurance Products and issue the same in a timely, prudent and ethical manner in accordance with the Laws, the Underwriting Materials and other customary title insurance underwriting practices;

B. Maintain and preserve, in separate files for each order, copies of all Title Insurance Products issued by Agent, and all supporting documents on which the determination of insurability is made, including, but not limited to, affidavits, lien waivers, survey plats, searches, examinations and work sheets;

C. Submit or ship documents for recording to the county recorder (or its equivalent) or to the person or entity responsible for recording within two (2) business days of the later of: (i) the date of Settlement or (ii) receipt of such documents by Agent if the Settlement is not performed by Agent;

D. Safeguard and assume full responsibility for all Title Insurance Products Insurer provides to Agent;

E. Collect all Premium and other charges attributable to the issuance of Title Insurance Products and remit to Insurer the amounts due and within the time frame as required in Section 8(E);

F. Establish and securely maintain in a federally insured escrow and/or trust account(s) separate from all of Agent's other accounts all funds received by Agent in connection with transactions where Insurer's Title Insurance Products are issued; disburse the funds only for the purposes for which the same were entrusted; and reconcile all such accounts (including "inactive" or "dormant" accounts) to a three-way reconciliation within (30) days of the bank statement ending date for every such account, but under no circumstances less frequently than monthly;

G. Comply with all Laws relating to the licensing and operation of Agent's Title Insurance Business;

H. Issue Title Insurance Products only under the signature of a Validating Officer as identified in Exhibit A;

I. Comply with all of the terms and conditions of this Agreement and all other terms and conditions of all other agreements between Agent and Insurer or between Agent and Insurer's affiliates;

J. Provide Insurer with any and all information or documentation in the possession or control of Agent that is requested, subpoenaed or required by other legal process from Insurer or by any state or federal governmental or regulatory authority;



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

K. Perform such services and render such assistance as Insurer may reasonably request in connection with: (i) any regulatory examination, information request or data call, or (ii) any claim or litigation arising from: (a) a commitment, policy, endorsement or other Title Insurance Product issued by Agent or by Insurer on behalf of Agent, or (b) any conduct of Agent. Such services and assistance shall be performed by Agent regardless whether such examination, information request, data call, claim or litigation is instituted during the term of this Agreement or following the termination of this Agreement. In addition, Agent will promptly forward to Insurer:

(i) All documents received by Agent in which Insurer is a party to any administrative and/or judicial proceedings;

(ii) All written complaints or inquiries made to any regulatory agency regarding transactions involving Title Insurance Products of Insurer; and

(iii) All original documentation and work papers associated with the transaction or conduct giving rise to any examination, claim or complaint;

L. Maintain and preserve (by paper or electronic means) all records, books, books of account, files, documents, correspondence, bank records, title evidence and material of all kinds relating to Agent's Title Insurance Business for the time period required by the Laws, but in no event for a period of less than ten (10) years; and

M. Notify Insurer immediately of the following:

(i) Any claims involving Title Insurance Products. Agent will provide Insurer with all documentation received by Agent in connection with the claim;

(ii) Any request, subpoena, or legal process for information or documentation received by Agent from any state or federal government, judicial or regulatory authority. If the request, subpoena or legal process is directed to Agent, Agent will promptly comply with the request, subpoena or legal process by the applicable date set forth therein, and provide a copy of the response to Insurer;

(iii) Agent becomes unable, for any reason, to continue conducting Agent's Title Insurance Business;

(iv) Any change in the ownership of Agent of more than a twenty-five (25%) interest;

(v) Any change in Validating Officers or other key officers or employees of Agent. In the event that such a change occurs, Agent will promptly provide to Insurer a fully executed "Disclosure & Release of Information Authorization." Agent will also undertake all actions necessary to assure the insurance coverages required in Section 12 are maintained at all times;

(vi) Any change in the location of Agent's principal office or opening, closing or changing the location of any of its other offices;

(vii) Any criminal or civil action in which Agent is a defendant; and

(viii) Any shortage in any of Agent's escrow or trust accounts.

5. INSURER'S DUTIES

Insurer will:

A. Provide Agent with the Title Insurance Products and a means of accounting for them;

B. Provide Agent with the Underwriting Materials; and



- C. Determine all risk assumption questions submitted by Agent.

6. LIMITATIONS ON AGENT'S APPOINTMENT AND AUTHORITY

Agent will not, without written approval from Insurer:

- A. Commit Insurer to a risk that:
- (i) Is in excess of the amount set forth in Exhibit A;
 - (ii) Is an Extrahazardous Risk;
 - (iii) Agent knows to be based upon a disputed title; or
 - (iv) Requires prior approval by Insurer;
- B. Use Title Insurance Forms other than those provided by Insurer, or alter any Title Insurance Form provided by Insurer;
- C. Administer or adjust any claim of Loss arising out of or related to any Title Insurance Product issued by Agent;
- D. Accept service of legal process on behalf of Insurer. If legal process involving Insurer is delivered to Agent, Agent will immediately forward to Insurer all documents that were delivered;
- E. Incur bills or debts chargeable to Insurer; or
- F. Issue Title Insurance Products covering any title in which Agent, the attorney furnishing an opinion of title, or any abstractor or title searcher providing a search to Agent, have any direct or indirect interest.

7. TITLE INSURANCE RATES

Insurer will provide Rate Manuals to Agent. If allowed by applicable Law, Insurer reserves the exclusive right to change its rates from time to time, in whole or in part, and will notify Agent of such changes. Such notification may be made electronically. Agent will charge and collect Premium according to the Rate Manuals.

8. DIVISION OF PREMIUM AND REPORTING SCHEDULE

- A. Agent will remit to Insurer in accordance with Exhibit A the Premium specified in the Rate Manuals or otherwise as permitted as Insurer's underwriting fee for its assumption of risk.
- B. If Agent issues policies in states in which rates are not promulgated or regulated, and if Agent charges and collects Premium that is higher than the amount calculated according to the Rate Manuals, the percentage amount remitted to Insurer will be calculated on such higher amount collected; however, should Agent charge and collect Premium that is lower than the amount calculated according to the Rate Manuals, the percentage amount remitted to Insurer will be calculated according to the Rate Manuals. In no event, however, shall Agent charge rates that deviate from the Rate Manuals without written approval from Insurer and only in those States where deviation from rates as set forth in the Rate Manuals is legally permitted.
- C. Agent will remit to Insurer Closing Protection Letter fees, if any, specified in Exhibit A.
- D. For transactions over Agent's limit of authority, transactions involving Extrahazardous Risks, and for transactions originated by Insurer, the amount to be remitted by Agent to Insurer will be as negotiated between Agent



and Insurer for each transaction if allowed by applicable Law. Insurer may also require that a greater percentage of Premium be remitted by Agent on certain real estate transactions if Insurer performs additional services or assumes additional risk. For purposes of calculating Agent's retention in cases where reinsurance is purchased by Insurer, the cost of such reinsurance will first be deducted from the Premium collected prior to the division of Premium calculated according to this Section, and the amount deducted for reinsurance will be remitted to Insurer according to subparagraph (E) of this Section.

E. Agent will report to Insurer on a monthly basis and in a manner approved by Insurer, all Title Insurance Products which have been issued since the previous report. A copy of each Title Insurance Form covered by the report will be included with each report. Agent will also remit to Insurer, with each monthly report, all amounts due Insurer under this Agreement for the Title Insurance Products covered by the report and remittance will be due within 30 days of the end of the calendar month in which the transaction giving rise to the issuance of the Title Insurance Products closed. All Title Insurance Products submitted to Insurer as required under this Section will become the property of Insurer.

F. All amounts due Insurer pursuant to this Agreement are the property of Insurer when received by Agent and will be held by Agent in an escrow and/or trust bank account for the benefit of Insurer until paid over to Insurer.

9. RESPONSIBILITY FOR LOSS:

A. As between Insurer and Agent, Agent is responsible for all Losses directly or indirectly arising from or attributable to the following acts or omissions of Agent:

- (i) Defalcation, fraud or dishonesty;
- (ii) Failure to comply with the terms and requirements of this Agreement or with the rules, regulations or instructions given to Agent by Insurer;
- (iii) Intentional or negligent omission from commitments or policies of reference to encumbrances or title defects disclosed by the application, search and examination of title, an approved examiner's report, or certification of title, or which were otherwise known or should have been known to Agent;
- (iv) The improper Settlement or attempted Settlement of a transaction involving Insurer's Title Insurance Products, including but not limited to (a) loss or misapplication of customer funds, documents or other things of value received by Agent in a fiduciary capacity (including loss derived from disbursement of funds for construction) or otherwise, resulting in Loss to Insurer; (b) failure to disburse properly or close in accordance with Settlement instructions or applicable Law; or (c) misappropriation of closing, escrow, trust or Settlement funds by Agent;
- (v) Negligent errors or omissions in: (a) the search or examination of title; (b) the preparation of Title Insurance Products; or (c) other procedures involved in processing an application for title insurance;
- (vi) Failure to follow Underwriting Materials or instructions of Insurer;
- (vii) Failure of title plant or search to disclose matters causing a Loss;
- (viii) Failure to properly or timely report a claim to Insurer;
- (ix) Failure to accurately charge or report Premium;
- (x) Failure to comply with any Law related to Agent's Title Insurance Business or other businesses conducted by Agent;
- (xi) Failure to deliver to the appropriate county recorder (or equivalent) within two (2) business days of the date of closing, the insured deed(s), mortgage(s) or other documents, properly executed and acknowledged in recordable form, along with all fees, taxes, affidavits, intake sheets and other documents that may be required by the



county recordation office;

(xii) Issuance of any commitment when no insurance is contemplated; and

(xiii) Closing on a commitment for title insurance that has not been updated as to the date of closing or the most recent effective date of the land records.

B. Agent's responsibility for Loss as set forth in Section 9(A) will be construed broadly to include any Loss caused by the actions or inactions of Agent and Agent's Subcontractors.

C. Insurer is responsible for all other Losses resulting from claims under the Title Insurance Products issued by Agent.

D. If Insurer incurs a Loss for which Agent is responsible, Agent agrees to reimburse Insurer for such amounts on demand. Insurer will have the right of setoff for such amounts. Agent will immediately notify its E&O insurer of Insurer's claim for reimbursement of a Loss when directed to do so by Insurer.

10. PREPARATION OF POLICIES AND COMMITMENTS

A. Agent will show as exceptions to coverage all defects, liens and encumbrances, including but not limited to taxes, restrictions, easements and any other matters which affect the validity, marketability or insurability of the title being insured, of which Agent has knowledge or notice, including but not limited to those matters disclosed by a proper search of the records, an opinion of title, or an inspection or survey of the insured land.

B. Agent will identify Insurer as its underwriter on all Title Insurance Products.

11. CLAIMS

Insurer will have the exclusive right to adjust, pay or compromise all claims (including those claims for which Agent is liable to Insurer) and the sole discretion to commence, defend against or settle legal proceedings in connection therewith. If a claim is made to Agent or if Agent becomes aware of any information which may give rise to a claim under any Title Insurance Product which Agent has issued, Agent will immediately Notify Insurer. Agent will cooperate with and provide all reasonable assistance to Insurer in investigating, adjusting or contesting any claim. Unless expressly authorized by Insurer, Agent will not administer any claim, nor make any attempt to investigate, accept or deny any claim, or settle or refer the claim to outside counsel. Agent will promptly make available to Insurer any of Agent's file documents necessary to administer such claim.

12. INSURANCE

A. Agent will obtain and keep in full force and effect as long as Agent has liability to Insurer under the terms of this Agreement, the following:

(i) A comprehensive liability insurance policy for errors and omissions ("E&O Policy") in an amount equal to or exceeding the amount set forth in Exhibit A and issued by an insurer acceptable to Insurer. Agent will furnish to Insurer a full copy of the E&O Policy, including all endorsements, as well as a copy of proof of payment of the current premium.

(a) The E&O Policy will have deductibles not exceeding those set forth in Exhibit A and cover the full range of Agent's responsibilities and services, including searches, document preparation, commitment and policy issuance and (if applicable) closing, escrow or Settlement services. The parties recognize, notwithstanding the foregoing, that this Agreement does not extend beyond the issuance of Title Insurance Products, and that the responsibilities assumed by Insurer under this Agreement are limited to the issuance of Title Insurance Products and liability under Closing Protection Letters.



(b) Agent will renew the existing E&O Policy to increase the policy period by each renewal year. Timely renewal prevents coverage lapses created by a switch to an insurer that does not provide prior acts coverage for the years covered by the prior insurer. If Agent's insurer is unable or unwilling to renew the existing E&O Policy, Agent will: (i) Notify Insurer of the reason for non-renewal and (ii) make reasonable efforts to procure an E&O Policy with prior acts coverage. If Agent has a bona fide reason not to renew with a willing insurer, Agent will contact Insurer for approval to procure an E&O Policy with a different insurer, and, if approved, make reasonable efforts to obtain prior acts coverage.

(ii) A Fidelity Bond in an amount equal to or exceeding the amount set forth in Exhibit A and issued by an insurer acceptable to Insurer. If Agent or any of Agent's Subcontractors has access to closing, escrow, trust or Settlement accounts, or money that may be entrusted to Agent by Insurer or others in the course of Agent's operations, then each such individual must be covered by a separate Fidelity Bond (or Surety Bond, if applicable) to cover any fraudulent or dishonest act, or such person or persons must be covered by a blanket Fidelity Bond (or blanket Surety Bond, if applicable) in an amount equal to or exceeding the amount set forth in Exhibit A. Agent will furnish to Insurer a full copy of the Fidelity Bond(s) (or Surety Bond(s), if applicable), including all endorsements, as well as a copy of proof of payment of the current premium.

(iii) A Surety Bond in an amount equal to or exceeding the amount set forth in Exhibit A issued by an insurer acceptable to Insurer. If Agent or any principal or owner of Agent, including without limitation, any shareholder, partner or manager, has access to closing, escrow, trust or Settlement accounts, or money that may be entrusted to Agent by Insurer or others in the course of Agent's operations, then each such individual must be covered by a separate Surety Bond to cover any fraudulent or dishonest act, or such person or persons must be covered by a blanket Surety Bond in an amount equal to or exceeding the amount set forth in Exhibit A. Agent will furnish to Insurer a full copy of the Surety Bond, including all endorsements, as well as a copy of proof of payment of the current premium.

B. At any time during the term of this Agreement, Agent will promptly furnish to Insurer upon request of Insurer, evidence (satisfactory to Insurer) of compliance with this Section 12, including but not limited to evidence of renewals of all required coverage and complete copies of the policies and bonds.

C. If applicable Law requires coverage that is greater than or in addition to the requirements of this Section 12, then such greater or additional coverage will be obtained by Agent.

D. Agent assigns to Insurer all of its rights, claims and causes of action that may accrue under the above E&O Policy, Fidelity Bond and Surety Bond.

E. Agent authorizes Insurer to submit notices of claims to Agent's E&O and bond insurers on Agent's behalf. Alternatively, if Insurer requests Agent to submit notice of claim to Agent's E&O and bond insurers, Agent will do so immediately upon request and inform Insurer when notice has been submitted.

F. Agent will immediately Notify Insurer in writing if Agent's insurance coverage is cancelled or if coverage is changed.

13. AUDITS AND CREDIT INVESTIGATIONS

Agent hereby agrees and authorizes Insurer, at Insurer's option:

A. To conduct, or have conducted periodic audits of Agent's policy inventory, title insurance files and any material, files, records or accounts, including financial and business records. Agent hereby grants Insurer the right at any reasonable time or times to audit all financial and business records relating to any closing, escrow, trust or Settlement functions conducted by Agent for purposes of protecting interests under title insurance policies in connection with Agent's issuance of Title Insurance Products; and

B. To obtain periodic credit reports and criminal background reports on Agent, principles of Agent or employees of Agent, as well as investigations relative to the business, professional and personal reputation, character,



personal characteristics and mode of living of Agent. These matters may include matters in the nature of an investigative consumer report as defined by the Federal Fair Credit Reporting Act.

14. CLOSING PROTECTION LETTERS

A. In its sole discretion, Insurer may from time to time, as an accommodation to Agent in the promotion of Agent's Title Insurance Business, issue a Closing Protection Letter to a prospective insured.

B. Insurer has developed and maintains an automated system to facilitate the uniform use and distribution of an approved standard form Closing Protection Letter. Agent will use Insurer's automated system to issue the standard form Closing Protection Letter in all instances where a Closing Protection Letter is issued on behalf of Agent. Agent may obtain a Closing Protection Letter only in transactions where the issuance of Insurer's Title Insurance Products is specified for the protection of the named parties.

C. In the event Insurer incurs a Loss arising from matters covered by a Closing Protection Letter, Agent will promptly, without offset, reimburse Insurer for the full amount of the Loss. Insurer will have sole and exclusive discretion to compromise and settle any claim asserted against Insurer without prejudice to Insurer's right to full reimbursement, and without release or waiver of Agent's obligations to reimburse Insurer.

D. In the event that Agent violates the provisions set forth herein and/or otherwise improperly causes a Closing Protection Letter to be issued in a non-standard form or in a state where Agent is not licensed to conduct business, then Agent will be solely responsible for and will indemnify Insurer without offset for any Loss.

E. Agent's responsibility for Loss as set forth in this Section 14 will be construed broadly to include any Losses caused by the actions or inactions of Agent and/or Agent's Subcontractors.

F. Agent will not issue a Closing Protection Letter without collecting the proper fee, if any, for the Closing Protection Letter and remitting the appropriate fee as set forth in Exhibit A.

G. Agent will not, without written approval from Insurer, issue a Closing Protection Letter without complying with state specific requirements for the issuance of a Closing Protection Letter.

15. TRADEMARK, SERVICE MARKS AND WORD MARKS

Insurer grants to Agent a non-exclusive, nontransferable license to use the Marks that Insurer may provide electronically to Agent in the same content, format and style as the Title Insurance Products exist in non-electronic format. Insurer reserves the right to control the manner in which Agent uses the Marks and any electronic forms provided by Insurer to Agent. Agent will not sell, alter, modify, license or sublicense the Marks. Insurer may audit Agent's use of the Marks in accordance with Section 13 of this Agreement. The license granted in this Section 15 will terminate automatically upon Agent's breach of any provision of this Section 15 or upon termination of this Agreement. Agent will destroy any Marks or other electronic forms supplied to it by Insurer upon termination of the license.

16. TERMINATION OF AGREEMENT

A. Either party may terminate this Agreement by giving the other party thirty (30) days advance written notice of termination. Notice will be given as provided in Section 1(J) and Exhibit A of this Agreement.

B. If either party materially breaches a provision of this Agreement, the other party may terminate this Agreement effective immediately by Notifying the party committing such breach. Agent's material breach includes, without limitation:

- (i) Agent's material deviation from any term or requirement contained in this Agreement;



(ii) Agent's failure to: (a) promptly pay amounts due Insurer; (b) promptly report when due issued Title Insurance Products; (c) report a shortage in Agent's accounts of funds entrusted to it by Insurer or others; (d) comply with Section 12 herein; (e) Notify Insurer of any changes in Agent, pursuant to Section 4(M)(iv) of this Agreement; (f) comply with Section 14 of this Agreement; or (g) timely record all instruments referred to at Section 4(C) of this Agreement;

(iii) Agent, or any principal and/or owner of Agent, including without limitation, any officer, director, shareholder, partner, manager, associate, or member of Agent, or any employee of Agent, is involved in any act of fraud, dishonesty, misconduct or unethical behavior;

(iv) Agent's assignment of this Agreement without Insurer's consent; or

(v) The filing of a case under any chapter of the U.S. Bankruptcy laws by or against Agent, Agent's assignment to a custodian or receiver of substantially all of its assets, or Agent's failure generally to pay its debts as they become due or Agent acknowledges in writing that it is unable to do so.

C. If during the term of this Agreement, for any reason, Agent is unable to carry on the business of issuing Insurer's Title Insurance Products, Insurer may cancel this Agreement by giving thirty (30) days written notice to Agent.

D. Consequences of Termination

(i) Agent to Account. If this Agreement is terminated, Agent will immediately provide Insurer with a complete written accounting of all remittances due under this Agreement and of all Title Insurance Products furnished by Insurer to Agent and deliver to Insurer all such forms and, upon Insurer's request, deliver all files kept pursuant to Section 4(B) above relating to Insurer's Title Insurance Products. Insurer will have the right of immediate, multiple and unrestricted access to all files kept pursuant to Section 4(B), and Insurer's audit rights under this Agreement will survive such termination. Agent will promptly return all unused Title Insurance Products to Insurer. Further, Agent will immediately destroy and delete any and all forms of Insurer stored on or within any and all computer systems or other electronic storage systems maintained, controlled and/or owned by Agent.

(ii) Insurer's Right to Access Agent's Records. In addition to Insurer's rights as set forth in Section 11 above, Insurer's right to access Agent's records, computer and/or information storage systems will continue indefinitely in the event of any threatened or actual litigation which could result in a Loss to Insurer. Agent will keep all of its records intact, and Agent, upon the request of Insurer, will assist Insurer in accessing any and all such records.

(iii) Title Insurance Products. Agent and Insurer recognize and agree that all Title Insurance Products entrusted to Agent by Insurer are and will remain the property of Insurer at all times during the term of this Agreement and following its termination.

(iv) Continuation of Liability and Insurance Coverage. Agent acknowledges that upon termination of this Agreement, Agent will continue to have liability to Insurer for Losses incurred by Insurer for which Agent is responsible under this Agreement. Agent will, after termination of this Agreement, maintain an errors and omissions policy ("E&O Policy"), at its expense, as required under Section 12 of this Agreement. If, at any time after termination of this Agreement, Agent ceases to be engaged in the business of title insurance or no longer has a business need to maintain an E&O Policy, Agent will obtain, at its expense, a two (2) year tail coverage endorsement to its E&O Policy. In the event Agent shall fail to either maintain an E&O Policy or obtain a tail coverage endorsement to its E&O Policy, Insurer may, but will not be obligated to do so, purchase an E&O Policy or tail coverage endorsement on Agent's behalf. Agent will reimburse Insurer for any and all costs and expenses incurred by Insurer in procuring such insurance coverage.

(v) Rights & Remedies. Each party will be entitled to seek all legal and equitable remedies available under all applicable Law for the enforcement of any or all rights, duties and obligations.



17. REPRESENTATIONS, WARRANTIES AND VALIDATING OFFICERS

Agent represents and warrants that Agent is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; that it is authorized to do business in all states listed on Exhibit A; and that Agent's Validating Officers are listed on Exhibit A.

18. WAIVER AND FUTURE COMPLIANCE

A waiver of any provisions of this Agreement by Insurer or Agent will not be construed to be a waiver of compliance with such provision in the future.

19. ASSIGNMENT

A. This Agreement is not assignable by Agent without the prior written consent of Insurer. Insurer may assign without the consent of Agent. In case of any assignment, this Agreement will be binding upon and inures to the benefit of the parties hereto and any authorized successors and assigns.

B. If there is any change in the ownership or control of Agent, including without limitation, any change in officers, directors, shareholders, partners, managers, associates, members or any key employees of Agent, such change may be considered, at Insurer's option, as an Assignment under this Section.

C. Any attempt by Agent to assign this Agreement without the prior written approval of Insurer will be void and will result in the immediate termination of this Agreement without further action.

20. BREACH OF AGREEMENT; ATTORNEY'S FEES AND COSTS

In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be entitled to recover its reasonable attorney's fees and costs and other expenses incurred in such litigation or proceeding, including any appellate proceedings.

21. CONFIDENTIALITY

A. Each party on behalf of itself and its employees, officers, directors and affiliates, hereby agrees that Confidential Information will not be disclosed or made available to any third party, employee or subcontractor for any reason whatsoever, other than with respect to:

- (i) A party's employees on a "need to know" basis;
- (ii) A party's subcontractors on a "need to know" basis, provided that any such subcontractor is subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Section; or
- (iii) As otherwise required by Law or as otherwise permitted by this Agreement.

B. Prior to any disclosure of either party's Confidential Information as required by Law, the party subject to the requirement shall, if permitted by Law:

- (i) Notify the other party of any actual or threatened legal compulsions of disclosure, and actual legal obligations of disclosure immediately upon becoming so obligated; and
- (ii) Cooperate with the other party's reasonable and lawful efforts to resist, restrict, limit or delay disclosure as necessary to enforce this Agreement.

C. The rights and remedies under this Section 21 shall survive termination of this Agreement.



22. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

At the option of Insurer, this Agreement may be enforced in any state court or federal court where the main office(s) of Insurer's local state manager(s) may be located, such state(s) being set forth on Exhibit A. Agent consents to the jurisdiction and venue of any such court and waives any defense that venue in such forums is not convenient.

Agent and Insurer, by their acceptance of this Agreement, irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

23. INVALID PROVISIONS

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any Law, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

24. SURVIVAL

Those provisions of this Agreement which would require that they survive the termination of this Agreement in whole or part in order to give them full force and effect will survive the termination of this Agreement, including without limitation Sections 4(L) (record retention); 9 (Losses); 11 (claims); 13 (audits and investigations); 16(D) (termination consequences); and 21 (confidentiality). In addition, all rights of action arising from or related to this Agreement that accrue during the term of this Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.

25. GOVERNING LAW

The validity, construction and enforceability of this Agreement will be governed by the laws of the first state set forth on Exhibit A.

26. AUTHORIZATION TO EXECUTE

Each party, intending to be legally bound, has directed and authorized the officer, or other individual, whose signature appears below to execute and deliver this Agreement as its representative and on its behalf as of the date indicated below.

27. AMENDMENT

Neither this Agreement nor Exhibit A may be amended or modified except by a written agreement signed by Agent and Insurer that expressly states that it is intended to amend this Agreement, including Exhibit A.

OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY

AGENT: _____

Signature

Signature of Party Promising Agent's Performance

By: _____
Printed Name and Title

By: _____
Printed Name and Title

Date: _____

Date: _____



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

EXHIBIT A

Page 1 of 2

EFFECTIVE DATE:

AGENT:

APPOINTED STATE(S): Florida

SINGLE RISK LIMITATION: \$1,000,000.00

E&O POLICY AMOUNT(S): a minimum of \$250,000 per claim

E&O POLICY DEDUCTIBLE(S): no more than \$10,000

FIDELITY BOND AMOUNT: a minimum of \$50,000
(Required for Corporate Agents only; not required for attorneys or law firm agents)

SURETY BOND AMOUNT: a minimum of \$35,000
(Required for Corporate Agents only; not required for attorneys or law firm agents)

DIVISION OF PREMIUM: 70% to Agent / 30% to Insurer

CLOSING PROTECTION LETTER FEE AND DIVISION THEREOF: N/A

ADDRESSES FOR NOTICE:

INSURER:

Old Republic National Title Insurance Company
c/o Attorneys' Title Fund Services, LLC
6545 Corporate Centre Boulevard
Orlando, FL 32822

AGENT:



EXHIBIT A
Page 2 of 2

Validating Officers:

Name: _____

Signature: _____

Title: _____

Name: _____

Signature: _____

Title: _____

Name: _____

Signature: _____

Title: _____

Name: _____

Signature: _____

Title: _____

AGENT: _____

By: _____

Date: _____

Title: _____

INSURER: OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

By: _____

Date: _____

Title: _____



Through **ATTORNEYS' TITLE FUND SERVICES, LLC.**



APPLICATION FOR LAW FIRM

1. Firm Name: _____
2. Firm Address: _____
City: _____ State: _____ Zip Code: _____
3. Office Phone Number: _____ Fax Number: _____
4. Federal ID No.: _____ Date firm commenced business: _____
5. Firm's E-mail Address: _____
6. Primary Contact Name: _____ Title: _____

BUSINESS/CUSTOMERS:

7. Percentage of practice devoted to real estate? _____%
8. Will Attorneys' Title Fund Services, LLC be performing title searches for the firm? Yes _____ No _____
9. Are you presently a policy-issuing agent for any other title insurance company? Yes _____ No _____
If yes, please list: _____
10. Are you aware of any claims on policies issued by your firm? Yes ____ No ____ If yes, please explain the circumstances. _____
11. Over the next twelve months, Applicant anticipates the proposed net remittances to Old Republic National Title Insurance Company through Attorneys' Title Fund Services, LLC to be: \$ _____
12. What computerized closing system does the firm use? _____
13. Has the firm previously been a policy-writing agent for any other title insurance company not included in the response to question 9? Yes ____ No ____ . If so, please list the company or companies and explain the reason why the relationship was terminated.

INSURANCE COVERAGE:

14. Please provide the following information concerning insurance coverage. ****PLEASE SUPPLY COPIES OF POLICIES IN EFFECT.***

Professional Liability Carrier: _____

Coverage Limit Each Claim: \$ _____ Aggregate: \$ _____

Deductible: \$ _____ Expiration Date: _____

15. If applicant performs closings, maintains escrow/trust accounts, or disburses construction funds, please complete Pre-signing Escrow Audit Procedure/Questionnaire, Exhibit I.

BELOW IS AN EXPLANATION OF THE MINIMUM TITLE INSURANCE REMITTANCE REQUIREMENT.

The minimum title insurance remittance requirement to Old Republic National Title Insurance Company through The Fund is \$3,000. You are subject to this fee beginning with the first calendar year after your one year anniversary as a member. For example, you became a member on June 1, 2016. You will be subject to the annual service support fee beginning with calendar year 2018. An annual service support fee of \$1,000 will be charged to your account if your title insurance premiums remitted for the [calendar] year does not equal or exceed that amount. This fee is charged to offset the cost of all the services you receive as a Fund member. Only policies issued on Old Republic through The Fund and returned to The Fund will be credited to the minimum requirements.

PLEASE READ THE FOLLOWING STATEMENTS CAREFULLY BEFORE SIGNING

_____, as Applicant on behalf of
(Please print name of individual completing application)

Agent: _____
(Name of law firm seeking appointment as Agent)

Applicant(s) represents that Applicant(s) has authority to make such application on behalf of Agent and hereby give(s) authority and consent to Old Republic National Title Insurance Company and Attorneys' Title Fund Services, LLC to seek and obtain information, both pre-application and during the agency relationship with ORNTIC, if appointed, relative to the business, professional and personal reputation, character, personal characteristics and mode of living of Applicant(s) and Agent as well as applicant(s) and Agent's credit history. This may include matters in the nature of an investigative consumer report as defined by the Federal Fair Credit Reporting Act. Applicant(s) and Agent understand that upon written reasonable request, Applicant(s) and Agent may obtain a disclosure of the nature and scope of the investigation and report.

Agent and Applicant(s) hereby state that the foregoing information (including any separate attached statement) is true and correct to the best of its knowledge and belief. It is further understood and agreed that the representations contained in this application are material inducements for Old Republic National Title Insurance Company's entering into an agency relationship with Agent, and that at any time either prior to or after entering into any agency relationship, should any information contained in this application become inaccurate, Applicant or Agent will so notify Old Republic National Title Insurance Company through Attorneys' Title Fund Services, LLC. It is understood and agreed that no agency relationship exists between Agent and Old Republic National Title Insurance Company unless and until an Agreement for Appointment of Policy-Issuing Agency is executed by both parties.

Agent and Applicant(s) hereby release any individual or institution, including its officers, employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may result to Applicant(s) and Agent because of compliance with this authorization and request to release information or any attempt to comply with it. Applicant(s) and Agent hereby agree that an electronic, photocopy, or facsimiled copy of Applicant(s) and Agent's authorization with an electronic, photocopy, or facsimile copy of Applicant and Agent's signature shall be deemed as binding, valid, genuine and authentic as an original authorization and signature for all purposes.

by: _____ its _____ as Applicant
Signature Officer

(Print Name) Date: _____

**APPLICATION FOR LAW FIRM
PRE-SIGNING ESCROW
PROCEDURE/QUESTIONNAIRE**

1. Is a separate escrow or trust account maintained for the title insurance business of the firm? Yes ____ No ____
2. List all escrow checking accounts: _____

3. How often are escrow bank accounts reconciled? _____
4. Who prepares the reconciliations? _____
5. Who reviews the reconciliations? _____
6. Is an escrow account trial balance of all open file balances (both debit and credit) prepared whenever bank accounts are reconciled? Yes ____ No ____ Is there management review? _____
7. Are procedures in place to properly segregate cash receipts, cash disbursements and bank reconciliation functions, or as an alternative, are reviews in place to cross check transactions where proper segregation of duties is not possible? Yes ____ No ____
8. Are procedures in place to follow up on the recording of satisfactions of mortgages? Yes ____ No ____



Through **ATTORNEYS' TITLE FUND SERVICES, LLC.**



APPLICATION FOR ATTORNEY SIGNATORY

1. Applicant's Name: _____
2. Firm Name: _____
3. Firm Address: _____
City: _____ State: _____ Zip Code: _____
4. Office Phone Number: _____ Fax Number: _____
5. E-mail Address: _____
6. Florida Bar Number: _____ Have you ever been reprimanded, suspended or disbarred in any state? _____
If yes, please describe when and the circumstances _____
7. Are you a member of the Real Property, Probate & Trust Law Section of The Florida Bar? _____
Are you certified in Real Estate Law in Florida? _____

BUSINESS/CUSTOMERS:

8. Percentage of practice devoted to real estate: _____%
How many years experience in real property law do you possess? _____
9. Are you presently a policy-issuing agent or approved attorney for any other title insurer?
Yes _____ No _____ If yes, please list: _____

10. Were you previously an agent or approved attorney for any underwriters not listed in Question 9 above?
Yes _____ No _____ If yes, list the company and explain the reason why the relationship was terminated.

PERSONAL INFORMATION:

Applicant's Home Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone No.: _____

Social Security Number: _____ Date of Birth: _____

Each Attorney Signatory is a candidate to be a beneficiary of Attorneys' Title Insurance Fund, a Florida business trust, Ch. 609, F.S. The membership fee is \$25 to be paid with this application. It is understood if this application is denied, this amount will be returned to applicant.

At the discretion of Attorneys' Title Fund Services, LLC applicant may be required to successfully complete the New Member Training Course offered by Attorneys' Title Fund Services, LLC in Orlando, Florida prior to execution of an agency agreement. Tuition for the training is \$675, including Hotel Accommodation and Meals for each Attorney Signatory. If a hotel room is not required, the fee is \$500 for each Attorney Signatory.

PLEASE READ THE FOLLOWING STATEMENTS CAREFULLY BEFORE SIGNING

I understand that Old Republic National Title Insurance Company (ORNTIC) and Attorneys' Title Fund Services, LLC (ATFS) may not obtain any consumer report on Me without My consent in writing. I hereby authorize ORNTIC and ATFS to retrieve (both pre-application and during the agency relationship with ORNTIC, if appointed) information from all personnel, educational institutions, government agencies, companies, corporations, consumer credit reporting agencies, law enforcement agencies at the federal, state, county or city level, workers' compensation agencies or individuals, relating to My past activities, to supply any and all information concerning My background. The information received may include, but is not limited to, records regarding my academic, residential, and job performance histories, business activities, involvement in litigation, personal history, credit reports, driving history and criminal history records. I hereby authorize ORNTIC and ATFS to disclose any such information obtained to other Principals of the Proposed Agent. I understand and agree that My authorization is a continual authorization, in that it shall continue to be in effect during this application period and for the duration of any Agency Agreement entered into between ORT and the Applicant, their respective successors and assigns.

I hereby release any individual or institution, including its officers, employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may result to Me because of compliance with this authorization and request to release information or any attempt to comply with it. I hereby agree that an electronic, photocopy or facsimiled copy of My authorization with an electronic, photocopy or facsimile copy of My signature shall be deemed as binding, valid, genuine and authentic as an original authorization and signature for all purposes.

APPLICANT'S
SIGNATURE: _____

DATE: _____

Opening A Title Insurance Agency

So, you're thinking about opening a title insurance agency. Well, before you open the doors for the first time, a review of the laws and rules affecting insurance representatives and the operation of Florida title agencies could be very beneficial to you. After all, you want to maintain a successful title agency. Insurance laws are located in [Title XXXVII](#) of the Florida Statutes and in Chapters [69B](#) and [69O](#) of the Florida Administrative Code.



Here's a quick overview of laws and procedures that new (and not-so-new) agents frequently inquire about, along with the applicable cites, for opening a title insurance agency. If that's not for you, maybe you want to check out the guidelines for opening [major lines insurance agencies](#) - [bail bond agencies](#) and adjusting firms coming soon.

Naming your title agency

Florida law prevents you from naming your agency anything that would be misleading or deceptive in any way. Names chosen should not imply that the agency is an *insurance company*, *governmental agency*, or any other national or state organization. We will not allow any agency to use a name that does not meet this criteria. If you use the words "title insurance," "title guaranty," or "title guarantee" in your agency's name, you must follow it with the word "agency" in the same size and font. [s. [626.602](#) and [626.8413](#), F.S.]

Obtain a title insurance agency license

No individual or business can act as a title insurance agency unless it possesses a title insurance agency license. You apply for a license through [MyProfile](#) after creating an account using the agency's information (Federal Employer Identification Number, etc.). [s. [626.8411](#), [626.8412](#), and [626.8418](#), F.S.]

Title insurance agencies do not require branch licenses. The license of the main office may be used for each branch location, which means that a violation discovered at one branch could affect all the locations. In addition, each branch location that does title insurance work must designate an agent-in-charge (see below) and notify us of the identity of the person designated. Offices that perform closings only do not need to be licensed and do not need a licensed title agent at that location.

Obtaining forms

You can download forms on our web site, www.MyFloridaCFO.com/Division/Agents. Any completed form should be submitted to the address or fax number listed on the form.

Designating an agent in charge

The agent-in-charge for a title insurance agency must be a licensed and appointed title agent or an attorney in good standing with the Florida Bar. You designate your agent-in-charge when you apply for licensure through the agency's [MyProfile](#) account. [s. [626.172](#) and [626.0428](#), F.S.]

On a related matter, you are required you to notify us within 30 days if you or the agency have a change in name, address (including e-mail), or telephone number. This is quickly and easily done by logging in to the [MyProfile](#) account for you or the agency. Don't forget to log in for both if both have changes to be made! [s. [626.551](#), F.S.]

Appointment required to transact business

Your agency license does NOT authorize you to transact insurance. A license is issued when an applicant meets all of the eligibility requirements mandated by the statutes; however, authority to transact insurance is not established until you are appointed by the insurance company or companies. [s. [626.8412](#), F.S.]

Before you can be appointed by a title insurance company, you will need to obtain three things: 1) a fidelity bond in an amount, not less than \$50,000, acceptable to the title insurance company; 2) errors and omissions insurance in an amount acceptable to the title insurance company in an amount not less than \$250,000 per claim and an aggregate limit with a deductible no greater than \$10,000; and 3) a surety bond in an amount not less than \$35,000 made payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified in the event a claim is made upon the surety bond or the bond is terminated. The surety bond must remain in effect and unimpaired as long as the agency is appointed by a title insurer. The agency must provide written proof to the appointing title insurer or insurers on an annual basis evidencing that the surety bond is still in effect and unimpaired. [s. [626.8419](#), F.S.]

Annual administrative surcharge

Each licensed title insurance agency must pay \$200 as an administrative surcharge by the end of January every year. Failure to pay this amount can result in administrative action and/or a fine being assessed against the license of the title insurance agency. You will be e-mailed an invoice at the beginning of January that will have instructions on paying the surcharge.

Annual Title Insurance Data Call

Each title insurance agency licensed to do business in this state shall maintain and submit information, including revenue, loss, and expense data to the Office of Insurance Regulation (OIR) to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually after the reporting year.

The report is to be submitted no later than May 31 and it is to include the information collected from January 1 through December 31 for each title insurance agency from the prior year. Failure to submit the data required timely could result in the suspension of that title agency's license.

Additional information about the title data call may be found on the website for the Office of Insurance Regulation at <https://www.floir.com/Office/Reporting.aspx#Title>.

Don't forget to check out these cites also:

Florida Statute sections

[626.561](#) Reporting and accounting for funds

[626.8473](#) Escrow; trust fund

[627.780](#) Illegal dealings in premium

Florida Administrative Code rules

[69B-222](#) Unlicensed insurance personnel

[69B-186.008](#) Escrow Disbursements

[69B-186.010](#) Escrow Requirements

[69O-186.003](#) Title Insurance Rates

[69O-186.008](#) Escrow Requirements

[69O-186.009](#) Reconciliation of Escrow Accounts

[69O-186.013](#) Title Insurance Statistical Gathering

Where to find these guidelines

You can find all this information, any more, online such as the [Florida Statutes](#) and [Administrative Code \(rules\)](#). Our web address is www.MyFloridaCFO.com/Division/Agents. Be sure to check out the various [Frequently Asked Questions](#) (FAQs) we have received and provided answers to help guide you, such as one especially for title insurance.

Good luck with your new agency!



THE FLORIDA BAR FOUNDATION

LEADERSHIP AND FUNDING FOR JUSTICE IN FLORIDA

875 Concourse Parkway South
Suite 195
Maitland, FL 32751
407-960-7000 | 800-541-2195
Fax 407-960-3765
www.TheFloridaBarFoundation.org

Notice to Bar Foundation

To complete and submit this form electronically, please visit our website at www.thefloridabarfoundation.org or mail completed form to:

The Florida Bar Foundation IOTA Operations Department 875 Concourse Parkway South, Suite 195 Maitland, Florida 32751

IOTA ACCOUNT

Please enter your IOTA account number exactly as assigned by your eligible institution (do not omit any numbers).

ELIGIBLE INSTITUTION

FBF USE ONLY

(Name)

(Address)

(City)

(State)

(Zip Code)

(Contact) *optional*

(_____) *optional*
(Telephone)

LAWYER/LAW FIRM

FBF USE ONLY

(Name)

(Law Firm) *if applicable*

(Address)

(City)

(State)

(Zip Code)

(Contact)

(_____) *optional*
(Telephone)

(Email Address) *optional*

I/my law firm is establishing this IOTA account in compliance with 5-1.1(g) Rules Regulating The Florida Bar (IOTA Program) for all nominal or short-term funds of clients or third persons that "... the lawyer has determined cannot practicably be invested for the benefit of the client or third person." Client or third-person trust funds that lawyers or law firms determine can earn income for the individual client or third person, in excess of the costs to secure such income, cannot be deposited into IOTA accounts. For further guidance in determining IOTA eligible funds, visit the Foundation's website at www.thefloridabarfoundation.org.

(Signature)

(Print name)

(Date)

FOUNDATION MEMBERSHIP

Every member of The Florida Bar, whether in solo practice or in a law firm, who maintains an IOTA account automatically becomes a member of the Foundation, unless declined, (whether or not the member individually maintains client or third-party trust funds).

For Foundation membership records, please enter the full name and Florida Bar attorney number of The Florida Bar member in solo practice, or every Florida Bar member in the law firm: (Use additional sheets as needed).

LAST NAME _____ FIRST NAME _____ MIDDLE INITIAL _____

ATTORNEY # _____ (Florida Bar #) M/F (Enter "M" for male or "F" for female)

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

For more information about the IOTA program and the charitable programs it supports, or for assistance in setting up this account, remitting interest or dividends to the Foundation, or handling remittance errors, please visit the Foundation's website at www.thefloridabarfoundation.org, or call (407) 960-7000, or (800) 541-2195 (FL), and ask for the IOTA Operations Department.



NOTICE TO ELIGIBLE INSTITUTION FORM

Eligible Institution (*enter institution name below*):

The undersigned Lawyer/Law Firm is establishing an IOTA account in compliance with 5-1.1(g) *Rules Regulating The Florida Bar* (IOTA Program) for all nominal or short-term funds of clients or third persons that A...the lawyer has determined cannot practicably be invested for the benefit of the client or third person. Client or third-person trust funds that lawyers or law firms determine can earn income for the individual client or third person, in excess of the costs to secure such income, cannot be deposited into IOTA accounts. For further guidance in determining IOTA eligible funds, visit the website at www.thefloridabarfoundation.org.

The IOTA account must remain in my/our law firm's name, and must be labeled as a trust account. The IOTA account must bear the Foundation's Taxpayer Identification Number (see reverse for W-9 Form for IOTA Accounts). IRS Form 1099 is required to be filed for IOTA accounts. IOTA accounts are NOT subject to back-up withholding.

Lawyer/Law Firm Name: _____

IOTA Account Number: _____

You (the Institution) are authorized to open my/our law firm's IOTA account as the highest paying* of the following account types that your institution offers:

A. Interest Checking / Negotiable Order of Withdrawal (NOW) account.

B. Interest Checking/NOW account with Sweep Option and Daily Repurchase Agreement collateralized by United States Government Securities as the investment vehicle. (*Due to minimum balance requirements, the sweep option is only available to accounts identified by the Eligible Institution and The Florida Bar Foundation.*)

C. Money Market Fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, consisting solely of United States Government Securities and with total assets of at least \$250,000,000.00.

***Interest Rate Comparability Requirement.** Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account qualifications, if any. 5-1.1(g) (5)(A) *Rules Regulating The Florida Bar* Interest or dividends calculated on the balance of the deposited funds in the IOTA account, in accordance with the eligible institution's standard practice for non-IOTA account customers, less Reasonable Service Charges and Fees as defined by the Foundation, if any, must be remitted, at least quarterly, to The Florida Bar Foundation (see Reasonable Service Charges and Fees Policy on reverse). Remittance made via ACH and Electronic Transfer is encouraged.

By (*all IOTA account signatories*):

Date: _____

(Signature)

(Signature)

(Name)

(Name)

(Signature)

(Signature)

(Name)

(Name)

ELIGIBLE INSTITUTION ACCEPTANCE:

(Authorized Signature)

(Date)

Form **W-9**

Request for Taxpayer
Identification Number and Certification

Give form to the
requester. Do not
send to the IRS

Account Number

Tax Payer I.D. Number **59-1004604**

PAYOR (Bank):

Under penalties of perjury, I certify that:

☒

The above Tax I.D. Number is
correct.

☒

Exempt from backup withholding

☒

I am a U.S. person

PAYEE: The Florida Bar Foundation
875 Concourse Parkway South, Suite 195
Maitland, Florida 32751



Signature of U.S. person

**THE FLORIDA BAR FOUNDATION
REASONABLE SERVICE CHARGES AND FEES POLICY
ADOPTED JUNE 23, 1993**

The following charges and fees have been defined as "reasonable" and are the only service charges or fees permitted to be deducted from interest or dividends earned on IOTA accounts:

- ❖ Per check charge¹
- ❖ Per deposit charge¹
- ❖ Fee in lieu of minimum balance
- ❖ Federal deposit insurance fee

Eligible institutions also may recoup special costs for their participation in IOTA through deduction of a reasonable IOTA handling/administrative fee.

¹ This charge includes fees for intra-account transfers between a lawyer's or law firm's accounts at the same institution.

For more information about the IOTA program and the charitable programs it supports, or for assistance in setting up this account, remitting interest or dividends to the Foundation, or handling remittance errors, please visit the Foundation's website at www.thefloridabarfoundation.org or call (407) 960-7000, or (800) 541-2195 (FL), and ask for the IOTA Operations Department.



**TRUST ACCOUNT
(Sample) Bank Notification Letter**

Date _____

Your Financial Institution
Address

Re: James Esquire, Attorney at Law
Trust Account Number _____

Dear Financial Institution,

Pursuant to Rule 5-1.2(d)(4), Rules Regulating The Florida Bar, all members of The Florida Bar are required to authorize and request the bank where the lawyer is a signatory on a trust account to notify the bar of any trust check that is returned or the account is overdrawn, absent bank error.

This letter is to authorize and request your institution to automatically notify:

Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

in the event that, absent bank error:

- any trust account is overdrawn; or
- any trust check is dishonored or returned due to insufficient funds or uncollected funds.

If you have any questions, please do not hesitate to contact me.

Respectfully,

James Esquire

Sample Trust Account Plans for Law Firms

All law firms with more than one lawyer must maintain a current written plan for each trust account held by the law firm.

The blanks should be filled in with the position(s) of the lawyer(s) and/or non-lawyer(s) responsible for the functions described and the name(s) of the lawyer(s) responsible.

These forms are only examples. Each firm's circumstances may differ and should be reflected in the actual Trust Account Plans.

These forms should not be filed with The Florida Bar. Under Rule 5-1.2(c)(1) and (2), the lawyer(s) responsible for maintaining the written plan must keep this plan with the firm's trust account records and must update the plan if any of the names or functions change. This plan must be provided to each lawyer in the firm on completion and each time the plan is changed.

Trust Account Plan A is for small and medium firms with only one office location.

Trust Account Plan B for multi-office firms with branch offices in Florida and for large firms with only one office location.

These forms are guides and may be adapted to suit the style of each firm but the trust account plan must contain the information called for in these forms. If you have specific questions regarding this new rule requirement, call the Ethics Hotline at (800) 235-8619 or (850) 561-5780.

EXAMPLE TRUST ACCOUNT PLAN A

LAW FIRM TRUST ACCOUNT PLAN FOR CALENDAR/FISCAL YEAR 20_____

In compliance with Rule 5-1.2, Rules Regulating The Florida Bar, the _____ law firm presents its trust account plan setting forth those persons responsible for maintaining and monitoring the firm's trust account(s).

Checks: Prepared by (partner A's assistant or office manager) and signed by _____ partner B for checks up to \$10,000. As a firm policy, checks over \$10,000 must be signed by both _____ partners A and B.

Deposit Slips: Prepared by (partner A's assistant) and reviewed by _____ partner A or B. (The name of the individual partner(s) or owner(s) responsible for the various functions must be filled in the blanks).

Electronic transfers: Prepared by (partner A's assistant and office manager) and authorized by _____ partner A or B for electronic transfers up to \$10,000. As a firm policy, electronic transfers over \$10,000 must be authorized by _____ Partners A and B.

Monthly reconciliations: Completed by (partner A's assistant/office manager/CPA) and reviewed and approved _____ partner A, majority shareholder.

Annual reconciliations: Completed by (partner A's assistant, bookkeeper, office manager) and reviewed by independent CPA firm _____, which audits the firm's trust account annually. The annual reconciliation is reviewed and approved by both _____ partners A and B.

Monthly client ledger card reconciliations: Completed by (partner A or partner A's assistant, bookkeeper, office manager) and reviewed and approved by _____ partner A, majority shareholder.

Annual client ledger card reconciliations: Completed by (office manager, bookkeeper, partner A's assistant) and reviewed by independent CPA firm _____, which audits the firm's trust account annually. The annual reconciliation is reviewed and approved by both _____ partners A and B.

Questions relating to trust accounts: Questions regarding the firm trust account should be addressed to _____ partner A, majority shareholder. If _____ partner A cannot answer the question(s), such question(s) will be answered by both _____ partners A and B.

EXAMPLE TRUST ACCOUNT PLAN B

LAW FIRM TRUST ACCOUNT PLAN FOR CALENDAR/FISCAL YEAR 20_____

In compliance with Rule 5-1.2, Rules Regulating The Florida Bar, the _____ law firm presents its trust account plan setting forth those lawyers responsible for maintaining and monitoring the firm's trust account(s) in the _____(city)_____, Florida branch office of the firm. The firm is set up so that each office is responsible for its own trust accounting review and responsibility.

Checks: Prepared by (office manager, CPA, or business manager), signed by _____ partner Y, managing partner, for checks up to \$10,000. Pursuant to firm policy, checks over \$10,000 must be signed by _____ partners Y and Z, of the firm's board of directors. (The name of the individual partner(s) or owner(s) responsible for the various functions must be filled in the blanks).

Deposit Slips: Prepared by (office manager, CPA, or business manager) and reviewed by _____ partner Y, managing partner.

Electronic transfers: Prepared by (office manager, CPA, business manager. Y's transfers up to \$10,000. Pursuant to firm policy, electronic transfers over \$10,000 must be authorized by _____ partners Y and Z, of the firm's board of directors.

Monthly reconciliations: Completed by (office manager, CPA, or business manager) and reviewed and approved by _____partner Y, managing partner.

Annual reconciliations: Prepared by (office manager, CPA, business manager) and reviewed by independent CPA firm A, which audits the trust account annually. The reconciliation is then reviewed and approved by the firm's board of directors, composed of _____partners Y, Z and P.

Monthly client ledger card reconciliations: Prepared by (office manager, CPA, or business manager) and reviewed and approved _____ partner Y, managing partner.

Annual client ledger card reconciliations: Prepared by (office manager, CPA, or business manager) and reviewed by independent CPA firm _____(name)_____, which audits the trust account client ledger cards annually. The reconciliation is reviewed and approved by the firm's board of directors, composed of _____ partners Y, Z and P.

Questions relating to trust accounts: Questions regarding the firm's trust account(s) should be addressed to _____partner Y, managing partner. If partner Y cannot answer the question(s), such question(s) will be addressed to and answered by the firm's board of directors, composed of _____ partners Y, Z and P.

FORM (fill in and mail to)
The Florida Bar
Department of Lawyer Regulation
651 East Jefferson Street
Tallahassee, Florida 32399-2300

DESIGNATION OF INVENTORY ATTORNEY

I hereby designate:

(print record Bar name of designated inventory attorney)

(print The Florida Bar number)

who has indicated a current willingness to serve as my inventory attorney should the need for protection of my clients' legal rights arise.

Dated this _____ day of _____, 20____

(signature)

(typed or printed name as recorded in Bar records)

_____ Florida Bar Number

PLAPPERT TAKES STOCK OF HIS INVENTORY ATTORNEY OPPORTUNITIES

📅 May 11, 2021 👤 By Jim Ash ▶ Senior Editor 📁 Top Stories

'I was a fairly new lawyer without much work. I thought at the time, it will give me more experience, and some more exposure, so I'll do it'



Stanley W. Plappert

Most lawyers who take the plunge into professional service have a hard time describing the satisfaction they get from helping others — or why they keep volunteering again and again.

Ocala attorney Stanley W. Plappert, president of the Florida Legal Advocacy Group, P.A., is no different — but his service is all too rare.

Plappert has become a go-to “inventory attorney” — someone who volunteers to manage the files of a lawyer who is unable to continue practicing law.

Helping the courts and the Florida Bar protect the interests of stranded clients requires diplomatic and detective skills and can involve many tedious and uncompensated hours. But somebody has to do it, Plappert says.

“Number one, it’s good for the public, because the Bar is looking after the clients who have been orphaned or abandoned,” he said.

And the other reason? Because somebody asked, Plappert said.

“I try to help when I can and where I can,” he said.

Over the years, Bar staff attorneys who are responsible for petitioning the court to appoint an inventory attorney have come to rely on Plappert’s willingness to serve.

“Mr. Plappert’s incredible service to the Bar and the public assures that the former clients’ property is protected,” said a staff attorney who preferred to remain anonymous. “The Bar is so grateful for his ‘can-do’ approach, and we know that we can call upon him when other sources of assistance are unavailable.”

Florida Bar Rule 1-3.8 (Right to Inventory) requires most Florida attorneys to designate an inventory attorney, but for obvious reasons, the rule does not require the designated attorney to serve.

According to Bar website, “inventory attorneys take possession of the files of a member who dies, disappears, is disbarred or suspended, becomes delinquent, or suffers involuntary leave of absence due to military service and no other responsible party capable of conducting the member’s affairs is known.”

It also explains that “the inventory attorney may give the file to a client for finding substitute counsel; may make referrals to substitute counsel with the agreement of the client; or may accept representation of the client, but is not required to do so.”

Plappert had only been a lawyer for a few months when the Marion County Bar Association asked him to be an inventory attorney for a local lawyer who died “without having made any provisions.”

Plappert sensed an opportunity.

“I was a fairly new lawyer without much work,” he said. “I thought at the time, it will give me more experience, and some more exposure, so I’ll do it.”

Bar attorneys petitioned the chief judge to appoint Plappert as an inventory attorney, and Plappert set to work. Fortunately, there were people familiar with the former lawyer’s practice who agreed to assist.

“He had a paralegal who worked for him, and she was willing to help, she was working for another attorney who was in the same building where his office had been, so that really worked out,” Plappert said. “It was very helpful to me learning the practice, learning more about the law.”

There were about 50 active files, and about 250 inactive files, Plappert said. Of the clients he was able to contact, he recalls only about eight who engaged him as their new lawyer.

Much of the work is organizational, Plappert said.

“The first thing we do is, we make an Excell spreadsheet of the names, addresses, phone numbers, and email addresses of all of the clients from the files, and then we try to differentiate whether they are active or closed,” he said.

The next step is contacting clients, he said.

“We send a letter, and that letter introduces me as the local inventory attorney appointed by the local court,” he said. “We have an election form that’s attached to the letter that gives them the choice to either receive their file, have their file sent to another attorney, or to inquire with us about potential representation by us,” he said.

There can be finances to straighten out, too, Plappert said.

“In some cases, there are trust accounts, so I’m also given authority to do a trust accounting to see whether there is enough money to reimburse the people who had money in the trust, and if not, ask the Florida Bar to ask the judge how to apportion the money that’s left.”

When the work is done, Plappert goes back to court.

“Once I have contacted all the clients, then I report back to the court, and say, I contacted the 50 current open files, I was able to reach 35 of them, 15 of them I cannot find the addresses, I’m asking the court for permission to shred all the files and to relieve me of my duties.”

Not all of Plappert’s inventory attorney assignments resulted from a death. One attorney disappeared, probably due to a substance abuse problem. A few others became mentally incapacitated. He is currently an inventory attorney for a Brevard County attorney who was killed in a fire.

And not all clients are relieved when the inventory attorney approaches them, Plappert acknowledges. Many are confused by the process and worried about the progress of their case. They also resent paying for legal services that weren’t delivered, Plappert said.

“If the person dies, they’re more compassionate, more understanding,” Plappert said. “But what they’re concerned with is, moving their cases forward, and having to pay twice to hire another counsel. I understand their pain, and I understand their frustration, I don’t let it bother me.”

It’s also easy for abandoned clients to misinterpret the inventory attorney’s role, Plappert said.

“I had one recently call The Florida Bar helpline, trying to file a complaint against me,” he laughs. “I told the person on the help line, I’m not his attorney, I’m trying to get the information together so he can choose who he wants to be his attorney.”

Even judges sometimes forget, Plappert said.

“The local court will sometimes try to make demands of us, but we are not the attorneys for the clients,” he laughs.

Plappert’s firm has grown to several attorneys and his practice is busy, so he no longer needs to take inventory attorney assignments to learn the legal ropes. But as Florida Bar membership ages the demand for inventory attorneys grows, Plappert remains willing to serve.

In December 2020, the Board of Governors recommended a proposed amendment to Rule 1-3.8 that would authorize the Bar to pay inventory attorneys for their services if certain conditions are met. The proposal anticipated paying 33 inventory attorneys up to \$3,000 each, plus expenses. The Florida Supreme Court has yet to rule on the proposal.

Plappert thinks it’s a good idea.

“I think it would be a healthy thing to do,” he said.

And yes, Plappert had made arrangements for another attorney in his firm to take over his cases if he is no longer able to practice law.

“Everybody should do that,” he said.



The Florida Bar

INVENTORY LAWYER MANUAL

THE FLORIDA BAR – HEADQUARTERS OFFICE

Patricia Ann Toro Savitz, Staff Counsel

The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

Telephone: (850) 561-5839 **Email:** invatty@floridabar.org

DIRECTORY OF BRANCH OFFICES

TALLAHASSEE BRANCH

The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

Telephone: (850) 561-5845 **Circuits:** 1, 2, 3, 4, 8, 14

TAMPA BRANCH

The Florida Bar, 2002 North Lois Avenue, Suite 300, Tampa, Florida 33607-5958

Telephone: (813) 875-9821 **Circuits:** 6, 12, 13, 20

ORLANDO BRANCH

The Florida Bar, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-5200

Telephone: (407) 425-5424 **Circuits:** 5, 7, 9, 10, 18, 19

FORT LAUDERDALE BRANCH

The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130 Sunrise, Florida 33323

Telephone: (954) 835-0233 **Circuits:** 15, 17

MIAMI BRANCH

Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131

Telephone: (305) 377-4445 **Circuits:** 11, 16

PREFACE

The Florida Bar created this manual to be available to each inventory lawyer assigned to an inventory proceeding. This manual is intended to acquaint all interested individuals with the inventory rules and procedures of The Florida Bar. This manual is intended only to be a guide and a starting point for persons appointed or interested in determining the requirements of the inventory lawyer procedures. The Florida Bar makes no warranties about the manual's content. Suggestions for changes or additions to the manual are welcome.

WORD versions of the attached forms are available on request via email at invatty@floridabar.org as well as from The Florida Bar's branch offices.

CAVEAT: Because the Rules Regulating The Florida Bar are amended periodically, readers of this manual are urged to consult the current Rules Regulating The Florida Bar at www.floridabar.org.

RULE REGULATING THE FLORIDA BAR 1-3.8 RIGHT TO INVENTORY

(a) **Appointment; Grounds; Authority.** Whenever a lawyer is suspended, disbarred, becomes a delinquent member, abandons a practice, disappears, dies, or suffers an involuntary leave of absence due to military service, catastrophic illness, or injury, and no partner, personal representative, or other responsible party capable of conducting the lawyer's affairs is known to exist, the appropriate circuit court, on proper proof of the fact, may appoint a lawyer or lawyers to inventory the files of that lawyer ("the subject lawyer") and to act as necessary to protect the interests of the subject lawyer's clients.

(b) **Maintenance of Confidentiality.** Any lawyer appointed to inventory a subject lawyer's files must not disclose any information contained in the inventoried files without the consent of the client to whom the files relate except as necessary to carry out the order of the court that appointed the lawyer to make the inventory. Lawyers appointed to inventory files may seek a protective order from the appropriate court or take other action necessary to protect confidential information of the subject lawyer's clients.

(c) **Status and Purpose of Inventory Lawyer.** Nothing in this rule creates the duties or obligations of a lawyer-client, fiduciary, or other relationship between a lawyer appointed to inventory a subject lawyer's files and the subject lawyer's clients except for those duties and obligations specifically set forth in this rule and those duties and obligations inherent in the specific tasks undertaken by the inventory lawyer. The purpose of appointing an inventory lawyer is to avoid prejudice to the subject lawyer's clients and, as a secondary result, prevent or reduce claims against the subject lawyer.

(d) **Designation of Inventory Lawyer.** Each member of the bar who practices law in Florida must designate another member of The Florida Bar who has

agreed to serve as inventory lawyer under this rule except that no designation is required with respect to any portion of the member's practice as an employee of a governmental entity. When the services of an inventory lawyer become necessary, an authorized representative of The Florida Bar will contact the designated member and determine the member's current willingness to serve. The designated member is not under any obligation to serve as inventory lawyer.

OVERVIEW

Rule 1-3.8 requires all members of The Florida Bar to designate an inventory lawyer to wind up a lawyer's practice in the event the lawyer becomes unable to practice, e.g., due to death, disability, or disbarment. Normally, there will be a responsible party capable of conducting the lawyer's affairs who will act as needed, making it unnecessary for The Florida Bar or the courts to intervene. For example, the affairs of a lawyer employed at a law firm with more than one member will ordinarily be wound up by the law firm; a lawyer's personal representative or the personal representative's lawyer may sell the practice or wind up the practice through the estate. Thus, the rules do not contemplate seeking the formal appointment of an inventory lawyer through Rule 1-3.8 except in extraordinary circumstances.

When the services of an inventory lawyer become necessary, an authorized representative of The Florida Bar will contact the designated member and determine the member's current willingness to serve. Bar counsel or the proposed inventory lawyer then will file a petition for appointment of inventory lawyer (Form 1, attached) with the Chief Judge in the judicial circuit where the subject lawyer's practice is located. A judge will be assigned to preside over the case and an order appointing the inventory lawyer will be issued (Form 2). Staff Counsel, bar counsel, and the subject lawyer's representative must receive notice of all pleadings and orders.

It is important to remember that the inventory lawyer does not become counsel to the clients of the subject lawyer's practice. While the client(s) and the inventory lawyer can agree to representation by mutual consent, the role of the inventory lawyer is to close out the practice by notifying clients and taking steps to return client files and funds to appropriate parties. On appointment, the inventory lawyer should compile a list of the active cases so that clients can be notified of the need to obtain new counsel and the availability of their file. The inventory lawyer notifies each active client of the appointment by sending a notification letter (Form 3) along with a Request for File Disposition (Form 4) to be completed by the client and returned to the inventory lawyer. The inventory lawyer must review the files under Florida Bar Ethics Opinion 81-8 before seeking an order of destruction.

The inventory lawyer can apply for an injunction freezing the bank accounts of the subject lawyer or for necessary writs.

The inventory lawyer must file an initial report with the circuit court (Form 5).

The inventory file may be closed by filing the Final Report of Inventory Lawyer

and Petition for Discharge (Form 7) and a proposed order of discharge (Form 9) only after each client of the subject lawyer has been notified; their files have been distributed to them or they have declined to receive their files; they cannot be located or they fail to respond to the notification; and funds have been delivered to the rightful owner.

Operating and Trust Account Funds

Part of the responsibility of an inventory lawyer requires disposition of funds. Money that is properly in the subject lawyer's operating account generally belongs to the subject lawyer or the deceased subject lawyer's estate. If appropriate, the inventory lawyer may seek an order authorizing reimbursement of documented costs expended for the inventory matter from the operating account. Money properly in the trust account does not belong to the subject lawyer. Before disbursing any funds from the trust account, the inventory lawyer must contact the Florida Bar Clients' Security Fund and determine whether any claims already have been paid in connection with the subject lawyer. This will ensure no double payments are made on the same claim. When the rightful owner of funds in the trust account can be identified, a court order should be sought providing authority to disburse the funds to the rightful owner. If there are insufficient funds in the trust account to fulfill all trust obligations, a court order should be sought providing for *pro rata* distribution. If, after due diligence, the inventory lawyer cannot locate the rightful owner or cannot identify the rightful owner of the funds, then the inventory lawyer should obtain a specific order directing that the money to be disbursed to the Florida Department of Financial Services, Division of Unclaimed Property under rule 5-1.1(i) and Chapter 717, Florida Statutes. The telephone number for the abandoned property section is (850) 410-9000 or 1-888-258-2253, Florida Department of Financial Services, Division of Unclaimed Property.

Rule Regulating The Florida Bar 5-1.1(i) states:

Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When a lawyer's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, the funds or property must be designated as unidentifiable or held for missing owners. The lawyer must make a diligent search and inquiry to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds must be properly identified as trust property in the lawyer's possession. If a missing beneficial owner is located, the trust funds or property must be paid over or delivered to the beneficial owner if the owner is then entitled to receive the funds or property. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners must be disposed of as provided in applicable Florida law after diligent search and inquiry fail to identify the beneficial owner or owner's address.

Inventory Lawyer Checklist

The purpose of this checklist is to provide general information as to practical steps for the inventory lawyer to follow. It specifically does not address legal issues, such as malpractice insurance or probate matters. The checklist is located on the bar's website www.floridabar.org.

On identification of an appropriate need, seek appointment as inventory lawyer by petitioning for appointment with the Chief Judge in the circuit where the subject lawyer practiced law. Copy Staff Counsel of The Florida Bar and bar counsel on the petition requesting appointment by emailing a copy to invatty@floridabar.org. In many instances, these matters are not handled through the Clerk of Court. Bar counsel in the appropriate branch can provide guidance.

- 1) On receipt of the order of appointment, determine whether a date has been set for filing the Initial Report of Inventory Lawyer. If so, calendar this date as well as the due dates for future periodic reports. Avoid mentioning confidential lawyer-client matters in your reports.
- 2) If a probate matter is pending for a deceased lawyer, coordinate your actions with the decedent's personal representative.
- 3) Identify any active cases. Former law firm employees may be helpful in locating a list of active clients and the upcoming calendar. Notify clients of your appointment as inventory lawyer and of their need to seek new counsel. Return files to the clients, at their expense, so that they can seek new counsel. It may be appropriate to notify courts with active cases of the unavailability of the subject lawyer.
- 4) Identify law office bank accounts, including trust accounts and fiduciary accounts, as well as safe deposit boxes, and review records to identify appropriate disposition of funds and property. It may be prudent to freeze the subject lawyer's law office accounts or to transfer the funds to the inventory lawyer's accounts to safeguard them. Generally, no disbursements from operating or trust accounts should be made absent court order. In a case where inadequate records make it impossible to determine the appropriate disposition of the funds, you should seek a court order to direct you to disburse the funds to the Florida Department of Financial Services, Division of Unclaimed Property.
- 5) The inventory lawyer will incur expenses such as mailing or storage costs. Generally, the subject lawyer is responsible for these costs, and it is appropriate to seek payment from sources such as the subject lawyer's estate or operating account. In rare instances, the bar may be able to provide reimbursement. Please note that bar counsel's specific prior approval is required. If authorized, please provide invoices to your bar counsel on at least a monthly basis.
- 6) Once immediate client needs have been met, it is appropriate to consider disposition of the subject lawyer's law office, furniture, and office equipment. Again, it is always best to coordinate matters with the estate, if any, and to seek a court order authorizing disposition of property after a detailed report of the inventory lawyer.
- 7) Review closed client files to determine if they contain any original documents, such as original wills, or other client property where the loss would prejudice a former client of the subject lawyer. Remove and attempt to return all such documents to their owners.

Seek a court order to permit disposition of the rest of the closed client files. Shredding assistance is available from the bar.

8) In some cases, it may be appropriate for the inventory lawyer to retain original matters from client files for a defined or an indefinite period. If so, the order terminating the appointment of inventory lawyer should note this.

FREQUENTLY ASKED QUESTIONS FOR INVENTORY LAWYERS

Q 1. A client/third party is demanding that I release funds over which they claim ownership from the trust account. I have not yet completed a full accounting nor acquired authorization from the court to release the funds. Can I pay them?

It is inappropriate to release any funds until a full accounting has been made to assure that adequate funds exist to satisfy all claims. Once the inventory lawyer can represent to the court that a full account has been made, the inventory lawyer may seek court authorization to disburse the funds.

Q 2. The bank will not honor the order appointing me as inventory lawyer. What should I do?

Contact the bar counsel to have a staff investigator speak to the bank representatives and explain the inventory process.

Q 3. During the inventory process, I have found personal belongings and non-client related business paperwork owned by the lawyer for which I am serving as inventory lawyer. What should I do with them?

If the subject lawyer is still living, or if there is a guardian, personal representative or heir, the items can be delivered to that person. It may be prudent to note this in the inventory lawyer report, seek court authorization before the delivery, and obtain a receipt.

Q 4. I need clerical/moving/etc. assistance to complete the inventory process and the subject lawyer has funds remaining in the operating account sufficient to cover these expenses. May I use the funds for this purpose?

Yes, if your accounting shows the funds in the operating account belong to the subject lawyer, not clients, and you obtain court authorization first.

Q 5. I cannot find the client/third party so that I can send the funds/property to that person. What should I do?

The bar's staff investigators may be able to assist you with this matter. Please contact bar counsel.

Q 6. The subject lawyer left no records regarding a trust account. I do not even know what bank they used or if they had a trust account. What should I do?

Bar counsel can contact The Florida Bar Foundation and determine whether it has any information regarding an IOTA trust account. Please contact bar counsel.

Q 7. Is it really necessary to go through every closed client file before destruction? This is overwhelming.

Please see the bar's Ethics Department's information packet on closed files on the bar's website. Also check any agreements made with the client as to file retention.

Q 8. Can I close the inventory matter if I still need to hold files for a certain period of time?

Yes, the court order discharging you as inventory lawyer can specify that you will continue to hold the files for a certain period of time.

Q 9. The inventory lawyer rule contemplates payment of inventory lawyers by the bar. May I, as inventory lawyer, be paid for my services?

Please consult with bar counsel. Funds to reimburse inventory lawyers for their services are extremely limited and only available with prior specific written approval.

FORM 1

FILED BY BAR COUNSEL FOR THE FLORIDA BAR OR THE PROPOSED INVENTORY LAWYER

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,

Circuit Court Case No. _____

Florida Bar File No. _____

[SUBJECT LAWYER NAME],

A _____ [disbarred, deceased, suspended, etc.]
lawyer.

_____/

PETITION FOR APPOINTMENT OF INVENTORY LAWYER

(The Florida Bar OR Proposed Inventory Lawyer) brings this Petition
for Appointment of Inventory Lawyer and says:

1. This Court has jurisdiction to entertain this petition and over
the petition's subject matter under Rule 1-3.8, Rules Regulating The Florida
Bar.

2. [Subject Lawyer's Name] (subject lawyer) is a member of The
Florida Bar and subject to the jurisdiction of this Court.

(OPTIONAL PARAGRAPHS, choose appropriate one):

3. Subject lawyer has been [disbarred/suspended, etc.] as of [enter date of order], by the Supreme Court of Florida.

[OR]

4. Subject lawyer is [deceased/disabled, etc.,] and unable to practice law.

5. Subject lawyer has no partner, executor, or other responsible party capable of conducting subject lawyer's affairs connected with the practice of law.

6. Subject lawyer is in actual or constructive possession of certain files of clients or former client files.

7. Subject lawyer's inability to practice law creates the probability of prejudice to the clients or former clients.

8. In order to protect the legal rights of subject lawyer's clients and minimize subject lawyer's liability, if any, all active files of subject lawyer must be inventoried under Rule 1-3.8, Rules Regulating The Florida Bar and appropriate action must be taken to notify and otherwise protect the clients as provided in the rules.

9. Subject lawyer is believed to have maintained a trust account and an office operating account.

10. That [Inventory Lawyer Name], a member of The Florida Bar,

[Inventory Lawyer Address, Inventory Lawyer Phone, Inventory Lawyer email address] has consented to act as inventory lawyer.

WHEREFORE, (The Florida Bar OR Inventory Lawyer), by and through its undersigned representative, prays that this Honorable Court:

A. Appoint [Inventory Lawyer Name], a lawyer licensed to practice law in the State of Florida, as inventory lawyer for [Subject Lawyer] with the full powers and duties under Rule 1- 3.8, Rules Regulating The Florida Bar.

B. Direct that [Inventory Lawyer] proceed as soon as possible.

C. Direct that [Inventory Lawyer] furnish progress reports to this Court with copies to The Florida Bar periodically at times and intervals as this Court may deem appropriate until the inventory lawyer's duties are complete and this Court enters an order approving the inventory lawyer's final report.

D. Direct that such writs as are necessary to enable [Inventory Lawyer Name] to carry out (his/her) duties under this court order will be issued forthwith by the clerk of this Court on application of [Inventory Lawyer].

E. Direct that [Inventory Lawyer] will have full access to and authority to make deposits to and disbursements from the trust account(s) and operating account(s) of the subject lawyer and comply with the

provisions of Rules 5-1 and 5-2, Rules Regulating The Florida Bar, in all transactions involving these accounts.

Inventory Lawyer or Bar Counsel
Address
Telephone number
Florida Bar Number:
Email address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Petition for Appointment of Inventory Lawyer has been furnished to the Chief Judge (or other appropriate Judge) [insert appropriate name, address and email address of the judicial assistant]; to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, at invatty@floridabar.org; to Bar Counsel, The Florida Bar [insert appropriate address] at _____@floridabar.org; and to [Subject of the inventory matter or Personal Representative and appropriate address] on this__ day of _____, 20__.

Proposed Inventory Lawyer or Bar Counsel

FORM 2

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,

Circuit Court Case No. _____

Florida Bar File No. _____

[SUBJECT LAWYER NAME],

A _____ [disbarred, deceased, suspended, etc.]
lawyer.

_____ /

ORDER APPOINTING INVENTORY LAWYER

THIS CAUSE came on to be heard on the Petition of (The Florida Bar
OR the inventory lawyer) for Appointment of Inventory Lawyer under Rule
1-3.8, Rules Regulating The Florida Bar, and the Court being otherwise
fully advised in the premises and finding that:

(**OPTION 1**, but if disbarred or disciplinary revoked or resigned, use
WAS) [Subject Lawyer Name] is/was a member of The Florida Bar and that
he/she has been (disbarred/suspended/etc.) by order of the Supreme Court
of Florida;

(**OPTION 2**) [Subject Lawyer Name] has abandoned (his/her)
practice;

(OPTION 3) [Subject Lawyer Name] has disappeared or died and no executor, partner, or responsible party capable of conducting (his/her) law practice affairs is known to exist;

and that [Subject Lawyer Name] has in (his/her) actual or constructive possession files of clients or former clients and has not returned those files to those clients; and that in order to protect the rights of all concerned including [Subject Lawyer Name] and (his/her) clients and former clients, it is:

ORDERED AND ADJUDGED:

1. [Inventory Lawyer Name/Address/Phone/Email Address], is hereby appointed as inventory lawyer for [Subject Lawyer Name] with full powers and duties under Rule 1-3.8, Rules Regulating The Florida Bar to carry out the function as inventory lawyer.

2. The inventory lawyer is directed to proceed as soon as possible to inventory the files of [Subject Lawyer Name] and to take such action as he/she deems indicated to protect the interests of the current and former clients of [Subject Lawyer Name] as well as the interest of [Subject Lawyer Name].

3. The inventory lawyer specifically is authorized to accept representation of [Subject Lawyer Name]'s clients in connection with the

activities of cases found in the files inventoried as long as each client is given a free choice for the further employment of inventory lawyer as counsel.

4. The inventory lawyer is not obligated to accept employment as counsel in connection with any or all the active cases found in the files inventoried but he/she, at his/her option, may agree or refuse to represent the clients.

5. The inventory lawyer must furnish a progress report to this court with copies to Staff Counsel, The Florida Bar, [Physical Address], via email at invatty@floridabar.org, and Bar Counsel, [Name/Physical Address], via email at _____@floridabar.org within 60 days of this order, and furnish periodic progress reports as this court directs until completion of the duties as inventory lawyer and approval of a final report by this court.

6. The Clerk of this Court will issue, on application of the inventory lawyer, such writs as may be necessary to carry out this order.

7. The inventory lawyer has specific authority to have access to the law office bank accounts of [Subject Lawyer Name], whether the bank account is operating, escrow, trust, estate, or in any representative capacity.

DONE AND ORDERED in Chambers at _____, County of _____, Florida, this ____ day of _____, 20____.

[Judge's Name], Chief Judge/Circuit Judge

Copies Provided To:

[Personal Representative Name], Personal Representative OR [Subject Lawyer Name], [insert appropriate address];
Staff Counsel, The Florida Bar, [insert address], and via email at invatty@floridabar.org;
Bar Counsel, The Florida Bar, [insert address], and via email at ____@floridabar.org;
[Inventory Lawyer Name], Inventory Lawyer [insert address and email].

FORM 3

[Letterhead]

[Date]

[Client Name]
[ClientAddress]

Re: [Subject Lawyer Name]; Circuit Court Case No. _____
The Florida Bar File No. _____

Dear [Client Name]:

I have been appointed by the circuit court as the Inventory Lawyer for the files of [Subject Lawyer Name] due to the fact that [Subject Lawyer Name] has [died/been disbarred, etc.]. **(NOTE: If the subject lawyer was disbarred, has died, disappeared or has been adjudicated incompetent, that fact should be substituted).**

[Mr./Ms. Subject Lawyer Last Name]'s files indicate that (he/she) has represented you in a legal matter. If this representation has not been fully completed, it is suggested that you hire a new lawyer and have your new lawyer contact me immediately.

You may pick up your files in person on your request. I will mail your file to you only if you indicate that on the enclosed REQUEST FOR FILE DISPOSITION. Please indicate on the enclosed REQUEST FOR FILE DISPOSITION what disposition you wish to have made of the file and mail this request to me at [Inventory Lawyer Name/Address].

Please print your name and address legibly. If you wish the file to be mailed to you, you will be asked to provide appropriate mailing costs in advance.

Please allow at least 5 working days after mailing the request before attempting to pick up your file.

If you have any questions, I can be contacted by telephone at [Inventory Lawyer Phone], or my office at [Inventory Lawyer Address].

Sincerely,

[Inventory Lawyer Name],
Inventory Lawyer

FORM 4

REQUEST FOR FILE DISPOSITION

TO: [Inventory Lawyer Name]
[Inventory Lawyer Address]

Re: [Subject Lawyer Name]; TFB File No. _____
a) I HEREBY request disposition of my office file held by [Inventory
Lawyer Name] as follows:

_____ I will pick up my file at your [Inventory Lawyer Office Location] office.

_____ The legal matter contained in the file has been completed and the file
may be destroyed.

_____ This is your authority to send the file via regular U.S. Mail to the
person indicated below after I provide appropriate mailing costs to
you.

Sincerely,

Name: _____

Address: _____

Phone: _____

FORM 5

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,

Circuit Court Case No. _____

Florida Bar File No. _____

[SUBJECT LAWYER NAME],

A _____ *[disbarred, deceased, suspended, etc.]* lawyer.

_____/

INITIAL REPORT OF INVENTORY LAWYER

Comes now [Inventory Lawyer Name], as Inventory Lawyer for the
files of [Subject Lawyer Name], and reports to the Court as follows:

1. I was appointed as inventory lawyer by order of the court
dated [Date of Order].
2. There has been delivered to me approximately [# of Files] files
of [Subject Lawyer Name] and so far as is known at this time this
constitutes all of the active and inactive client files. Approximately [# of
Active Files] of these files are active files on which [Subject Lawyer Name]
is the lawyer of record. Each file has been examined and the party in
interest has been notified of the pendency of this inventory proceeding and

that their file may be secured from me on application.

3. The remaining files numbering approximately [# of files] contain copies of documents, letters, and miscellaneous papers of no apparent value or use. Each file is being examined and an evaluation is being made as to the necessity of notifying the client. If the file shows action or inquiry during the past six years, a letter is being written to the client, a copy of which is attached as Exhibit A, with a return letter to me indicating their choice as to the disposition of the file.

4. Where files indicate that there has been no action or inquiry during the past six years or that they have been fully completed, those files are being held as "no action files," subject to future disposition or destruction.

5. OPTIONAL: This court has granted authority to return all files to [Subject Lawyer Name]'s former clients or to have them destroyed as the court may direct. A copy of this authority is attached as Exhibit _____.

6. As of the date of this report, approximately [# Letters mailed] letters have been mailed to clients concerning their files; approximately [# of No Action Files] files have been designated as "no action files" and [#Files Delivered] files have been delivered to clients or their respective lawyer or agent.

7. On [Date applied for Injunction], I applied for and received an injunction freezing the bank accounts of [Subject Lawyer Name]. The total amount in held under that order is \$_____ as will appear from the letter(s) from the bank(s) attached as Exhibit(s) _____. There are no other assets of [Subject Lawyer Name] known to me at this time.

Respectfully submitted this _____ day of _____ 20_____.

[Inventory Lawyer Name]
Inventory Lawyer
[Inventory Lawyer Address]
[Inventory Lawyer Phone] [Inventory
Lawyer Bar No.]
[Inventory Lawyer Email Address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Chief Judge [insert appropriate name and address]; to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, at invatty@floridabar.org; to Bar Counsel, The Florida Bar [insert appropriate address] at _____@floridabar.org; and to [Subject of the inventory matter or Personal Representative and appropriate address] on this _____ day of _____, 20_____.

Inventory Lawyer or Bar Counsel

FORM 6

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,
No. _____

Circuit Court Case

Florida Bar File No.

[SUBJECT LAWYER NAME],

A _____ *[disbarred, deceased, suspended, etc.]* lawyer.
_____/

SECOND REPORT OF INVENTORY LAWYER

Comes now [Inventory Lawyer Name], as Inventory Lawyer for the
files of [Subject Lawyer Name], and reports to the court the following:

1. Since the filing of the first report, I have ascertained that I
received approximately [# of files] office files. Of these files approximately
[# of files] require no action.

2. The items reported in paragraph ____ and paragraph ____ of
the initial report have been disposed of by delivery of files to clients or to
their new lawyers.

3. The status of the office files of is approximately as follows, as

of this date:

- a) Letters mailed to clients _____
Requests for files _____
Request to destroy files _____
No response to letters _____
Letters returned undelivered _____
- b) Requests for files _____
Files delivered _____
Files requested, but not delivered _____

4. Your petitioner makes the following recommendations concerning the disposition of all remaining files:

- a) That the approximately [# of Files] "no action" files be destroyed.
- b) That the [# of Files] "no response" files be destroyed.
- c) That the persons interested in the remaining [# of Files] files requested but not retrieved files be given a second notice and that any files not retrieved be destroyed as of [Date].
- d) That the receipts for the [# of Files] files delivered to clients be held by your petitioner until [Date], and on that date be destroyed.

5. Your petitioner, as inventory lawyer, has incurred the following expenses for which (he/she) requests reimbursement from the Florida Bar:

- a) Cost of mailing [# of Letters] letters at \$_____.
- b) Miscellaneous expense per statement attached \$_____

(OR)

6. Your petitioner represents that there are funds in [Subject Lawyer Name]'s operating account in the amount of \$_____.

Petitioner requests permission from this Court to reimburse those expenses from this operating account. The remaining funds are the legal property of [Subject Lawyer Name] and petitioner seeks authority of this Court to disburse them to [Subject Lawyer Name] [or Subject Lawyer's Estate] or to the Division of Financial Services, State of Florida, if the undersigned is [unable to locate the subject lawyer through reasonable efforts or if the estate is closed].

7. Your petitioner represents that there is a trust account balance of \$_____, representing trust funds of [Subject Lawyer Name] held in trust for clients. Petitioner will make diligent search and inquiry to ascertain the owners of these funds and seek further authority of this Court to disburse them to the owner of the funds.

WHEREFORE, your petitioner requests the entry of an order,

- a) Authorizing the destruction of files or other disposition as the Court may direct;
- b) Authorizing the payment of expenses incurred by the inventory lawyer in the distribution and destruction of files; and
- c) Holding in abeyance the disposition of the trust funds of [Subject Lawyer Name] until the rightful owners are located and a report is filed requesting proper disbursement of the funds.

[Inventory Lawyer Name]

Inventory Lawyer
[Inventory Lawyer Address]
[Inventory Lawyer Phone]
[Inventory Lawyer Bar No.]
[Inventory Lawyer Email Address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Chief Judge [insert appropriate name and address]; to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, at invatty@floridabar.org; to Bar Counsel, The Florida Bar [insert appropriate address] at _____@floridabar.org; and to [Subject of the inventory matter or Personal Representative and appropriate address] on this _____ day of _____, 20____.

Inventory Lawyer or Bar Counsel

FORM 7

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,
No. _____

Circuit Court Case

Florida Bar File No.

[SUBJECT LAWYER NAME],

A _____ *[disbarred, deceased, suspended, etc.]* lawyer.

_____/

FINAL REPORT OF INVENTORY LAWYER AND PETITION FOR DISCHARGE

Petitioner respectfully submits that on [Date of Court Order] was appointed as inventory lawyer for the files and records of [Subject Lawyer Name] under Rule 1-3.8, Rules Regulating The Florida Bar.

Petitioner has filed (his/her) report(s) of (his/her) actions as inventory lawyer. On [Date of Order], an order was entered directing the distribution and payment of funds held in trust accounts and personal bank accounts of [Subject Lawyer Name] and directing the destruction of the remaining office files.

Pursuant to that order of [Date of Order], petitioner has destroyed all of the remaining office files of [Subject Lawyer Name].

Petitioner caused the funds in the trust account(s) of [Subject Lawyer Name] to be paid to [fill in appropriate name or agency].

Petitioner caused the funds in the operating account to be paid to [fill in appropriate name or agency].

WHEREFORE, having completed all duties as inventory lawyer for [Subject Lawyer Name], [Inventory Lawyer Name] respectfully requests the entry of an order approving (his/her) actions and to discharge [Inventory Lawyer Name] as inventory lawyer.

Respectfully submitted this _____ day of _____,
20____.

[Inventory Lawyer Name]
Inventory Lawyer
[Inventory Lawyer Address]
[Inventory Lawyer Phone] [Inventory
Lawyer Bar No.]
[Inventory Lawyer Email Address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Chief Judge [insert appropriate name and address]; to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, at invatty@floridabar.org; to Bar Counsel, The Florida Bar [insert appropriate address] at _____@floridabar.org; and to [Subject of the inventory matter or Personal Representative and appropriate address] on this _____ day of _____, 20____.

Inventory Lawyer or Bar Counsel

FORM 8

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,

Circuit Court Case No. _____

Florida Bar File No. _____

[SUBJECT LAWYER NAME],

A _____ *[disbarred, deceased, suspended, etc.]* lawyer.

_____/

ORDER

This cause coming on to be heard on the reports of [Inventory Lawyer Name], as inventory lawyer for the files of [Subject Lawyer Name], and the court being fully advised,

IT IS ORDERED:

1. That the approximately [Number of Files] "no action" files and the [Number of Files] "no response" files be destroyed immediately.
2. That the [Number of Files] files authorized to be destroyed by the persons interested in those files be destroyed immediately.
3. That the [Number of Files] files requested but not picked up, and the [Number of Files] files belonging to clients whose letters were

returned undelivered, be held by the inventory lawyer until [Date], and all files not delivered by that date be destroyed.

4. That the receipts for files delivered to clients to be held by the inventory lawyer until [Date], or for any additional time as the inventory lawyer elects, and on that date be destroyed.

5. That the sum of \$_____ in the operating account in the name of [Subject Lawyer Name] on deposit in [Name and Address of Banking Institution] be paid to [fill in appropriate name or agency].

6. That the balance of \$_____ in the trust account in the name of [Subject Lawyer Name] on deposit in [Name and Address of Banking Institution] be paid to [fill in appropriate name or agency].

DONE AND ORDERED in Chambers at _____, County of _____, Florida, this _____ day of _____, 20__.

[Judge's Name], Chief Judge/Circuit Judge

Copies Provided To:

[Personal Representative Name], Personal Representative OR [Subject Lawyer Name], [insert appropriate address];

Staff Counsel, The Florida Bar, [insert address] via email at invatty@floridabar.org;

Bar Counsel, The Florida Bar [insert address] via email at _____@floridabar.org; and

[Inventory Lawyer Name], Inventory Lawyer [insert address] via email at [insert email].

FORM 9

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

In Re:

THE FLORIDA BAR,

Petitioner,
No. _____

Circuit Court Case

Florida Bar File No.

[SUBJECT LAWYER NAME],

A _____ *[disbarred, deceased, suspended, etc.]* lawyer.
_____/

ORDER

This cause come on to be heard on the petition of [Inventory Lawyer Name], as inventory lawyer for the files of and records of [Subject Lawyer Name], for the approval of a final report and for discharge, and the court being fully advised, it is

ORDERED:

1. That the final report of inventory lawyer for the files and records of [Subject Lawyer Name] is hereby approved.
2. That [Inventory Lawyer Name] is hereby discharged as the inventory lawyer for the files and records of [Subject Lawyer Name].

DONE AND ORDERED in Chambers at _____, County of _____, Florida, this _____ day of _____, 20__.

[Judge's Name], Chief/Circuit Judge

Copies Provided To:

[Personal Representative Name], Personal Representative OR [Subject Lawyer Name], [insert appropriate address], via email at [insert email address];

Staff Counsel, The Florida Bar [insert address], via email at invatty@floridabar.org;

Bar Counsel, The Florida Bar [insert address], via email at _____@floridabar.org; and

[Inventory Lawyer Name], Inventory Lawyer [insert address], via email at [insert email address].

SAMPLE ADMINISTRATIVE FORM

**PRE-NEED INVENTORY ATTORNEY AGREEMENT
CONSENT TO CLOSE OFFICE**

This consent agreement is entered into between _____, hereinafter referred to as "Subject Attorney," and _____, hereinafter referred to as "Inventory Attorney."

The Subject Attorney authorizes the Inventory Attorney to take all actions necessary to close my legal practice due to my disability, incapacity or death. These actions include but are not limited to:

Making application to the appropriate circuit court for appointment as an inventory attorney under 1-3.8, R. Regulating Fla. Bar;

- Entering my office and utilizing my equipment and supplies as needed to close my practice;
- Opening and processing my mail;
- Taking possession and control of all property comprising my law office, including client files and records;
- Examining files and records of my law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying my files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by my clients;
- Filing notices, motions, and pleadings on behalf of my clients where their interests must be immediately protected and other legal counsel has not yet been retained;
 - Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;
 - Winding down the financial affairs of Subject Attorney's practice, including providing Subject Attorney's clients with a final accounting and statement for services rendered Inventory Attorney, return of client funds, collection of fees on Subject Attorney's behalf payment of business expenses, and closure of business accounts when appropriate;
 - Advertising Subject Attorney's law practice or any of its assets to find a buyer for the practice;



- Signing checks on my trust account and providing an accounting to my clients of funds in trust; and,
- Contacting my professional liability carrier concerning claims and potential claims.

The Subject Attorney's bank or financial institution may rely on the authorizations in this Agreement unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

Subject Attorney authorizes Inventory Attorney to provide legal services to Subject Attorney's former clients providing Inventory Attorney has no conflict of interest and obtains the consent of Subject Attorney's former clients to do so. Inventory Attorney has the right to enter into an attorney-client relationship with Subject Attorney's former clients and to have clients pay Inventory Attorney for his or her legal services. Inventory Attorney agrees to check for conflicts of interest, and when necessary, to refer the clients to another attorney.

The Inventory Attorney agrees to preserve confidential information and the attorney-client privilege of my clients and to make disclosure only to the extent reasonably necessary to carry out the purpose of this consent. The Inventory Attorney is appointed as my agent for purposes of preserving my clients' confidential information, the attorney-client privilege, and the work product privilege. This authorization does not waive any attorney-client privilege.

I appoint the Inventory Attorney as signatory, or in substitution of my signature, on my lawyer trust account(s) upon my disability, incapacity or death.

I understand that the Inventory Attorney will not process, pay, or in any other way be responsible for payment of my personal bills.

Subject Attorney and Inventory Attorney acknowledge that the duties specified under this Agreement are subject to and controlled by the requirements of 1-3.8, R. Regulating Fla. Bar.

[Subject Attorney]

[Date]

STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 20____, by _____ (name of person acknowledging).

(NOTARY SEAL)

Signature

Name (Typed, Printed, or Stamped)

My commission expires: _____

Personally known _____ OR Produced Identification _____
Type of Identification Produced

HANDBOOK ON LAWYER ADVERTISING AND SOLICITATION



The Florida Bar

Standing Committee on Advertising

Eleventh Edition

Updated July 7, 2022

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INTRODUCTION

The Florida Bar's Standing Committee on Advertising (SCA) has been charged by the Supreme Court of Florida with the responsibility of evaluating all non-exempt lawyer advertisements, as well as all direct mail communications to prospective clients, for compliance with the Rules Regulating The Florida Bar. Accordingly, such advertisements and communications must be filed with The Florida Bar for review. Due to the high volume of advertisements filed by Florida lawyers and the need to comply with the 15-day deadline imposed by the Supreme Court of Florida, the SCA has delegated the initial review function to the staff of the Ethics and Advertising Department of The Florida Bar.

This handbook was produced by the Ethics and Advertising Department in an effort to assist advertising lawyers in developing advertisements that comply with the rules governing lawyer advertising. For your convenience, this handbook includes, among other things: an overview of applicable regulations broken down by the type of advertisement to which they apply; a reproduction of Subchapter 4-7 of the Rules Regulating the Florida Bar in its entirety; answers to frequently asked questions about lawyer advertising regulations; quick reference checklists for different advertising media. Examples of complying and non-complying advertisements, including direct mail, appear in a separate document on The Florida Bar's website at www.floridabar.org under "Advertising Regulation."

Filings and other communications regarding lawyer advertising should be directed to:

Ethics & Advertising Department
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
Telephone number (850) 561-5780

When the Lawyer Advertising Rules Apply

Types of Media – Rule 4-7.11(a)

Florida's lawyer advertising rules apply to all forms of communication seeking legal employment in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media.

Florida Bar Members – Rule 4-7.11(b)

Florida's lawyer advertising rules apply to lawyers admitted to practice in Florida advertising to provide legal services in Florida.

Lawyers Admitted in Other Jurisdictions - Rule 4-7.11(b)

Florida's lawyer advertising rules apply to lawyers admitted to practice in jurisdictions other than Florida who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. Out-of-state lawyers may only advertise to provide legal services in Florida when they are authorized by other law to provide those services in Florida, such as lawyers who are authorized by Federal law to practice before the Citizenship and Immigration Services, before the U.S. Patent Office, before the Internal Revenue Service, and before the Social Security Administration anywhere in the United States. Out-of-state lawyers may not advertise to provide legal services in Florida for state matters, such as personal injury, probate, traffic, or criminal law. *See* Rule 10-2.1(c). An out-of-state lawyer's expectation that the lawyer will be admitted pro hac vice in a particular matter does not authorize the out-of-state lawyer to advertise to provide legal services in Florida. *Id.*

Press Releases - SCA Decision

Under Rule 4-7.11, Florida's lawyer advertising rules apply to press releases that are provided to media outlets by lawyers or law firms. However, a lawyer or law firm is not required to file a press release with the bar for review if the press release is provided solely to legitimate media outlets where the media outlets have complete editorial control, including whether to print any information in the press release, and where the media outlet is not paid to print information from the press release.

Referral Sources - Rule 4-7.11(c)

Florida's lawyer advertising rules apply to communications made to referral sources about legal services.

Class Actions – SCA Decision

Advertisements designed to obtain clients to join as members of a class are subject to the lawyer advertising rules.

Seminars – SCA Decision

Florida's lawyer advertising rules apply to announcements of and invitations to attend seminars sponsored by a lawyer or law firm.

Welcome Wagon / Val Pak / Money Mailers – SCA Decision

Lawyer or law firm advertisements in a coupon express (such as welcome wagon, val pak, or money mailer) in which the lawyer's advertisement is enclosed with multiple advertisements from various businesses, must comply with general advertising regulations for print advertisements, but need not comply with direct mail requirements and are not considered a form of direct solicitation.

When the Lawyer Advertising Rules Do Not Apply

Advertisements Used Out of State - Rule 4-7.11 Comment

Florida's lawyer advertising rules do not apply to advertisements aired or disseminated in a jurisdiction other than Florida if the Florida Bar member is admitted in the other jurisdiction, the advertisement complies with the appropriate rules of that jurisdiction, and the advertisement is not intended for use in Florida.

Mediators – SCA Decision

Advertisements for mediation services for lawyer/mediators who are subject to the ethics rules for mediators that provide no information about the lawyer's legal services or qualifications other than that the mediator is a lawyer or member of The Florida Bar are not subject to the lawyer advertising rules and need not be filed for review. Mediators should contact the Alternative Dispute Resolution Center at (850) 921-2910 for guidance concerning rules for certified mediators and mediator advisory ethics opinions.

Newspaper Articles – SCA Decision

Columns or articles for a newspaper which are informational, do not contain promotional information about the lawyer, and do not solicit legal employment are not considered lawyer advertising and need not be filed for review.

Political Advertisements – SCA Decisions

Advertisements for politicians or political causes that do not promote a lawyer or law firm are not considered lawyer advertising and need not be filed for review. Advertisements for a political campaign where a lawyer is running for political office are not subject to the lawyer advertising rules.

Solicitation of Birth Mothers - SCA Decision

Florida’s lawyer advertising rules do not apply to advertisements to solicit birth mothers when placed by a lawyer on behalf of existing adoption clients.

Witnesses

Florida’s lawyer advertising rules do not apply to notices to find witnesses if the lawyer has an existing client and the lawyer does not accept prospective clients as a result of placing the notice seeking witnesses.

Note: Although the lawyer advertising rules do not apply to some communications, the rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation applies to all communications of a lawyer. Rule 4-8.4(c)

Prohibited Forms of Solicitation

Direct Contact with Prospective Clients - Rule 4-7.18(a)

A lawyer may not contact a prospective client in-person, including by telephone or through other means of direct real-time electronic contact such as video telephone or video conference, if a significant motive is the lawyer’s pecuniary gain, unless the prospective client is a family member, current client, former client, or other person with whom the lawyer has a prior professional relationship. This prohibition does not extend to unsolicited direct mail or email communications made in compliance with Rule 4-7.18(b). Further, the comment to this rule states that lawyers may initiate the mutual exchange of contact information at business-related events and business-related social media platforms if the lawyer does not initiate discussion of a specific legal matter. However, a lawyer may not go to a specific event specifically to initiate such an exchange, and the comment expressly states that accident scenes, hospital rooms, and doctor’s offices are not business or professional meeting locations. The Board of Governors has determined that participation in real-time Internet chat rooms is not a form of prohibited solicitation as long as there is no face-to-face communication and the communication meets the requirements of direct written solicitations in Rule 4-7.18(b), in Florida Advisory Advertising Opinion A-00-1 (2016). The Board of Governors also has determined that the in-person solicitation prohibition does not extend to unsolicited text messages meeting the requirements of Rule 4-7.18(b), as long as the lawyer provides an “opt-out” for recipients; recipients are not required to pay for receipt of the text messages; and the lawyer complies with all applicable state and federal laws, rules, and regulations regarding unsolicited text messages. The lawyer is

responsible for determining compliance with applicable laws, rules and regulations, including the federal Telephone Consumer Protection Act, 47 U.S.C. §227. The following have been found to be prohibited direct in-person solicitation by the SCA:

- cold calls;
- an advertisement printed on a pharmacy bag that is handed directly to pharmacy customers;
- an advertisement printed on a claim check for valet service at a hospital;
- an advertisement printed on a folder given by a realtor to the realtor's clients;
- business cards and flyers passed out to passers-by; and
- an advertisement printed on a wristband to indicate that a customer or attendee is of legal drinking age.

Payment for Recommendations - Rule 4-7.17(b)

A lawyer may not give anything of value to a person for recommending the lawyer's services. This prohibition does not prevent a lawyer from paying the reasonable cost of advertising or the payment of usual charges to a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) or other legal service organization; nor does it apply to the sale of a law practice as permitted under Rule 4-1.17.

Statutory Prohibitions

Lawyers should also be aware that certain forms of solicitation may be prohibited under Florida Statutes. *See, e.g.*, § 119.105, Fla. Stat. (forbidding use of information from non-confidential police reports to solicit accident or crime victims or their relatives); §877.02, Fla. Stat. (making it a misdemeanor for employees of hospitals, sanitariums, police departments, wrecker services, garages, prisons or courts, or for bail bondsmen, investigators, photographers, insurance or public adjustors to assist a lawyer in soliciting legal business); §316.066(3)(c), Fla. Stat. (forbidding use of information from accident reports prepared by law enforcement officers for commercial solicitation); and 49 U.S.C. §1136(g)(2) (prohibiting unsolicited communications offering personal injury representation within 45 days after an interstate or international air carrier accident).

Regulations Governing Content

Required Content

Name of Lawyer or Law Firm - Rule 4-7.12(a)(1)

All forms of lawyer advertising, including advertisements that are exempt from the filing requirement, must include the name of at least one lawyer, law firm, or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertising content. The name must be reasonably prominent in the advertisement.

Lawyers must advertise and practice under their official bar names. Each member of The Florida Bar is required to designate an official bar name, which must be used in the course of the member's practice of law. Rule 1-3.3(a) and (b). A lawyer may change the lawyer's official bar name only with the approval of the Supreme Court of Florida. The Supreme Court of Florida website states that a lawyer may change the lawyer's official bar name by sending a letter or a completed form to the clerk's office requesting that the name be changed on the roll of attorneys. The request must include the lawyer's name as currently listed with The Florida Bar; the new name clearly divided into first, middle, and last names; and Florida Bar number. The lawyer must also include a self-addressed stamped envelope for return of the order approving the change. The court asks that the lawyer include no personal documents with the request, such as copies of identification documents or marriage/dissolution documents. The address of the clerk's office is: 500 South Duval Street, Tallahassee, Florida, 32399-1927. The telephone number is 850-488-0125. The name change form may be found at:
http://www.floridasupremecourt.org/clerk/forms/06-20-2017_NameChangeRequest.pdf#f

Location of Practice - Rule 4-7.12(a)(2)

- All forms of lawyer advertising must disclose the city, town or county of 1 or more bona fide office locations of the lawyer or lawyers who will perform the services advertised. The geographic location disclosure must be reasonably prominent. The SCA has found that an advertisement is misleading if it lists law firm offices in several cities when, in fact, there are no bona fide firm offices in those cities. The comment to Rule 4-7.12 defines "bona fide office" as "a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis." The commentary also states that "An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule." The SCA has developed the following criteria for determining whether an advertised location is a bona fide office:
- Does the office have the firm's name on an outside office sign or on the building's directory?

- Is the advertised location staffed by law firm employees who answer phone calls at that location from prospective clients?
- Is the advertised location staffed by receptionists, secretaries, clerks, or paralegals employed by the firm on a full-time basis?
- Other than client interviews and conferences, do firm lawyers furnish legal services from the advertised location?
- Is the advertised location staffed by at least one firm lawyer on a regular and continuing basis?

Even though a lawyer may not advertise an office location that is not a bona fide office, the lawyer may advertise that the lawyer is “available for consultation” or “available by appointment” at a specified location. These designations are appropriate when the space is a “virtual office” that is owned or under the control of another, is shared with multiple lawyers or other professionals, or is a conference room or other space rented by the hour. A lawyer may identify other office locations as “limited service” or “satellite” offices only if the advertised office location is controlled exclusively by the lawyer’s law firm.

Referrals to Another Lawyer – Rule 4-7.12(b)

Advertisements in which the advertising lawyer intends to refer the advertised matter to another lawyer or law firm must contain a reasonably prominent disclaimer indicating the matter will be referred. The required disclaimer may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where the disclaimer appears as on-screen text, it must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule.

Languages – Rule 4-7.12(c)

All required information in an advertisement must appear in the same language used in the advertisement. If more than 1 language is used, the required information must appear in all languages used in the advertisement.

Legibility – Rule 4-7.12(d)

All required information in an advertisement must be reasonably prominent and clearly legible if written and clearly audible if spoken aloud. For example, advertisements including dramatizations of actual or fictitious events must contain the disclaimer: “DRAMATIZATION. NOT AN ACTUAL EVENT.” For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the

same size as the largest text used in the advertisement, or the same size as the text that a required disclaimer qualifies. However, required information may need to be printed in a different color, bolded, or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. A required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. In a television advertisement where required information appears as on-screen text, the required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. If a disclaimer is required in a television advertisement, it must be on-screen at the same time and for a reasonable amount of time as compared to the information the disclaimer qualifies. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required to qualify other information provided in the advertisement, the disclaimer must be spoken reasonably close to the information requiring the disclaimer. Required information, including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies. Examples of information required to appear in advertisements are:

All media:

- Name of lawyer, law firm, or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) for the advertisement - Rule 4-7.12(a)(1)
- Geographic disclosure of bona fide office by city, town, or county - Rule 4-7.12(a)(2)
- Disclosure that cases will be referred to another lawyer - Rule 4-7.12(b)
- Disclosure “Not an employee or member of law firm” - Rule 4-7.13(b)(5)
- Disclosure “DRAMATIZATION. NOT AN ACTUAL EVENT” when applicable - Rule 4-7.13(b)(6)
- Disclosure that a prospective client may not obtain the same or similar results when a testimonial contains specific results - Rule 4-7.13(b)(9)
- Name of certifying organization and area of practice for which a lawyer is board certified if the advertisement states that the lawyer is certified - Rule 4-7.14(a)(4)
- Cost disclosure, if the advertisement provides fee information - Rule 4-7.14(a)(5)
- Time a price will be honored, if the advertisement lists a price that is valid for a period of less than 90 days [or 1 year for annual publications such as the yellow pages] - Rule 4-7.14(a)(5)

Additional requirements for all unsolicited direct mail and email

- “Advertisement” on the outside of direct mail advertisements and on each separate enclosure included in the advertisement or the inside of a self mailing brochure [“Advertisement” as the first word of the subject line if an email or the first word of a targeted social media communication] - Rule 4-7.18(b)(2)(B)
- If the case will be handled by a lawyer who did not sign the advertisement or whose name does not appear in the advertisement, direct mail, email or targeted social media advertisements must so indicate - Rule 4-7.18(b)(2)(G)
- Statement of lawyer or law firm qualifications is required [see guidelines for both lawyer and firm qualifications] - Rule 4-7.18(b)(2)(C)

Additional requirements for all unsolicited *targeted* direct mail, targeted email, and targeted social media communications (prompted by a specific occurrence):

- Targeted direct mail, email, and targeted social media communications must contain a statement as to how the lawyer obtained the information about the prospective client’s legal matter - Rule 4-7.18(b)(2)(H)
- Targeted direct mail, email, and targeted social media communications must include as the first sentence “If you have already retained a lawyer for this matter, please disregard this letter.” Rule 4-7.18(b)(2)(E)

Deceptive and Inherently Misleading Statements – Rule 4-7.13

A lawyer cannot make deceptive or inherently misleading communications about the lawyer or services offered. This rule prohibits advertisements that contain a material statement that is factually or legally inaccurate, material omissions, or implications of material nonexistent facts. Examples of deceptive and inherently misleading statements include:

Predictions of Success – Rule 4-7.13(b)(1)

An advertisement cannot include statements that a consumer can reasonably interpret as a prediction or guaranty of success or specific results the lawyer can achieve. The comment to Rule 4-7.13(b)(1) provides the following as examples of statements that would violate the rule: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.” The comment also provides the following regarding interpretation of the rule:

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter.

Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results – Rule 4-7.13(b)(2)

Information regarding past results must be factually verifiable and cannot omit facts that would make the results misleading under Rules 4-7.13(b)(2) and 4-7.14.

Comparisons – Rule 4-7.13(b)(3)

An advertisement cannot compare lawyers’ skills, experience, reputation or record unless the comparison is objectively verifiable.

Areas Not Currently Practiced – Rule 4-7.13(b)(4)

A lawyer cannot advertise practice areas in which the lawyer does not currently practice or intend to practice.

Nonlawyer Appearing to be Member of Firm – Rule 4-7.13(b)(5)

Advertisements cannot contain a voice and/or image that create the impression that the person is an employee or member of the law firm. If the person is not an employee or member of the law

firm, the following disclaimer must be displayed clearly and conspicuously in the advertisement: “Not an employee or member of law firm.” The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time that the person appears in the advertisement and for a reasonable amount of time as compared to the time the person is on-screen. In an advertisement where the disclaimer is spoken, it must be clearly audible and at a comparable volume and speed as other information in the advertisement and spoken reasonably close to when the person is speaking if the person speaks in the advertisement.

Dramatizations – Rule 4-7.13(b)(6)

Advertisements using dramatizations of actual or fictitious events must contain the prominently displayed disclosure: “DRAMATIZATION. NOT AN ACTUAL EVENT.” The SCA has determined that use of stock photographs or footage do not require the disclaimer unless they are used in the context of a testimonial, during the description of a specific client’s story, or when the advertisement otherwise states or implies that the stock photograph or footage is related to an actual case. The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time the dramatization appears and for a reasonable amount of time as compared to the dramatization. In an advertisement where the disclaimer is spoken, it must be clearly audible, at a comparable volume and speed as other information in the advertisement and spoken reasonably close to the dramatization.

Actor Disclosure – Rule 4-7.13(b)(7)

Advertisements using actors appearing to be engaged in a specific profession must include a prominently displayed disclosure “ACTOR. NOT ACTUAL [OCCUPATION].” See also, Authority Figures - Rule 4-7.15(b).

Implying Use of Improper Tactics – Rule 4-7.13(b)(8)

Advertisements cannot include statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will use tactics that are prohibited by the Rules of Professional Conduct, court order, court rule or law.

Testimonials – Rule 4-7.13(b)(9)

Testimonials are prohibited unless they meet the following requirements:

- the person making the testimonial must be qualified to evaluate the lawyer

- the testimonial must be the actual experience of the person making the testimonial
- the information provided by the testimonial must be representative of what clients of the lawyer or law firm generally experience
- the lawyer may not write or draft the testimonial
- the person making the testimonial may receive nothing of value in exchange for the testimonial
- if the testimonial contains information about results obtained, the advertisement must contain a prominent disclaimer that prospective clients may not obtain the same or similar results.

The required disclaimer must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The required disclaimer must be reasonably near and clearly connected to the information the disclaimer qualifies. If appearing in a television advertisement where the disclaimer appears as on-screen text, the disclaimer must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the testimonial. In an advertisement where the disclaimer is spoken, it must be clearly audible, at a comparable volume and speed as the testimonial, and spoken reasonably close to the testimonial. Additionally, the lawyer must have the client's informed consent to use a testimonial related to a client's matter, pursuant to Rule 4-1.6 (a).

Implying Florida Bar Approval – Rule 4-7.13(b)(10)

Advertisements cannot state or imply that they or the advertised lawyer or law firm have been approved by The Florida Bar. An advisory opinion from the SCA regarding compliance with lawyer advertising regulations is not the equivalent of "approval" by The Florida Bar. Any use of the bar's seal or logo must be approved by The Florida Bar Board of Governors or Executive Director. Florida Bar members may not use The Florida Bar seal in advertisements. Use of the seal is misleading because it implies bar approval of the advertisement.

Judicial Titles – Rule 4-7.13(b)(11)

Retired or former judges cannot use the title "Judge" preceding their names in advertisements. Retired or former judges therefore cannot use "Judge Smith," "Retired Judge Doe" and the like. However, the title may be used with an appropriate modifier after the retired or former judge's name, e.g., Jane Smith, Retired Circuit Court Judge; or John Doe, former County Court Judge.

Executive Titles – Rule 4-7.13(b)(11)

Retired or former executive officials cannot use their former titles preceding their names in advertisements. However, the title may be used with an appropriate modifier after the retired or former executive branch official's name. Thus, while "Governor Smith" would not be permissible, Jane Smith, former governor, or John Doe, Florida governor (2008-2012) would be permitted under this rule.

Legislative Titles – Rule 4-7.13(b)(11)

Retired or former legislators cannot use their former titles preceding their names in advertisements. However, the title may be used with an appropriate modifier after the retired or former legislator's name. Therefore, "Senator Smith" would be impermissible while "Jane Smith, state senator (2000-2006)" would be permissible.

Internet Searches; Implied Affiliation – Rule 4-7.13(b)(12)

Paid internet search results are subject to the lawyer advertising rules.

An additional issue with the use of such advertisements concerns the search terms that trigger the resulting advertisements. Using the name of a competitor in a way that makes it seem as though that competitor is affiliated with the advertising lawyer or that misleads a person searching the internet for the competitor to unknowingly contact the advertising lawyer would be misleading and violate Rule 4-7.13(b)(12). The comment to the Rule notes that the triggered internet search result would not be misleading if the first text displayed is the name of the advertising lawyer or law firm. In the alternative, if the law firm name is a trade name that does not contain the name of a lawyer, the name of the lawyer responsible for the advertisement must be displayed as the first text.

Potentially Misleading Advertisements – Rule 4-7.14

Varying Interpretations – Rule 4-7.14(a)(1)

Advertisements that are subject to reasonable varying interpretations are prohibited unless they contain sufficient information to clarify the potentially misleading nature of the advertisement. The clarifying information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The clarifying information must be reasonably near and clearly connected to the information it qualifies. If appearing in a television advertisement where the clarifying information appears as on-screen text, it must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information it qualifies. In an advertisement where the clarifying information is spoken, it must be clearly audible, at a comparable volume and speed as the information it clarifies and spoken reasonably close to the information it clarifies.

Literally Accurate but Misleading – Rule 4-7.14(a)(2)

Advertisements that contain information that is literally accurate but could reasonably mislead a consumer about a material matter are prohibited as potentially misleading. The advertisement would comply if sufficient information to clarify the potentially misleading nature of the advertisement is added. The clarifying information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The clarifying information must be reasonably near and clearly connected to the information it qualifies. If appearing in a television advertisement where the clarifying information appears as on-screen text, it must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as

compared to the information it qualifies. In an advertisement where the clarifying information is spoken, it must be clearly audible, at a comparable volume and speed as the information it clarifies, and spoken reasonably close to the information it clarifies.

Awards, Ratings, and other Honors – Rule 4-7.14(a)(3)

Advertisements cannot contain information about awards, honors, ratings or memberships of lawyers “unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover.” Additionally, the SCA has determined that references to awards, honors, ratings or memberships are potentially misleading unless the exact name of the rating or award is used, the exact name of the organization giving the rating or award is included, the year the rating or award is bestowed is included, and the organization uses legitimate selection criteria. The committee has determined, however, that the year that the rating or award was bestowed is not required in advertisements aired or published in the same year that the rating or award was given.

A lawyer may state that the rating is the highest, but other statements characterizing the rating or award may not be permissible. For example, a lawyer may state that the lawyer is AV rated, the highest rating by Martindale-Hubbell, but the lawyer may not state that the rating is prestigious. A lawyer may state that the lawyer is included in the [Year of Inclusion] Best Lawyers in America, but the lawyer may not refer to him or herself as one of the best lawyers in America.

Note: The use of Martindale-Hubbell ratings may be restricted by the publisher. For information on the use of ratings, please see Martindale-Hubbell Peer Review Ratings Use Guidelines. (<https://www.martindale.com/assets/pdf/PRR-CRR%20Use%20Guidelines%20Final.pdf>)

Board Certification, Specialization, Expertise – Rule 4-7.14(a)(4)

Lawyer advertisements may not include statements that claim or imply a lawyer is “certified” or “board certified” in an area of law unless the lawyer is Board Certified in that practice area. Lawyers certified by The Florida Bar must identify The Florida Bar as the certifying organization. If a lawyer is certified by another state bar, the lawyer may state that the lawyer is “certified” or “board certified” in an area of law only if the state bar certification program is comparable to Florida’s certification program and the advertisement indicates that the certifying organization is the other state bar. If the lawyer is certified by another organization, the lawyer may state that the lawyer is “certified” or “board certified” in an area of law only if the certifying organization has been accredited by the American Bar Association or The Florida Bar, and the advertisement identifies the certifying organization. Both the certifying organization and the area of certification must be included in the advertisement. The certifying organization and area of certification must be reasonably prominent and may not appear in fine print, nor buried in a footnote. The certifying organization and area of certification must be reasonably near and clearly connected to the statement indicating that the lawyer is certified or board certified. If appearing in a television advertisement where the certifying organization and the area of certification appear as on-screen text, they must appear in sufficient size and must be on-screen

at the same time and for a reasonable amount of time as compared to the statement that the lawyer is certified or board certified in an area of law. In an advertisement where the certifying organization and the area of certification are spoken, they must be clearly audible and at a comparable volume and speed as the information provided about certification and spoken reasonably close to the information about certification. In addition, an advertisement may not state or imply that a law firm is board certified in a particular area of practice; only individual lawyers can claim certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that no all lawyers in the firm specialize or have expertise in that area.

Cost Disclosure – Rule 4-7.14(a)(5)

Every lawyer advertisement that contains information about the lawyer's fee must also disclose whether the client will be responsible for costs or any other expenses in addition to the fee. Advertisements which state that the lawyer's fee is contingent upon the outcome or that the fee will be a percentage of the recovery must also disclose whether the client will be responsible for costs if there is no recovery. For example, if fees and costs are contingent on the outcome of a case, a lawyer may state "No recovery, no fees or costs." If fees but not costs are contingent on the outcome, the lawyer may state "No recovery, no fee, but client is responsible for costs." The SCA has previously determined that if a lawyer states that the lawyer charges a flat fee, a disclosure of whether the client will be responsible for costs in addition to the flat fee is required. However, the SCA has also determined that stating that the lawyer offers an initial consultation at no charge does not require a disclosure of costs (unless there is a cost associated with the initial consultation). The cost disclosure information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The cost disclosure must be reasonably near and clearly connected to the fee information. If appearing in a television advertisement where the cost disclosure appears as on-screen text, the disclosure must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information provided about fees. In an advertisement where the disclaimer is spoken, it must be clearly audible, at a comparable volume and speed as the information about fees and spoken reasonably close to the information about fees.

Honoring Advertised Fees – Rule 4-7.14(a)(5)

Advertised fees or a range of fees for particular services must be honored by the advertising lawyer for at least 90 days, unless the advertisement specifies a shorter time period. The specification of a shorter time period must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. The specification of a shorter time period must be reasonably near and clearly connected to the fee information. If appearing in a television advertisement where the disclaimer appears as on-screen text, the shorter time period must appear in sufficient size, must be on-screen at the same time and for a reasonable amount of time as compared to the information about fees. In an advertisement where the shorter time period is

spoken, it must be clearly audible, at a comparable volume and speed as the information about the fee, and spoken reasonably close to the information about the fee. However, for yellow pages advertisements or advertisements in other directories or publications that are published annually, the fee must be honored for no less than one year following publication.

Unduly Manipulative or Intrusive Advertisements – Rule 4-7.15

Manipulative Appeals – Rule 4-7.15(a)

An advertisement cannot contain any image, sound, video or dramatization that is unduly manipulative. An advertisement is unduly manipulative if it is “designed to solicit legal employment by appealing to a prospective client’s emotions rather than to a rational evaluation of a lawyer’s suitability to represent the prospective client.”

As an example, many advertisements use animals. Some advertisements include animals purely as an attention-getting device, while others include animals in an attempt to compare lawyers or their legal services to the animals appearing in the advertisements. Many advertisements using animals are permissible under the lawyer advertising rules. However, the SCA’s opinion is that use of animals is prohibited in advertisements when the animal is shown in a predatory or aggressive way, such as attacking another animal, growling, showing teeth, because that suggests the lawyer will act in an inappropriate fashion. The SCA’s opinion does not mean, however, that an advertisement could not include an aggressive growling dog used to indicate that a lawyer or law firm handles dog bite cases if the advertising lawyers are not improperly comparing themselves to the aggressive animal. Similarly, any use of the animal that would suggest that the lawyer would engage in improper tactics would be improper. See, *The Florida Bar v. Pape & Chandler*, 918 So.2d 240 (Fla. 2005), in which 2 lawyers were publicly reprimanded for using 1-800-PITBULL and drawing of a pit bull in their television ads, because the Supreme Court of Florida found that improperly indicated that the lawyers would engage in improper tactics, as pit bulls are often perceived as representing vicious behavior.

Authority Figures – Rule 4-7.15(b)

An advertisement cannot use an authority figure such as a judge or law enforcement officer, or an actor portraying a judge or law enforcement officer, to endorse or act as a spokesperson for a lawyer or law firm.

Celebrities – Rule 4-7.15(c)

An advertisement cannot contain the voice or image of a celebrity. Rule 4-7.15(c). A celebrity is defined as “an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level.” Comment to Rule 4-7.15(c). An exception to the rule is that advertisements may be recorded by “a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.”

Economic Incentives – Rule 4-7.15(d)

An advertisement cannot offer an economic incentive for consumers to hire the lawyer or view the advertisement. For example, the SCA has determined that a lawyer cannot offer a gift card in exchange for a consumer “liking” the lawyer’s Facebook page, because the consumer must go to the lawyer’s Facebook page and view information about the lawyer in order to “like” the page. However, a lawyer may offer a discount on legal fees or a special fee structure, or free legal advice in an advertisement.

Presumptively Valid Content – Rule 4-7.16

Lawyers and Law Firms

Lawyers and law firms may include the following information in advertisements, which is presumed not to violate the lawyer advertising rules:

- the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, Website addresses, email addresses, office and telephone service hours, and a designation such as “lawyer” or “law firm”;
- date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
- technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
- military service, including branch and dates of service;
- foreign language ability;
- fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification;
- participation in prepaid or group legal service plans;
- credit cards accepted;
- fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;

- common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;
- punctuation marks and common typographical marks;
- an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

Qualifying Providers

Qualifying providers (lawyer referral services, matching services, group or pooled advertising programs, directories, or tips or leads generators) may include the following information in their advertisements, which are presumed not to violate the lawyer advertising rules:

- name, location, telephone number;
- referral fee charged;
- hours of operation;
- process by which referrals are made;
- areas of law in which referrals or matches are offered;
- geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched; and
- the logo of its sponsoring bar association and its nonprofit status if approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar.

Payment for Advertising and Promotion – Rule 4-7.17

Payment by Other Lawyers – Rule 4-7.17(a)

A lawyer may not pay all or part of the costs of the advertising of another lawyer who is not a member of the same law firm. However, lawyers may advertise jointly. If lawyers advertise jointly, all required information must be included for each advertising law firm. Additionally, if lawyers advertise jointly, the lawyers must not to state or imply that they are part of the same law firm so that the public will not be misled. See Rule 4-7.21(f). Depending on the circumstances, the advertisement may need to include a prominently displayed disclaimer that the lawyers practice in separate law firms.

Payment for Referrals – Rule 4-7.17(b)

A lawyer is not permitted to give anything of value to another person for recommending the lawyer or for referrals. However, a lawyer may pay reasonable costs of advertising, fees charged by a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) that do not constitute improper division of legal fees, fees charged by a lawyer directory that do not constitute an improper division of legal fees, and may buy a law practice in conformance with Rule 4-1.17. A lawyer may not participate in networking or tips clubs where members are required to make referrals to each other as part of the membership. Massachusetts Ethics Opinion 08-01; Montana Ethics Opinion 960227; New York City Bar Opinion 2000-1; New York State Ethics Opinion 791 (2006); and Virginia Legal Ethics Opinion 1846 (2009).

Payment by Nonlawyers – Rule 4-7.17(c)

A nonlawyer may not pay all or part of the costs of a lawyer's advertising.

Firm Names – Rule 4-7.21

Lawyers may not advertise under firm names that are false, misleading or deceptive. Therefore, a lawyer may not use a trade name that implies connection with a government agency or with a public or charitable legal services organization. Some trade names may require a disclaimer such as “a private law firm” so as not to be misleading. The disclaimer must be reasonably prominent as defined above. Similarly, a lawyer may not practice under a trade name that includes the phrase “legal clinic” or “legal services” unless the practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services. In addition, a lawyer may not advertise under a trade name unless the same name appears on the lawyer's letterhead, business cards, office sign, fee contracts, and appears with the lawyer's signature on pleadings and other legal documents. A firm name may not include the name of a person who is not a partner or shareholder of the firm, except that the firm may continue to use the name of a deceased partner or shareholder where there has been a continuing succession in the firm's identity. Rule 4-7.21, Comment.

Lawyers who are employed by insurance companies to represent insureds may use a name other than that of the insurance company if certain requirements are met so that there is no material misrepresentation. Rule 4-7.21(g). These requirements include the following: (1) that the name of a supervisory lawyer must be included in the firm name; (2) the employment relationship with the insurance company must be disclosed in, among other things, offices signs, firm letterhead, announcements, websites, business cards, advertising and legal directories; (3) the employment relationship with the insurance company must be disclosed to all clients, potential clients and in the official court file at the lawyer's first appearance; (4) the offices of the firm and insurance company should be physically and functionally separate as required by private practitioners sharing space with nonlawyers; and (5) the lawyer must take efforts to correct any misunderstanding when the lawyer knows or reasonably should know a client or prospective client misunderstands the situation. *Id.*

The SCA offers the following examples of misleading firm names. The law firm of Smith & Brown proposes to create a professional association to be called “The Personal Injury Firm.” This second law firm, which is wholly owned by Smith & Brown or its shareholders, will handle only personal injury matters. The Personal Injury Firm will have its own letterhead and members will sign pleadings under the name of the new firm. When handling personal injury matters, firm members will use business cards that include the name of The Personal Injury Firm. Otherwise, firm members will distribute business cards that include the original firm name of Smith & Brown. Separate books and records will be kept for the new practice. Smith & Brown intends to provide its new personal injury firm with employees, facilities, and equipment. In return, The Personal Injury Firm will pay Smith & Brown a fee based on the amount of profit earned by the new firm.

In essence, the new firm will operate parallel to Smith & Brown. The SCA believes that use of the “parallel law firm” name, The Personal Injury Firm, violates Rule 4-7.21 because it is deceptive and misleading. Use of the name The Personal Injury Firm implies that lawyers working for that firm practice exclusively in the area of personal injury when, in fact, those same lawyers also work for Smith & Brown, a firm which maintains a general law practice with no special emphasis. For a variety of reasons, the full extent of the nature of a firm’s practice can play a significant role in a prospective client’s decision about which firm to hire. Accordingly, an implied practice restriction that does not actually exist is deceptive and misleading. See also, Florida Ethics Opinions 93-6 and 93-7 (regarding other ethical concerns raised by the simultaneous practice in more than one law firm).

The SCA has determined that a sole practitioner may not use the term “and Associates” as part of the firm name, where the law firm employs no associates, to indicate that the firm employs associates is misleading in violation of Rule 4-7.2(c)(1). See also, *The Florida Bar v. Fetterman*, 439 So.2d 835 (Fla. 1983). In *Fetterman*, the Florida Supreme Court found it permissible to have the trade name “Fetterman & Associates” where the lawyer had associates when the name was adopted and continued to have one associate, but that the name would be misleading if the lawyer stopped employing any associates. The court noted that “associate” means a lawyer who is “a salaried employee who is not a partner of the firm.” *Id.* Similarly, the SCA has determined that use of the term “group” or “team” in a firm name implies that multiple lawyers are employed by the firm. Therefore, a sole practitioner cannot use the term “group” or “team” in the firm name.

Additional Regulations for Direct Mail, Email, and Targeted Social Media Communications to Prospective Clients – Rule 4-7.18

In addition to complying with the general regulations set forth above, all unsolicited direct mail, email, and targeted social media communications sent to prospective clients or referral sources must comply with the following regulations:

Regulations Applicable to All Unsolicited Direct Mail

Prospective Client Has Asked Not to Receive – Rule 4-7.18(b)(1)(C)

A lawyer may not send direct mail, email, and targeted social media communications to a person who has informed the lawyer that the person does not want to receive information from the lawyer.

Coercion, Duress, Fraud, Overreaching – Rule 4-7.18(b)(1)(D)

A lawyer may not send direct mail or direct email that involves “coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence.”

Physical and Mental State of Recipient – Rule 4-7.18(b)(1)(E)

A lawyer may not send direct mail, email, and targeted social media communications if 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 reasonably judgment in employing a lawyer.”

“Advertisement” Mark - Rule 4-7.18(b)(2)(B)

Every separate enclosure and the face of the envelope of an unsolicited direct mail communication to prospective clients must be reasonably prominently marked “Advertisement” in ink that contrasts with both the background and other text on the same page. For a self-mailing brochure, “Advertisement” must be marked on the address panel, on the inside of the brochure, and on every separate enclosure in the brochure in a color that contrasts with both the background and other text on the same page. The SCA does not interpret the rule as requiring that the “Advertisement” be in a different color from every other color that appears on the same page. Instead, the SCA is of the opinion that the “Advertisement” mark is not reasonably prominent if a reasonable consumer would likely not notice it. For example, the SCA is of the opinion that the “Advertisement” mark will not meet the requirements of the rule if all text on the page is in the same color as the “Advertisement” mark, all text near or surrounding the “Advertisement” mark is in the same color as the “Advertisement” mark, or the color of the “Advertisement” mark is not of sufficient contrast to its background. If the direct mail advertisement is sent as a postcard, the SCA has determined that the advertisement mark must appear on the reverse side of the postcard as well as the front of the postcard [please note that a targeted direct mail advertisement may not be sent as a postcard]. If the direct mail advertisement is sent as a self-mailing brochure, the address panel and the inside of the brochure must contain the “Advertisement” mark. An unsolicited email or targeted social media communication must include a subject line that begins with the word “Advertisement.” The “advertisement” mark may not appear in fine print, nor may it be buried in a footnote.

The SCA has determined that use of statements such as “Important Information,” “Urgent” and “Official Documents Enclosed” negate the purpose of the “Advertisement” mark, are misleading, and therefore are impermissible on the outside of an unsolicited direct mail communication. The

SCA also is of the opinion that it is impermissible to state “Important” with the word “Advertisement” or to have “Important Legal Documents Enclosed,” “Time Sensitive Information Enclosed,” “Open Immediately,” or other similar language on the outside of a direct mail advertisement.

Note: When filing direct mail advertisements that will be sent in an envelope, filers must include a sample envelope so that bar staff may determine whether the direct mail complies with this requirement.

Information solicited by prospective clients or that is sent only to existing and former clients, the lawyer’s family members, and other lawyers do not need to include the “advertisement” mark.

Statement of Qualifications - Rule 4-7.18(b)(2)(C)

Every unsolicited direct mail, email, and targeted social media communication to prospective clients must be accompanied by a written statement detailing the lawyer’s or law firm’s background, training and experience and must specifically include the advertising lawyer or law firm’s experience in preparing cases similar to the one that forms the subject matter of advertising. This statement may be either on a separate document or incorporated into the body of the direct mail communication, but it must include information on background, training, and experience. The SCA has adopted guidelines for the statement of qualifications for an individual lawyer, a law firm, and a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator), which appear in this handbook as appendices. Information that is sent only to existing and former clients, the lawyer’s family members, and other lawyers do not need to include the statement of qualifications. This information must be reasonably prominent and may not appear in fine print, nor may it be buried in a footnote. Information that is sent only to existing and former clients, the lawyer’s family members, and other lawyers do not need to comply with this requirement.

Inclusion of “Sample” Contract - Rule 4-7.18(b)(2)(D)

If a contract for representation is included in the direct mail, email, and targeted social media communication, the top of each page of the contract must be marked “SAMPLE” in red ink in a type size one size larger than the largest type used in the contract and the words “DO NOT SIGN” must appear on the client signature line. Information that is sent only to existing and former clients, the lawyer’s family members, and other lawyers do not need to comply with this requirement.

Resemblance to Legal Documents – Rule 4-7.18(b)(2)(F)

Direct mail, email, and targeted social media advertisements cannot be “made to resemble legal pleadings or other legal documents.” Information that is sent only to existing and former clients, the lawyer’s family members, and other lawyers do not need to comply with this requirement.

Additional Regulations for Targeted Direct Mail, Email & Targeted Social Media Communications

In addition to the general advertising regulations for all media and the general regulations for direct mail advertisements, the following regulations apply to unsolicited written communications prompted by a specific occurrence affecting the intended recipient or the recipient's family member:

First Sentence - Rule 4-7.18(b)(2)(E)

Any unsolicited written communication concerning a specific matter must include as its first sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The first sentence must be reasonably prominent and may not appear in fine print. Information that is sent only to existing and former clients, the lawyer's family members, other lawyers, and persons who have asked to receive information from the lawyer or law firm does not need to comply with this requirement.

Disclosure if Another Lawyer Will Handle the Case or Matter - Rule 4-7.18(b)(2)(G)

If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, the direct mail, email, or targeted social media advertisement must include a reasonably prominent statement so advising the client. Information that is sent only to existing and former clients, the lawyer's family members, and other lawyers does not need to comply with this requirement.

Disclosure of How Lawyer Obtained Information - Rule 4-7.18(b)(2)(H)

Any unsolicited direct mail, email, or targeted social media communication prompted by a specific occurrence involving or affecting the intended recipient or a family member must disclose how the lawyer obtained the information prompting the communication. This disclosure requirement is intended to help the recipient understand the extent of the lawyer's knowledge regarding the recipient's particular situation and to minimize the possibility of the recipient being misled into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. Rule 4-7.18, Comment. The advertisement must include enough information or explanation so that the recipient can find the information that prompted the unsolicited direct communication from the lawyer. Rule 4-7.18, Comment. A written communication may also comply with this requirement by stating what information the lawyer has, e.g., "I obtained your name from a list of investors and the only information on the list is the names and addresses of investors and the fact that the investment was made." Rule 4-7.18, Comment. This disclosure must be reasonably prominent in the advertisement and may not appear in fine print, nor may it be buried in a footnote. Information that is sent only to existing and former clients, the lawyer's family members, other lawyers, and persons who have asked to receive information from the lawyer or law firm does not need to comply with this requirement.

Disclosure of the Legal Problem on the Outside Prohibited - Rule 4-7.18(b)(2)(I)

An unsolicited direct mail communication seeking employment by a specific prospective client with regard to a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure, the nature of the client's legal problem. If a window envelope will be used in the advertisement, the nature of the prospective client's matter must not be visible through the glassine window, or the advertisement will be in violation of this requirement. Also, the SCA has determined that a targeted direct mail advertisement cannot be sent as a postcard, because required disclosures (that the person has a matter, how the information about the matter was obtained, and experience in the area of law being advertised) and other information on the postcard reveal the nature of the prospective client's legal problem to anyone viewing the postcard. To comply with this rule, a postcard either must be placed in an envelope, or must be converted to a self-mailing, fold-over brochure in which all information disclosing the nature of the legal problem is on the inside of the mailer and the fold over is secured shut.

The Supreme Court of Florida has determined that an advertisement did not violate this rule where a lawyer sent a direct mail brochure that included "The Ticket Clinic" with picture of stop sign and roadway, along with the words "Don't Just Roll Over Fight Back" on the outside because that information would not "lead inescapably to the conclusion that the recipient had indeed been charged with a particular offense" and "there was nothing to distinguish the outside of the brochure from numerous other unsolicited, seemingly random bulk mail advertisements which are mailed and delivered regularly in the hopes of gaining, by chance alone, some new customers or purchasers." *The Florida Bar v. Gold*, 937 So. 2d 652 (Fla., 2006). Following the court's reasoning, if the information on the outside would inescapably lead the viewer to the conclusion that the intended recipient had a specific legal problem, the advertisement would violate this rule.

Note: When filing direct mail advertisements that will be sent in an envelope, filers must include a sample envelope so that bar staff may determine whether the direct mail complies with this requirement.

Information that is sent only to existing and former clients, the lawyer's family members, other lawyers, and persons who have asked to receive information from the lawyer or law firm does not need to comply with this requirement.

30 Day Waiting Period - Rule 4-7.18(b)(1)(A)

If an unsolicited direct mail, email, or targeted social media communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, the lawyer must wait at least 30 days after the injury, death, accident or disaster to mail, email, or post the targeted social media communication.

Representation by Another Lawyer – Rule 4-7.18(b)(1)(B)

If an unsolicited direct mail, email, or targeted social media communication concerns a matter in which the sending lawyer knows or reasonably should know that the recipient is already represented by another lawyer, no direct mail, email, or targeted social media communication may be sent.

Waiting Period in Violence Injunction Cases - Rule 4-7.18(b)(1)(G)

If an unsolicited direct mail, email, or targeted social media communication concerns an injunction against violence, the lawyer cannot send the direct mail, email, or targeted social media if the lawyer knows or reasonably should know that the respondent in the injunction petition has not yet been served with notice of process in the matter.

Note: Newsletters qualify as direct mail communications. Newsletters must therefore, comply with the requirements of Rule 4-7.18 and must be filed for review in accordance with Rule 4-7.19 if mailed to prospective clients. Any subsequent editions of a previously filed newsletter must be filed for review as new advertisements if they include any new information about the lawyer or law firm, unless it is information of the type set forth in Rule 4-7.16(a) (“Permissible Content of Advertisements”). However, if no new information about the lawyer or law firm is added to subsequent editions of a previously filed newsletter, or if the only new information about the lawyer or law firm appearing in subsequent editions is covered by Rule 4-7.16(a), these subsequent editions need not be re-filed. *See* Florida Advertising Opinion A-99-01.

Qualifying Providers, Lawyer Referral Services, Matching Services, Group or Pooled Advertising, Directories, and Tips or Leads Generators – Rule 4-7.22

Definition – Rule 4-7.22(b)

A qualifying provider, which includes lawyer referral services, matching services, group or pooled advertising programs with a common telephone number or URL, directories, and tips or leads generators, is:

any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website

address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

Lawyer's Responsibility – Rule 4-7.22(e)

A lawyer is responsible for making sure that advertisements for qualifying providers comply with lawyer advertising rules if the lawyer participates with the qualifying provider. A lawyer is responsible for the qualifying provider's compliance with Florida bar rules if the lawyer fails to conduct due diligence regarding the qualifying provider's compliance before agreeing to participate or if the lawyer fails to cease participation and provide documentation to The Florida Bar of that cessation within 30 days of The Florida Bar notifying the lawyer that the qualifying provider is not in compliance.

Requirements for Qualifying Providers – Rule 4-7.22(d)

A lawyer can only accept referrals from a qualifying provider that complies with Rule 4-7.22, Rules Regulating The Florida Bar, including the following requirements:

- the qualifying provider's advertisements comply with lawyer advertising rules
- the qualifying provider does not engage in any in-person solicitation
- the qualifying provider does not receive any fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;
- the qualifying provider refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;
- the qualifying provider does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;
- the qualifying provider annually reports to The Florida Bar on July 1 of each year the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;
- the qualifying provider provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The

Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

- the qualifying provider responds in writing within 15 days to any official inquiry by bar counsel;
- the qualifying provider does not represent or nor imply to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;
- the qualifying provider uses its actual legal name or a registered fictitious name in all communications with the public;
- the qualifying provider affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and
- the qualifying provider does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

Filing Requirement - Rule 4-7.19(a)

Direct Mail, Email, and Targeted Social Media Posts - Rule 4-7.19(a)

All unsolicited direct mail, direct email, and targeted social media advertisements must be filed for review at least 20 days before their planned use. Rules 4-7.19(a) and 4-7.20(a).

Targeted Social Media Posts – Board decision

Posts in social media feeds targeting persons who self-identify characteristics that indicate that they have a specific legal issue must follow the direct mail advertising rules for targeted electronic solicitations in Rule 4-7.18(b). The Florida Bar Board of Governors determined that a social media post was a form of targeted electronic solicitation that must comply with the requirements of Rule 4-7.18(b) for targeted electronic media when the lawyer inquired about paying to have a specific social media post appear in the social media feed of specific individuals who self-identified through their social media as containing specified characteristics of a prospective class in a prospective class action.

All other media (television, radio, print, billboards and signs, Internet banner and pop-up ads, etc.) - Rule 4-7.19(a)

Television, radio, print, and Internet advertisements (except for lawyer or law firm websites) must be filed for review with the bar at its headquarters address at least 20 days before their first use, unless the content of the advertisements is limited to the presumptively valid content listed in Rule 4-7.16. Rules 4-7.19(a) and 4-7.20(a). Presumptively valid content is also commonly referred to as “safe harbor” or “tombstone” information.

Where to File

All required filings must be submitted to: Ethics and Advertising Department, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300. If you are attempting to file an advertisement for review under Chapter 4-7, Rules Regulating The Florida Bar, please note that the bar does not accept initial filings by email because filing fees by check made payable to The Florida Bar are required for each advertisement filed for review and must accompany the initial filing. The bar does not accept credit card payments for advertising filings. Additionally, if you are sending video or audio recordings for review, you must mail the video or audio recording to the Ethics and Advertising Department on a disk or USB drive before a final opinion can be issued. Emailed audio or video recordings will not be accepted or reviewed for compliance. If you have questions regarding this policy, please contact this department.

When to File

All required filings must be submitted for review at least 20 days before the first use of the advertisement to allow for a 15-day evaluation period and 5 days mailing time.

Contents of Filing

A filing with the bar must include:

- a copy of the advertisement:
- on DVD or flash drive for television (one advertisement per DVD or flash drive)*
- on CD or flash drive for radio (one advertisement per CD or flash drive)*
- plus all enclosures and a sample envelope for direct mail
- noted as a self-mailer on the cover sheet or cover letter for self-mailing direct mail
- a transcript of the audio portion of the recording, if audio is used;
- a printed copy of all text used in the advertisement, including both on-screen text and audio if applicable;

- a statement listing all media in which the advertisement or communication will appear, the expected frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used;
- the name of the lawyer responsible for the content;
- a check made payable to The Florida Bar including \$150 for each advertisement timely filed (at least 20 days in advance of first use) and \$250 for each advertisement filed late (less than 20 days in advance of first use); and
- an accurate English translation if the advertisement appears in a language other than English.

*Note: the advertisement must be capable of duplication by The Florida Bar for the committee's use. Please do not send a recording that is locked to prevent duplication. If the advertisement is being provided via electronic recording, the recording must be sent via DVD, CD or flash drive. The Florida Bar will not accept an emailed link or emailed file as the filing or a hypertext link on a DVD or CD. The preferred file format for advertisements recorded electronically for is H.264 / MPEG-4 or AVC (advanced video coding). Resolution should not be larger than 720x480. VLC Media Player is the preferred software that will be used by The Florida Bar to view electronically recorded advertisements. Windows Media (.wmv), QuickTime (.mov or .qt) and Real Player (.rm, .ram, .rmvb) files can also be viewed.

Information about H.264 may be found here: http://www.h264info.com/?page_id=10

VLC can be downloaded here: <http://get.freedownloads.us.com/1/download/1/vlc/index3.php?>

Review by The Florida Bar

Advertisements will not be reviewed until the bar has received a complete filing. The bar will mail a response on or before 15 days from the date a complete filing is received. The bar's response will be mailed to the lawyer responsible for the advertisement's content at that lawyer's record bar address. If the advertisement is submitted by someone other than the lawyer, such as a marketer or a nonlawyer employee, the bar will mail a copy of the bar's response to that person on request. If an incomplete filing is received by the bar, or if the bar has questions regarding the content of the submission, the bar will mail a notification of the information required to complete the file, or the additional information requested, on or before 15 days from the date the filing is received.

Exemptions from Filing Requirement - Rule 4-7.20

Certain types of advertisements are exempt from the filing requirement. An advertisement that is exempt need not be filed for review. The fact that an advertisement is exempt from the filing and review requirements of Rule 4-7.19 does not mean that it is exempt from the other provisions of Subchapter 4-7. Thus, all advertisements must include, at a minimum, the name of

at least one lawyer, law firm, or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement's content and the geographic location, by city, town, or county of at least one bona fide office location of the lawyer who will perform the advertised services. Rules 4-7.12(a)(1) and (a)(2). For additional regulations governing all forms of lawyer advertising, see Rules 4-7.12 through 4-7.17 and 4-7.21. The following are exempt from the filing requirement:

Announcements of Contribution or Sponsorship – Rule 4-7.20(b)

A brief announcement in any public medium 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 presumptively valid content of advertisements set forth in Rule 4-7.16.

Legal Listings – Rule 4-7.20(c)

A listing or entry in a law list or bar publication

Mailings to lawyers, current clients and former clients – Rule 4-7.20(d)

Mailings that are sent only to other lawyers, current clients, and former clients

Communications sent at the request of a prospective client – Rule 4-7.20(e)

Mailings or other communications sent to a prospective client at that prospective client's request

Professional Announcements – Rule 4-7.20(f)

Professional announcement cards (announcing changed associations or addresses) that are mailed only to relatives, close personal friends, existing clients, former clients, or other lawyers.

Websites – Rule 4-7.20(g)

Lawyer and law firm websites are exempt from the filing requirement, including pop-ups on the lawyer or law firm's own website.

Florida Bar Consumer Information Pamphlets – SCA decision

Florida Bar consumer information pamphlets stamped with a lawyer's exempt contact information and placed in the lobby of a business where pick up by consumers is strictly voluntary are exempt from the filing requirement.

Florida Bar *Journal* and News Advertisements – SCA decision

Advertisements by lawyers placed in the Florida Bar *Journal* and Florida Bar *News* are not required to be filed for review. Please note that the editorial policy of the Florida Bar *Journal* and Florida Bar *News* is that advertisements must comply with substantive lawyer advertising rules.

Letterhead & Business Cards - SCA decision

Letterhead and business cards, provided they are not used in an unsolicited, direct mail communication or duplicated for publication in an advertising medium, are exempt from the filing requirement.

Mediator Advertisements – SCA decision

Advertisements solely for mediator services in which the advertisements contain no information about legal services or experience, other than that the mediator is a member of The Florida Bar, are exempt from the filing requirement.

Newspaper Articles and Columns – SCA decision

Newspaper articles and columns that are written by a lawyer that are informational and do not contain promotional information about the lawyer are not required to be filed for review.

Newsletters – SCA decision

Informational newsletters which contain the lawyer or law firm's name, address, phone number and fax number must be filed for review. If the promotional information about the lawyer or law firm does not change from issue to issue, only the first issue of the newsletter is required to be filed for review; subsequent issues need not be filed for review (Advertising Opinion A-99-1).

Solicitation of Birth Mothers - SCA decision

Advertisements to solicit birth mothers when placed by a lawyer on behalf of existing adoption clients are not required to be filed for review.

Solicitation of Witnesses – SCA decision

Florida's lawyer advertising rules do not apply to notices to find witnesses if the lawyer has an existing client and the lawyer does not intend to accept prospective clients as a result of placing the notice seeking witnesses.

“Tombstone” Ads for Qualifying Providers – Rules 4-7.20(a) and 4-7.16(b)

An advertisement for a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) that contains no information or

illustrations other than its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the participating lawyers practice, and, if applicable, the provider's nonprofit status, its status as a lawyer referral service approved by The Florida Bar, and the logo of its sponsoring bar association. Direct mail and direct email advertisements do not fall within this exception and must always be filed for review.

“Tombstone” Ads for Lawyers or Law Firms- Rules 4-7.20(a) and 4-7.16(a)

Direct mail, direct email, and targeted social media advertisements do not fall within this exception and must always be filed for review. An advertisement in any public medium (e.g., t.v., radio, print, Internet banner, Internet pop-up) that contains no information other than the following is not required to be filed for review:

- the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, email addresses, office and telephone service hours, and a designation such as “lawyer” or “law firm”;
- date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
- technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
- military service, including branch and dates of service;
- foreign language ability;
- fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification;
- participation in prepaid or group legal service plans;
- credit cards accepted;
- fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;
- common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;

- punctuation marks and common typographical marks;
- an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

Reliance on Florida Bar Opinions - Rule 4-7.19(e) and (f)

A finding of compliance is binding on The Florida Bar in a grievance proceeding, unless: 1) the advertisement contains a misrepresentation that is not evident from the face of the advertisement; or 2) The Florida Bar later sends a notice of noncompliance regarding the advertisement, in which case there is a 30-day period to discontinue or revise the advertisement. Rule 4-7.19(b) and (f). Use of a noncomplying advertisement or unsolicited direct mail communication after notification of noncompliance may be considered an aggravating factor by the grievance committee.

How the Review Process Works

The advertising lawyer must provide a complete filing (copy of advertisement, filing fee, statement of media duration and use) at least 20 days before the advertisement is first published or otherwise used. The Florida Bar must complete review of a filing within 15 days of receipt, unless The Florida Bar determines that further examination is warranted and The Florida Bar so advises the filer within the 15-day period. In such cases, The Florida Bar must complete the review as promptly as the circumstances reasonably allow. If The Florida Bar fails to send the filer any communication within 15 days of receipt, the advertisement is deemed approved.

For each distinct advertisement submitted for review, a separate file is opened and a separate file number assigned. The filing is reviewed to determine whether it is complete. (A complete filing includes the advertisement, the review fee, and a statement of intended use. For a more exhaustive list of requirements, see above.)

If the filing is incomplete, the filer is notified and asked to submit the omitted materials.

If the filing is complete, SCA staff reviews the advertisement to determine whether it complies with the requirements of Subchapter 4-7. If SCA staff determines that the advertisement falls into one of the exempt categories discussed in Section II., E., above, staff notifies the filer that the filing is exempt, returns the filing fee, and provides no opinion on the advertisement.

If the filing is complete and not exempt, SCA staff next determines whether the advertisement complies with the applicable advertising rules and notifies the filer of its advisory opinion. The

notification letter identifies any areas of noncompliance and describes the procedure to be followed to obtain SCA review of a notice of noncompliance.

A preliminary opinion may be obtained by providing a draft advertisement, the filing fee, and statement of media use and duration. Receipt of a preliminary opinion based on a draft does not satisfy the filing requirement. Lawyers who obtain a preliminary opinion must file the final version of the advertisement at least 20 days before its first publication or dissemination. On receipt of an advertisement in its final form, a final advisory opinion will be rendered.

Options on Receiving an Unfavorable Staff Opinion

Appeal to the Standing Committee

Any filer receiving an unfavorable staff opinion may submit a written request for SCA review, postmarked no later than 30 days from the date of the non-compliance letter (not the date of receipt).

The request for appeal should conform to the following requirements:

- The request should be on letter-sized paper and double-spaced;
- The request should clearly and concisely state the issues to be reviewed; and
- The request and accompanying argument may be no more than 5 pages in length.

A timely request for SCA review will be docketed for consideration by the SCA at its next meeting. The SCA meets regularly in an effort to promptly handle appeals. Each agenda item presented to the SCA will include the advertisement or direct mail to be reviewed, staff's original non-compliance letter, the request for review and any supporting argument, other relevant information in the file, and any recommendation from staff. Following discussion, the SCA votes to sustain, reverse, or modify staff's advisory opinion. The SCA may defer its decision pending receipt of additional information or for further discussion. Florida Bar staff will promptly notify the filer in writing of the SCA's decision.

Decisions of the SCA may be appealed to the Board of Governors by sending a written request for review to Ethics Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, within 30 days of notice of the SCA action that is the subject of the appeal. See, Procedures 4(h), 5 and 6, Florida Bar Procedures For Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation. (See Appendix 3). The request should clearly state the issues for review and may include a written argument explaining why the filer believes the committee's decision is incorrect.

Revise and Resubmit the Filing

A filer may choose to revise and resubmit the advertisement or direct mail communication to address the concerns outlined in the noncompliance letter. The filer need not submit an

additional fee for review of a resubmission that makes changes only to cited areas of noncompliance. The Board of Governors policy regarding review of lawyer advertisements is that any change of any kind to an advertisement, other than to comply with a notice of noncompliance, renders the advertisement a new advertisement with a new filing fee of \$150 per timely filed advertisement and \$250 per untimely filed advertisement. Any change includes, but is not limited to, any change to wording, illustrations, photographs, typographical marks, layout, or color scheme. The revised submission must refer to the original file number. Florida Bar staff will notify the filer in writing whether the revised advertisement complies.

Use the Original Submission

A filer who continues to use an advertisement or an unsolicited direct mail, email, or targeted social media communication that has received an unfavorable staff or SCA disposition does so at the filer's own risk. If a complaint is filed, the lawyer may be subject to discipline for use of the noncomplying advertisement or unsolicited direct mail communication.

Enforcement

Statewide Advertising Grievance Committee

The majority of cases prosecuted against lawyers for advertising violations come from complaints to the bar's Lawyer Regulation Department filed by members of the public, including other lawyers. Additionally, a lawyer may be referred to Lawyer Regulation by the SCA or The Florida Bar Board of Governors for repeated violations. Although rare, a lawyer may be referred to Lawyer Regulation by Florida Bar staff for failing to respond to bar staff's requests for information. Complaints are prosecuted from Lawyer Regulation Headquarters in Tallahassee. If grievance committee review is necessary, the case is forwarded to the statewide advertising grievance committee. A statewide grievance committee was appointed in 2004 to hear only advertising cases, for consistency.

Compliance Review Program

Periodically, Florida Bar staff is provided with information indicating that lawyers have not filed advertisements for review. Staff then requests filings from lawyers who have not filed their non-exempt advertisements for review together with the late fee.

Formal Advertising Opinions

Proposed Advisory Opinions

Procedure 4 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation provides that the SCA may consider rendering a written opinion for publication on appeal of a written staff opinion by the lawyer who requested the staff opinion, at the request of the board of governors, on SCA review of staff opinions, or on SCA review of

existing formal opinions. Except for appeals of written staff opinions, the SCA must publish in The Florida Bar News an official notice of its intent to consider rendering a written opinion, stating the time and place at which the SCA's deliberations will occur, identifying the subject matter of the issue and any proposed text and inviting written comments from interested bar members. If an opinion is issued, the SCA will publish an official notice of the adoption of the advisory advertising opinion in The Florida Bar News, including the full text of the opinion. Any subsequent notice must contain the full text of any revised advisory advertising opinion. Members of the bar may provide written comments as to any proposed formal advertising opinion. After consideration of any written comments, the SCA will vote whether to adopt, modify or decline to issue a formal written opinion.

Appeal to the Board of Governors

Procedure 5 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation allows members who timely filed comments to request Board of Governors review of the proposed formal advertising opinion within 30 days after the date of the letter informing the member of the SCA's decision.

Board of Governors Opinions

Procedure 2(c) of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation permits the Board of Governors to issue its own advisory advertising opinions. Procedure 6 of the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation governs how such opinions are issued. If the Board of Governors decides to render an advisory advertising opinion it will refer the request to the Board Review Committee. The Board Review Committee must publish in The Florida Bar News an official notice of its intent to consider rendering a written opinion, stating the time and place at which the Board Review Committee's deliberations will occur, identifying the subject matter of the issue and any proposed text and inviting written comments from interested bar members. If an opinion is issued, the Board Review Committee must publish an official notice of the adoption of the advisory advertising opinion in The Florida Bar News, including the full text of the opinion. Any subsequent notice must contain the full text of any revised advisory advertising opinion. Members of the bar may provide written comments on any proposed advisory advertising opinion. After consideration of any written comments, the Board Review Committee will vote whether to adopt, modify or decline to issue a formal written opinion. The Board of Governors must take action regarding all opinions issued under this procedure.

Record Retention – Rule 4-7.19(j)

Lawyers must retain copies of each advertisement actually disseminated for 3 years after their last dissemination with a record of when and where they were used. Rule 4-7.19(j). For direct mail, email, and targeted social media advertisements that are identical except for name and address of recipients, the lawyer may retain 1 letter together with a list of the names and addresses of all recipients. *Id.*

Public Records – 15-4.2

The files of the SCA are public records. Every lawyer advertisement filed with The Florida Bar is a public record; limited exceptions include “proposed advertisements and proposed direct mail communications filed for advisory review when the submitting lawyer advises the committee that the materials constitute protected trade secrets or proprietary information.” Rule 15-4.2, Rules Regulating The Florida Bar. Once an advertisement is used, it is no longer a proposed advertisement and becomes available for inspection and copying. Until the date of publication, the advertisement(s) is marked “proprietary” in the SCA’s files and is not made available for public inspection and copying. If the advertisement is never disseminated and the filer wishes to maintain the proprietary status of the file, the filer should notify SCA staff so that the advertisement will remain marked proprietary.

APPENDICES

APPENDIX 1

FREQUENTLY ASKED QUESTIONS

GENERAL:

What information must I include in my advertisement?

All lawyer advertisements must contain the name of at least 1 lawyer or the law firm. All advertisements for qualifying providers (lawyer referral services, matching services, group or pooled advertising programs, directories, and tips or leads generators) must contain the name of the qualifying provider. Rule 4-7.12(a)(1).

All advertisements must give at least one bona fide office location by city, town, or county of the lawyer who will perform the legal services advertised. Rule 4-7.12(a)(2).

The above are the minimum requirements for advertisements. Other requirements may apply depending on the content of your advertisement. For example, if you intend to refer the case out, this must be stated in the advertisement. Rule 4-7.12(b). As another example, if your advertisement discusses your fee, there must also be a statement of whether the client is responsible for any additional costs. Rule 4-7.14(a)(5). These are just two examples. You should look to the content of each particular advertisement and the applicable rules for the requirements for that particular advertisement.

I'm not Board Certified. Can I include my areas of practice in my ad?

Yes, you can always include your areas of practice as long as they are areas in which you actually practice. Rules 4-7.16(a)(6) and 4-7.13(b)(4). You can also state that you limit your practice to one or more areas of law. 4-7.14(a)(4). However, if you are not board certified in a particular area of law, you cannot state that you are board certified in that area of law. Rule 4-7.14(a)(4). You must be able to objectively verify any claims that you specialize, are an expert, or variations of those terms, in an area of law, either via board certification in that area or by being able to objectively verify specialty or expertise based on your education, training, experience, or substantial involvement in that area.

Do I still need to include the disclaimer language about the hiring of a lawyer is an important decision . . . ?

No, the hiring disclosure, "*The hiring of a lawyer is an important decision that should not be based solely upon advertisements . . .*" is no longer required by the lawyer advertising rules although you may continue to use it if you wish. *In re: Amendments to the Rules Regulating The Florida Bar*, 971 So. 2d 763 (Fla. 2007).

What information is subject to the language requirements of Rule 4-7.12(c) and legibility requirements of Rule 4-7.12(d)?

Any information or disclosures required under Subchapter 4-7 must appear in the same language in which the advertisement appears. Rule 4-7.12(c). If an advertisement uses more than one language, the required information or other disclosure must appear in each language used in the advertisement. *Id.* However, the Standing Committee on Advertising has determined that if the only information in a different language is a statement saying that you speak a foreign language, such as “se habla Español,” the requirement to have all required information in each language used is not triggered.

Any information required by the lawyer advertising rules to be in an advertisement must be reasonably prominent and clearly legible when appearing in writing and must be intelligible if spoken. Rule 4-7.12(d). For purposes of these rules, “reasonably prominent” as applied to disclaimers and other required information means clear and conspicuous compared to the prominence of other information contained in the advertisement, or in the case of a required disclaimer, with reasonable prominence compared to the information the disclaimer qualifies. In text, reasonable prominence does not necessarily mean that the required information must be the same size as the largest text used in the advertisement, or the same size as the text a required disclaimer qualifies. However, required information, may need to be printed in a different color, bolded, or some other means used to make the required information have reasonable prominence as compared to other information in the advertisement. Required information, including a required disclaimer, may not appear in fine print, nor may it be buried in a footnote. In a television advertisement where required information appears as on-screen text, required information must appear in sufficient size and for a sufficient amount of time to be clear and conspicuous. If a disclaimer is required in a television advertisement, it must be on-screen at the same time and for a reasonable amount of time as compared to the information the disclaimer qualifies. In an advertisement where required information is spoken, required information must be clearly audible and at a comparable volume and speed as other statements in the advertisement to be considered reasonably prominent as required by the rule. If a disclaimer is required, the disclaimer must be spoken reasonably close to the information requiring the disclaimer. Required information, including required disclaimers, is not reasonably prominent if a reasonable consumer would likely not notice the required information or would likely not connect the required disclaimer to the information that disclaimer qualifies. Examples of required language include the following:

All Advertisements:

Rule 4-7.12(a)(1)	Lawyer or law firm name must appear in advertisement
Rule 4-7.12(a)(2)	Geographic disclosure of a bona fide office
Rule 4-7.12(b)	Notification that cases will be referred to another lawyer
Rule 4-7.13(b)(5)	Disclaimer that not employee
Rule 4-7.13(b)(6)	Dramatization disclaimer
Rule 4-7.13(b)(9)	Testimonial disclaimer
Rule 4-7.14(a)(5)	Cost disclosure

Rule 4-7.14(a)(4) Name of certifying organization of board certification if from an organization other than The Florida Bar, and, if the organization is not another state bar, the statement “Not Certified as a Specialist by The Florida Bar.”

Rule 4-7.14(a)(5) Time price honored, if the advertisement lists a price that is valid for a period of less than 90 days (Note: Prices listed in yellow page advertisements and any other advertisement used in a media that is published only once a year must be honored for at least 1 year.)

Additional Requirements for Direct Mail, Email, and Targeted Social Media Advertisements:

Rule 4-7.18(b)(2)(B) The word “advertisement” must appear (1) on the outside of direct mail advertisements on the face of the envelope or the address panel of a self-mailer and (2) on each separate enclosure of the advertisement or on the inside of a self-mailing brochure. The “advertisement” mark must be reasonably prominent and in ink that contrasts with both the background on which it is printed and the other text used in the advertisement. For email advertisements, the subject line must begin with the word “advertisement.” For targeted social media advertisements, the first text in the advertisement must be the word, “advertisement.”

Rule 4-7.18(b)(2)(C) Statement of qualifications for a lawyer, law firm, or participating lawyers of a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) are required in all direct mail, email, and social media advertisements.

Rule 4-7.18(b)(2)(E) Targeted direct mail, email, and social media advertisements must include as the first sentence “If you have already retained a lawyer for this matter, please disregard this letter.”

Rule 4-7.18(b)(2)(G) If the case is to be referred to another lawyer, direct mail, email, and social media advertisements must contain a statement notifying the prospective client of the intended referral.

Rule 4-7.18(b)(2)(H) Targeted direct mail, email, and social media advertisements must contain information on how the lawyer obtained the information about the prospective client’s legal matter.

What is the difference between a targeted and a non-targeted direct mail, email, or social media ad?

A targeted direct mail advertisement is one that is prompted by a specific occurrence. For example, sending a direct mail, email, or social media advertisement to someone the advertising lawyer knows has been arrested or the advertising lawyer knows that the person’s house is in foreclosure, that is a targeted direct mail advertisement. Paying to have a social media posting or advertisement put in the feed of a person who has self-identified as having specific characteristics that means that person has a specific legal problem. On the other hand, direct mail or email advertisements sent out generally, such as bulk mailers to a specific zip code, are

non-targeted unless the advertising lawyer knows the recipients have a specific legal problem. For example, sending bulk mailers to handle property insurance claims to a zip code that was just hit by a hurricane would be considered targeted direct mail, not non-targeted. Social media that is not targeted is considered a form of general advertising that does not have to comply with Rule 4-7.18(b).

Targeted direct mail, email, and social media advertisements have additional requirements that do not apply to non-targeted direct mail advertisements. The first sentence of a targeted direct mail, email, or social media advertisement must be “If you have already retained a lawyer for this matter, please disregard this letter.” Rule 4-7.18(b)(2)(E). In a targeted direct mail or email advertisement, lawyers must disclose how they obtained the information prompting the advertisement. Rule 4-7.18(b)(2)(H). Finally, there can be nothing on the outside of a targeted direct mail advertisement that reveals the nature of the client’s legal problem. Rule 4-7.18(b)(2)(I).

May I send my direct mail advertisement on a post card?

Only if it is not a targeted direct mail advertisement. A targeted direct mail advertisement cannot reveal the nature of the prospective client’s legal problem on the outside pursuant Rule 4-7.18(b)(2)(I). Based on prior decisions of the Standing Committee on Advertising, a targeted direct mail advertisement cannot be sent as a postcard, because required disclosures (that the person has a matter, how the information about the matter was obtained, and experience in the area of law being advertised) and other information on the postcard reveal the nature of the prospective client’s legal problem to anyone viewing the postcard. To comply with this rule, the postcard either must be placed in an envelope, or must be converted to a self-mailing, fold-over brochure in which all information disclosing the nature of the legal problem is on the inside of the mailer and the fold over is secured shut. If the postcard will be enclosed in an envelope, it must be prominently marked “advertisement” on the face of the envelope in a color that contrasts with both the background and other text used on the envelope in accordance with Rule 4-7.18(b)(2)(B).

I’m running an advertisement in another state, not Florida. Do the Florida lawyer advertising rules still apply?

Florida’s lawyer advertising rules do not apply to advertisements aired or disseminated in a jurisdiction other than Florida if the Florida Bar member is admitted in the other jurisdiction, the advertisement complies with the appropriate rules of that jurisdiction, and the advertisement is not intended for use in Florida.

Can a non-Florida lawyer appear in an advertisement in Florida?

Out-of-state lawyers may only advertise to provide legal services in Florida when they are authorized by other law to provide those services in Florida, such as lawyers who are authorized by Federal law to practice before the Immigration & Naturalization Service, the U.S. Patent Office, the Internal Revenue Service, and the Social Security Administration anywhere in the United States. Out-of-state lawyers may not advertise to provide legal services in Florida for state matters, such as personal injury, probate, traffic, or criminal law. See Rule 10-2.1(c). An

out-of-state lawyer's expectation that the lawyer will be admitted pro hac vice in a particular matter does not authorize the out-of-state lawyer to advertise to provide legal services in Florida. *Id.* Out-of-state lawyers should consider contacting The Florida Bar's Unlicensed Practice of Law Department at (850) 561-5840 to inquire whether or not they are authorized to provide the advertised services.

I want to mail, email, or post a targeted social media advertisement to other lawyers. Do the lawyer advertising rules apply?

Rule 4-7.18(b)(3) states that communications between lawyers are not subject to Rule 4-7.18(b)(2), which sets forth specific requirements for direct mail, email, and social media advertisements. Additionally, communications to other lawyers do not have to be filed for review. Rule 4-7.20(d).

I want to send out a newsletter. What rules apply?

Newsletters sent by mail or email must comply with Rule 4-7.18(b). Newsletters must also be filed for review in accordance with Rule 4-7.19, unless they are mailed only to other lawyers, current clients, former clients and people who have requested the newsletter. Rules 4-7.20(d) and (e). Any subsequent edition of a previously filed newsletter must be filed for review as a new advertisement if it includes any new information about the lawyer or law firm, unless it is information of the type described in Rule 4-7.16 ("Presumptively Valid Content"). However, if no new information about the lawyer or law firm is added to subsequent editions of a previously filed newsletter, or if the only new information about the lawyer or law firm appearing in subsequent editions is information covered by Rule 4-7.16(a), these subsequent editions need not be filed for review. See, Florida Advertising Opinion A-99-01 (available on the bar's website).

What rules apply to seminar announcements?

Seminar announcements generally must comply with the lawyer advertising rules. Seminar announcements disseminated through the mail, email, or social media must comply with Rule 4-7.18(b) governing written communications. Exceptions may be made, however, if the lawyer has no financial responsibility for the seminar and no control over seminar advertisements. For example, if a lawyer will appear as a guest speaker at a seminar sponsored and financed by someone else, the advertisement may be exempt from the regulations governing lawyer advertising. Whether and which rules apply must be decided on a case-by-case basis, according to the Standing Committee on Advertising.

I want to send out professional announcements. What rules apply?

Professional announcements appearing in the public print media must comply with the regulations governing other forms of print advertisement. Provided they contain no illustrations or information beyond that set forth in Rule 4-7.16, professional announcements appearing in the public print media are exempt from the filing requirement under Rule 4-7.20(a).

If the announcements are to be mailed, Rule 4-7.20(f) makes an exception from the filing requirement for "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.” If the announcements are mailed or emailed to prospective clients, professional announcements must comply with the rules governing direct mail and email advertisements, Rule 4-7.18(b).

I want to advertise to referral sources. Do the lawyer advertising rules still apply?

Yes. Rule 4-7.11(c) states that the lawyer advertising rules apply to communications made to referral sources.

I represent adoptive parents. I want to run an advertisement looking for birth mothers. Do the lawyer advertising rules apply to this ad?

No, if you are placing an advertisement on behalf of existing clients who are seeking a birth mother. This is because you are not seeking to represent the birth mother.

I want to run an advertisement looking for witnesses to my client’s case. Do the lawyer advertising rules apply to this ad?

No, if you are truly only looking for witnesses on behalf of an existing client, and the witnesses are not also potential clients. If the witnesses are also potential clients and you want to be able to represent them (presuming no conflicts of interest exist), then the lawyer advertising rules apply as you are not solely seeking witnesses. You are also seeking potential clients.

INTERNET ADVERTISING:

What rules apply to my website?

Generally, Rules 4-7.11 through 4-7.17 govern the content of your website. However, your website does not have to be filed for review. Rule 4-7.20(g).

What rules apply to social media?

It depends. To the extent you are using your social networking pages solely for social purposes, to maintain social contact with family and close friends, they are not subject to the lawyer advertising rules. However, if you have social networking pages that you use to promote you or your law firm’s practice, then such pages are subject to the lawyer advertising rules, but the Standing Committee on Advertising has determined that such pages are not required to be filed for review. Paid spot advertising on social media, including “boosted” or “sponsored” posts must be filed for review unless their content is limited to the information in Rule 4-7.16. Some paid advertising on social media must comply with the requirements for direct electronic solicitations, because they are targeted to specific consumers who meet specified criteria that indicate that they have a specific legal problem. You should review the Standing Committee on Advertising’s Guidelines for Social Networking Sites.

What rules apply to YouTube and similar sites?

It depends. If you post videos on YouTube or other video sharing site that are used solely for purposes that are unrelated to the practice of law, those videos are not subject to the lawyer

advertising rules. On the other hand, videos that are used to promote you or your law firm's practice are subject to the lawyer advertising rules. The Standing Committee on Advertising has determined that such videos do not have to be filed for review. You should review the Standing Committee on Advertising's Guidelines for Video Sharing Sites.

FILING:

Do I have to file my advertisement for review before I can use it?

Yes, all advertisements must be filed for review at least 20 days before the advertisements are used. Rule 4-7.19(a). The only exemption is if your advertisement falls within one of the filing exemptions found in Rule 4-7.20.

What is a "Tombstone" ad?

A "Tombstone" advertisement is an advertisement in the public media that only contains the presumptively valid content found in Rule 4-7.16. Such advertisements do not have to be filed for review under Rule 4-7.20(a).

For lawyers and law firms, presumptively valid content includes the names of the lawyers, the firm name, contact information, areas of practice, bar memberships, former employment positions as a lawyer, jurisdictions in which the lawyer is admitted, other licenses the lawyer has, military service, foreign language ability, acceptance of credit cards, whether the lawyer belongs to any prepaid or group legal service plans and certain listed illustrations. You should review Rule 4-7.16(a) for the complete list.

For qualifying providers (lawyer referral services, matching services, group or pooled advertising programs, directories, and tips or leads generators), presumptively valid content includes its name, location, contact info, referral fee charge, hours of operating, how referrals are made, areas of law in which referrals or matches are offered, and the geographic area in which the lawyers practice. Qualifying providers should look to Rule 4-7.16(b) for the complete list.

Are direct mail or direct email advertisements ever exempt from filing?

No, unless they are sent only to other lawyers, family members, current clients or past clients, and persons who have asked to receive information from the advertising lawyer. Rule 4-7.20(d) and (e).

Do I have to file my website?

No. Websites are not required to be filed for review under Rule 4-7.20(g). However, if you have a concern about a certain portion of your website, Rule 4-7.19(d) allows you to file a specific page, provision, statement, illustration or photograph from your website for review. You must pay the filing fee and include all of the information required under Rule 4-7.19(h) to have a complete filing. You cannot file your entire website for review. Rule 4-7.19(d).

Do I have to file my Facebook page? What about YouTube, LinkedIn or Similar Sites?

No. Under the Standing Committee on Advertising Guidelines for Social Networking Sites and the Guidelines for Video Sharing Sites the SCA has concluded that a lawyer does not have to file the lawyer or law firm's own page on a social media site. However, you should keep in mind this is for Facebook, YouTube, LinkedIn and other similar pages/accounts for you or your law firm. If you post a banner or other advertisement on a social networking site or video sharing site or on a third party's social networking page, that is an advertisement that is subject to filing under Rule 4-7.20. Paid spot advertising on social media, including "boosted" or "sponsored" posts must be filed for review under Rule 4-7.20 unless their content is limited to the information in Rule 4-7.16.

How do I file my ad? What do I need to include?

Rule 4-7.19(a) says you must file your advertisement at the Bar's headquarters in Tallahassee. To file your advertisement, you need to send it to:

The Florida Bar, Ethics and Advertising Department
651 East Jefferson Street
Tallahassee, FL 32399-2300

Rule 4-7.19(h) sets out what you need to include:

- A copy of the advertisement. You need to send it in the form in which it will be used and that is readily capable of being duplicated by the Bar. For example, a video of a television commercial on a DVD or flash drive, an audio recording of a radio advertisement, a letter or brochure for a direct mail advertisement or a copy of a print advertisement.
- A transcript for an advertisement in electronic format, such as TV and radio.
- A printed copy of all text used in the advertisement, including both spoken and on-screen text. This can be done as part of the transcript for TV and radio advertisements.
- An accurate English translation, if any part of an advertisement not in English.
- A sample envelope for advertisements that are to be mailed.
- A statement listing the media in which the advertisement will appear, the anticipated frequency of use of the advertisement and the anticipated time period that the advertisement will be used.
- The name of at least one lawyer responsible for the content of the advertisement.
- The filing fee. The filing fee is \$150 for advertisements timely filed and \$250 for advertisements that are not timely filed.

Must I submit a separate review fee for each advertisement I plan to run, even if the advertisements are all very similar?

Yes, unless the advertisements are identical in content.

Can I file by fax or email?

No. The review process cannot begin until the bar receives a check for the entire amount of the filing fee.

How long does the review process take?

Bar staff has 15 days from the day we receive a complete filing to issue an opinion whether an advertisement complies with the rules. Rule 4-7.19(b). A complete filing means you have included all of the information required to be included under Rule 4-7.19(h). If your filing was not complete, we still must communicate with you within 15 days of your submission, but the communication will generally be to ask for the missing information or fee. Rule 4-7.19(b).

Can I get an expedited opinion?

No. While we appreciate the importance of your advertisement to your business, due to the volume of advertisements submitted, staff cannot promise to have the review process completed sooner than the 15-day time period. We do try to complete the review process in a timely manner, and it does not always take the full 15 days. Please also note that advertisements must be filed at least 20 days before they are first used. Rule 4-7.19(a).

If I revise my advertisement, do I have to pay the filing fee again?

No, as long as the only revisions you made were to comply with staff's notice of noncompliance. If you make any other change to the advertisement, the submission will be considered a new advertisement and you will have to pay the filing fee. Any change includes, but is not limited to, any change to wording, illustrations, photographs, typographical marks, layout, or color scheme.

Once my advertisement has been approved, must I resubmit the advertisement if I decide to use the advertisement later in its identical form?

Generally, the answer is no. If, however, you plan to use the same advertisement in a different medium, you must resubmit the advertisement if the change in medium requires analysis under different rules. For example, you would ordinarily need to resubmit an advertisement originally appearing in a newspaper if you later want to use the same advertisement in a direct mail campaign. The re-submission is required because direct mail advertisements have to comply with the additional requirements of Rule 4-7.18 while print advertisements do not have to comply with Rule 4-7.18.

Additionally, when the rules are amended by the Florida Supreme Court, changes in the rules may make a previously complying advertisement noncompliant or vice versa. Therefore, after a rule change you should consider whether the changes affect your advertisement and, if so, resubmit your advertisement. If you have made no changes to the advertisement, you need not submit a new filing fee. Rather, you can submit the advertisement under the original file number given it when it was filed the first time.

Can I get a preliminary opinion on my advertisement before I go to the expense of having it produced?

Yes. To get a preliminary opinion on a radio, TV or other video advertisement, you can submit a transcript, including both all planned spoken and on-screen text, and a description of the visuals and/or background sounds. To get a preliminary opinion on another kind of advertisement, you can submit a draft of the advertisement. To get a preliminary opinion on any kind of advertisement, you also must submit the filing fee of \$150 required by Rule 4-7.19(h)(8). Presuming you've sent everything needed under Rule 7-1.19(h), you will receive a preliminary opinion on your submission. However, you still must submit the final version of the advertisement for review at least 20 days before it is first used. Rule 4-7.19(a) and (c). Once you submit a final version of the advertisement for review, you will receive a final opinion. You do not have to pay the filing fee again if you have made no changes to the preliminary advertisement other than the changes necessary to comply with the opinion you receive.

Do I have to file an advertisement going only to other lawyers?

No, such advertisements do not have to be filed under Rule 4-7.20(d).

Do I have to file an advertisement only going to my current and former clients?

No, such advertisements do not have to be filed under Rule 4-7.20(d).

APPENDIX 2: QUICK REFERENCE CHECKLISTS

QUICK REFERENCE CHECKLIST - PRINT ADS

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal professional as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim certification in an area of law? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible? or not reasonably prominent Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)

- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

QUICK REFERENCE CHECKLIST - T.V. & RADIO

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or inaudible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or inaudible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure or inaudible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)

- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or inaudible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)

- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

QUICK REFERENCE CHECKLIST - WEBSITES

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. Websites are not required to be filed with The Florida Bar for review. However, they are required to comply with the substantive lawyer advertising rules in Rules 4-7.12 through 4-7.17 and 4-7.21. A specific aspect of a website such as a specific page, provision, statement, illustration, or photograph may be filed with The Florida Bar for review on a voluntary basis under Rule 4-7.19(d) with a filing fee of \$150. A filing of an entire website will not be accepted by The Florida Bar. *Id.*

Even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)

- Does the advertisement contain any statements that compare or characterize the lawyer or law firm's skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer "Not an employee or member of law firm"? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer "DRAMATIZATION. NOT AN ACTUAL EVENT."? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer "ACTOR. NOT ACTUAL [profession or occupation.]"? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm's clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)

- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that no all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a

language other than English, does the cost disclosure fail to appear in the same language?
Rule 4-7.12(c)

- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

QUICK REFERENCE CHECKLIST - INTERNET ADS OTHER THAN ELECTRONIC MAIL OR WEBSITES (e.g., BANNER AND POP-UP ADS)

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)

- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)

- Does the advertisement state or imply that another lawyer or law firm is part of, associated with, or affiliated with the advertising lawyer or law firm when that is not the case? Rule 4-7.13(b)(12)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that no all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a

language other than English, does the cost disclosure fail to appear in the same language?
Rule 4-7.12(c)

- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)

QUICK REFERENCE CHECKLIST - DIRECT MAIL

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible? or not

reasonably prominent Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)

- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by

board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that no all lawyers in the firm specialize or have expertise in that area.

Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)

Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)

Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)

Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)

Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?

- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)

- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)
- Does the direct mail advertisement fail to prominently mark the face of the envelope and each separate enclosure of the direct mail advertisement "Advertisement" in a color that contrasts with both the background and other text? Rule 4-7.18(b)(2)(B) Is the word "Advertisement" on the envelope and each separate enclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word "Advertisement" fail to appear in that language on the face of the envelope and each separate enclosure? Rule 4-7.12(c)
- If sent as a self-mailer, does the direct mail advertisement fail to prominently mark the address panel and the inside of the self-mailer "Advertisement" in a color that contrasts with both the background and other text? Rule 4-7.18(b)(2)(B) Is the word "Advertisement" on the address panel and the inside of the self-mailer illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word "Advertisement" fail to appear in that language on the address panel and inside of the self-mailer? Rule 4-7.12(c)
- Does the direct mail advertisement fail to include a written statement of the advertising lawyer or law firm's background, training and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement include a contract that is not marked "SAMPLE" at the top of each page in red ink in type size one size larger than the largest used in the contract and "DO NOT SIGN" in the client signature line? Rule 4-7.18(b)(2)(D) Are "SAMPLE" and "DO NOT SIGN" illegible or not reasonably prominent? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, do the words "SAMPLE" and "DO NOT SIGN" fail to appear in that language? Rule 4-7.12(c)
- If the direct mail advertisement concerns a specific matter, does it fail to include as its first sentence "If you have already retained a lawyer for this matter, please disregard this letter." Rule 4-7.18(b)(2)(E) Is this first sentence illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the first sentence fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement or any of its enclosures appear to resemble legal documents? Rule 4-7.18(b)(2)(F)

- If a lawyer other than the one whose name or signature appears in the direct mail advertisement will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the direct mail advertisement so indicate? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)
- If the direct mail advertisement has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(H) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement disclose the nature of the prospective client's legal problem on the envelope (or outside if sent as a self-mailing brochure)? Rule 4-7.18(b)(2)(I)
- If the direct mail advertisement concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident or disaster? Rule 4-7.18(b)(1)(A)
- If the direct mail advertisement concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the direct mail advertisement being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

QUICK REFERENCE CHECKLIST - ELECTRONIC MAIL

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)

- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal professional as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible? or not reasonably prominent Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)
- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)

- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)
- Does the email fail contain a subject line that begins with the word "Advertisement"? Rule 4-7.18(b)(2)(B) Is the word "Advertisement" in the subject line illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the word "Advertisement" fail to appear in that language? Rule 4-7.12(c)
- Does the email fail to include a written statement of the advertising lawyer or law firm's background, training and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the email include a contract that is not marked "SAMPLE" at the top of each page in red ink in type size one size larger than the largest used in the contract and "DO NOT SIGN" in the client signature line? Rule 4-7.18(b)(2)(D) Are "SAMPLE" and "DO NOT SIGN" illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, do the words "SAMPLE" and "DO NOT SIGN" fail to appear in that language? Rule 4-7.12(c)
- If the email concerns a specific matter, does it fail to include as its first sentence "If you have already retained a lawyer for this matter, please disregard this letter." Rule 4-7.18(b)(2)(E) Is this first sentence illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the first sentence fail to appear in that language? Rule 4-7.12(c)
- Does the written communication appear to resemble legal documents? Rule 4-7.18(b)(2)(F)

- If a lawyer other than the one whose name or signature appears in the email will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the email so indicate? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)
- If the email has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(H) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)
- If the email concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident or disaster? Rule 4-7.18(b)(1)(A)
- If the email concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the email being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

QUICK REFERENCE CHECKLIST - TARGETED SOCIAL MEDIA

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

Please note: All required information must appear in the portion of the social media advertisement that appears in the feed.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or not reasonably prominent? Rules 4-7.12(a)(1) and Rule 4-7.12(d)
- Does the advertisement fail to disclose the city, town or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or not reasonably prominent? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)
- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rules 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation or record that are not objectively verifiable? Rule 4-7.13(b)(3)

- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a prominent disclaimer “Not an employee or member of law firm”? Rule 4-7.13(b)(5) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event without the prominent disclaimer “DRAMATIZATION. NOT AN ACTUAL EVENT.”? Rule 4-7.13(b)(6) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation without the prominent disclaimer “ACTOR. NOT ACTUAL [profession or occupation.]”? Rule 4-7.13(b)(7) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm’s clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or not reasonably prominent? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)

- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)
- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified?
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(5) Is the cost disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(5) Is the cost disclosure illegible? or not reasonably prominent Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)

- Does the advertisement include any image, sound, video or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)
- Does the targeted social media advertisement fail to contain the word "Advertisement" as the first word of the post? Rule 4-7.18(b)(2)(B) Is the word "Advertisement" illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the word "Advertisement" fail to appear in that language? Rule 4-7.12(c)
- Does the targeted social media advertisement fail to include a written statement of the advertising lawyer or law firm's background, training and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the targeted social media advertisement include a contract that is not marked "SAMPLE" at the top of each page in red ink in type size one size larger than the largest used in the contract and "DO NOT SIGN" in the client signature line? Rule 4-7.18(b)(2)(D) Are "SAMPLE" and "DO NOT SIGN" illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, do the words "SAMPLE" and "DO NOT SIGN" fail to appear in that language? Rule 4-7.12(c)
- If the targeted social media advertisement concerns a specific matter, does it fail to include as its first sentence "If you have already retained a lawyer for this matter, please disregard this." Rule 4-7.18(b)(2)(E) Is this first sentence illegible or not reasonably prominent? Rule 4-

7.12(d) If the advertisement appears in a language other than English, does the first sentence fail to appear in that language? Rule 4-7.12(c)

- Does the written communication appear to resemble legal documents? Rule 4-7.18(b)(2)(F)
- If a lawyer other than the one whose name or signature appears in the targeted social media advertisement will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the targeted social media advertisement so indicate? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)
- If the targeted social media advertisement has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(H) Is this disclosure illegible or not reasonably prominent? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)
- If the targeted social media advertisement concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident or disaster? Rule 4-7.18(b)(1)(A)
- If the targeted social media advertisement concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the email being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

APPENDIX 3: ADVERTISING RULES

4-7 INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.11 APPLICATION OF RULES

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment

Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or

disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” *See Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Legibility. Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

Comment

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic Location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is “available for consultation” or “available by appointment” or has a “satellite” office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to Other Lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: “Your case may be referred to another lawyer.”

Language of Advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the

advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) Deceptive and Inherently Misleading Advertisements. An advertisement is deceptive or inherently misleading if it:

- (1) contains a material statement that is factually or legally inaccurate;
- (2) omits information that is necessary to prevent the information supplied from being misleading; or
- (3) implies the existence of a material nonexistent fact.

(b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to, advertisements that contain:

- (1) statements or information that a prospective client can reasonably interpret as a prediction or guaranty of success or specific results;
- (2) references to past results unless the information is objectively verifiable, subject to rule 4-7.14;
- (3) comparisons of lawyers or statements, words, or phrases that characterize a lawyer's or law firm's skills, experience, reputation, or record, unless the characterization is objectively verifiable;
- (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
- (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";
- (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT";
- (7) an actor purporting to be engaged in a particular profession or occupation, unless the advertisement includes the following prominently displayed notice: "ACTOR. NOT ACTUAL [. . .]";

(8) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos, or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;

(9) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

(C) that is not representative of what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(10) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating The Florida Bar;

(11) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed after the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law; or

(12) a statement or implication that another lawyer or law firm is part of, is associated with, or affiliated with the advertising law firm when that is not the case, including contact or other information presented in a way that misleads a person searching for a particular lawyer or law firm, or for information regarding a particular lawyer or law firm, to unknowingly contact a different lawyer or law firm.

Comment

Material omissions

An example of a material omission is stating “over 20 years’ experience” when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states “over 20 years’ experience” when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied existence of nonexistent fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not

authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past results

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised

result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, "I have successfully represented clients," or "I have won numerous appellate cases," may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words "successful" or "won" in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word "successful" to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating The Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

The prohibition against comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of skills, experience, reputation or record

The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as “the best,” “second to none,” or “the finest” will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “I am dedicated to excellence in my representation of my clients,” is permissible as a goal. Similarly, the statement, “My goal is to provide high quality legal services,” is permissible.

Areas of practice

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, “DRAMATIZATION. NOT AN ACTUAL EVENT.” For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the re-construction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under rule 4-7.15.

Implying lawyer will violate rules of conduct or law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in “combative and vicious tactics” that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Florida bar approval of ad or lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating The Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, executive, and legislative titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed after the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Judge Doe (Retired), Former Justice Doe, Retired Judge Smith, Justice Smith (Retired), Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer’s name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one’s judicial, executive, or legislative experience is permitted if the reference is after the lawyer’s name and is clearly modified by terms such as “former” or “retired.” For example, a former judge may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge.”

As another example, a former state representative may not include “Representative Smith (former)” or “Representative Smith, retired” in an advertisement, letterhead, or business card. However, a former representative may state, “John Smith, Florida Bar member, former state representative.”

Further, an accurate representation of one’s judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed after the person’s name. For example, the statement “John Jones was governor of the State of Florida from [. . . years of service . . .]” would be permissible.

Also, the rule governs lawyer advertising. It does not apply to pleadings filed in a court. A practicing lawyer who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge’s previous title of “Judge” in a pleading could be sanctioned.

Implication of association or affiliation with another lawyer or law firm

This rule prohibits any statement or implication that a lawyer or law firm is affiliated or associated with the advertising lawyer or law firm when that is not the case. Lawyers may not state or imply another lawyer is part of the advertising firm if the statement or implication is

untrue. For example, when a lawyer leaves a law firm, the firm must remove the lawyer's name from the firm's letterhead, website, advertisements, and other communications about the law firm. An example of impermissible advertising would be including the name of a lawyer or law firm that is not part of the advertising law firm in an Internet advertisement or sponsored link that is displayed when the non-affiliated lawyer or law firm's name is used as a search term when the advertisement does not clearly indicate that the non-affiliated lawyer or law firm is not part of the advertising law firm. Another example of impermissible conduct is use of another lawyer or law firm name as an Internet search term that triggers the display of an advertisement that does not clearly indicate that the advertisement is for a lawyer or law firm that is not the lawyer or law firm used as the search term. The triggered advertisement would not be misleading if the first text displayed is the name of the advertising lawyer or law firm and, if the displayed law firm name is a trade name that does not contain the name of a current or deceased partner, the name of the lawyer responsible for the advertisement is also displayed as the first text.

Adopted January 31, 2013, effective May 1, 2013 (108 So.3d 609); amended March 8, 2018, effective April 30, 2018 (238 So.3d 164); amended March 3, 2022, effective May 2, 2022 (SC20-1467).

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in potentially misleading advertising.

(a) Potentially Misleading Advertisements. Potentially misleading advertisements include, but are not limited to:

(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base the membership or recognition on a lawyer's ability or skill, unless the entity conferring the membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based on objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified or other variations of that term unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating The Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as

provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement “Not Certified as a Specialist by The Florida Bar” in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.

In the absence of the certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law;

(5) a statement that the lawyer is a specialist or an expert in an area of practice, or other variations of those terms, unless the lawyer is certified under the Florida Certification Plan or an American Bar Association or Florida Bar accredited certification plan or the lawyer can objectively verify the claim based on the lawyer’s education, training, experience, or substantial involvement in the area of practice in which specialization or expertise is claimed;

(6) a statement that a law firm specializes or has expertise in an area of practice, or other variations of those terms, unless the law firm can objectively verify the claim as to at least 1 of the lawyers who are members of or employed by the law firm as set forth in subdivision (a)(5) above, but if the law firm cannot objectively verify the claim for every lawyer employed by the firm, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in the area of practice in which the firm claims specialization or expertise; or

(7) information about the lawyer’s fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer’s skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a

lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

“John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell’s highest rating.”

“Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine.”

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer’s or law firm’s services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer’s practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as “certified” or “board certified” or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer’s practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is “certified” in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms “specialization,” “expertise,” or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a

lawyer's "of counsel" relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the "of counsel" lawyer's board certification or qualifications only if the "of counsel" practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the "of counsel" qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

- (a) uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client;
- (b) uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer;
- (c) contains the voice or image of a celebrity, except that a lawyer may use the voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm; or
- (d) offers consumers an economic incentive to employ the lawyer or review the lawyer's advertising; provided that this rule does not prohibit a lawyer from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and does not prohibit the

lawyer from offering free legal advice or information that might indirectly benefit a consumer economically.

Comment

Unduly Manipulative Sounds and Images

Illustrations that are informational and not misleading are permissible. As examples, a graphic rendering of the scales of justice to indicate that the advertising lawyer practices law, a picture of the lawyer, or a map of the office location are permissible illustrations.

An illustration that provides specific information that is directly related to a particular type of legal claim is permissible. For example, a photograph of an actual medication to illustrate that the medication has been linked to adverse side effects is permissible. An x-ray of a lung that has been damaged by asbestos would also be permissible. A picture or video that illustrates the nature of a particular claim or practice, such as a person on crutches or in jail, is permissible.

An illustration or photograph of a car that has been in an accident would be permissible to indicate that the lawyer handles car accident cases. Similarly, an illustration or photograph of a construction site would be permissible to show either that the lawyer handles construction law matters or workers' compensation matters. An illustration or photograph of a house with a foreclosure sale sign is permissible to indicate that the lawyer handles foreclosure matters. An illustration or photograph of a person with a stack of bills to indicate that the lawyer handles bankruptcy is also permissible. An illustration or photograph of a person being arrested, a person in jail, or an accurate rendering of a traffic stop also is permissible. An illustration, photograph, or portrayal of a bulldozer to indicate that the lawyer handles eminent domain matters is permissible. Illustrations, photographs, or scenes of doctors examining x-rays are permissible to show that a lawyer handles medical malpractice or medical products liability cases. An image, dramatization, or sound of a car accident actually occurring would also be permissible, as long as it is not unduly manipulative.

Although some illustrations are permissible, an advertisement that contains an image, sound or dramatization that is unduly manipulative is not. For example, a dramatization or illustration of a car accident occurring in which graphic injuries are displayed is not permissible. A depiction of a child being taken from a crying mother is not permissible because it seeks to evoke an emotional response and is unrelated to conveying useful information to the prospective client regarding hiring a lawyer. Likewise, a dramatization of an insurance adjuster persuading an accident victim to sign a settlement is unduly manipulative, because it is likely to convince a viewer to hire the advertiser solely on the basis of the manipulative advertisement.

Some illustrations are used to seek attention so that viewers will receive the advertiser's message. So long as those illustrations, images, or dramatizations are not unduly manipulative, they are permissible, even if they do not directly relate to the selection of a particular lawyer.

Use of Celebrities

A lawyer or law firm advertisement may not contain the voice or image of a celebrity. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

- (1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney” or “law firm”;
- (2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession 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 Florida where the lawyer is licensed to practice;
- (3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;
- (4) military service, including branch and dates of service;
- (5) foreign language ability;
- (6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (a)(4) of rule 4-7.14 regarding use of terms such as certified, specialist, and expert;
- (7) prepaid or group legal service plans in which the lawyer participates;
- (8) acceptance of credit cards;

(9) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (a)(5) of rule 4-7.14 regarding cost disclosures and honoring advertised fees;

(10) common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;

(11) punctuation marks and common typographical marks;

(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. The Florida Bar’s lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

Comment

The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION

(a) Payment by Other Lawyers. No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) Payment for Referrals. A lawyer may 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 permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) Payment by Nonlawyers. A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment

Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules; and.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may 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, a 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 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

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

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

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) 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; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) These communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each separate enclosure of such communication and the face of an envelope containing the communication must be reasonably prominently marked “advertisement” in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the “advertisement” mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word “Advertisement.”

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be

accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked “SAMPLE” in red ink in a type size one size larger than the largest type used in the contract and the words “DO NOT SIGN” must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: “If you have already retained a lawyer for this matter, please disregard this letter.”

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer’s knowledge regarding the recipient’s particular situation.

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

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client’s request.

Comment

Permissible contact

A lawyer may initiate the routine mutual exchange of contact information with prospective clients who are attending the same business or professional conference or meeting or business-related social gathering if the lawyer initiates no further discussion of a specific legal matter. Similarly, a lawyer may initiate the exchange of contact information and profiles via a specific social media platform that is established for the purpose of businesses and professionals exchanging this type of information if the lawyer initiates no discussion of specific legal matters. If a prospective client then initiates discussion of a specific legal matter, the lawyer should decline to discuss the matter at the initial contact and defer further discussion to a more appropriate location when the discussion would endanger a prospective client’s confidentiality.

Lawyers should not interpret the above to allow a lawyer who knows a person has a specific legal problem to go to a specific conference or meeting where that prospective client will be in attendance in order to initiate the exchange of contact information. An accident scene, a hospital room of an injured person, or a doctor's office are not business or professional conferences or meetings within the meaning of the discussion above.

Prior professional relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing where the lawyer obtained information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct

mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or prepaid legal services plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with these representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

Adopted January 31, 2013, effective May 1, 2013 (108 So.3d 609), amended November 9, 2017, effective February 1, 2018; amended March 3, 2022, effective May 2, 2022 (SC20-1467).

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 shall 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 at The Florida Bar headquarters address in Tallahassee.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements filed with it pursuant to 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 Bar subsequently 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 subdivision (h) of 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 such 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) failure to timely file the advertisement with The Florida Bar;
- (2) dissemination of a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;
- (3) filing of an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;
- (4) dissemination of 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) dissemination of 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 is not in compliance 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 subdivision (a) must include:

- (1) a copy of the advertisement in the form or forms in which it is to be disseminated, which 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 subdivision (a), or \$250 for each advertisement not timely filed. This fee 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 subsequent to The Florida Bar's evaluation of 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 with The Florida Bar at its headquarters address in Tallahassee 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 in accordance with the requirements of 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 pursuant to 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 can submit the

lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion prior to 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 be able 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 material to a determination of 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).

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term “legal clinic” or “legal services” in conjunction with the lawyer’s own name if the lawyer’s practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may 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 is in violation of this rule unless the same name is the law firm name that appears on the lawyer’s letterhead, business cards, office sign, and fee contracts, and appears with the lawyer’s signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

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

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment

Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. *See Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d) When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter

difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a

clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

APPENDIX 4: “COMMERCIAL SPEECH DOCTRINE”

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976), the United States Supreme Court opined that commercial speech is entitled to some protection. Based on the public’s right to receive the free flow of commercial information, the Court held that commercial speech is protected First Amendment speech and may not be prohibited absolutely. Subsequently, in *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), the Court extended the “Commercial Speech Doctrine” to lawyer advertising, holding that a total prohibition on the advertisement of routine legal services is unconstitutional.

Lawyer advertising, as a form of commercial speech, receives a level of constitutional protection that is above unprotected speech (e.g., false, deceptive or misleading statements or advertisements concerning unlawful activities) but below that provided completely protected speech (e.g., political statements). Under the “Commercial Speech Doctrine,” a state may totally prohibit misleading advertising and may impose restrictions if the particular content or method of advertising is inherently misleading or if experience demonstrates that the advertising is subject to abuse. *In re R.M.J.*, 102 S.Ct. 929, 937 (1982). If the content of the advertisement is not misleading, the state may regulate it only when there is a substantial government interest being served. *Id.* However, the state may place reasonable restrictions upon the time, place, and manner of lawyer advertising, so long as the content or subject matter is not regulated. *See, Bates*, 97 S.Ct. at 2709.

The standard for regulating the content of commercial speech was first articulated by the Supreme Court in *Central Hudson Gas and Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). There the Court found that the content of non-misleading commercial speech can be constitutionally regulated only when a substantial government interest is at stake, the regulation directly advances that interest, and the regulation is no more extensive than is necessary to serve that interest. In *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), the Court clarified the Central Hudson test for regulating commercial speech by announcing that only a “reasonable fit” must be necessary between the state interest and the regulation. The “fit” need not be perfect, only reasonable.

The following decisions on lawyer advertising by the Supreme Court are recommended reading for a comprehensive understanding of the application of the “Commercial Speech Doctrine” to lawyer advertising:

- A. *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978) -- upholding total ban of in-person solicitation when the primary motivation behind the contact is the lawyer’s pecuniary gain.
- B. *In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) -- holding that when the lawyer is motivated by the desire to promote political goals rather than pecuniary

gain, direct in-person solicitation is treated as “political speech,” rather than “commercial speech,” and is entitled to greater constitutional protection against state regulation.

- C. *In re R.M.J.*, 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 65 (1982) -- deciding that a state may not completely prohibit lawyers from accurately listing their areas of practice; however, certain disclosure language may be necessary to avoid potentially misleading the public.
- D. *Zauderer v. Office of Disciplinary Council*, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) -- discussing lawyers use of illustrations in their advertising; also holding that a state may require an advertisement for contingent fees to state that an unsuccessful litigant may be responsible for court costs.
- E. *Shapero v. Kentucky Bar Ass’n*, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) -- holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems; the state’s interest in preventing overreaching or coercion by a lawyer using direct mail can be served by restrictions short of a total ban.
- F. *Peel v. Attorney Registration & Disciplinary Commission*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990) -- holding that a state may not totally ban a lawyer from advertising certification as a trial specialist by a recognized national certification organization; however, appropriate disclosure statements may be required to avoid any potentially misleading implications.
- G. *Ibanez v. Florida Department of Business and Professional Regulation*, 512 U.S. 136, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994) -- holding that it is not misleading for lawyer/accountant to use the designations of CPA and CFP, without further clarification, on letterhead and advertisements as long as the designations are true.
- H. *The Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995) -- holding that Florida’s 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the State’s substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system.
- I. *Friedman v. Rogers*, 440 U.S. 1, 99 S.Ct. 887, 59 L.Ed.2d 100 (1979) -- holding that “[t]he use of trade names is a form of commercial speech.” The Court in *Friedman*, upheld, however, a prophylactic prohibition on the use of trade names by optometrists due to specific concerns based upon actual experience which established possibilities for deception of the public.
- J. *The Florida Bar v. Fetterman*, 439 So. 2d 835, 840 (Fla. 1983) -- finding the trade name “The Law Team, Fetterman and Associates” to be “neither inherently nor operatively misleading” where the firm employed more than 1 full time associate when the name was adopted and continued to employ at least 1 full time associate on staff.
- K. *The Florida Bar v. Herrick*, 571 So. 2d 1303, 1305 (Fla. 1990) -- concluding that “[S]tate rules [on lawyer advertising and solicitation] may be no broader than reasonably necessary to prevent the perceived evil.”

**APPENDIX 5:
ADDITIONAL RULES REGULATING THE SCA**

CHAPTER 15. REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS

15-1. GENERALLY

RULE 15-1.1 PURPOSE

The Florida Bar, as an official arm of the Supreme Court of Florida, is charged with the duty of enforcing the rules governing lawyer advertising and solicitation and with assisting members of The Florida Bar to advertise their services in a manner beneficial to both the public and the legal profession. The board of governors, pursuant to the authority vested in it under rule 2-8.3, shall create a SCA to advise members of The Florida Bar on permissible advertising and solicitation practices. It shall be the duty of the committee to administer the advertising evaluation program set forth in subchapter 4-7.

15-2. SCA

RULE 15-2.1 MEMBERSHIP AND TERMS

The total number of standing committee on advertising members is determined at the discretion of the board of governors of a number of no more than 20, 3-5 of which are nonlawyers representing the public. Members of the committee are appointed by the president-elect of The Florida Bar, as provided in rule 2-8.1. The president-elect designates the chair and vice-chair, with the advice and consent of the board of governors. Members of the committee serve staggered 3-year terms unless removed by the president or president-elect for non-attendance or other good cause. No member may serve more than 2 consecutive terms. A quorum consists of a majority of the members.

RULE 15-2.2 FUNCTIONS

It shall be the task of the committee to evaluate all advertisements filed with the committee for compliance with the rules governing advertising and solicitation and to provide written advisory opinions concerning compliance to the respective filers, to develop a handbook on advertising for the guidance of and dissemination to members of The Florida Bar, and to recommend to the board of governors from time to time such amendments to the Rules of Professional Conduct as the committee may deem advisable.

RULE 15-2.3 REIMBURSEMENT FOR PUBLIC MEMBERS

The nonlawyer public members of the standing committee shall be reimbursed for reasonable travel and related expenses associated with attendance at meetings of the committee.

RULE 15-2.4 RECUSAL OF MEMBERS

Members of the committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or other lawyers in their firms.

15-3. PROCEDURE

RULE 15-3.1 MEETINGS

The committee shall meet as often as is necessary to fulfill its duty to provide a prompt opinion regarding a submitted advertisement's compliance with the advertising and solicitation rules.

RULE 15-3.2 RULES

The committee may adopt such procedural rules, subject to review by the board of governors, for its activities as may be required to enable the committee to fulfill its function.

15-4. REPORT OF COMMITTEE

RULE 15-4.1 GENERALLY

Within 3 months after the conclusion of the first year of the review program, the committee shall submit to the board of governors a report detailing the year's activities of the committee. The report shall include such information as the board of governors may require.

RULE 15-4.2 RECORDS

(a) Maintenance of Records. The committee shall keep records of its activities for 3 years.

(b) Public Access to Records. All records of the committee shall be open for public inspection and copying with the following exceptions:

- (1) proposed advertisements and proposed direct mail communications filed for advisory review when the submitting attorney advises the committee that the materials constitute protected trade secrets or proprietary information;

(2) the media, frequency, and duration of an advertisement when the submitting attorney advises the committee that the information constitutes protected trade secrets or proprietary information;

(3) the names and addresses of recipient of direct mail communications;

(4) information made confidential by rule of the Supreme Court of Florida;

(5) attorney-client communications between the bar, its committees and staff and those attorneys retained by the bar in anticipation of, or during, civil litigation; and

(6) work product prepared by an attorney retained by the bar in anticipation of, or during, civil litigation.

(c) Inspection of Copyrighted Material. Copyrighted work may be inspected but not reproduced.

APPENDIX 6:

FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION

FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION

1. APPLICATION; SCOPE; AND USAGE

Staff opinions, standing committee on advertising opinions, and opinions of the board of governors are advisory only and are not the basis for action by grievance committees, referees, or the board of governors except on application of the respondent in disciplinary proceedings. If a respondent's defense includes reliance on the receipt of a staff opinion, ethics counsel may release to the bar counsel, grievance committee, referee, or board of governors information concerning the opinion or the opinion request that would otherwise be confidential under these rules. Information concerning requests for staff opinions are confidential, except as otherwise provided in bylaw 2-9.4, Rule 15-4.2, and these procedures. If public statements are made by the inquirer about any advisory opinion or opinion request, confidentiality of the request and the opinion is waived and ethics counsel may disclose the opinion and information relating to the request.

The proposed advisory advertising opinion process should not be used to circumvent procedures to adopt or amend Rules Regulating The Florida Bar.

2. AUTHORITY TO ISSUE ADVERTISING OPINIONS

Ethics counsel and assistant ethics counsel, the standing committee on advertising, and the board of governors have the authority to evaluate lawyer advertisements in accordance with rule 4-7.19 and to issue advisory advertising opinions in the type and manner as set forth in these procedures.

(a) Ethics Counsel and Assistant Ethics Counsel. Ethics counsel and assistant ethics counsel may render oral and written opinions that will be identified as "staff opinions." Staff opinions may be issued only to the members of The Florida Bar in good standing inquiring as to their own contemplated conduct.

- (1) Staff opinions will not be issued if it is known to staff that the inquiry:
 - (A) is made by a person who is not a member of The Florida Bar in good standing;
 - (B) concerns past conduct of the inquirer;
 - (C) involves the conduct of a lawyer other than the inquirer;
 - (D) asks a question of law;
 - (E) asks a question of rule or court procedure; or
 - (F) is the subject of a proceeding brought under the Rules Regulating The Florida Bar.
- (2) Staff may decline to issue an opinion if the inquiry:
 - (A) is the subject of current litigation; or
 - (B) asks a question for which there is no previous precedent or underlying bar

policy on which to base an opinion.

(b) Standing Committee on Advertising. The standing committee on advertising (SCA) may render written opinions, amend existing opinions, or withdraw existing opinions on:

- (1) appeal of a written staff opinion by the inquiring lawyer;
- (2) request of the board of governors regarding application of the lawyer advertising rules to a particular set of facts;
- (3) review of staff opinions by the SCA; or
- (4) review of existing advisory advertising opinions by the SCA.

Opinions of the SCA will be identified as advisory advertising opinions.

(c) Board of Governors. The board of governors may render written opinions, amend existing opinions, or withdraw existing opinions:

- (1) on appeal of SCA action; and
- (2) on its own initiative when the board of governors determines that the application of the lawyer advertising rules to a particular set of facts is likely to be of widespread interest or unusual importance to a significant number of Florida Bar members.

Opinions of the board of governors will be identified as advisory advertising opinions.

3. PROCEDURES FOR ISSUANCE OF AND DECLINING TO ISSUE STAFF OPINIONS

(a) Request for Staff Opinion.

(1) *Oral Staff Opinions.* Members of the bar in good standing may request an oral staff opinion, other than an advertising filing required by rule 4-7.19, by calling ethics counsel in Tallahassee, at 1-800-235-8619 or 1-850-561-5780. Oral opinions may be confirmed in writing only in accord with the procedures for issuance of written staff opinions. All information relating to the request for an oral staff opinion is confidential as provided elsewhere in these procedures.

(2) *Written Staff Opinions.* Members of the bar in good standing may request a written staff opinion, other than an advertising filing required by rule 4-7.19, by writing Ethics Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 or by electronic mail to eto@flabar.org. All requests for written staff opinions must set forth all operative facts on which the request is based and contain an affirmative statement that the criteria of procedure 2(a) are met. Except for advertising filings required by rule 4-7.19, all material and information relating to the request for a written staff opinion are confidential as provided elsewhere in these procedures.

(b) Declining to Issue Staff Opinions. Ethics counsel must decline to issue a staff opinion if any criteria of procedure 2(a)(1) apply. Ethics counsel may decline to issue a staff opinion if any criteria of procedure 2(a)(2) apply.

(c) Appeal to SCA. Members of the bar in good standing filing advertisements for evaluation under rule 4-7.19 or requesting a written staff opinion may appeal the opinion or the decision not to issue the opinion to the SCA as provided elsewhere in these procedures. Appeals to the SCA are public information. Oral staff opinions and decisions not to issue an oral opinion may not be appealed.

4. PROCEDURE FOR ISSUANCE OF SCA OPINIONS

(a) Scheduling SCA Review. Timely appeals, requests of the board of governors, SCA

review of staff opinions, and SCA review of existing advisory advertising opinions will be scheduled for SCA consideration at the next available meeting of the SCA if any official notice requirements are met.

(b) Authority of SCA Chair. The chair of the SCA has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be allowed. In addition, the chair may appoint a subcommittee to conduct the review.

(c) Notice of SCA Review.

(1) *Adoption and Modification of Opinions.* In the event that the SCA decides to consider rendering a written opinion for publication at the request of the board of governors, on SCA review of staff opinions, or on SCA review of existing formal opinions, the SCA must publish in *The Florida Bar News* an official notice of its intent to consider rendering a written opinion. The notice must state the time and place at which the SCA's deliberations will occur and must invite written comments from interested bar members in good standing. Initial publication must fully identify the subject matter of the issue and any proposed text, if then available, and invite written comment. If an opinion is issued, the SCA must publish an official notice of the adoption of the advisory advertising opinion in *The Florida Bar News*, including the full text of the opinion. Any subsequent notice must contain the full text of any revised advisory advertising opinion.

(2) *Withdrawal of Opinions.* In the event that the SCA decides to consider withdrawing an advisory advertising opinion, the SCA must publish in *The Florida Bar News* an official notice of its intent to consider withdrawing the advisory advertising opinion. The notice must state the time and place at which the SCA's deliberations will occur, summarize the advisory advertising opinion, and invite written comments from interested bar members in good standing.

(d) Comments. Any member in good standing may file written comment with ethics counsel within 30 days of the date of publication of official notice of the SCA's intent to consider rendering an advisory advertising opinions, official notice of the SCA's adoption of a proposed advisory advertising opinion, official notice that the SCA has revised a proposed advisory advertising opinion, or official notice that the SCA intends to withdraw an advisory advertising opinion.

All comments filed under this subdivision must be in the form of written statements with relevant facts, arguments in support, and citations to relevant authority, if any.

(e) Record on Review. Ethics counsel will prepare and distribute to the SCA an agenda covering each matter for review. Any person may request and receive a copy of the agenda. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies.

(1) *Appeals of Written Staff Opinions.* The agenda item will include the original request for the opinion, the written staff opinion, and the written request for SCA review.

(2) *Requests of Board of Governors.* The agenda item will include the request, relevant material and authorities, any proposed text for consideration, and any timely comments.

(3) *Review of Staff Opinions.* The agenda item will include the original request for the opinion, the written staff opinion, and the written request for SCA review.

(4) *Review of Existing Advisory Advertising Opinions.* The agenda item will include the existing advisory advertising opinion, relevant material and authorities, and the written request for SCA review.

(f) SCA Action. By majority vote of those present, the SCA may:

(1) *Appeals of Written Staff Opinions.*

- (A) affirm the opinion, in whole or in part;
 - (B) reverse the opinion, in whole or in part;
 - (C) return the opinion to ethics counsel with instructions as to redrafting; or
 - (D) determine to issue, amend, or withdraw an advisory advertising opinion.
- (2) *Requests of Board of Governors.*
- (A) decline to issue an advisory advertising opinion;
 - (B) agree to issue, amend, or withdraw an advisory advertising opinion; or
 - (C) provide informal information or comments to the inquirer.
- (3) *Review of Staff Opinions.*
- (A) affirm the opinion, in whole or in part;
 - (B) reverse the opinion, in whole or in part;
 - (C) return the opinion to ethics counsel with instructions as to redrafting; or
 - (D) determine to issue, amend, or withdraw an advisory advertising opinion.
- (4) *Review of Existing Advisory Advertising Opinions.*
- (A) affirm the advisory advertising opinion, in whole or in part;
 - (B) reverse the advisory advertising opinion, in whole or in part;
 - (C) determine to issue, amend, or withdraw an advisory advertising opinion.

(g) Notice of SCA Action. Notice of SCA action regarding formal opinions of the SCA will be published in *The Florida Bar News*. Notice of the SCA's actions will be provided by ethics counsel to:

- (1) *Appeals of Written Staff Opinions.* The inquiring bar member who requested review of a written staff opinion or an advertisement filed in accordance with rule 4-7.19;
- (2) *Requests of Board of Governors.* The inquirer, all bar members who timely commented on a referral from the board of governors, any bar member who requests review within 30 days of the publication of the notice of SCA action, and the bar's executive director;
- (3) *Review of Staff Opinions.* All bar members who timely commented on notice of the SCA's review of staff opinions.
- (4) *Review of Existing Advisory Advertising Opinions.* All bar members who timely commented on notice of the SCA's review of existing advisory advertising opinions.

(h) Appeal of SCA Action. Any bar member who timely commented to the SCA and any bar member who timely appealed a written staff opinion may appeal action of the SCA to the board of governors as provided elsewhere in these procedures.

5. PROCEDURE FOR REVIEW OF SCA ACTION

(a) Referral to Board Review Committee on Professional Ethics. Timely appeals from SCA action will be referred to the Board Review Committee on Professional Ethics (BRC).

(b) Scheduling BRC Review. Timely appeals will be scheduled for BRC consideration at the next meeting of the BRC if the appeal or request is made more than 30 days in advance of such meeting.

(c) Authority of BRC Chair. The chair of the BRC has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be allowed. In addition, the chair may appoint a subcommittee to conduct the review.

(d) Record on Review. Ethics counsel will prepare and distribute to the BRC a file on each matter for review. Any person may request and receive a copy of the agenda item. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies. The agenda item will include the record before the SCA and the request for BRC

review.

(e) **BRC Action.** By majority vote of those present, the BRC may:

- (1) affirm the SCA action, in whole or in part;
- (2) reverse the SCA action, in whole or in part; or
- (3) return the matter to the SCA with instructions as to redrafting.

(f) **Review of BRC Action.** The BRC will report its actions to the board and the action will be placed on the agenda of the board for review and approval as a consent item if affirming SCA action. Any member of the board may request that any BRC action be taken up for discussion by the full board. By majority vote of those present, the board may:

- (1) affirm the SCA action, in whole or in part;
- (2) reverse the SCA action, in whole or in part; or
- (3) return the matter to the SCA with instructions as to redrafting.

(g) **Notice of Board of Governors Action.** Notice of board of governors action regarding formal advisory advertising opinions will be published in *The Florida Bar News*. Notice of the board's actions will be provided by ethics counsel to the members who timely requested board of governors review.

6. PROCEDURE FOR ISSUANCE OF BOARD OF GOVERNORS OPINIONS

(a) **Referral to BRC.** Board of governors decisions to render an advisory advertising opinion will be referred to the BRC to develop a specific set of facts on which the opinion will be based, comply with notice provisions in this procedure, and adopt a written advisory opinion applying the lawyer advertising rules to the set of facts.

(b) **Scheduling BRC Review.** Advisory advertising opinions will be scheduled for BRC consideration if the decision to consider rendering an opinion is made more than 30 days in advance of such meeting and any official notice requirements are met.

(c) **Authority of BRC Chair.** The chair of the BRC has the discretion to determine the order of the agenda, time allocated to each matter, and whether personal appearances may be allowed. In addition, the chair may appoint a subcommittee to conduct the review.

(d) **Notice of BRC Opinion.** In the event that the board of governors refers an issue to the BRC to render a written opinion for publication, the BRC will publish in *The Florida Bar News* an official notice of its intent to consider rendering a written opinion. The notice will state the time and place at which the BRC's deliberations will occur and invite written comments from interested bar members in good standing. Initial publication will identify the subject matter of the issue and any proposed text, if then available, and invite written comment. If an opinion is issued, the BRC will publish an official notice of the adoption of the advisory advertising opinion in *The Florida Bar News*, including the full text of the opinion. Any subsequent notice will contain the full text of any revised advisory advertising opinion.

(e) **Comments.** Any bar member in good standing may file written comment with ethics counsel within 30 days of the date of publication of official notice of the BRC's intent to consider rendering a proposed advisory opinion, official notice of the BRC's adoption of an advisory opinion, or official notice that the BRC has revised a proposed advisory opinion.

All comments filed under this subdivision must be in the form of written statements with relevant facts, arguments in support, and citations to relevant authority, if any.

(f) **Record on Review.** Ethics counsel will prepare an agenda item for each matter for review. Any person may request and receive a copy of the agenda item. Ethics counsel may charge a reasonable fee for providing copies in accord with established, general bar policies.

The agenda item will contain the statement of facts on which the proposed advisory opinion will be made, relevant material and authorities, and the text of the proposed advisory opinion, if then available.

(g) BRC Action. By majority vote of those present, the BRC may:

- (1) determine to issue an opinion; or
- (2) determine not to issue an opinion.

(h) Review of BRC Action. The BRC will report its actions to the board. By majority vote of those present, the board may:

- (1) affirm the BRC action, in whole or in part;
- (2) reverse the BRC action, in whole or in part; or
- (3) return the matter to the BRC with instructions as to redrafting.

(i) Notice of Board of Governors Action. Notice of board of governors action regarding formal advisory opinions will be published in *The Florida Bar News*. Notice of the board's actions will be provided by ethics counsel to the bar members who timely filed comments.

7. TIME FOR APPEALS

All appeals allowed under these procedures are commenced by mailing the required items to Ethics Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, within 30 days of notice of the action that is the subject of the appeal. Failure to timely commence an appeal bars the appeal.

**APPENDIX 7:
THE FLORIDA BAR STANDING COMMITTEE
ON ADVERTISING GUIDELINES**

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR A LAWYER'S STATEMENT OF QUALIFICATIONS AND EXPERIENCE

Rule 4-7.18(b)(2)(C) requires that every direct written communication to a prospective client be accompanied by a factual statement detailing the lawyer's background, training, and experience.

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

- Specific experience in the area or areas of law for which professional employment is sought;
- If advertising for matters that may end up in trial, the number of similar cases actually tried by the advertising lawyer; and
- Date of admission to The Florida Bar. May also include the fact and date of admission of other bars and courts;
- Number of years of experience as a licensed lawyer in the area(s) of law referred to in the advertisement;

Additionally, the SCA recommends including the following:

- Law school(s) attended, and date(s) of graduation. May also include: legal degree(s) earned; other academic degree(s) earned (including date(s) of degree(s) and institution(s) conferring degree(s));
- Prior legal employment or legal positions held (e.g., former assistant state attorney; formerly associated at 30-lawyer civil trial law firm);
- The legal organization(s) and/or professional organization(s) of which the advertising lawyer is a member.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR A LAW FIRM'S STATEMENT OF QUALIFICATIONS AND EXPERIENCE

Rule 4-7.18(b)(2)(C) requires that every direct written communication to a prospective client be accompanied by a factual statement detailing the firm's background, training, and experience.

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

- Specific experience of the firm in the area or areas of law for which professional employment is sought, including the number of lawyers who practice in these areas, and the length of time the law firm has been practicing in the area advertised;
- Length of time the law firm has been in existence.
- The number of lawyers within the firm.
- The areas of practice of the firm.
- If advertising for matters that may end up in trial, the number of similar cases actually tried by the advertising firm; and

Additionally, the SCA recommends including the following:

- Law school(s) attended, and date(s) of graduation for the lawyer(s) of the firm who will be providing services in the advertised area of practice. May also include: legal degree(s) earned; other academic degree(s) earned (including date(s) of degree(s) and institution(s) conferring degree(s));
- Date of admission to The Florida Bar for the lawyer(s) of the firm who will be providing services in the advertised area of practice. May also include the fact and date of admission of other bars and courts;
- Prior legal employment or legal positions held (e.g., former assistant state attorney; formerly associated at 30-lawyer civil trial law firm) for the lawyer(s) of the firm who will be providing services in the advertised area of practice;
- Number of years of experience as a licensed lawyer in the area(s) of law referred to in the advertisement of the lawyer(s) of the firm who will be providing services in the advertised area of practice;
- The legal organizations and/or professional organization(s) to which the advertising lawyer(s) or the firm belongs.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

**THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING
GUIDELINES FOR A QUALIFYING PROVIDER'S
STATEMENT OF QUALIFICATIONS AND EXPERIENCE**

Rule 4-7.18(b)(2)(C) requires that every written communication to a prospective client be accompanied by a factual statement detailing the background, training, and experience of the lawyers to whom the recipient may be referred. Qualifying providers include lawyer referral services, matching services, group or pooled advertising programs, directories, or tips or leads generators. For the definition of qualifying provider, please see Rule 4-7.22(b).

The SCA has determined that the following ordinarily must be included in the statement of qualifications:

The number of lawyers participating in the qualifying provider.

- The areas of practice of the participating lawyers available for potential clients to choose from.
- For each area of practice, the number of participating lawyers who practice in that area, together with a range of years of experience of those lawyers in that area of practice.
- If advertising for matters that may end up in trial, a range of the number of similar cases actually tried by participating lawyers.
- The minimum requirements the qualifying provider has established for membership in the service.
- The length of time the qualifying provider has been in existence.
- Geographic locations of lawyers participating in the qualifying provider.

Finally, the statement of qualifications must be clearly legible. Rule 4-7.12(d). If the advertisement appears in a language other than English, the statement of qualifications must appear in that language. Rule 4-7.12(c).

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR NETWORKING SITES

(Revised August 19, 2020)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including email and instant messaging. Twitter is a networking site in which brief posts of no more than 140 characters are sent to followers, or persons who have specifically requested to receive the postings of particular persons on Twitter [Note: Twitter subsequently changed its character limitations]. Twitter postings are generally public, but a person who posts via Twitter can choose to have Twitter postings sent only to that person's followers and not generally accessible to the public.

The SCA has reviewed the social networking media and issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes (i.e. to maintain social contact with family and close friends) and not for the purpose of marketing legal services, are not subject to the lawyer advertising rules. However, lawyers are still bound by the Rules Regulating the Florida Bar.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.17 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guaranties of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Posts that lawyers pay to appear in the feed of consumers with whom the lawyer has no prior family or professional relationship must not only comply with all general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21, but must also be filed for review under Rule 4-7.19 unless they are “tombstone” advertisements, the content of which is limited to the information listed in Rule 4-7.16. These posts are a form of paid spot advertising and are sometimes referred to as “sponsored” or “boosted.” Frequently, they are provided to consumers within a specified geographic area near the advertising lawyer. Depending on the type of advertisement and selection criteria for the consumers to whom they are “boosted,” the advertisement also may have to comply with the requirements for direct electronic solicitations based on a January 31, 2020 decision of The Florida Bar Board of Governors. The board determined that a social media post was a form of targeted electronic solicitation that must comply with the requirements of Rule 4-7.18(b) for targeted electronic media when the lawyer inquired about paying to have a specific social media post appear in the social media feed of specific individuals who self-identified through their social media as containing specified characteristics of a prospective class in a prospective class action. Thus, it is The Florida Bar’s position that any social media post by a lawyer that is targeted to prospective consumers of legal services who are not current or former clients of the lawyer where the social media post is targeted with enough specificity that it does not appear as mass marketing to consumers who may or may not have a specific need for legal services and instead it appears in the feed only of prospective clients who have self-identified with characteristics that identify those prospective clients as having a specific need for legal services, then that social media post must comply with the requirements for targeted direct electronic media under Rule 4-7.18(b) and must be filed for review. Information on complying with these rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Targeted Social Media Advertisements Quick Reference Checklist on the Florida Bar website.

Invitations sent directly from a social media site via instant messaging to a third party to view or link to the lawyer’s page on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business must meet the requirements for written solicitations under Rule 4-7.18(b), unless the recipient is the lawyer’s current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the page sent via email must comply with the direct email rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons who have requested information from the lawyer, or persons with whom the lawyer has a prior professional relationship. Instant messages and direct email must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct email rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Although lawyers are responsible for all content that the lawyers post on their own pages, a lawyer is not responsible for information posted on the lawyer’s page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules. If a third party posts information on the lawyer’s page about the lawyer’s services that does not comply with the lawyer advertising rules, the lawyer must remove the information from the lawyer’s page. If the lawyer becomes aware that a third party has posted information about the lawyer’s services on a page not controlled by the lawyer that does not comply with the lawyer advertising rules, the lawyer should ask the third party to

remove the non-complying information. In such a situation, however, the lawyer is not responsible if the third party does not comply with the lawyer's request.

Lawyers who post information to Twitter whose postings are generally accessible are subject to the lawyer advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as above. A lawyer may post information via Twitter and may restrict access to the posts to the lawyer's followers, who are persons who have specifically signed up to receive posts from that lawyer. If access to a lawyer's Twitter postings is restricted to the followers of the particular lawyer, the information posted there is information at the request of a prospective client and is subject to the lawyer advertising rules, but is exempt from the filing requirement under Rule 4-7.20(e). Any communications that a lawyer makes on an unsolicited basis to prospective clients to obtain "followers" is subject to the lawyer advertising rules, as with any other social media as noted above. Because of Twitter's 140 character limitation, lawyers may use commonly recognized abbreviations for the required geographic disclosure of a bona fide office location by city, town or county as required by Rule 4-7.12(a).

Finally, the SCA is of the opinion that a page on a networking site is sufficiently similar to a website of a lawyer or law firm that pages on networking sites are not required to be filed with The Florida Bar for review.

In contrast with a lawyer's page on a networking site, a banner advertisement posted by a lawyer on a social networking site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR VIDEO SHARING SITES

(Revised May 9, 2016)

Video sharing sites accessed via the Internet have proliferated in the last several years. There are numerous video sharing sites. A video sharing site is a site accessed via the Internet that permits video viewing, uploading and sharing via search or direct link. Probably the most well-known video sharing site is YouTube, on which registered users are permitted to upload videos, but all visitors are permitted to view.

The SCA has reviewed the video sharing media, and issues the following guidelines for lawyers using them.

Videos of individual lawyers on video sharing sites that are used solely for purposes that are unrelated to the practice of law are not subject to the lawyer advertising rules.

Videos appearing on video sharing sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These videos and all information the lawyer or law firm posts with them must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guarantees of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Invitations to view or link to the lawyer's video sent on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business must comply with requirements for direct written solicitation under Rule 4-7.18(b), unless the recipient is the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the video sent via email must comply with the direct email rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons with whom the lawyer has a prior professional relationship or persons who have requested information from the lawyer. Instant messages and direct email must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct email rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Finally, the SCA is of the opinion that videos posted solely on video sharing sites are information at the request of the prospective client and therefore not required to be filed with The Florida Bar for review. Rule 4-7.20(e).

In contrast with a video posted on a video sharing site, a banner advertisement posted by a lawyer on a video sharing site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).

HANDBOOK ON LAWYER ADVERTISING & SOLICITATION - SAMPLE ADS



THE FLORIDA BAR
Standing Committee on Advertising
Tenth Edition
Updated 2020

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Jane Jones, Partner

- Selected for inclusion in *Best Lawyers in America* 2013 in the field of Intellectual Property.

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Admitted to The Florida Bar, 1991
Rated AV by Martindale Hubbell® from 2000 to present
included in Best Lawyers 2000 to present

Jane Smith, Attorney at Law

Graduated Cum Laude from
the University of Florida Law School, 1991
Admitted to The Florida Bar 1991

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SMITH & JONES, P.A.**

Attorneys at Law

John Smith, Esq.

Jane Jones, Esq.

{Date}

Homeowner
Street Address
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Dear Homeowner:

If you have already retained a lawyer for this matter, please disregard this letter. I obtained your name from the public records of the Clerk of Court. These records indicate that a foreclosure has been filed against you. My knowledge about the specifics of your case is limited to the information contained in the public records. You may have legal defenses to avoid foreclosure.

Federal and state laws provide pre-foreclosure requirements for lenders and protections for homeowners. A failure by the lender to comply with these requirements could result in a defective foreclosure. It may be possible for the homeowner to remain in their home during the foreclosure process. The lawyers of Smith & Jones have over 30 years of combined experienced in real estate and foreclosure cases. John Smith graduated from Florida State University School of Law in 1991 and was admitted to The Florida Bar in 1991. Jane Jones graduated from the University of Florida Law School in 1993 and was admitted to The Florida Bar in 1993. We know what steps the bank must take to foreclose on your home and want to help you.

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Homeowner
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*John Smith, Esq.
J.D. FSU 2005
Admitted to The
Florida Bar in 2005*



*Jane Smith, Esq.
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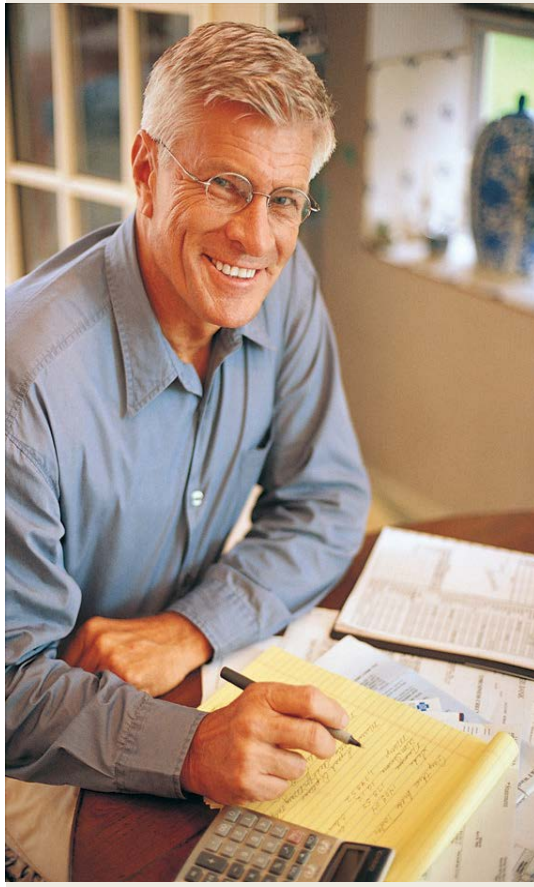
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Public court records indicate that a foreclosure has been filed against you. Our knowledge of your case is limited to the information in the public record. You may be able to save your home!

DO NOT DELAY! In Florida, you have only 20 days to answer a foreclosure complaint. If you do not answer the complaint in time, you may lose your right to assert the defenses which may give you more time in your home.

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► SMITH & JONES NEWS.. 2

○ ISSUE 1 | ○ VOLUME 1 | ○ YEAR 2013



The Advocate

A BULLETIN ON PROTECTING THE RIGHTS OF PEOPLE IN NEED

Lawyers in Bankruptcy

The economic downturn has yielded far-reaching effects, and many lawyers have not been able to escape its grasp. The Ethics Hotline has received many calls recently from lawyers who are faced with bankruptcy but fear that it would negatively affect their ability to continue practicing law. Fortunately, The Florida Bar ordinarily does not investigate a lawyer involved personally in a bankruptcy if the lawyer has not violated any other rules of ethical conduct.

Rule 5-1.2(e)(3) is the only provision in the Rules Regulating the Florida Bar that directly addresses bankruptcy. It states only that an attorney's bankruptcy filing would give cause for The Florida Bar to order an audit of the lawyer's trust account. Lawyers are not required to inform the Bar of their bankruptcy filing nor is the Bar required to actually audit the lawyer's trust account. The rule merely gives the Bar grounds to do so. In practice, The Florida Bar usually will not use this provision to audit a trust account unless there are other grounds to do so.

Under normal circumstances, a lawyer's filing of bankruptcy should not affect his or her clients' funds. The prohibition against the commingling of lawyer and client funds

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is designed to protect clients' money from just these types of situations. The rule ensures that should a lawyer's business and personal creditors go after a lawyer's assets, as they might during bankruptcy proceedings, the clients' funds would be safely held in separate trust or escrow accounts.

Of course, the Bar (and possibly law enforcement authorities) will take action against a lawyer if he or she engages in dishonesty, fraud, deceit, or misrepresentation through the bankruptcy proceedings. The lawyer is also reminded that his or her duties to clients, including the duty of confidentiality, remain intact throughout the bankruptcy proceedings.

In short, bankruptcy is a largely personal matter that The Florida Bar will most likely not get involved in unless the lawyer has violated other Rules of Professional Conduct. Hopefully, that thought will provide at least some comfort to lawyers who are facing a difficult prospect.



Question of the Month

Do I have to file my advertisement for review before I can use it?

Yes, all advertisements must be filed for review at least 20 days before the advertisements are used. Rule 4-7.19(a). The only exemption is if your advertisement falls within one of the filing exemptions found in Rule 4-7.20.

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Please join us for a reception on May 31 at 5:30 P.M. as we celebrate the opening of our new location.

Smith & Jones, P.A. was founded in 1984 by Martin Smith and Jill Jones with the goal of helping tort victims and their loved ones in their time of need. Since then, we have grown into a team of 12 lawyers and 23 staff members and represent victims in a range of areas including wrongful death, personal injury, products liability, and automobile and motorcycle accidents. We've been listed as one of U.S. News' "Best Law Firms" every year since 2000.



**SMITH &
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02/28/20, 04:30 PM

To: Anyemail@gmail.com
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Dear Homeowner:

If you have already retained a lawyer for this matter, please disregard this letter. I obtained your name from the records of the Clerk of Court. These records indicate that a foreclosure has been filed against you. My knowledge about the specifics of your case is limited to the information contained in the public records. You may have legal defenses to avoid foreclosure.

Federal and state laws provide pre-foreclosure requirements for lenders and protections for homeowners. A failure by the lender to comply with these requirements could result in a defective foreclosure. It may be possible for the homeowner to remain in their home during the foreclosure process. The lawyers of Smith & Jones have over 30 years of combined experienced in real estate and foreclosure cases. John Smith graduated from Florida State University School of Law in 1991 and was admitted to The Florida Bar in 1991. Jane Jones graduated from the University of Florida Law School in 1993 and was admitted to The Florida Bar in 1993. We know what steps the bank must take to foreclose on your home and want to help you.

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FLORIDA BAR STANDING COMMITTEE ON ADVERTISING

ADVISORY OPINION A-00-1 (Revised)

January 29, 2016

[Approved as revised by the Board of Governors on January 29, 2016.]

Advisory Advertising Opinions Are Not Binding

A lawyer may solicit prospective clients through Internet chat rooms, defined as real time communications between computer users, only if the lawyer complies with the rules on direct written communications and files any unsolicited communications with The Florida Bar for review. Lawyers may respond to specific questions posed to them in chat rooms. Lawyers should be cautious not to inadvertently form attorney-client relationships with computer users.

RPC: 4-7.18, 4-7.19

Opinions: 00-4, Illinois 96-10, Michigan RI-276, Philadelphia 98-6, Utah 97-10, Virginia A-0110, West Virginia 98-03

As use of the Internet becomes more and more a part of the practice of law, questions arise as to whether attorneys may ethically participate in chat rooms. As used in this opinion, the term "chat room" refers to a real time communication between computer users. A foremost concern in attorney participation in chat rooms is whether such activity constitutes impermissible solicitation. Rule 4-7.18(a)(1) provides:

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit, or permit employees or agents of the lawyer to solicit on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

Several other states have considered the issue of whether attorney participation in chat rooms constitutes impermissible solicitation. For example, in Michigan Opinion RI-276, it was concluded that while e-mail communications were akin to direct mail communications:

A different situation arises if a lawyer is participating in interactive communication on the Internet, carrying on an immediate electronic conversation. If the communication was initiated by the lawyer without invitation, such "real time" communications about the lawyer's services would be analogous to direct solicitations, outside the activity permitted by MRPC 7.3.

Similarly, the West Virginia Lawyer Disciplinary Board stated in Opinion 98-03:

The Board is of the opinion that solicitations via real time communications on the computer, such as a chat room, should be treated similar to telephone and in-person solicitations. Although this type of communication provides less opportunity for an attorney to pressure or coerce a potential client than do telephone or in-person solicitations, real time communication is potentially more immediate, more intrusive and more persuasive than e-mail or other forms of writing. Therefore, the Board considers Rule 7.3(a) to prohibit a lawyer from soliciting potential clients through real-time communications initiated by the lawyer.

The Utah State Bar's Ethics Advisory Opinion Committee has likewise concluded that an attorney's use of a chat room for advertising and solicitation are considered to be in person communications for the purposes of its Rule 7.3(a) and, thus, restricted by that rule. Utah Ethics Opinion 97-10. The Virginia State Bar Advertising Committee's Lawyer Advertising Opinion A-0110 is in accord with this reasoning.

The Philadelphia Bar Association, in Opinion 98-6, acknowledged that attorneys could not engage in any activity that would be improper solicitation. The Committee further stated, "In the opinion of the Committee, conversation interactions with persons on the Internet do not constitute improper solicitation, but in any one particular case the interaction may evolve in such a way that it could be characterized as such." The Illinois State Bar Association, in Ethics Opinion 96-10, has also stated:

The Committee does not believe that merely posting general comments on a bulletin board or chat room should be considered solicitation. However, if a lawyer seeks to initiate an unrequested contact with a specific person or group as a result of participation in a bulletin board or chat group, then the lawyer would be subject to the requirements of Rule 4-7.3. For example, if the lawyer sends unrequested electronic messages (including messages in response to inquiries posted in chat groups) to a targeted person or group, the messages should be plainly identified as advertising material.

The Board of Governors is unpersuaded by the reasoning of opinions from other states that conclude that participation in chat rooms, merely because it occurs in real time, is a form of prohibited solicitation. The underlying purpose of the prohibition against direct solicitation is the inherently coercive nature of direct conversations. The Supreme Court of the United States has upheld a ban on direct solicitation, stating "Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 457, 98 S. Ct. 1912, 1919, 56 L. Ed. 2d 444 (1978). The Court's opinion cited the American Bar Association's argument of a compelling state interest in banning direct solicitation: "to reduce the likelihood of overreaching and the exertion of undue influence on lay persons, to protect the privacy of individuals, and to avoid situations where the lawyer's exercise of judgment on behalf of the

client will be clouded by his own pecuniary self-interest.” *Id.* At 461. In contrast, written communications via a chat room, albeit in real time, do not involve the same pressure or opportunity for overreaching.

The Board therefore concludes that a direct solicitation via a chat room is permissible, but only if the communication complies with all the requirements for direct written communications set forth in Rule 4-7.18(b). Requirements of Rule 4-7.18(b) include, e.g., no contact within 30 days of an accident, beginning the communication with the word “advertisement,” providing information about the lawyer’s qualifications and experience, use of the first sentence “if you have already retained a lawyer for this matter, please disregard. . . ,” and the like. The Board’s decision is limited to participation in a chat room that does not involve live face-to-face interaction, e.g., via video telephone or video teleconference (such as Skype). Live face-to-face interaction by video would implicate the possibility of undue influence and pressure that is meant to be prohibited by Rule 4-7.18(a).

Additionally, direct solicitations in chat rooms must be filed with The Florida Bar for review in compliance with Rule 4-7.19. Filing is required only when the solicitation is unsolicited by the consumer. This opinion should not be interpreted as suggesting that a lawyer must file responses to specific requests for information about the lawyer or the lawyer’s services in a chat room that were initiated by a prospective client and not at the prompting of the lawyer. A lawyer may also respond to the posting of a general question such as “Does anyone know a lawyer who handles X type of matter?” without filing the response for review by The Florida Bar. Only a lawyer’s unsolicited offers to provide legal services or information about the lawyer’s services are required to be filed for review with The Florida Bar under Rules 4-7.19 and 4-7.20. Although solicited responses need not be filed for review, they remain subject to the substantive lawyer advertising rules found in subchapter 4-7 of the Rules Regulating The Florida Bar.

The Board believes that the most likely type of question to which a lawyer will want to respond is one involving a specific legal issue, such as “I just received a speeding ticket - what should I do?” or “I have heard that I can avoid probate if I have a trust - is that true?” The Board cautions lawyers that they may inadvertently form a lawyer-client relationship with a person by responding to specific legal inquiries, which will require that a lawyer comply with all Rules of Professional Conduct, including rules regarding conflicts of interest, confidentiality, competence, diligence, and avoiding engaging in the unlicensed practice of law. See, e.g., Florida Ethics Opinion 00-4. Although interpretation of these rules is outside the scope of an advisory advertising opinion, the Board feels obligated to point out that lawyers who engage in discussions in chat rooms may have other ethical obligations, regardless of whether the lawyer’s communications are permissible under the lawyer advertising rules.

Finally, this opinion should not be construed so broadly as to require compliance with lawyer advertising rules or filing with The Florida Bar for participation by a Florida attorney in chat rooms when it is *completely unrelated to seeking professional employment*, such as when the chat concerns the attorney’s personal interests or hobbies.

Filing Requirement - Rule 4-7.19(a)

Direct Mail and Direct Email - Rule 4-7.19(a)

All unsolicited direct mail and direct e-mail advertisements must be filed for review at least 20 days before their planned use. Rules 4-7.19(a) and 4-7.20(a).

All other media (television, radio, print, billboards and signs, Internet banner and pop-up ads, etc.) - Rule 4-7.19(a)

Television, radio, print, and Internet advertisements (except for lawyer or law firm websites) must be filed for review with the bar at its headquarters address at least 20 days before their first use, unless the content of the advertisements is limited to the presumptively valid content listed in Rule 4-7.16. Rules 4-7.19(a) and 4-7.20(a). Presumptively valid content is also commonly referred to as “safe harbor” or “tombstone” information.

Where to File

All required filings must be submitted to: Ethics and Advertising Department, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300. If you are attempting to file an advertisement for review under Chapter 4-7, Rules Regulating The Florida Bar, please note that the bar does not accept initial filings by email because filing fees by check made payable to The Florida Bar are required for each advertisement filed for review and must accompany the initial filing. The bar does not accept credit card payments for advertising filings. Additionally, if you are sending video or audio recordings for review, you must mail the video or audio recording to the Ethics and Advertising Department on a disk or USB drive before a final opinion can be issued. Emailed audio or video recordings will not be accepted or reviewed for compliance. If you have questions regarding this policy, please contact this department.

When to File

All required filings must be submitted for review at least 20 days before the first use of the advertisement to allow for a 15-day evaluation period and 5 days mailing time.

Contents of Filing

A filing with the bar must include:

- a copy of the advertisement:
- on DVD or flash drive for television (one advertisement per DVD or flash drive)*
- on CD or flash drive for radio (one advertisement per CD or flash drive)*

- plus all enclosures and a sample envelope for direct mail
- noted as a self-mailer on the cover sheet or cover letter for self-mailing direct mail
- a transcript of the audio portion of the recording, if audio is used;
- a printed copy of all text used in the advertisement, including both on-screen text and audio if applicable;
- a statement listing all media in which the advertisement or communication will appear, the expected frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used;
- the name of the lawyer responsible for the content;
- a check made payable to The Florida Bar including \$150 for each advertisement timely filed (at least 20 days in advance of first use) and \$250 for each advertisement filed late (less than 20 days in advance of first use); and
- an accurate English translation if the advertisement appears in a language other than English.

*Note: the advertisement must be capable of duplication by The Florida Bar for the committee's use. Please do not send a recording that is locked to prevent duplication. If the advertisement is being provided via electronic recording, the recording must be sent via DVD, CD or flash drive. The Florida Bar will not accept an e-mailed link or e-mailed file as the filing or a hypertext link on a DVD or CD. The preferred file format for advertisements recorded electronically for is [H.264 / MPEG-4](#) or AVC (advanced video coding). Resolution should not be larger than 720x480. [VLC Media Player](#) is the preferred software that will be used by The Florida Bar to view electronically recorded advertisements. Windows Media (.wmv), QuickTime (.mov or .qt) and Real Player (.rm, .ram, .rmvb) files can also be viewed.

Review by The Florida Bar

Advertisements will not be reviewed until the bar has received a complete filing. The bar will mail a response on or before 15 days from the date a complete filing is received. The bar's response will be mailed to the lawyer responsible for the advertisement's content at that lawyer's record bar address. If the advertisement is submitted by someone other than the lawyer, such as a marketer or a nonlawyer employee, the bar will mail a copy of the bar's response to that person on request. If an incomplete filing is received by the bar, or if the bar has questions regarding the content of the submission, the bar will mail a notification of the information required to complete the file, or the additional information requested, on or before 15 days from the date the filing is received.

Exemptions from Filing Requirement - Rule 4-7.20

Certain types of advertisements are exempt from the filing requirement. An advertisement that is exempt need not be filed for review. The fact that an advertisement is exempt from the filing and review requirements of Rule 4-7.19 does not mean that it is exempt from the other provisions of Subchapter 4-7. Thus, all advertisements must include, at a minimum, the name of at least one lawyer, law firm, or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement's content and the geographic location, by city, town or county of at least one bona fide office location of the lawyer who will perform the advertised services. Rules 4-7.12(a)(1) and (a)(2). For additional regulations governing all forms of lawyer advertising, see Rules 4-7.12 through 4-7.17 and 4-7.21. The following are exempt from the filing requirement:

Announcements of Contribution or Sponsorship – Rule 4-7.20(b)

A brief announcement in any public medium 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 presumptively valid content of advertisements set forth in Rule 4-7.16.

Legal Listings – Rule 4-7.20(c)

A listing or entry in a law list or bar publication

Mailings to lawyers, current clients and former clients – Rule 4-7.20(d)

Mailings that are sent only to other lawyers, current clients, and former clients

Communications sent at the request of a prospective client – Rule 4-7.20(e)

Mailings or other communications sent to a prospective client at that prospective client's request

Professional Announcements – Rule 4-7.20(f)

Professional announcement cards (announcing changed associations or addresses) that are mailed only to relatives, close personal friends, existing clients, former clients, or other lawyers.

Websites – Rule 4-7.20(g)

Lawyer and law firm websites are exempt from the filing requirement, including pop-ups on the lawyer or law firm's own website.

Florida Bar Consumer Information Pamphlets – SCA decision

Florida Bar consumer information pamphlets stamped with a lawyer's exempt contact information and placed in the lobby of a business where pick up by consumers is strictly voluntary are exempt from the filing requirement.

Florida Bar *Journal* and *News* Advertisements – SCA decision

Advertisements by lawyers placed in the Florida Bar *Journal* and Florida Bar *News* are not required to be filed for review. Please note that the editorial policy of the Florida Bar *Journal* and Florida Bar *News* is that advertisements must comply with substantive lawyer advertising rules.

Letterhead & Business Cards - SCA decision

Letterhead and business cards, provided they are not used in an unsolicited, direct mail communication or duplicated for publication in an advertising medium, are exempt from the filing requirement.

Mediator Advertisements – SCA decision

Advertisements solely for mediator services in which the advertisements contain no information about legal services or experience other than that the mediator is a member of The Florida Bar, are exempt from the filing requirement.

Newspaper Articles and Columns – SCA decision

Newspaper articles and columns that are written by a lawyer that are informational and do not contain promotional information about the lawyer are not required to be filed for review.

Newsletters – SCA decision

Informational newsletters which contain the lawyer or law firm's name, address, phone number and fax number must be filed for review. If the promotional information about the lawyer or law firm does not change from issue to issue, only the first issue of the newsletter is required to be filed for review; subsequent issues need not be filed for review (Advertising Opinion A-99-1).

Solicitation of Birth Mothers - SCA decision

Advertisements to solicit birth mothers when placed by an attorney on behalf of existing adoption clients are not required to be filed for review.

Solicitation of Witnesses – SCA decision

Florida's lawyer advertising rules do not apply to notices to find witnesses if the lawyer has an existing client and the lawyer does not intend to accept prospective clients as a result of placing the notice seeking witnesses.

“Tombstone” Ads for Qualifying Providers – Rules 4-7.20(a) and 4-7.16(b)

An advertisement for a qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) that contains no information or illustrations other than its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the participating lawyers practice, and, if applicable, the provider's nonprofit status, its status as a lawyer referral service approved by The Florida Bar, and the logo of its sponsoring bar association. Direct mail and direct email advertisements do not fall within this exception and must always be filed for review.

“Tombstone” Ads for lawyers or law firms- Rules 4-7.20(a) and 4-7.16(a)

Direct mail and direct email advertisements do not fall within this exception and must always be filed for review. An advertisement in any public medium (e.g., t.v., radio, print, Internet banner, Internet pop-up) that contains no information other than the following is not required to be filed for review:

- the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, e-mail addresses, office and telephone service hours, and a designation such as “attorney” or “law firm”;
- date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
- technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
- military service, including branch and dates of service;
- foreign language ability;

- fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification or specialty;
- participation in prepaid or group legal service plans;
- credit cards accepted;
- fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;
- common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;
- punctuation marks and common typographical marks;
- an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

**THE FLORIDA BAR
LAWYER ADVERTISING
COVER SHEET FOR TV & RADIO ADVERTISEMENTS**

Instructions: In an effort to expedite the review process please complete the following for each advertisement and, together with your cover letter mail, to: The Florida Bar, Ethics & Advertising, 651 E. Jefferson Street, Tallahassee, Florida 32399. **Filings are not accepted by fax or email.** For more information call 850-561-5780 or 800-235-8619.

ATTORNEY, LAW FIRM OR QUALIFYING PROVIDER	FILED BY MARKETER (If filed on behalf of attorney or qualifying provider.)
Firm:	Company:
Name:	Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Position:	*The response will be sent to the lawyer or qualifying provider responsible for the advertisement. The marketer will receive a copy if requested.
Date:	Date:

FOR ATTORNEYS AND LAW FIRMS ONLY:

☐ Solo ☐ ___ Partners & ___ associates ___ # Of Counsel

☐ Lawyer responsible for ad: _____

☐ Firm letterhead enclosed

Filing Fee enclosed: (Ad will not be reviewed without filing fee.)

\$150.00 (Must be filed in final form at least 20 days prior to first airing.)

\$250.00 (Late fee if advertisement is not filed at least 20 days prior to first airing. If filing is in response to a grievance, please enclose the original advertisement.)

☐ \$150.00 x _____ (# of ads) = \$ _____ (enclosed)

☐ \$250.00 x _____ (# of ads) = \$ _____ (enclosed)

Make Check Payable to **The Florida Bar**

☐ Transcript enclosed. (Required) ☐ On-screen text included (Required for TV)

The transcript must include a script, a printed copy of any on-screen text and a description of any visual images to be used in a television advertisement. (Example below)

Transcript of Speech	Identify All Speakers As Lawyer or Nonlawyer	On Screen Text	Visuals On Screen & Background sounds

At our law firm we've been handling criminal defense cases for 25 years.	Ms. Smith - Lawyer	Smith & Jones, P.A. 123 Main Street Tallahassee 850-555-5555	

Translation: If the advertisement appears in a language other than English, you must provide an accurate English translation in addition to the full transcript in the language other than English.

☐ English Translation Enclosed ☐ Advertisement in Language Other Than English Enclosed

Type of Advertisement: (Must be in format that can be readily capable for duplication.)

☐ **Television** (Check if the following is enclosed):

☐ DVD (Please submit a separate DVD per advertisement.) ☐ Flash Drive

☐ **Radio** (Check if the following is enclosed):

☐ DVD (Please submit a separate DVD per advertisement.) ☐ Flash Drive

Preferred file format is [H.264 / MPEG-4](#) or AVC (advanced video coding). This is the most common form of compression and distribution of high definition video. Resolution should not be larger than 720x480.

[VLC Media Player](#) is the software that will be used to view your advertisements. Windows Media (.wmv), Quicktime (.mov or .qt) and Real Player (.rm, .ram, .rmvb) files can also be viewed.

Computer format: ☐ H.264/MPEG-4 ☐ Windows Media (.wmv)
☐ Quick Time (.mov or .qt) ☐ Real Player (.rm, .ram, .rmvb)

Preliminary Opinion: A preliminary opinion may be issued without the expense of producing the advertisement by filing a draft of the information to be used in the advertisement together with a filing fee of \$150. Receipt of a preliminary opinion based on filing a transcript does not satisfy the filing requirement for television and radio ads. **Filers who obtain a preliminary opinion must file the final version of the television or radio advertisement at least 20 days before the advertisement's first broadcast.** On receipt of an advertisement in its final form, a final advisory opinion will be rendered.

☐ Final Opinion Requested ☐ Preliminary Opinion Requested

☐ The TV/Radio ad will be used on approval from The Florida Bar.

[Note: If waiting on bar approval please do not enter a date or a late fee will be assessed]

The TV/Radio ad will be broadcast on: _____

The TV/Radio ad will be used from _____ to _____. (dates)

Prior filings: If you have filed a similar advertisement please provide the following information: ☐ File Number(s): _____

Review Process: The Florida Bar must complete review of a complete filing within 15 days of receipt, unless The Florida Bar requires additional information and advises the filer within the 15 day period. In such cases, The Florida Bar will complete the review within 15 days of receipt of the additional information. If The Florida Bar fails to send the filer any communication within 15 days of a complete filing or the receipt of additional information requested, the filer will not be subject to discipline unless The Florida Bar subsequently notifies the filer of noncompliance and the filer continues to disseminate the advertisement after such notice.

☐ (Check here if additional information is attached.) Comments:

**THE FLORIDA BAR LAWYER ADVERTISING
COVERSHEET FOR DIRECT MAIL, E-MAIL, DIRECT MESSAGE, TEXT
MESSAGES & TARGETED SOCIAL MEDIA ADVERTISEMENTS**

Instructions: In an effort to expedite the review process please complete the following for each advertisement and, together with your cover letter mail, to: The Florida Bar, Ethics & Advertising, 651 E. Jefferson Street, Tallahassee, Florida 32399. **Filings are not accepted by fax or e-mail.** For more information call 850-561-5780 or 800-235-8619.

ATTORNEY, LAW FIRM OR QUALIFYING PROVIDER	FILED BY MARKETER (If filed on behalf of attorney or qualifying provider.)
Firm:	Company:
Name:	Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Position:	*The response will be sent to the lawyer or qualifying provider responsible for the advertisement. The marketer will receive a copy if requested.
Date:	Date:

FOR ATTORNEYS AND LAW FIRMS ONLY:

☐ Solo ☐ ___ Partners & ___ associates ___ # Of Counsel

☐ Lawyer responsible for ad: _____

☐ Firm letterhead enclosed

Filing Fee enclosed: (Ad will not be reviewed without filing fee.)

\$150.00 (Must be filed in final form at least 20 days prior to first airing.)

\$250.00 (Late fee if advertisement is not filed at least 20 days prior to first airing. If filing is in response to a grievance, please enclose the original advertisement.)

☐ \$150.00 x _____ (# of ads) = \$ _____ (enclosed)

☐ \$250.00 x _____ (# of ads) = \$ _____ (enclosed)

Make Check Payable to **The Florida Bar**

Direct Mail or E-mail Advertisement: Must include advertisement or e-mail, envelope and enclosures. Check all that apply. (Note: "Advertisement" must appear in a color that contrasts with the background and other text on every page or panel and the address panel.)

- ☐ Letter ☐ Post Card ☐ Brochure ☐ Newsletters (See Ad Opinion A-99-1)
☐ Envelope/Packaging ☐ Self-mailer ☐ E-mail (sample e-mail with subject line required)
☐ Direct Message (e.g., FaceBook Messenger, Instagram Messages, Twitter Direct Mail)
☐ Text Message ☐ Targeted Social Media Ad ☐ LinkedIn

- ☐ All enclosures are subject to review and must be included in filing.
- If a DVD is enclosed you must include an accurate transcript that includes both spoken and on-screen text.
 - If a contract or information sheet is enclosed it must have "Sample – Do Not Sign."
- ☐ Follow up communications will be sent to recipients. (Additional filing fees are required.)

Intended Recipients: The following persons will receive this direct mail ad:

- ☐ Clients (Former & Current) ☐ Attorneys/Judges ☐ Referral Source ☐ Prospective clients
☐ Other _____

- ☐ **Targeted:** the written communication concerns a specific matter.

(Cannot reveal nature of legal problem on outside of advertisement.)

NOTE: Every direct mail advertisement "prompted by a specific occurrence" must disclose how the lawyer obtained the recipient's name and address and use the first sentence, "If you have already retained a lawyer for this matter, please disregard this letter."

- ☐ **Not Targeted:** the written communication is mailed generally to persons unknown to have a specific matter.

30 Day Waiting Period: for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, the attorney must wait at least 30 days after the injury, death, accident or disaster to send the communication. This also includes Workers Compensation claims.

- ☐ The direct mail ad will be used on approval from The Florida Bar.

[Note: If waiting on bar approval please do not enter a date or a late fee will be assessed]

The direct mail ad will be mailed initially on: _____

The direct mail ad will be used from _____ to _____. (dates)

Translation: If the advertisement appears in a language other than English, you must provide an accurate English translation in addition to the full transcript in the language other than English.

- ☐ English Translation Enclosed ☐ Advertisement in Language Other Than English Enclosed

Preliminary Opinion: A preliminary opinion may be issued without the expense of producing the advertisement by filing a draft of the information to be used in the advertisement together with a filing fee of \$150. Receipt of a preliminary opinion based on filing a transcript does not satisfy the filing requirement for television and radio ads. **Filers who obtain a preliminary opinion must file the final version of the television or radio advertisement at least 20 days before the advertisement's first broadcast.** On receipt of an advertisement in its final form, a final advisory opinion will be rendered.

- ☐ Final Opinion Requested ☐ Preliminary Opinion Requested

Prior filings: If you have filed a similar advertisement please provide the following information:

☐ File Number(s): _____

Review Process: The Florida Bar must complete review of a complete filing within 15 days of receipt, unless The Florida Bar requires additional information and advises the filer within the 15 day period. In such cases, The Florida Bar will complete the review within 15 days of receipt of the additional information. If The Florida Bar fails to send the filer any communication within 15 days of a complete filing or the receipt of additional information requested, the filer will not be subject to discipline unless The Florida Bar subsequently notifies the filer of noncompliance and the filer continues to disseminate the advertisement after such notice.

☐ (Check here if additional information is attached.) Comments:

**THE FLORIDA BAR
LAWYER ADVERTISING
COVERSHEET FOR INTERNET ADVERTISEMENTS**

Note: Lawyer and law firm websites are exempt from the filing requirement. However, they are required to comply with the substantive lawyer advertising rules.

Instructions: In an effort to expedite the review process please complete the following for each advertisement and, together with your cover letter mail, to: The Florida Bar, Ethics & Advertising, 651 E. Jefferson Street, Tallahassee, Florida 32399. **Filings are not accepted by fax or e-mail.** For more information call 850-561-5780 or 800-235-8619.

ATTORNEY, LAW FIRM OR QUALIFYING PROVIDER	FILED BY MARKETER (If filed on behalf of attorney or qualifying provider.)
Firm:	Company:
Name:	Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Position:	*The response will be sent to the lawyer or qualifying provider responsible for the advertisement. The marketer will receive a copy if requested.
Date:	Date:

FOR ATTORNEYS AND LAW FIRMS ONLY:

☐ Solo ☐ ___ Partners & ___ associates ___ # Of Counsel

☐ Lawyer responsible for ad: _____

☐ Firm letterhead enclosed

Filing Fee enclosed: (Ad will not be reviewed without filing fee.)

\$150.00 (filed at least 20 days before first publication of ad)

\$250.00 (late fee required if advertisement was not filed at least 20 days before first use.

If filing is in response to a grievance please enclose the original advertisement.)

☐ \$150.00 x _____ (# of ads) = \$ _____ (enclosed)

☐ \$250.00 x _____ (# of ads) = \$ _____ (enclosed)

Make Check Payable to **The Florida Bar**

Internet Advertisement: The following mediums will be reviewed:

- ☐ Banner Ad ☐ Pop-up ☐ Sponsored Link Ad
- ☐ Targeted Social Media (please include who it is being displayed to and how selected)
- ☐ Other: _____

☐ The Internet ad will be used on approval from The Florida Bar.

[Note: If waiting on bar approval please do not enter a date or a late fee will be assessed]

The ad will appear on: _____

The ad will be used from _____ to _____. (dates)

Please note if advertisement is a video or audio, a transcript of the advertisement including spoken and on-screen text is required. All other advertisements must be provided in printed form even if you are providing the advertisement on disc or flash drive.

Translation: If the advertisement appears in a language other than English, you must provide an accurate English translation in addition to the full transcript in the language other than English.

☐ English Translation Enclosed ☐ Advertisement in Language Other Than English Enclosed

Preliminary Opinion: A preliminary opinion may be issued without the expense of producing the advertisement by filing a draft of the information to be used in the advertisement together with a filing fee of \$150. **If a preliminary opinion is sought and obtained, the lawyer *must still file* the final version of the advertisement to receive a final opinion at least 20 days before its first planned use.**

☐ Final Opinion Requested

☐ Preliminary Opinion Requested

Prior filings: If you have filed a similar advertisement please provide the following information:

☐ File Number(s): _____

Review Process: The Florida Bar must complete review of a complete filing within 15 days of receipt, unless The Florida Bar requires additional information and advises the filer within the 15 day period. In such cases, The Florida Bar will complete the review within 15 days of receipt of the additional information. If The Florida Bar fails to send the filer any communication within 15 days of a complete filing or the receipt of additional information requested, the filer will not be subject to discipline unless The Florida Bar subsequently notifies the filer of noncompliance and the filer continues to disseminate the advertisement after such notice.

☐ (Check here if additional information is attached.) Comments:

**THE FLORIDA BAR
LAWYER ADVERTISING
COVERSHEET FOR PRINT ADVERTISEMENTS**

Instructions: In an effort to expedite the review process please complete the following for each advertisement and, together with your cover letter mail, to: The Florida Bar, Ethics & Advertising, 651 E. Jefferson Street, Tallahassee, Florida 32399. **Filings are not accepted by fax or email.** For more information call 850-561-5780 or 800-235-8619.

ATTORNEY, LAW FIRM OR QUALIFYING PROVIDER	FILED BY MARKETER (If filed on behalf of attorney or qualifying provider.)
Firm:	Company:
Name:	Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Position:	*The response will be sent to the lawyer or qualifying provider responsible for the advertisement. The marketer will receive a copy if requested.
Date:	Date:

FOR ATTORNEYS AND LAW FIRMS ONLY:

☐ Solo ☐ ___ Partners & ___ associates ___ # Of Counsel

☐ Lawyer responsible for ad: _____

☐ Firm letterhead enclosed

Filing Fee enclosed: (Ad will not be reviewed without filing fee.)
 \$150.00 (filed at least 20 days prior to first publication.)
 \$250.00 (late fee required if advertisement is not filed at least 20 days prior to dissemination.)
 If filing is in response to a grievance please enclose the original advertisement.)
☐ \$150.00 x _____ (# of ads) = \$ _____ (enclosed)
☐ \$250.00 x _____ (# of ads) = \$ _____ (enclosed)
 Make Check Payable to **The Florida Bar**

Print Advertisement: The following mediums will be reviewed as a print ad:

☐ Yellow Pages ☐ Magazine ☐ Newspaper ☐ Billboard
☐ Other: _____

☐ The print ad will be used on approval from The Florida Bar.

[Note: If waiting on bar approval please do not enter a date or a late fee will be assessed]

The print ad will first appear in/on: _____

The print ad will be used from _____ to _____. (dates)

Translation: If the advertisement appears in a language other than English, you must provide an accurate English translation in addition to the full transcript in the language other than English.

☐ English Translation Enclosed ☐ Advertisement in Language Other Than English Enclosed

Preliminary Opinion: A preliminary opinion may be issued without the expense of producing the advertisement by filing a draft of the information to be used in the advertisement together with a filing fee of \$150. **If a preliminary opinion is sought and obtained, the lawyer *must still file the final version of the advertisement to receive a final opinion at least 20 days before its first planned use.***

☐ Final Opinion Requested ☐ Preliminary Opinion Requested

Prior filings: If you have filed a similar advertisement please provide the following information:

☐ File Number(s): _____

Review Process: The Florida Bar must complete review of a complete filing within 15 days of receipt, unless The Florida Bar requires additional information and advises the filer within the 15 day period. In such cases, The Florida Bar will complete the review within 15 days of receipt of the additional information. If The Florida Bar fails to send the filer any communication within 15 days of a complete filing or the receipt of additional information requested, the filer will not be subject to discipline unless The Florida Bar subsequently notifies the filer of noncompliance and the filer continues to disseminate the advertisement after such notice.

☐ (Check here if additional information is attached.) Comments:

69B-186.010 Unlawful Rebates and Inducements Related to Title Insurance Transactions.

(1) The purpose of this rule is to interpret paragraph 626.9541(1)(h), F.S., which provides that it is an unfair method of competition and unfair or deceptive act or practice prohibited by section 626.9521, F.S., to engage in certain activities related to title insurance.

(2) All lists contained within this rule are intended as examples and are not exhaustive. This rule does not prohibit inducements or rebates provided by filed or approved rates or rating manuals, advertising gifts allowed by paragraph 626.9541(1)(m), F.S., or inducements and rebates otherwise expressly allowed by law.

(3) For purposes of this rule, the term “referrer of settlement service business” means any person who is in a position to refer title insurance business incident to or part of a real estate transaction, or an associate of such person. A referrer of settlement service business may be a title insurance agent, title insurance agency, title insurance company, attorney, real estate broker, real estate agent, real estate licensee, broker associate, sales associate, mortgage banker, mortgage broker, lender, real estate developer, builder, property appraiser, surveyor, escrow agent, closing agent, or any other person or entity involved in a real estate transaction for which title insurance could be issued; or any employee, officer, director, or representative of such a person or entity.

(4) As they relate to the transaction of title insurance, the following activities, whether performed directly or indirectly, for or by any referrer of settlement service business, are inducements for the sale, placement or referral of title insurance business in violation of section 626.9521 and paragraph 626.9541(1)(h), F.S.:

(a) Facilitating any discount, reduction, credit, or paying any fee or portion of the cost of an inspection, inspection report, appraisal, or survey, including wind inspection, to or for a purchaser or prospective purchaser of title insurance.

(b) Providing membership in any organization, society, association, guild, union, alliance or club at a discount, reduced rate, or at no cost to a referrer of settlement service business.

(c) Making or offering to make a charitable or other tax-deductible contribution on behalf of the purchaser or prospective purchaser of title insurance.

(d) Providing or offering stocks, bonds, securities, property, or any dividend or profit accruing or to accrue thereon to a referrer of settlement service business. However, the use of lawful affiliated business arrangements that are permitted under the Federal Real Estate Settlement Procedure Act would not violate this subparagraph and would be allowable under subsection (2) of this rule.

(e) Providing or offering employment to a referrer of settlement service business in exchange for the purchase of title insurance.

(f) Providing or paying for the printing of bulletins, flyers, post cards, labels, etc. that promote the business of a referrer of settlement service business.

(g) Furnishing or paying for the furnishing of office equipment (fax machines, telephones, copy machines, etc.) to a referrer of settlement service business.

(h) Providing or paying for cellular telephone contracts for a referrer of settlement service business.

(i) Providing simulated panoramic home and property tours to real estate brokers or real estate sales associates that they utilize to promote their listings.

(j) Providing or paying for gift cards or gift certificates to or for a referrer of settlement service business or to a purchaser or prospective purchaser of title insurance.

(k) Sponsoring and hosting, or paying for the sponsoring and hosting, of open houses for real estate brokers or real estate sales associates to promote their listings.

(l) Providing or paying for food, beverages, or room rentals at events designed to promote the business of a referrer of settlement service business other than the title insurance agent or agency.

(m) Paying advertising costs to advertise and promote the listings of real estate brokers or real estate sales associates via publications, signs, emails, websites, web pages, banners, or other forms of media.

(n) Providing an endorsement, designation of preferred status, approved status, or featured partner status on publications, signs, emails, websites, web pages, banners or other forms of media promoting the business of real estate brokers or real estate sales associates.

(o) Paying a referrer of settlement service business to fill out processing (order) forms in exchange for title insurance contracts.

(p) Providing “leads” or mailing lists to or on behalf of a referrer of settlement service business at no cost or a reduced cost.

(q) Entering into any arrangement to provide unearned compensation to a referrer of settlement service business.

(r) Providing, or offering to provide, non-title services, without a charge that is commensurate with the actual cost, to a referrer of settlement service business.

- (s) Waiving of fees, costs, or premium for title updates or endorsements requested after the issuance of the title insurance policy.
- (t) Assuming any party's responsibility to provide refunds to consumers under applicable laws and regulations.
- (5) Except as prohibited by section 626.9541, F.S., expenditures for the following are not in violation of section 626.9521 and paragraph 626.9541(1)(h), F.S., or in violation of this rule:
 - (a) Promotional items with a company logo of the title insurance agent or agency, with a value not to exceed the amount allowed by paragraph 626.9541(1)(m), F.S., per item. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.
 - (b) Furnishing educational materials, such as fliers, brochures, pamphlets, or Frequently Asked Question sheets, exclusively related to title insurance for a referrer of settlement service business that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by a referrer of settlement service business.
 - (c) Compensation paid to a referrer of settlement service business for goods and services actually performed at amounts not exceeding the reasonable fair market value of the goods and services and that is not intended to induce the referral of title insurance business.
 - (d) Any advertising or marketing activities that directly promote the title insurance business of the title insurance agent or agency, which may include joint participation in marketing with another party provided that the agent or agency pays the proportionate share or fair market value of the costs, and does not violate paragraph (5)(a) of this rule.
 - (e) A payment by a title insurance company to its duly appointed agent for services actually performed in the issuance of a title insurance policy.
 - (f) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
- (6) A licensed and appointed title insurance agent is not prohibited under this rule to affix a notice to any contract or agreement, stating, "The terms of this contract are agreed to, but only to the extent that they do not violate the provisions of rule 69B-186.010, F.A.C., or paragraph 626.9541(1)(h), F.S.," or substantially similar language.

Rulemaking Authority 624.308(1), 626.9611 FS. Law Implemented 626.9521, 626.9541(1)(h), (m) FS. History--New 2-9-16, Amended 5-13-18.

690-186.008 Escrow Requirements.

(1) A title insurance agent or title insurer may not use, endanger, or encumber money held in trust without the permission of the owner of such money, given after full disclosure of the circumstances. Accordingly, except as hereinafter provided, a title insurance agent or title insurer may not disburse funds unless the funds are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled and credited to the title insurance agent's or title insurer's trust account. Notwithstanding that a deposit made by a title insurance agent or title insurer to the trust account has not been finally settled and credited to the account, the title insurance agent or title insurer may disburse funds from the trust account in reliance on such deposits under any of the following circumstances:

- (a) The deposit is made by a certified check, cashier's check, or money order;
- (b) The deposit is made by a check representing loan proceeds issued by a federally- or state-chartered bank, savings bank, savings and loan association, credit union, mortgage broker licensed under chapter 494, F.S., or other duly licensed or chartered lender;
- (c) The deposit is made by a bank check, cashier's check, official check, treasurer's check, or other such official instrument issued by a bank, savings and loan association, or credit union when the instrument is drawn by the bank on itself, or on another bank whether or not the check is "payable through" or "payable at" a bank and the title insurance agent or title insurer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the title insurance agent's or title insurer's trust account within a reasonable period of time. Such instruments are considered by the Federal Reserve Board, under Federal Regulation CC, otherwise cited as 12 C.F.R. 229, to be "next day" payable items. A check drawn by a corporation on a bank or a draft drawn by a corporation on itself whether or not the check or draft is "payable at" or "payable through" a bank and is not a "next day" payable item under Regulation CC unless the depository bank chooses to treat it as such, and may not be disbursed on until collected;
- (d) The deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the State of Florida or on the escrow or trust account of a real estate broker licensed under chapter 475, F.S., or on the account of a mortgage broker licensed under chapter 494, F.S., or on the escrow trust account of a title insurance agent or title insurer licensed under the Florida Insurance Code, when the title insurance agent or title insurer has a reasonable or prudent belief that the deposit will clear and constitute collected funds in the trust account within a reasonable period of time;
- (e) The deposit is made by a check issued by the United States Government, the State of Florida or any agency or political subdivision of the State of Florida;
- (f) The deposit is made by a check issued by an insurance company authorized to do business in the State of Florida and the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time;
- (g) The deposit is made by a personal check in an amount not to exceed \$500 when the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

(2) For purposes of this provision, disbursement of funds shall only be made on such negotiable instruments as enumerated above which contain the following elements:

- (a) Are signed by the drawer; and,
 - (b) Contain an unconditional order to pay; and,
 - (c) Are payable on demand; and,
 - (d) Are payable to order or to bearer.
- (3) Funds received by a licensed title insurance agent or insurer pursuant to a real estate closing transaction involving the issuance of a title insurance binder, commitment, policy of title insurance, or guaranty of title shall not be deposited or transferred to an interest-bearing trust account without the written consent of the buyer and seller.
- (4) Funds received from depositors in excess of the insured amount must be deposited in a financial institution that has a rating not less than the minimum standards established by Government National Mortgage Association (GNMA).

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 628.151 FS. History—New 6-25-86, Amended 2-26-90, Formerly 4-21.010, Amended 2-13-95, 1-27-02, Formerly 4-186.008.

690-186.009 Reconciliation of Escrow Accounts.

(1) Every licensed title insurance agent shall maintain a monthly reconciliation of every escrow account required to be maintained pursuant to section 626.8473, F.S., and shall, on a monthly basis, report such reconciliation together with appropriate supporting documentation to each title insurer which licensed the agent during the reconciliation period. The reconciliation shall be supported by appropriate documentation, including a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection (2). Licensed title insurance agents and title insurers shall provide a copy of the monthly escrow account reconciliation to the Office upon its request. Such records shall be maintained by the title insurer for a period of five years.

(2) Every licensed title insurance agent shall maintain a separate ledger card for each real estate closing transaction for which funds are received in escrow. The ledger card shall contain chronological entries of dates and amounts of moneys received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Such records shall be maintained by the title insurance agent for a period of three years. The ledger card required by this rule may be maintained in computer storage with a print-out available upon request of a title insurer or the Office.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 627.776(1)(m), 628.151 FS. History—New 2-26-90, Formerly 4-21.0105, 4-186.009.



Real Estate Settlement Procedures Act FAQs

The questions and answers below pertain to compliance with the Real Estate Settlement Procedures Act (RESPA) and certain provisions of Regulation X.

RESPA Section 8 General

QUESTION 1:

What are the provisions of RESPA Section 8?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8 prohibits certain actions related to [federally related mortgage loans](#).

RESPA Section 8(a) prohibits kickbacks for business referrals related to or part of settlement services involving federally related mortgage loans. 12 USC § 2607(a); 12 CFR § 1024.14(b).

RESPA Section 8(b) prohibits unearned fee arrangements, i.e., splitting charges made or received for settlement services, except for services actually performed, in connection with federally related mortgage loan transactions. 12 USC § 2607(b); 12 CFR § 1024.14(c).

RESPA Section 8(c) identifies certain payments that are not prohibited by Section 8. 12 USC § 2607(c); 12 CFR § 1024.14(g).

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau's approach to Compliance Aids.

[Appendix B to Regulation X](#) provides examples to illustrate the application of RESPA to particular fact patterns, including fact patterns under Section 8(a), 8(b), and 8(c) indicating whether or not a violation occurred. Appendix B to 12 CFR part 1024.

RESPA Section 8(d) details specific penalties for violations of Section 8, including for Sections 8(a) and 8(b). 12 USC § 2607(d).

RESPA Sections 8(a), 8(b), and 8(c) are discussed in more detail in [RESPA Section 8 General FAQs 2](#) through [FAQ 4](#) and [RESPA Section 8\(a\) FAQ 1](#) below.

QUESTION 2:

What is RESPA Section 8(a)?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8(a) prohibits kickbacks for business referrals involving a federally related mortgage loan. RESPA Section 8(a) prohibits the giving and accepting of kickbacks (e.g., cash or other “things of value” as defined in RESPA and Regulation X) pursuant to any agreement or understanding to refer settlement service business or business incident to a real estate settlement service in connection with those loans. 12 USC § 2607(a).

For more information on RESPA Section 8(a), see [RESPA Section 8\(a\) FAQ 1](#) below.

QUESTION 3:

What is RESPA Section 8(b)?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8(b) prohibits unearned fee arrangements in connection with federally related mortgage loans. RESPA Section 8(b) prohibits the giving and accepting of any portion, split, or percentage of charges made or received for real estate settlement service business, unless for services actually performed. 12 USC § 2607(b).

QUESTION 4:

What payments are not prohibited under RESPA Section 8(c)?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8(c) provides a list of payments (provided or received) and arrangements that are not prohibited under RESPA Section 8. These include:

1. Fees paid to attorneys for services actually rendered. 12 USC § 2607(c)(1)(A).
2. Fees paid by a title company to its duly appointed agent for services actually performed in the issuance of a title insurance policy. 12 USC § 2607(c)(1)(B).
3. Fees paid by a lender to its duly appointed agent for services actually performed in the making of the loan. 12 USC § 2607(c)(1)(C).
4. Bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed. 12 USC § 2607(c)(2).
5. Payments under “cooperative brokerage and referral arrangements or agreements between real estate agents and brokers.” 12 USC § 2607(c)(3).
6. Affiliated business arrangements, subject to specified conditions. 12 USC § 2607(c)(4).
7. Other payments and classes of payments adopted by regulation after consultation with other specified federal agencies and officials. 12 USC § 2607(c)(5).

[Regulation X, 12 CFR §§ 1024.14\(g\)\(1\)](#) and [1024.15](#) implement these RESPA Section 8 provisions and provide details on the payments that are not prohibited by RESPA Section 8, identified above. These provisions also specify additional payments and activities that are not prohibited by Section 8, such as: (1) normal promotional and educational activities, subject to certain conditions, and (2) an employer’s payments to its own employees for any referral activities. 12 CFR §§ 1024.14(g)(1)(vi) and 14(g)(1)(vii). [Appendix B to Regulation X](#) provides further guidance on these payments and activities.

QUESTION 5:

Which individuals, entities, and transactions are covered by RESPA Section 8?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8 prohibitions generally apply to any [person](#), which RESPA defines to include individuals, corporations, associations, partnerships, and trusts. 12 USC § 2602(5).

RESPA does not apply to extensions of credit to government or governmental agencies or instrumentalities. It also does not apply to extensions of credit primarily for business, commercial, or agricultural purposes. 12 USC § 2606.

[Regulation X, 12 CFR § 1024.5](#) provides additional limits on the coverage of RESPA.

QUESTION 6:

Under RESPA Section 8, can a lender or other settlement service provider give a gift, refund, or discount to a consumer for using that lender or provider?

ANSWER (UPDATED 10/7/2020):

Generally, yes.

RESPA Section 8 does not prohibit a lender or other settlement service provider from giving a consumer a gift or an incentive (e.g., a discount, refund of fees, chance to win a prize, etc.) for doing business with that entity. However, RESPA Section 8 prohibits, for example, giving an incentive to a consumer in exchange for the consumer referring other business to that lender or other settlement service provider.

Other federal and state laws may also have restrictions that apply and should be consulted.

RESPA Section 8(a)

QUESTION 1:

What activities are prohibited under RESPA Section 8(a)?

ANSWER (UPDATED 10/7/2020):

RESPA Section 8(a) and Regulation X, 12 CFR § 1024.14(b), prohibit giving or accepting a fee, kickback, or thing of value pursuant to an agreement or understanding (oral or otherwise), for referrals of business incident to or part of a settlement service involving a federally related mortgage loan.

- *Fee, kickback, or thing of value.* Thing of value is broadly defined in RESPA and Regulation X. 12 USC § 2602(2); 12 CFR § 1024.14(d). Regulation X defines the term to include, without limitation: monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips

and payment of another person's expenses, or reduction in credit against an existing obligation. "Payment" is used synonymously with the giving or receiving of a "thing of value" in Regulation X, 12 CFR §§ 1024.14 and 1024.15, and does not require the transfer of money. 12 CFR § 1024.14(d).

- *Pursuant to an agreement or understanding, oral or otherwise.* An agreement or understanding need not be written or verbalized. It may be established by practice, pattern, or course of conduct. For example, when a thing of value is received repeatedly, and connected in any way with the volume or value of business referred, receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding. 12 CFR § 1024.14(e).
- *For referrals of business.* Referrals include oral or written action directed to a person that has the effect of affirmatively influencing a person's selection of a provider of a settlement service or business incident to or part of a settlement service. That effect can be on any person in connection with the settlement service or business incident thereto who will pay for the service or a charge attributable, in whole or in part, to that service or service provider. 12 CFR § 1024.14(f)(1). Additionally, referrals include requiring the use by the person paying for the service of a particular provider of settlement service-related business. 12 CFR §§ 1024.14(f)(2) and 1024.2(b) ("required use"). Finally, note that prohibited referrals are not limited to those directed to consumers. They might be directed to a number of sources, such as appraisers, real estate agents, title companies and agents, lenders, mortgage brokers, or companies that provide information in connection with settlements, such as credit reports and flood determinations. 12 CFR § 1024.14(b) and (f).
- *Incident to or part of a real estate settlement service involving a federally related mortgage loan.* To be a violation, the referral(s) must be directly or indirectly incident to or part of a real estate settlement service involving a [federally related mortgage loan](#). 12 USC § 2602(1); 12 CFR § 1024.2(b). [Settlement service](#) is defined broadly as any service provided in connection with a real estate settlement, which includes (but is not limited to) origination of a loan, closing services, title services, title insurance, document preparation, property surveys, inspections and appraisals, the rendering of credit reports and appraisals, and services of attorneys, real estate agents, and mortgage brokers. 12 USC § 2602(3); 12 CFR § 1024.2(b).

RESPA Section 8: Gifts and Promotional Activity

QUESTION 1:

Are gifts and promotions allowed under RESPA Section 8?

ANSWER (UPDATED 10/7/2020):

It depends.

Under RESPA Section 8(a), gifts and promotions generally are “things of value” and therefore could, depending on the circumstances, violate RESPA Section 8(a). If the gifts or promotion are given or accepted, as part of an agreement or understanding, for referral of business incident to or part of a real estate settlement service involving a federally related mortgage loan, they are prohibited.

For example, if a settlement service provider gives current or potential referral sources tickets to attend professional sporting events, trips, restaurant meals, or sponsorship of events (or the opportunity to win any of these items in a drawing or contest) in exchange for referrals as part of an agreement or understanding, such conduct violates RESPA Section 8(a). 12 CFR § 1024.14(b). Such an agreement or understanding need not be written or oral and can be established by a practice, pattern, or course of conduct. 12 CFR § 1024.14(e).

There is no exception to RESPA Section 8 solely based on the value of the gift or promotion. Accordingly, settlement service providers should carefully analyze whether providing gifts or opportunities to win prizes to referral sources could violate the prohibitions under RESPA Section 8.

However, in certain circumstances, gifts or promotions directed to a referral source are not prohibited if they are a “normal promotional or educational activity” meeting the conditions in Regulation X. 12 CFR § 1024.14(g)(1)(vi).

For more information about the analysis under RESPA Section 8(a), see [RESPA Section 8\(a\) FAQ 1](#), above. For more information about “normal promotional and educational activities” under RESPA and Regulation X, see [RESPA Section 8: Gifts and Promotional Activities FAQ 2](#) and [FAQ 3](#), below.

QUESTION 2:

What conditions does Regulation X establish for gifts and promotions to be “normal promotional and educational activities” allowed under RESPA?

ANSWER (UPDATED 10/7/2020):

Regulation X allows “normal promotional and educational activities” directed to a referral source if the activities meet two conditions:

- The activities are not conditioned on referral of business; and
- The activities do not involve defraying expenses that otherwise would be incurred by the referral source.

12 CFR § 1024.14(g)(1)(vi).

Whether a particular item or activity meets each of these two conditions is a factual question.

The first condition is that normal promotional and educational activities must not be conditioned on referral of business. Factors that are relevant to whether the first condition is met may include the following:

- *Whether the item or activity is targeted to referral sources.* If an item or activity is targeted narrowly towards prior, ongoing, or future referral sources, this could indicate the item or activity is conditioned on referrals of business. For example, if a promotional item is provided only to a limited set of settlement service providers who also happen to be current referral sources or an intentionally targeted group of future referral sources, this may suggest that the recipient is receiving the promotional item because of past or future referrals and, thus, the promotional item may be conditioned on referrals. If, instead, a promotional item is provided to a broader set of recipients, such as the general public or all settlement service providers offering similar services in a given locality, then that may indicate that the promotional item is not conditioned on referral of business.
- *How often the item or activity is given to the referral source.* If a referral source is routinely and frequently provided with an item or included in an activity, and particularly if that referral source is provided with the item or included in the activity more often than other persons, this could indicate the item or activity is conditioned on referrals.

The second condition is that normal promotional and educational activities must not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer

settlement services or business incident thereto. Factors that may be relevant to whether the second condition is met may include the following:

- *Whether the item or activity involves a good or service that the referral source would otherwise have to pay for themselves.* If, for example, a promotional activity involves paying for mandatory continuing education expenses, certifications, licenses, or other items that the referral source would otherwise need to pay for on their own, the promotional item or activity is more likely to defray expenses. Similarly, if the activity involves paying for the referral source's office supplies branded with the referral source's name, contact information, or logo, this is more likely to defray expenses of the referral source. But if the activity involves providing the referral source with office supplies featuring the name, contact information, or logo of the entity providing the supplies, this is less likely to defray expenses, since it is unlikely that the referral source would otherwise use its own funds to purchase office supplies featuring the name and information of another entity.

If the particular item or activity does not meet either of these conditions, it is not a "normal promotional or educational activity" meeting the conditions in Regulation X, 12 CFR § 1024.14(g)(1)(vi). See [RESPA Section 8: Gifts and Promotional Activities FAQ 3](#) below for discussion of "normal promotional or educational activities" as applied to examples.

QUESTION 3:

What are examples of "normal promotional and educational activities" meeting the conditions in Regulation X?

ANSWER (UPDATED 10/7/2020):

Regulation X allows "normal promotional and educational activities" that are not conditioned on the referral of business and do not involve "defraying" expenses otherwise incurred by that recipient who is in a position to make a referral. 12 CFR § 1024.14(g)(1)(vi).

Whether a particular item or activity meets the conditions in Regulation X for "normal promotional and educational activities" depends on the facts and circumstances. For example:

- A settlement agent hosts a one-time-only drawing for a mini basketball set (backboard, rim, net, and ball). The settlement agent includes an announcement of the drawing in an email to all previous customers and all loan originators in the city summarizing the settlement agent's services and providing the agent's contact information. The entries to the drawing are automatically made for every previous customer and loan originator in the city, regardless of whether the prior customer or loan originator has made or will

make a referral to the settlement agent. The agent also includes a drawing entry submission form on their website. The drawing is more likely to meet the conditions for a “normal promotional and educational activity” under Regulation X because 1) the drawing entry is not conditioned on referrals and 2) the prize would not defray expenses as the basketball set is not an expense that persons in a position to refer business to the settlement agent would otherwise incur.

- A title company hosts a continuing education course for real estate agents who must meet mandatory continuing education requirements to maintain their license. The title company charges a course admission fee equivalent to the fair market value of the course and invites all of the local real estate agents, regardless of their status as referral sources. The real estate agents pay for their own admission to the course. Under these facts, the activity is more likely to meet the conditions for a “normal promotional and educational activity” under Regulation X because 1) the course admission is not provided conditioned on referrals and 2) the course admission fee is the fair market value, meaning the title company is not defraying the real estate agent’s expenses for the course.
- A title company routinely hosts free seminars on recent real estate market developments. The seminars are open to the public, and they are advertised to all of the area’s real estate agents, regardless of their status as referral sources. The seminars are more likely to meet the conditions of a “normal promotional and educational activity” under Regulation X, because 1) admission to the courses are not conditioned on referrals and 2) the courses are not defraying expenses that otherwise would be incurred by persons in a position to make referrals, as they are routinely provided free of charge for everyone, not just referral sources.

However, with slight changes to these fact patterns, the activities can fail to meet the conditions for “normal promotional and educational activity” under Regulation X. For example:

- A settlement agent’s drawing for a mini basketball set where the agent’s announcement and promotion email is sent only to select mortgage loan originators, who are given drawing entries for each referral the loan originator makes directing others to the settlement agent is likely not a “normal promotional or educational activity” meeting the conditions established in Regulation X. This is because the facts and circumstances indicate the opportunity to win the mini basketball set, or the mini basketball set itself, is conditioned on the referral of business, given that the persons in the drawing pool are only those persons who made referrals and also that the number of entries (which affect

the odds of winning the mini basketball set) are based on the number of referrals. In fact, as a reminder, this may implicate a RESPA Section 8(a) violation, as discussed in [RESPA Section 8: Gifts and Promotional Activity FAQ 1](#), above.

- A title company's continuing education course that real estate agents use to meet their license requirements, for which the admission fee is waived if the real estate agent makes a specified number of referrals, is likely not a "normal promotional or educational activity" meeting the conditions established in Regulation X. This is because the course admission fee waiver is conditioned on referrals to the title company (which could also implicate a RESPA Section 8(a) violation), and the fee waiver is defraying the real estate agent's expenses. Similarly, if the title company opens the same continuing education course to the public and charges an admission fee, but waives the fee for all real estate agents (regardless of referrals), the activity is still likely not a "normal promotional or educational activity" meeting the conditions established in Regulation X. This is because the course fee waiver is defraying expenses that the real estate agents otherwise would incur, as the course is meeting their license requirements and the fee waiver reduces their license-related expenses.

For more information about the conditions for meeting the "normal promotional and educational activities" under Regulation X, see [RESPA Section 8: Gifts and Promotional Activities FAQ 2](#).

For more information about the application of RESPA Section 8(a) to promotional or educational activities, see [RESPA Section 8: Gifts and Promotional Activities FAQ 1](#).

RESPA Section 8: Marketing Services Agreements (MSAs)

QUESTION 1:

What are marketing services agreements?

ANSWER (UPDATED 10/7/2020):

Marketing services agreements, or "MSAs," are agreements that commonly involve an arrangement where one person (or entity) agrees to market or promote the services of another and receives compensation in return. MSAs may involve only settlement service providers or may also involve third parties who are not settlement service providers. For example, an MSA exists when a mortgage loan originator agrees to market or promote the services of a real estate agent in return for compensation.

A lawful MSA is an agreement for the performance of marketing services where the payments under the MSA are reasonably related to the value of services actually performed. 12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv). This is distinguished from an MSA that—whether oral, written, or indicated by a course of conduct, and looking to both how the MSA is structured and how it is implemented—involves an agreement for referrals. Unlike referrals, as described in [RESPA Section 8: Marketing Services Agreement FAQ 2](#), below, marketing services are compensable services under RESPA. 12 CFR § 1024.14(b) and (g)(2).

Moreover, when a person performing settlement services receives payment for performing marketing services as part of a real estate transaction, the marketing services must be actual, necessary, and distinct from the primary services performed by the person. These marketing services cannot be nominal, and the payments cannot be for a duplicative charge or referrals. 12 CFR § 1024.14(b), (c), and (g)(3).

QUESTION 2:

What is the distinction between referrals and marketing services for purposes of analyzing MSAs under RESPA Section 8?

ANSWER (UPDATED 10/7/2020):

Whether a particular activity is a referral or a marketing service is a fact-specific question for purposes of the analysis under RESPA Section 8(a).

As discussed in [RESPA Section 8\(a\) FAQ 1](#), referrals include any oral or written action directed to a person where the action has the effect of affirmatively influencing the selection of a particular provider of settlement services or business incident thereto by a person paying a charge attributable to the service or business. 12 CFR § 1024.14(f)(1). For example, referrals include a settlement service provider directly handing clients the contact information of another settlement service provider that happens to result in the client using that other settlement service provider.

In contrast, a marketing service is not directed to a person; rather, it is generally targeted at a wide audience. For example, placing advertisements for a settlement service provider in widely circulated media (e.g., a newspaper, a trade publication, or a website) is a marketing service.

MSAs that involve payments for referrals are prohibited under RESPA Section 8(a), whereas MSAs that involve payments for marketing services may be permitted under RESPA Section 8(c)(2), based on the facts and circumstances of the structure and implementation. More

information on this analysis is discussed in [RESPA Section 8: Marketing Services Agreement FAQ 3](#) and [FAQ 4](#), below.

QUESTION 3:

How do the provisions of RESPA Section 8 apply when analyzing whether an MSA is lawful?

ANSWER (UPDATED 10/7/2020):

Entering into, performing services under, and making payments under MSAs are not, by themselves, prohibited acts under RESPA or Regulation X. In fact, MSAs are not referenced in RESPA or Regulation X. Ultimately, the determination of whether an MSA itself or the payments or conduct under an MSA is lawful depends on whether it violates the prohibitions under RESPA Section 8(a) or RESPA Section 8(b), or is permitted under RESPA Section 8(c). The analysis under RESPA Section 8 depends on the facts and circumstances, including the details of the MSA and how it is both structured and implemented. The following describes how specific provisions of RESPA frame that analysis.

Under RESPA Section 8(a), if an MSA involves an agreement or understanding to refer business incident to or part of a settlement service in exchange for a fee, kickback, or thing of value, then the MSA or conduct under the MSA is **prohibited**. For example, this can include (but is not limited to) agreements structured or implemented to provide payments based on the number of referrals received. For more information about the analysis under RESPA Section 8(a), see [RESPA Section 8\(a\) FAQ 1](#), above.

Under RESPA Section 8(b), if the MSA serves as a method of splitting charges made or received for real estate settlement services in connection with a federally related mortgage loan, other than for services actually performed, the MSA or the conduct under the MSA is **prohibited**. MSAs violate RESPA Section 8(b) if they disguise kickbacks by purporting to provide payment for services, but a split charge is paid even though the person receiving the split charge does not actually perform services. Similarly, a violation of RESPA Section 8(b) occurs if the services are performed, but the amount of the split charge exceeds the value of the services performed by the person receiving the split. For more information about the analysis under RESPA Section 8(b), see [RESPA Section 8 General FAQ 3](#), above.

However, under RESPA Section 8(c)(2), if the MSA or conduct under the MSA reflects an agreement for the payment for bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, the MSA or the conduct is **not**

prohibited. 12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv). RESPA Section 8(c)(2) does not apply to MSAs that involve payments for referrals because they are not agreements for marketing services actually performed. However, RESPA Section 8 does not prohibit payments under MSAs if the purported marketing services are actually provided, and if the payments are reasonably related to the market value of the provided services only. Note that under Regulation X, the value of the referral, i.e., any additional business that might be provided by the referral, cannot be taken into consideration when determining whether the payment has a reasonable relationship to the value of the services provided. 12 CFR § 1024.14(g)(2). See *also* 12 CFR § 1024.14(b).

QUESTION 4:

What are some examples of MSAs prohibited by RESPA Section 8?

ANSWER (UPDATED 10/7/2020):

As stated previously, an MSA can be lawful under RESPA if it is structured and implemented consistently as an agreement for the performance of actual marketing services and where the payments under the MSA are reasonably related to the value of the services performed. 12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv) and (g)(2).

However, as discussed in the FAQs above, MSAs can be unlawful when entered into based on their structure or can become unlawful based on how they are implemented. The Bureau's Office of Enforcement has identified violations of RESPA Section 8 in investigations that involved the use of oral or written MSAs. An MSA is or can become unlawful if the facts and circumstances show that the MSA as structured, or the parties' implementation of the MSA—in form or substance, and including as a matter of course of conduct—involves, for example:

- An agreement to pay for referrals.
- An agreement to pay for marketing services, but the payment is in excess of the reasonable market value for the services performed.
- An agreement to pay for marketing services, but either as structured or when implemented, the services are not actually performed, the services are nominal, or the payments are duplicative.
- An agreement designed or implemented in a way to disguise the payment for kickbacks or split charges.

For example, assume a lender enters into an MSA with a real estate agent that also makes referrals to the lender. The MSA requires the real estate agent to perform marketing services, including deciding on and coordinating direct mail campaigns and media advertising for the lender. However, the real estate agent either does not actually perform the MSA's identified marketing services or the real estate agent is paid compensation that is in excess of the reasonable market value of those marketing services.

In this scenario, the lender and real estate agent would not meet the standard in RESPA Section 8(c)(2), because the marketing services are not actually provided, or the payments are not reasonably related to the value of the marketing services provided. 12 CFR § 1024.14(g)(1)(iv). Further, if in the example the MSA was structured or implemented as a way for the lender to compensate the real estate agent for client referrals to the lender, the MSA would violate RESPA Section 8(a).

More information about analyzing MSAs under RESPA Section 8 is available in [RESPA Section 8: Marketing Services Agreement FAQ 3](#), above.

Appendix D to Part 1024

Affiliated Business Arrangement Disclosure Statement Format Notice

To:

From:

(Entity Making Statement)

Property: _____

Date:

This is to give you notice that [referring party] has a business relationship with [settlement services provider(s)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[provider and settlement service] _____

[charge or range of charges] _____

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[provider and settlement service] _____

[charge or range of charges] _____

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that referring party is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

 OLD REPUBLIC TITLE	
FACTS	WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

	Go to www.oldrepublictitle.com (Contact Us)

Who we are

Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do

How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law.

Definitions

Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., and Mississippi Valley Title Services Company</i>
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • <i>Old Republic Title does not share with non-affiliates so they can market to you</i>
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • <i>Old Republic Title doesn't jointly market.</i>

Affiliates Who May be Delivering This Notice				
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	L.T. Service Corp.	Lenders Inspection Company
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Old Republic Diversified Services, Inc.	Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.
Old Republic National Title Insurance Company	Old Republic Title Company	Old Republic Title Companies, Inc.	Old Republic Title Company of Conroe	Old Republic Title Company of Indiana
Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon	Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee
Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.	RamQuest Software, Inc.	Republic Abstract & Settlement, LLC
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CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0	Law Firms & Title Agencies: Regulatory Similarities & Differences	<i>Robert J. Rohan</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
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May 28, 2024

Reference Number:	2405949N
Title:	Law Firms & Title Agencies: Similarities and Differences
Level:	Intermediate
Approval Period:	07/01/2024 - 01/31/2026

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Real Estate	1.0