


Advertising Legal Services Ethically in Louisiana in the Wake of an Accident or Disaster

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In an effort to assist Louisiana State Bar Association (LSBA) members in their efforts to offer legal assistance to members of the public in the days, weeks and months that follow an accident or disaster, the LSBA is reminding lawyers to review the Louisiana Rules of Professional Conduct and state law before attempting to advertise for and/or contact prospective clients in connection with the accident or disaster, paying particular attention to the items listed below.

Additionally, as a benefit of LSBA membership, the LSBA's Ethics Advisory Service and LSBA ethics counsel are available to provide FREE confidential, informal, non-binding advice and opinions on matters regarding a lawyer's own prospective conduct — including questions about proposed lawyer advertising and/or unsolicited written communications. Also, all advertisements and unsolicited written communications that must be filed and evaluated for compliance as per Rule 7.7 should be directed to LSBA ethics counsel; information on the filing requirements and filing process is available online, 24/7, at: www.LSBA.org/LawyerAdvertising. LSBA Ethics Counsel Richard P. Lemmler, Jr. can be reached at direct dial (504)619-0144 or e-mail RLemmler@LSBA.org.

Things to Remember

In-Person Solicitation of Prospective New Clients is Strictly Prohibited

Rule 7.4(a) of the Louisiana Rules of Professional Conduct, in pertinent part, states:

Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship:

- ▶ in person,
- ▶ by person to person verbal telephone contact,
- ▶ through others acting at the lawyer's request or on the lawyer's behalf or otherwise when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6.

"Runner-Based" Solicitation is a Serious Crime for Both "Runner" and Lawyer

La. R.S. 37:219 states:

Unlawful payments by attorneys; unlawful solicitation of employment for legal practitioners; penalty

A. It shall be unlawful for any attorney to pay money or give any other thing of value to any person for the purpose of obtaining representation of any client.

B.(1) No person, firm, or entity shall solicit employment for a legal practitioner. This Paragraph shall not apply to a communication governed by the Louisiana State Bar Articles of Incorporation, Article 16, Rules of Professional Conduct, Rule 7.1.

(2) This Section does not prevent any corporation or voluntary association formed for benevolent or charitable purposes and recognized by law from furnishing an attorney at law to give free assistance to persons without means.

C.(1) Whoever violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned, with or without hard labor, for not less than ninety days nor more than five years.

(2) For a second and each subsequent violation of the provisions of this Section, the penalty shall be a fine of not more than twenty thousand dollars and imprisonment at hard

labor for not less than three years and for not more than fifteen years without the benefit of parole, probation, or suspension of sentence for the first five years.

Unsolicited Written Communications — Including Unsolicited E-mails — Relating to the Accident or Disaster Are Strictly Prohibited Within 30 Days Following the Date of the Accident or Disaster

Rule 7.4(b)(1) of the Louisiana Rules of Professional Conduct states:

A lawyer shall 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, an unsolicited 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 thirty days prior to the mailing of the communication;

(B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c) (1) of Rule 7.2; or

(E) 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.

[Rule 7.6(c)(1) of the Louisiana Rules of Professional Conduct requires unsolicited electronic mail communications to comply with Rule 7.4(b)(1).]

Advertisements in the Public Media (e.g., TV, radio, newspaper, website, etc.) ARE Permissible Immediately Following the Accident or Disaster BUT must be Compliant with the Louisiana Rules of Professional Conduct, including, but not limited to, the Filing and Evaluation Requirements of Rule 7.7:

If Not Otherwise Exempt from the Filing and Review Requirements of Rule 7.7, ALL ADVERTISEMENTS and UNSOLICITED WRITTEN COMMUNICATIONS MUST be Filed with the Louisiana State Bar Association's Rules of Professional Conduct Committee, through its Ethics Counsel, Prior to or Concurrent with the Lawyer's First Use/Dissemination of the Advertising or Unsolicited Written Communication

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Rule 7.7(c) of the Louisiana Rules of Professional Conduct states:

Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communication sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

Unsolicited Written Communications May be Sent Thirty or More (30+) Days Following the Accident or Disaster, but:

- 1) Must Bear the "ADVERTISEMENT" Mark on the Top of Each Page and the Lower Left Corner of the Face of the Envelope, Printed in a Certain Minimum Print Size;
- 2) Must Not Resemble Legal Pleadings, Notices, Contracts or Other Legal Documents;
- 3) Must Not be Sent by Registered Mail, Certified Mail or Other Forms of Restricted Delivery;
- 4) Must Advise if Another Lawyer Will Actually Handle the Case or Matter;
- 5) Must Disclose How the Lawyer Obtained the Information Prompting the Communication, if Prompted by a Specific Occurrence Involving the Intended Recipient or a Family Member of that Person; and
- 6) Must Not Reveal on the Envelope or Outside of the Mailing the Nature of the Client's Legal Problem, if Specific to a Prospective Client/Matter

Rule 7.4(b)(2) of the Louisiana Rules of Professional Conduct states:

(A) Unsolicited written communications to a prospective client are subject to the Requirements of Rule 7.2.

(B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules:

- (i) Such communication shall clearly state the name of at least one member in good standing of the Association responsible for its content.*

(ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet and on the insides of the brochure or pamphlet. Written communications solicited by clients or prospective clients need not contain the "ADVERTISEMENT" mark.

(C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other form of restricted delivery.

(D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.

(E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.

(F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

Of course, lawyers should also remember to consider the balance of the Louisiana Rules of Professional Conduct before offering to provide legal services to new prospective clients. Advertising properly can be merely the first hurdle in what may become something of a race to provide legal representation to the victims of an accident or disaster.

Naturally, competence (Rule 1.1) and diligence (Rule 1.3) should be factored into the equation of whether to seek and/or undertake representation of prospective clients affected by an accident or disaster, especially given the victims' understandable desire for quick assistance and meaningful relief.

Likewise, if legal representation will be undertaken on a contingent fee basis, the requirement for a written contingent fee agreement signed by the client and in keeping with Rule 1.5(c) should not be overlooked or bypassed amid the fast-paced events that sometimes follow the accident or disaster. Clients need legal representation and lawyers need to ensure that the legal representation that is offered and provided not only meets the needs of the client but also comports with the requirements of the Rules and applicable substantive law.

The LSBA's Ethics Advisory Service stands ready to assist lawyers with their questions and concerns about compliance with the Rules — we're a member service, free and accessible through just a telephone call or e-mail. If you have questions, let us help you ethically help those who are in need of help.