

HOW THE ADVERTISING RULES INTERSECT WITH SOCIAL NETWORKING SITES

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CHAPTER 7

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Michael Dobbs is the program coordinator for the Advertising Review department of the State Bar of Texas. He has seven years of experience dealing specifically with the lawyer advertisement and solicitation rules, Part VII of the Texas Disciplinary Rules of Professional Conduct (TDRPC). He speaks frequently to different groups throughout Texas about these Rules and other subjects related to lawyer advertising. He also coordinates meetings for and helps with the appointments to the different standing committees of the State Bar of Texas.

Mr. Dobbs has also worked for state agencies for nearly eleven years and also was a teaching assistant at a large public university. He has fluency in Spanish and near fluency in French with experience living in Spain and France.

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How The Advertising Rules Intersect With Social Networking Sites

Agricultural Law Seminar
Texas Tech Law School
Lubbock, TX

Advertising Rules

- Protect the public from false, misleading & deceptive communications.
- Advertising Rules specify conduct for attorneys who promote their services to the public.
 - Part VII of the TDRPC (7.01 – 7.07)
 - Violations subject lawyers to the grievance process.

How to File an Advertisement

- ARC has specific time frames to review submissions (Rule 7.07):
 - 25 days for Pre-approval; or
 - 40 days for Filings (Concurrent review).
- Fee is \$75.00.
- Application is online:

www.texasbar.com/adreview

Advertising Rules

- The Number One Rule (not in the Rules):
 - The Committee does not regulate nor can it be blamed for taste issues in advertisements or solicitations .



Current lawyer per citizen ratio in Texas

As of 02/2011

Average 3000 new lawyers each year

Rule 7.01 – Firm Names & Letterhead

- Prohibits the use of trade names.
 - **Examples of violations:**
 - “Texas Legal Center”
 - “The Ag Law Clinic”
- Prohibits lawyers from holding themselves out to be partners, shareholders, or associates unless they can provide substantiation.
- Descriptive URLs/Domain Names are OK if rule compliant, such as www.texasaglawyers.com.

Rule 7.02 – Communications Concerning a Lawyer’s Services

- All attorney communications are covered under Rule 7.02.
- Prohibits the following:
 - Material misrepresentations & omissions;
 - Guaranteeing results or creating unjustified expectations;
 - Unsubstantiated comparison of services (“best/top”);

Rule 7.02 – Communications Concerning a Lawyer’s Services

- Stating or implying ability to improperly influence court, judge or official;
- Advertising as a specialist, unless approved under Rule 7.04;
- Rule covers all languages used in the ad or solicitation;
- No actors or models to portray clients.

Rule 7.02 – References to Past Successes or Results

- No reference to past successes or results unless:
 - Lawyer was lead counsel or primarily responsible for the verdict or settlement;
 - Amount involved was actually received by the client. (“Net” to client);
 - Case & damage information is provided;
 - Attorney’s fees & litigation expenses are disclosed if the verdict or gross settlement amount is referenced.
 - Revised in 2005.

Rule 7.04 – Advertisements in the Public Media

- Public media ads are materials that are made available to the general public including:
 - Billboard Advertisements;
 - Print ads in magazines, newspapers;
 - Telephone Directory Ads (“Yellow Pages”);
 - Television & radio ads, including “infomercials” & paid-for call-in shows; &
 - Websites/Social Media Profile Pages.

Rule 7.04 – Advertisements in the Public Media

- What are not considered Public Media Advertisements?
 - Legal newspaper ads;
 - Legal directories listings;
 - Letters or materials mailed to other lawyers;
 - Information sent because of a request; &
 - Information sent to clients, past clients.

Rule 7.04 – Advertisements in the Public Media

- Identify lawyer or law firm.
- Designate the city location of principal office.
- Cannot use an actor to portray a lawyer.
 - Be cautious with the use of “clip art” on websites
- Cannot use an actor as a spokesperson where implication is that person is a client or lawyer of the advertising firm, but can use spokespeople (need disclaimers).

Rule 7.04 – Advertisements in the Public Media

- Current Rules do not require the Board Certification disclaimer “Not Board Certified by the Texas Board of Legal Specialization (TBLS)”.
- If not certified by TBLS, stay away from language that alludes to a specialization (“special, specialist, certified”).
- Permitted statements: “limits practice to,” “focus on,” “emphasis on”

Rule 7.04 – Advertisements in the Public Media

- All required disclaimer or disclosure must be displayed in the same manner & equal prominence as the item being disclaimed or disclosed.
(No more really small “fine” print!)

Rule 7.07 (e) – Exempted Items

- “Tombstone” Information (Business card);
- Listing the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice (and/or in which the lawyer is certified);
- Identifying prepaid or group legal service plans in which the lawyer participates;
- Date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, & to the other bars of other jurisdictions;

Rule 7.07 (e) – Exempted Items

- Technical & professional licenses granted by this state & other recognized licensing authorities;
- foreign language ability;
- Acceptance/non-acceptance of credit cards; &
- Any fee for initial consultation & fee schedule.
- Indicating sponsorship of a charitable, civic, or community program or event, or of a public service announcement.

Rule 7.07 (e) – Exempted Items

- ALL this information can be included on ANY advertisement without needing to file it with the Advertising Review Committee.

Rule 7.07 – Filing Requirements Info.

- Committee can request substantiation of any claim made in advertisement [7.07(f)].
- Penalty for not filing an advertisement is a non-filer fee of \$300.
- Failure to file is a violation of disciplinary rules.

Advertising Rules & Social Media

- All attorney communications are covered under R.ule 7.02.
 - Cannot be false, misleading or deceptive.
- An advertisement or solicitation communication remains subject to the rules regardless of the media used.

Advertising Rules & Social Media

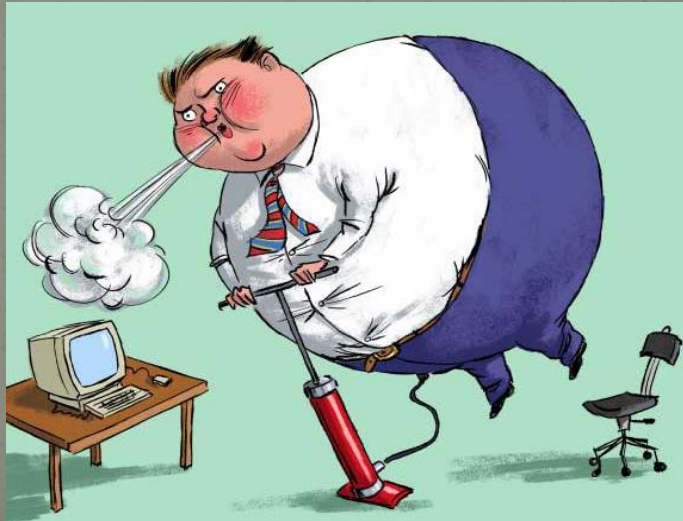
- The filing requirement applies when:
 - address the qualifications or the services of any lawyer or firm
 - are not exempt under Rule 7.07(e)
 - are generally available to the public
- the communicating attorney must file the electronic communication with the Advertising Review Committee.

Advertising Rules & Social Media

- Website are considered advertisements needing to be submitted if information goes beyond what is listed in Rule 7.07(e)(1-5).

DO YOU BLOG???

- Total identified blogs: 158,273,691 (as of 3/22/2011)
- New blogs in last 24 hours: 72,870
- New blog posts in last 24 hours: 1,146,100



Blogs & The Rules

- All attorney communications are covered under Rule 7.02.
- Blogs are considered advertisements if information goes beyond what is exempt under Rule 7.07(e).
- Commenting on a specific area of law, or development in an area of law is fine, provided the communication does not violate the rules.

Advertising Review

- Download the Application Form, Part VII of the Texas Disciplinary Rules of Professional Conduct & Interpretive Comments from the Advertising Review page on the State Bar of Texas website:

www.texasbar.com/adreview

- Contact Advertising Review:

Tel. No.: 800-566-4616

Email: adreview@texasbar.com