THE ADVERTISING RULES AND SOCIAL MEDIA

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Gene has served as a compliance officer with the State Bar of Texas since 1998, when he moved from Chicago. He oversees the Director of MCLE, advises the Director of Lawyer Referral Information Services, and the Standing Committees function of the Bar. In addition, as the Director of Advertising Review, Mr. Major works as the staff contact for the Advertising Review Committee and Liaison with the Chief Disciplinary Counsel.
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The Advertising Rules and Social Media

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Advertising Rules

- Protect the public from false, misleading and 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
  - 25 days for pre-approval
  - 40 days for filings (concurrent review)
- Fee is $75.000
- Application is online
  www.texasbar.com/adreview

Texas Advertising Rules

- The Number One Rule:
  - ARC does not nor can it be blamed for regulating taste issues.
Rule 7.01 Firm Names and Letterhead

- Prohibits the use of trade names
  - Examples of violations
    - “Texas Legal Center”
    - “The Employment Law Clinic”
- Prohibits lawyers from holding themselves out to be partners, shareholders or associates unless they can provide substantiation.
- Descriptive url’s are OK if rule compliant.

Rule 7.02 Communications Concerning a Lawyer’s Services

- All attorney communications are covered under R. 7.02
- Prohibits false, misleading, or deceptive statements.
  - Examples:
    - Material misrepresentations or omissions
    - Guaranteeing results or creating unjustified expectations
Rule 7.02 Communications Concerning a Lawyer’s Services - continued

- Unsubstantiated comparison of services

- Stating or implying ability to improperly influence court, judge or official

- Advertising as a specialist, unless approved under Rule 7.04

Rule 7.02 – Continued

- Rule covers lawyers who sponsor a communication by another lawyer

- No actors or models to portray clients
Rule 7.02: 2005 Revisions Constrain 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 dollar amount)
  - Case and damage information is provided
  - Attorney’s fees and litigation expenses are disclosed if the verdict amount or gross settlement amount is referenced

Rule 7.04 Advertisements in the Public Media

- Public media ads are materials that are made available to the general public including:
  - Billboards
  - Print ads in magazines, newspapers
  - Yellow pages
  - Television and radio ads, including “infomercials” and paid-for call-in shows
  - Websites
Rule 7.04 Advertisements in the Public Media

- What is not considered a Public Media Advertisement:
  - Legal newspapers
  - Legal directories
  - 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 – continued

- Must designate the geographical 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
Rule 7.04 - Continued

• Drops the Board Certification disclaimer of “Not Board Certified by the Texas Board of Legal Specialization”
  • If not Board Certified by TBLS, must stay away from language that alludes to a specialization
  • Permitted statements: “limits practice to,” “focus on,” “emphasis on”

Rule 7.04 - Continued

• Any required disclaimer or disclosure must be in the same manner and equal prominence as to the communication
  (No more really small print)
All attorney communications are covered under R. 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 and 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 and Social Media

- Landing/Home pages are considered advertisements if information goes beyond what is exempt under R. 7.07(f)
Rule 7.07 (e) Advertisements in the Public Media – Exempted Information

- Tombstone Information
  - Business card information
- the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice

Rule 7.07 (e) Advertisements in the Public Media – Exempted Information

- the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions
- technical and professional licenses granted by this state and other recognized licensing authorities
- foreign language ability
Rule 7.07 (e) Advertisements in the Public Media – Exempted Information

- identification of prepaid or group legal service plans in which the lawyer participates
- the acceptance or non-acceptance of credit cards
- any fee for initial consultation and fee schedule

Rule 7.07 (e) Advertisements in the Public Media – Exempted Information

- that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement

- All this information can be included on ANY advertisement without filing it with Ad Review.
Blogs

Why it’s important:
- 77% of all Internet users read blogs
- Almost half (45%) of all Internet users have started their own blogs or contributed to blogs
- 36% of Internet users think more positively about companies that use blogs
- 32% of Internet users trust bloggers’ opinions on products and services
  (Source: PRNews)
- Frequent blog posts can increase search engine rankings

Rule 7.04 Advertisements in the Public Media

- Blogs are **not** considered a Public Media Advertisement if:
  - Educational or editorial in nature
  - Commenting on a specific area of law, or development in an area of law.
  - Main goal of blogs is to have someone read how wonderful you are/gain credibility on a subject area
Internet, Blogs and The Rules - Review
• All attorney communications are covered under R. 7.02
• Landing/Home pages are considered advertisements if information goes beyond what is exempt under R. 7.07(f)
• 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 Committee
• Download the Application for Submission, Part VII of the Texas Disciplinary Rules of Professional Conduct and Interpretive Comments by the Advertising Review Committee:
  www.texasbar.com/adreview
• To contact the Advertising Review Committee:
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