

How the Evaluation Process Works Under New Rule 7.7

The RPCC/LSBA Ethics Counsel must complete its evaluation of a filing within thirty (30) days following receipt of a complete filing (as defined by Rule 7.7(d)), unless the RPCC/LSBA Ethics Counsel determines that further examination is warranted and the RPCC/LSBA Ethics Counsel so advises the filing lawyer within the thirty (30) day period. In such cases, the RPCC/LSBA Ethics Counsel shall complete the review as promptly as the circumstances reasonably allow. If the RPCC/Ethics Counsel does not send the filing lawyer one of three (3) written communications within thirty (30) days following receipt of a complete filing—namely: 1) a "Further Examination Notice", as described above; 2) a "Compliance Notice", as described below in Section F. (2)(a); or 3) a "Notice of Non-Compliance", as described below in Section F. (2)(b)—the advertisement will be deemed approved.

1) **Initial Intake & Screening of Filings**

For each separate and distinct advertisement or unsolicited written communication submitted for evaluation, a separate file is opened and a separate file number assigned. The filing is reviewed by Ethics Counsel to determine whether it is complete. A complete filing includes a copy of the ad/communication, a typewritten transcript of the ad, if any portion is not embodied in written/printed form, a sample envelope, if it will be mailed in an envelope, a statement of intended use and the appropriate filing fee. See Rule 7.7(d). Following the initial review for completeness, if the filing is complete, a letter is sent to the filing lawyer acknowledging receipt of the filing.

If the filing is incomplete, the filing lawyer is notified in writing of that fact and asked to submit the omitted materials. In the event that the filing lawyer does not submit the omitted materials as requested promptly, the RPCC/Ethics Counsel may find the filing non-compliant for insufficient information, as per Rule 7.7(f)—at which point, the filing lawyer will be advised in writing that dissemination or continued dissemination of the advertisement or unsolicited communication may result in professional discipline. The RPCC/Ethics Counsel will also report findings of non-compliance for insufficient information to the Office of Disciplinary Counsel unless, within ten (10) days of written notice from the RPCC/Ethics Counsel, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

If the filing is complete, the RPCC/LSBA Ethics Counsel evaluates the advertisement/communication to determine whether it complies with the Rules. If, upon evaluation, the RPCC/Ethics Counsel determines that the filing falls into one of the exempt categories discussed in Section II., C., above, the filing lawyer will be notified by letter that the filing is exempt and that the filing fee is unnecessary ["Exempt Notice"] (unless the filing lawyer still wishes to pay the filing fee voluntarily and receive an evaluation for compliance from the RPCC/Ethics Counsel).

2) **Evaluation of Filings**

If the filing is complete and not exempt, the RPCC/Ethics Counsel next determines whether the advertisement/communication complies with the applicable advertising rules and notifies the filing lawyer of the results of the evaluation. The filing lawyer will either receive a written Compliance Notice, notifying the lawyer that the advertisement/communication filed with the LSBA is deemed in compliance with the Rules ["Compliance Notice"] OR a written Notice of Noncompliance, identifying the areas of noncompliance, if any, with advice to the filing lawyer that dissemination or continued dissemination of the advertisement or written communication may result in professional discipline ["Notice of Non-Compliance"].

a) **Compliance Notice**

If the filing lawyer receives a Compliance Notice, the lawyer should retain a copy of the advertisement/communication for five (5) years after its last dissemination, along with a record of when and where it was used. For identical unsolicited written communications sent to two or more prospective clients, a single copy of the communication, together with a list of the names and addresses of all persons to whom the communication was sent, should be kept by the filing lawyer for five (5) years after its last dissemination. With that, the lawyer's obligations under Rule 7.7 have been satisfied with respect to that advertisement/communication. A finding of compliance, while not binding in a disciplinary proceeding, may be offered as evidence.

b) **Notice of Non-Compliance**

In the event of a determination of non-compliance, the written notification will also advise the filing lawyer that, unless the filing lawyer, within ten (10) days of the date of the Notice of Non-Compliance, certifies in writing that the advertisement or written communication has not and will not be disseminated, the RPCC/Ethics Counsel shall report the finding of non-compliance to the Office of Disciplinary Counsel, including in the report to the Office of Disciplinary Counsel a copy of the non-compliant advertisement/communication.

i) **Reasonable Revisions for Compliance**

If, in the opinion of the RPCC/Ethics Counsel, the non-compliant advertisement/communication might be simply/reasonably revised to achieve compliance, the Notice of Non-Compliance will also include recommendations from the RPCC/Ethics Counsel regarding those specific items that may be revised in order for the advertisement/communication to be compliant with the Rules. If the filing lawyer subsequently re-submits the same advertisement/communication revised only in accordance with the specific recommendations listed in the Notice of Non-Compliance, the revised advertisement/communication will be re-evaluated for compliance without the requirement of a completely new filing or payment of an additional filing fee. If the filing lawyer chooses not to revise or disseminate the advertisement/communication and certifies that choice to the RPCC/Ethics Counsel within ten (10) days of the date of the Notice of Non-Compliance, the filing is deemed terminated and Ethics Counsel's file for this matter will be closed.

ii) **Need for Significant/Substantial Revision**

If, in the opinion of the RPCC/Ethics Counsel, the advertisement/communication may not be simply/reasonably revised in order to achieve compliance but would require significant/substantial revision in order to achieve compliance, the Notice of Non-Compliance will so state (indicating that this filing is deemed terminated and Ethics Counsel's file is closed) but offer the filing lawyer an opportunity to contact Ethics Counsel to schedule an in-person appointment for one-on-one, in-depth advice and discussion regarding the kinds of advertisements/communications that would comply with the lawyer advertising rules. In this situation, the filing of a distinctly new or significantly-revised advertisement would constitute a new filing and require payment of a new filing fee.

3) **Optional Advance Written Advisory Opinion Process**

In addition to the "Regular Filing" procedure set forth above (and in Rule 7.7(c)) [i.e., for filings prior to or concurrent with the lawyer's first dissemination of a non-exempt advertisement/communication], a lawyer may obtain an Advance Written Advisory Opinion concerning compliance of a contemplated advertisement or written communication in advance of disseminating the advertisement or communication by submitting the material and fee specified in Rule 7.7(d) [i.e., the same items required for a "Regular Filing"] **at least thirty (30) days prior to such dissemination**. See Rule 7.7(b). If the RPCC/Ethics Counsel finds that the advertisement or written communication complies with these Rules, the lawyer's voluntary submission for an advance written advisory opinion shall be deemed to satisfy the "Regular Filing" requirement set forth in Rule 7.7(c), i.e., no further filing is needed for this advertisement or written communication.

Note regarding Television and Radio Advertisements: The RPCC/Ethics Counsel will accept "storyboards" and a script in satisfaction of the requirement of a copy of the advertisement, as noted in Rule 7.7(d)(1), in connection with a filing under Rule 7.7(b) [the advance written advisory opinion option]. Assuming that the "storyboards" and script filed with the RPCC/Ethics Counsel are found to comply with the Rules, the RPCC/Ethics Counsel will issue a written advisory opinion regarding the compliance of the anticipated advertisement on the condition that the final advertisement does not vary in substance from the "storyboards" and script that were filed with the RPCC/Ethics Counsel. After production of the advertisement, a copy of the advertisement in its final form must be submitted to the RPCC/Ethics Counsel prior to or concurrent with its first dissemination in order to fulfill the filing requirement of Rule 7.7(d). There is NO additional filing fee due in connection with this submission of the copy of the advertisement in its final form—its submission completes the filing initiated under this process. If the advertisement as filed in its final form does not vary in substance from the "storyboards" and script already filed with the RPCC/Ethics Counsel, the lawyer shall be deemed to have satisfied the filing requirements of Rules 7.7(b) and the written advisory opinion provided by the RPCC/Ethics Counsel shall have the evidentiary effects as indicated in Rule 7.7(h).

*Note regarding telephone directory (and/or other periodic contract/subscription-limited advertising) [e.g. yellow pages directory advertising]: If an advance written advisory opinion is requested for an advertisement that is to be placed in a telephone directory or other similar publication, the advertisement/communication must be filed **at least thirty (30) days prior to the contract or final printing deadline of the publication**, rather than thirty (30) days prior to first dissemination of the printed publication [which would be too late to withdraw or alter advertisements found non-compliant with the Rules].*

4) **Changes to Advertising and Unsolicited Written Communications Already Filed/In Compliance**

a) Voluntary Changes (i.e., made purposefully/voluntarily by the lawyer)

When a lawyer has already filed an advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel and a Compliance Notice was issued for that filing, if the lawyer makes subsequent changes to the advertisement or unsolicited written communication that do not simply involve the addition of "permissible content" as defined in Rule 7.2(b), the changed advertisement or unsolicited written communication effectively becomes a new advertisement or unsolicited written communication and, unless otherwise exempt under the specific exemptions listed in Rule 7.8, the new advertisement or unsolicited written communication must be filed as a new filing under Rule 7.7. A new filing fee of \$175.00 will be due with the filing prior to or concurrent with the first dissemination of the new advertisement or unsolicited written communication. If the filing does not occur until after the lawyer's first dissemination of the new advertisement or unsolicited written communication, a late filing fee of \$275.00 is due at the time of filing.

b) Involuntary Changes (i.e., as a result of a Change of Circumstances beyond the control of the lawyer)

When a lawyer has already filed an advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel and a Compliance Notice was issued for that filing, if a change of circumstances occurs subsequent to the RPCC/Ethics Counsel's evaluation and such change raises a substantial possibility that the advertisement or unsolicited written communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or unsolicited written communication or a modified advertisement or unsolicited written communication with the RPCC/LSBA Ethics Counsel, along with an explanation of the change in circumstances. An additional fee (i.e., a re-filing fee) in the amount of one-half of the regular filing fee (i.e., \$87.50) will be due with the re-filing, prior to or concurrent with the lawyer's first dissemination of the advertisement or unsolicited written communication (or a modified version thereof) following the change in circumstances.

If the lawyer does not re-file the advertisement or unsolicited written communication (or a modified version thereof) until after the lawyer's first dissemination of the advertisement or unsolicited written communication following the change in circumstances, a late re-filing fee of one-half of the normal late filing fee (i.e., \$137.50) will be due at the time of the late re-filing.