

HANDBOOK ON SOLICITATION AND LAWYER ADVERTISING IN LOUISIANA

Louisiana State Bar Association

Rules of Professional Conduct Committee

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Second Edition, November 2022



Table of Contents

<u>Part I. Introduction</u>	1
<u>Part II. Substantive Rules</u>	2
1. Prohibited Solicitation—Rules 7.4 and 7.2(c)(13).....	2
(a) Direct Contact with Prospective Clients.....	2
(b) Payment for Recommendations.....	2
2. Law Firm Names and Letterhead—Rule 7.10.....	3
(a) Trade Names.....	3
(b) Multi-Jurisdictional Law Firms.....	4
(c) Public Officers or Former Law Firm Members.....	4
(d) Partnerships and Organizational Business Entities.....	4
(e) Deceased and Retired Law Firm Members.....	4
3. Forms of Advertising and Jurisdictional Considerations—Rule 7.1.....	5
(a) Permissible Forms of Advertising.....	5
(b) Communications for Non-Profit Organizations.....	5
(c) Advertisements not Disseminated in Louisiana.....	5
4. Required Content for Advertisements and UWC’s—Rule 7.2(a).....	5
(a) Name of Lawyer.....	6
(b) Location of Practice.....	6
(c) LSBA Lawyer Advertising Filing Numbers.....	6
(d) Exemptions from Required Content.....	7
5. Permissible (or “Safe Harbor”) Content for Advertisements and UWC’s—Rule 7.2(b).....	7
(a) Permissible (or “Safe Harbor”) Content.....	8
(b) Public Service Announcements.....	9
6. Prohibited Content for Advertisements and UWC’s—Rule 7.2(c).....	9
(a) Content that is Prohibited Outright.....	9
(1) False, Misleading, or Deceptive Communications.....	9
(2) Promising Results.....	9
(3) Statements or Implications Regarding Achieving Results via Improper Means.....	9
(4) Improper Portrayals of Lawyers and Law Firms.....	10
(5) Improper Styling.....	10
(6) Nicknames, Monikers, Mottos, and Trade Names Stating or Implying Ability to Obtain Results.....	10

(7) Monetary Advances and Loan Guarantees.....	10
(8) Prohibited Visual and Verbal Portrayals and Illustrations.....	10
(9) Misstating Practice Areas.....	10
(10) Stating or Implying LSBA Approval.....	10
(11) Law Firm Name that Violates Rule 7.10.....	11
(b) Conditionally Prohibited Content.....	11
(1) Past Results.....	11
(2) Lawyer Service Comparisons.....	11
(3) Paid Testimonials/Endorsements.....	11
(4) Client Portrayals and Depiction of Events and Scenes.....	11
(5) Fields of Practice, Specialization, and Certification.....	11
(6) Liability for Expenses other than Fees.....	12
7. Other General Rules for Content for Advertisements and UWC’s—7.2(c).....	13
(a) Appearance of Required Statements, Disclosures, and Disclaimers.....	13
(b) Language of Required Statements.....	13
(c) Period for Honoring Advertised Fees.....	13
(d) Payment by Non-Advertising Lawyer.....	13
(e) Referrals to Another Lawyer.....	14
8. Additional Rules for UWC’s, Particular Media, and Other Communications.....	14
(a) Unsolicited Written Communications—Rule 7.4(b).....	14
(1) Prohibited UWC’s.....	14
(2) The “30 Day Rule”.....	15
(3) Requirements for UWC’s.....	15
(b) Advertisements in Electronic Media other than Computer-Accessed Communications—Rule 7.5.....	17
(1) General Rule.....	17
(2) Prohibited Content.....	17
(3) Permissible Content.....	17
(c) Computer-Accessed Communications—Rule 7.6.....	17
(1) Internet Presence.....	17
(2) Unsolicited Email Communications.....	18
(d) Information about a Lawyer’s Services Provided Upon Request—Rule 7.9.....	20
(1) General Rule.....	20
(2) Permissible Information.....	20
(3) Referrals and Associations of Another Lawyer or Law Firm.....	20
<u>Part III. Filing and Evaluation</u>	22
1. Exemptions from the Filing and Review Requirement—Rule 7.8.....	22
(a) Required Content and Permissible (“Safe Harbor”) Content.....	22
(b) Sponsorships and Contributions.....	22

(c) Law Lists and Bar Publications.....	23
(d) Existing Clients, Former Clients, or Other Lawyers.....	23
(e) Requested Communications.....	23
(f) Announcement Cards.....	23
(g) Websites and Home Pages.....	23
(h) Gifts and Promotional Items.....	24
(i) Bona Fide Office Signage.....	24
2. Requests for Advance Written Advisory Opinions Versus Regular Filings—Rule 7.7.....	24
3. How to File an Advertisement or UWC.....	25
(a) The Internal Operating Procedures (“IOPs”).....	25
(b) Filing Numbers and the Database.....	25
(c) Contents of Filing per Rule 7.7.....	26
(d) The Form.....	27
(e) Summary of Contents of Filing Application Packet.....	27
(f) Where to File and Manner of Transmission.....	27
4. How the Evaluation Process Works.....	28
(a) Acknowledgment Letter.....	28
(b) Evaluation Period.....	28
(c) Additional Information.....	28
(d) Evaluation Hierarchy.....	29
5. After the Evaluation.....	29
(a) Non-Binding Effect of Evaluation Findings.....	29
(b) Results of Evaluation.....	29
(c) Certificate of Non-Use.....	30
(d) Request for Review and Reports to the Office of Disciplinary Counsel.....	30
(e) Re-filing Due to Change in Circumstances.....	31
(f) Maintaining Copies of Advertisements	31
<u>Part IV. Appendix</u>	32
1. Useful Links.....	32
2. Examples of Advertisements and Unsolicited Written Communications Evaluated to be Compliant.....	32

HANDBOOK ON SOLICITATION AND LAWYER ADVERTISING IN LOUISIANA

By authority of the Louisiana Supreme Court, the Louisiana State Bar Association’s (the “LSBA”) Rules of Professional Conduct Committee (the “Committee”), among other functions, is charged with evaluating lawyer advertisements for compliance with ethical requirements and maintaining a handbook to guide lawyers through the advertising process—from creating the content of an advertisement or unsolicited written communication (including an unsolicited email) to, if necessary, the procedure for filing it with the LSBA for a compliance evaluation. This Handbook fulfills that purpose and supersedes the first edition published in 2008.

I. Introduction

The Rules governing solicitation and lawyer advertising are set forth in the Rule 7 series of the Louisiana Rules of Professional Conduct; specifically, Rules 7.1 through 7.10 (the “Advertising Rules”). The Advertising Rules:

- Describe the permissible forms and modes of advertising in Louisiana, as well as other communications to which the Advertising Rules do not apply (Rule 7.1);
- Outline mandatory, permissive, and prohibited advertising content, as well as other general content rules for advertisements and unsolicited written communications (Rule 7.2);
- Govern “direct” contact with prospective clients, including prohibited solicitation and permissible unsolicited written communications, such as mailers (Rule 7.4);¹
- Set forth other requirements for advertisements appearing in particularized forms of media—advertisements in electronic media that is *not* computer accessed, such as radio spots (Rule 7.5), and those that *are* computer accessed, such as websites and unsolicited emails (Rule 7.6);
- Establish the process for filing advertisements and unsolicited written communications with the LSBA for compliance evaluation (Rule 7.7), including exemptions from the filing process (Rule 7.8);
- Provide for the furnishing of information at the request of a potential client (Rule 7.9); and
- Place restrictions on law firm names and letterhead (Rule 7.10).

For ease of organization, this Handbook begins with discussions of prohibited solicitation and law firm names/letterhead prior to turning to the other Advertising Rules.

¹ Rule 7.3 currently is reserved.

II. Substantive Rules

1. Prohibited Solicitation—Rule 7.4 and 7.2(c)(13)

(a) Direct Contact with Prospective Clients. Rule 7.4 has two main parts. The first part—Rule 7.4(a)—pertains to prohibited solicitation (which is the topic of this Section), and the second part—Rule 7.4(b)—concerns unsolicited written communications (“UWC’s”) (which are covered separately in Section 8(a) of this Part).

Absent a family or prior lawyer-client relationship, Rule 7.4(a) prohibits a lawyer from soliciting employment from a *prospective* client in person or through person-to-person verbal telephone contact when “a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.” In addition to in-person and telephonic contact, the term “solicit” includes telegraphs, faxes, and “other communication directed to a specific recipient.” This captures UWC’s and unsolicited emails that do not meet the requirements for those types of communications. In other words, and as will be seen, if a UWC or unsolicited email is sent that does not satisfy the Advertising Rules, it would be considered a prohibited solicitation.

Rule 7.4(a) includes four other points regarding prohibited solicitation that are noteworthy:

- A lawyer cannot sidestep the prohibition by engaging another person to solicit on the lawyer’s behalf or at the lawyer’s request.
- Lawyers are not allowed to permit their employees or agents to solicit for them.
- In the event employment has been obtained through a prohibited solicitation, the lawyer cannot enter into an agreement for, charge, or collect a fee.
- The ability to solicit those with whom the lawyer has a “prior lawyer-client relationship” does not extend to unnamed members of a class action. Such persons are not considered “clients” for solicitation purposes.

(b) Payment for Recommendations. In addition to Rule 7.4, Rule 7.2(c)(13) contains another provision bearing on prohibited solicitation.² Under it, a lawyer shall not provide anything of value to a person for recommending the lawyer’s services. This does not

² Although not contained within the Advertising Rules, lawyers should be aware that certain forms of solicitation also are prohibited by Louisiana statutory law. *See, e.g.*, La. Rev. Stat. § 14:356 (unlawful solicitation for lawyers by sheriffs, clerks of court, constables, their deputies, or any police officer or detective); La. Rev. Stat. § 14:356.1 (unlawful solicitation for lawyers by wrecker drivers, owners, or any other persons providing wrecker services); La. Rev. Stat. § 14:356.3 (unlawful solicitation by lawyers by ambulance drivers, owners, or any other persons providing ambulance services); La. Rev. Stat. § 37:213 (unauthorized practice of law); and La. Rev. Stat. § 37:219 (unlawful payments by attorneys; unlawful solicitation of employment for lawyers). This is a non-exhaustive list of examples.

preclude the lawyer from paying the “reasonable” costs of advertising or the usual charges of a lawyer referral service or other legal services organization. *See* Rule 7.2(c)(13)(A). In the latter regard, as stated in Rule 7.2(c)(13)(A)(i)-(iii), the lawyer referral service may be operated by the LSBA, any local bar association, or a non-for-profit organization, provided that the service:

- Refers all persons requesting legal services to a participating lawyer;
- Prohibits lawyers from increasing fees to compensate for the referral service charges; and
- Fairly and equitably distributes all referral cases to participating lawyers, within their practice area, by random allotment or rotation.

2. Law Firm Names and Letterhead—Rule 7.10

A lawyer cannot use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the Advertising Rules. *See* Rule 7.10(a). Generally, this means that firm names, letterhead, and the like shall not be false, misleading, or deceptive. The balance of Rule 7.10 provides:

(a) Trade Names. Practicing under a trade name is permissible provided the name does not imply a connection with a government agency, a public or charitable services organization, or other professional association, or that the law firm is something other than a private law firm. *See* Rule 7.10(b).

Nor may a trade name: (1) materially misrepresent fact or law, (2) be false, misleading, or deceptive, (3) fail to disclose information necessary to prevent it from being false, misleading, or deceptive, (4) contain a reference to past results without an appropriate disclaimer,³ (5) promise results, (6) state or imply the lawyer can achieve results by means violative of the Louisiana Rules of Professional Conduct or other law, (7) draw comparisons with others lawyers’ services that cannot be factually substantiated, (8) contain a paid testimonial or endorsement without disclosing the fact of payment, (9) depict the portrayal of a client by a non-client or events or scenes that are not actual or authentic without an appropriate disclaimer, (10) use photographs or other static images that are false, misleading, or deceptive by virtue of alteration or context, (11) portray a non-lawyer as a lawyer or a law firm as a fictionalized entity, (12) use a “fictitious” name to refer to lawyers not associated together in a law firm or otherwise imply that lawyers are associated together in a firm when that is not true, (13) resemble a legal pleading, notice, contract, or other legal document, (14) employ a nickname, moniker, motto, or trade name that states or implies an ability to obtain results in a matter, or (15) publicize a willingness to make monetary advances or loan guarantees to clients.⁴

³ Disclaimers are discussed in greater detail below in Section 7 of this Part.

⁴ These requirements are contained in Rule 7.2(c)(1), which is incorporated into Rule 7.10(b) by reference.

In order to *advertise* using a trade name, the lawyer must actually *practice* under it. Thus, even if a trade name complies with the requirements stated above, a violation will result unless the trade name is the same law firm name that appears on the lawyer's letterhead, business cards, office signage, fee contracts, and pleadings, and other legal documents signed by the lawyer. *See* Rule 7.10(c).

Example: The law firm of Smith & Jones has multiple practice sections, including maritime law, and uses that name on its letterhead, client contracts, and/or pleadings. Smith & Jones—as a means of publicizing its maritime services—could not also advertise separately and simultaneously under a trade name such as “Anytime Maritime Law Firm” – at least not without full disclosure of any and all other business identities used to engage in the practice of law.

(b) Multi-Jurisdictional Law Firms. Law firms with offices in more than one jurisdiction may use the same name in each jurisdiction. However, when identifying lawyers in a particular office of the firm, the jurisdictional limitations on those lawyers not licensed in any jurisdiction where an office is located must be indicated. *See* Rule 7.10(d).

Example: The law firm of Smith & Jones has offices in Louisiana and Mississippi. The firm may advertise under that name in Louisiana, even though neither Ms. Smith nor Mr. Jones is licensed to practice here. But, in identifying the firm's Louisiana lawyers practicing in its Louisiana office, a disclosure such as “Licensed in Louisiana” is necessary to avoid the implication that those lawyers are dually licensed in Mississippi. And, a disclosure such as “not licensed in Louisiana” or “Licensed Only in Mississippi” would be necessary for identifying the firm's non-Louisiana lawyers who may be named or appear on letterhead, advertisements, etc., utilized within Louisiana.

(c) Public Officers or Former Law Firm Members. The names of lawyers holding public office or who formerly were associated with a law firm cannot be used in the firm's name, letterhead, or other communications during any period in which the lawyer is not “actively and regularly practicing with the firm.” *See* Rule 7.10(e).

(d) Partnerships and Organizational Business Entities. Lawyers cannot state or imply that they practice together in a partnership or other organizational business entity unless that is the fact. *See* Rule 7.10(f).

(e) Deceased and Retired Law Firm Members. Unless otherwise impermissible, a law firm may use or continue to include within its name the names of deceased law firm members or retired members of the firm or of a predecessor firm in a continuing line of succession. *See* Rule 7.10(g).

Example: The Smith Law Firm has three members, including Ms. Smith. Upon Ms. Smith's death, the firm may continue using her name in the name of the firm. If later the two remaining members separate their practices by one of them

withdrawing from the firm, the withdrawing member must use a different name for his or her new law firm because that firm is not “in a continuing line of succession.” The non-withdrawing member may continue practicing under the name of the Smith Law Firm. Names of attorneys serving actual periods of suspension or disbarred cannot advertise pursuant to La. Rev. Stat. § 37:213(7). Lawyers serving actual suspensions or disbarred should take this into account before entering into advertising campaigns in anticipation of returning to the practice of law.

3. Forms of Advertising and Jurisdictional Considerations—Rule 7.1

Having addressed prohibited solicitation and law firm names and letterhead, this Handbook next turns to permissible forms of lawyer advertising.

(a) Permissible Forms of Advertising. Subject to compliance with the content-based and procedural provisions of the Advertising Rules, under Rule 7.1(a), Louisiana lawyers are permitted to advertise in “public media.” The examples provided by that Rule are print media (e.g., telephone and legal directories, newspapers, and other periodicals), outdoor media (e.g., billboards and other signage), radio, television, computer-accessed communications, recorded messages accessed by dialing a telephone number, and certain written communications.

(b) Communications for Non-Profit Organizations. By contrast, publications, educational materials, websites and other communications by lawyers on behalf of non-profit organizations *that are not motivated by pecuniary gain* are not considered advertisements or UWC’s for purposes of the Advertising Rules. *See* Rule 7.1(c).

(c) Advertisements not Disseminated in Louisiana. Louisiana’s Advertising Rules do not apply to an advertisement appearing in another jurisdiction in which the advertising lawyer is admitted to practice, provided that (1) the advertisement complies with the rules of the jurisdiction at issue; and, (2) the advertisement is not intended for dissemination in Louisiana. *See* Rule 7.1(b).

4. Required Content for Advertisements and UWC’s—Rule 7.2(a)

According to Rule 7.2, Louisiana’s Advertising Rules apply to any communication conveying information about a lawyer, a lawyer’s services or a law firm’s services.

Louisiana lawyers undertaking an advertising endeavor must consider two distinct questions. *First*, does the advertisement or UWC comply with the content-based provisions of the Advertising Rules as a substantive matter? *Second*, does the advertisement or UWC have to be filed for a compliance evaluation as a procedural matter? The answer to the first question largely informs the answer to the second question.

Pursuant to Rule 7.2, there are three categories of content for advertisements and UWC’s—required content, permissible content, and prohibited content. This Section pertains to the first category, required content under Rule 7.2(a).

Subject to the limited exemptions discussed below, there are at least two, and very often three, items of content required for all advertisements and UWC's. They are: (1) the full name of a lawyer responsible for the content of the advertisement or UWC, (2) the location of the lawyer's practice, and (3) the filing number assigned to the advertisement or UWC by the LSBA. Careful attention should be paid to these requirements, as they are simple to comply with, but sometimes overlooked.

(a) Name of Lawyer. All advertisements and UWC's must include the full name of at least one lawyer (identifying more than one lawyer is acceptable) who is responsible for their content. The listed lawyer thereby certifies, when applicable, that the advertisement has been filed with the LSBA and assigned a filing number. *See* Rule 7.2(a)(1).

Example: The requirement that the full name of the responsible lawyer be listed bears emphasis. A nickname or otherwise incomplete name will not suffice. For instance, "Call lawyer Lou" will not satisfy this item of required content because it does not contain the lawyer's last name.

(b) Location of Practice. All advertisements and UWC's shall identify, by city or town, one or more "bona fide" office locations of the lawyer or lawyers who will actually perform the advertised services. To qualify as a "bona fide" office, the location must be a physical one maintained by the lawyer or law firm and from which the lawyer or law firm reasonably expects to furnish legal services substantially on a regular and continuing basis. The physical location must have at least one lawyer who is regularly and routinely present there. A location used as a "mail drop" or a "by appointment only" office where the lawyer is only occasionally present does not constitute a "bona fide" office location. If the lawyer has no "bona fide" office, the city or town of the address appearing on the lawyer's primary registration statement may be used to meet this requirement. *See* Rule 7.2(a)(2).

Advertisements and UWC's are not required to contain a telephone number, but they may do so at the lawyer's election. If the lawyer includes a telephone number associated with a specific geographic area where neither a "bona fide" office nor the address on the lawyer's primary registration is located, "appropriate qualifying language" must be added. *See* Rule 7.2(a)(2).

Example: A lawyer with a single "bona fide" office in Shreveport procures a telephone number with a (504) area code for an advertisement disseminated in New Orleans. Calls from prospective clients are re-routed and answered by the lawyer's staff in Shreveport. In that instance, the telephone number may be used only if qualifying language such as "Office in Shreveport" accompanies it. Otherwise, a prospective client may be under a misimpression that he or she is retaining a "local" lawyer.

(c) LSBA Lawyer Advertising Filing Numbers. Unless an advertisement or UWC is exempt from the requirement, it must be filed with the LSBA for a compliance evaluation

(as further discussed in Part III of this Handbook).⁵ In conjunction with the filing, the LSBA assigns a filing number to the advertisement or UWC under review. That filing number must be included in advertisements and UWC’s as required content. See Rule 7.2(a)(3).

Note: The “filing” number, which begins with a “LA” prefix, is to be distinguished from the “evaluation file” number, which begins with an “EC” prefix, that the LSBA later assigns for use in the evaluation process. It is the “filing” number, and not the “evaluation file” number, that must be appear in the advertisement or UWC (a later part of this Handbook describes how lawyers may obtain filing numbers from the LSBA online year round, 24 hours per day, seven days per week).

It is common – but not required – for lawyers to group the foregoing three items of required content in a single spot on the advertisement or UWC, *e.g.*, “Jane Doe • Baton Rouge • LA-00-00000.”

(d) Exemptions from “Required Content”: The following may be used without inclusion of the three items of otherwise required content identified above:

- **Sponsorships.** A “sponsorship” is a brief, public-media announcement identifying the lawyer or his or her 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.” To qualify for this exemption, the announcement cannot contain information about the lawyer or the law firm other than permissible (“Safe Harbor”) content (as set forth in the next Section of this Part) and the fact of sponsorship or contribution. See Rule 7.2(a)(4)(A).
- **Gifts & Promotional Items.** This includes coffee mugs, pens, pencils, apparel, or similar items identifying a lawyer or law firm. To qualify for this exemption, the item cannot be used or disseminated in a manner violative of the Advertising Rules. For instance, the item cannot be given in exchange for recommending the lawyer’s services or as part of a prohibited solicitation. See Rule 7.2(a)(4)(B).
- **Bona Fide Office Signage.** This exemption applies to a “sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer’s services or a law firm’s services that is permanently affixed, hanging erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.” See Rule 7.2(a)(4)(C).

5. Permissible (or “Safe Harbor”) Content for Advertisements and UWC’s—Rule 7.2(b)

A central principle of lawyer advertising is the avoidance of false, misleading or deceptive communications to the public.

⁵ In the case of an advertisement or UWC that is exempt from filing, the lawyer still has the option to file voluntarily if the lawyer desires to obtain a filing number. See Rule 7.2(a)(3).

(a) Permissible (or “Safe Harbor”) Content: Commonly referred to as “Safe Harbor” content, the following information is permitted in advertisements and UWC’s and, provided the information is true, is presumed not to be misleading or deceptive:

- The name of the lawyer or law firm, the number of lawyers in the advertising firm, a list of the lawyers associated with the law firm, office locations, parking arrangements, disability accommodations, telephone numbers, website and email addresses, office/telephone service hours, and designations such as “attorney,” “lawyer,” or “law firm” (*see* Rule 7.2(b)(1)(A) and (B));
- Date of admission to the LSBA and any other bars, as well as current or former membership or positions held in the LSBA or its sections of committees, together with dates of membership (*see* Rule 7.2(b)(1)(B));
- Former employment positions held in the legal profession, together with the dates the positions were held (*see* Rule 7.2(b)(1)(B));
- Years of experience in the practice of law (*see* Rule 7.2(b)(1)(B));
- The federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice (*see* Rule 7.2(b)(1)(B));
- Technical/professional licenses granted by the State or other recognized licensing authorities (*see* Rule 7.2(b)(1)(C));
- Educational degrees received, including dates and institutions (*see* Rule 7.2(b)(1)(C));
- Military service, including the branch and dates of service (*see* Rule 7.2(b)(1)(D));
- Foreign language abilities (*see* Rule 7.2(b)(1)(E));
- The fields of law in which the lawyer practices, including official certification logos (*see* Rule 7.2(b)(1)(F));

Note: The permissibility of including a certification logo is subject to the Advertising Rule’s restrictions on the types of certifications that are allowed to be used in connection with lawyer advertising. Those restrictions are explained in the next Section of this Part.

- Prepaid or group legal service plans in which the lawyer participates (*see* Rule 7.2(b)(1)(G));
- Initial consultation fees and fee schedules (*see* Rule 7.2(b)(1)(H));

Note: As indicated by Rule 7.2(b)(1)(H), when a lawyer includes fee information, certain additional restrictions are triggered. The permissibility of including initial consultation fees and fees schedules is subject to those restrictions, which are explained below in Sections 6 and 7 of this Part.

- Common salutatory language such as “best wishes,” “good luck,” “happy holidays,” or “pleased to announce” (*see* Rule 7.2(b)(1)(I));
- Punctuation marks and common typographical marks (*see* Rule 7.2(b)(1)(J)); and
- A photograph/image of the lawyer or lawyers who are members in or employed by the law firm against a “plain” background (*see* Rule 7.2(b)(1)(K)).

Note: The term “plain” is undefined by the Advertising Rules. Any background containing more than a solid color may be called into question.

(b) Public Service Announcements. A lawyer or law firm may be listed as a sponsor of a “public service announcement or charitable, civic, or community program or event”, provided that the information about the lawyer or law firm is limited to the permissible (“Safe Harbor”) content set forth above. *See* Rule 7.2(b)(2).

6. Prohibited Content for Advertisements and UWC’s—Rule 7.2(c)

In addition to required and permissible (“Safe Harbor”) content, the Advertising Rules define content that is either prohibited outright or allowable only under certain conditions or with appropriate disclaimers.

(a) Content that is Prohibited Outright. The following content is prohibited outright:

(1) False, Misleading, or Deceptive Communications. A communication is prohibited if it (1) is false, misleading, or deceptive, (2) materially misrepresents fact or law, (3) or omits material information necessary to prevent the information supplied from being false, misleading, or deceptive. *See* Rule 7.2(c)(1)(A)-(C).

(2) Promising Results. Lawyers may not promise results. *See* Rule 7.2(c)(1)(E). As an example, a lawyer may not include in an advertisement or UWC a statement such as “We will win your case for you” or “We will get you all the money you deserve.” Conversely, a statement such as “We will work hard for you” should be permissible, as it describes the level of effort that a lawyer or law firm will undertake for a client without an assurance that the effort will be successful.

(3) Statements or Implications Regarding Achieving Results via Improper Means. A lawyer may not state or imply that the lawyer can achieve results by means that violate the Louisiana Rules of Professional Conduct or other law. *See* Rule 7.2(c)(1)(F).

(4) Improper Portrayals of Lawyers and Law Firms. Communications shall not include portrayals of lawyers by non-lawyers, portrayals of a law firm as a “fictionalized entity,” or utilize a fictitious name to refer to lawyers who are not associated together in a law firm. Likewise, they cannot imply that lawyers are associated in a law firm if that is not the case. *See* Rule 7.2(c)(1)(J).

Example: Two separate law firms team together to handle hurricane claims while continuing to maintain their ongoing, separate law practices. Those firms cannot refer to themselves collectively as “The Storm Lawyers” without appropriate, full disclosure of all other firm names or identities also being used simultaneously because the implication of doing so is that the two law firms are merely just a single firm.

(5) Improper Styling. Communications shall not resemble a “legal pleading, notice, contract, or other legal document.” *See* Rule 7.2(c)(1)(K).

(6) Nicknames, Monikers, Mottos, and Trade Names Stating or Implying Ability to Obtain Permits. A lawyer shall not use a nickname, moniker, motto, or trade name that states or implies an ability to obtain results in a matter. *See* Rule 7.2(c)(1)(L).

Example: “Gail always prevails” or “Gail will prevail” would be prohibited mottos.

(7) Monetary Advances and Loan Guarantees. Prior to being engaged by a client, neither a lawyer nor anyone acting on the lawyer’s behalf may offer to make monetary advances or loan guarantees. Similarly, a lawyer is prohibited from advertising or otherwise publicizing a willingness to make such advances or guarantees. *See* Rule 7.2(c)(1)(M), which incorporates Rule 1.8(e)(4)(iii) by reference.

(8) Prohibited Visual and Verbal Portrayals and Illustrations. It is prohibited to include any visual or verbal descriptions, depictions, illustrations, photographs or portrayals of persons, things, or events that are false, misleading, or deceptive. *See* Rule 7.2(c)(2). It is also prohibited to use a still picture, photograph, or other static image that is rendered false, misleading, or deceptive as a result of alteration or the context of its use. *See* Rule 7.2(c)(1)(I).

(9) Misstating Practice Areas. Lawyers and law firms are prohibited from stating or implying that the lawyer or firm currently practices in an area of practice when that is not the case. *See* Rule 7.2(c)(3).

(10) Stating or Implying LSBA Approval. Stating or implying that a communication from a lawyer or law firm has received any kind of “approval” from the LSBA is prohibited. *See* Rule 7.2(c)(4).

Note: Rule 7.2(c)(4) clarifies that inclusion of the LSBA filing number as required content for an advertisement or UWC does not violate this provision. This is so because issuance of the filing number does not constitute “approval” by the LSBA.

(11) Law Firm Name that Violates Rule 7.10. In connection with advertising, a lawyer may not use a law firm name that does not comply with the requirements for such names set forth above in Section 2 of this Part. *See* Rule 7.2(c)(8).

(b) Conditionally Prohibited Content. The following content is allowed with disclaimers or by fulfilling other conditions:

(1) Past Results. References or testimonials regarding past successes or results are allowed only when accompanied by a disclaimer. *See* Rule 7.2(c)(1)(D). The examples of disclaimers appropriate for this purpose given in the Advertising Rules are “Results May Vary” or “Past Results are not a Guarantee of Future Success.”

(2) Lawyer Service Comparisons. A lawyer may not compare his or her services to those of other lawyers unless the comparison can be “factually substantiated.” *See* Rule 7.2(c)(1)(G).

(3) Paid Testimonials/Endorsements. Paid testimonials or endorsements are prohibited unless the fact of payment is disclosed. *See* Rule 7.2(c)(1)(H).

(4) Client Portrayals and Depiction of Events and Scenes. A non-client cannot portray a client without a disclaimer. The same disclaimer requirement applies to “the depiction of any events or scenes” (excluding still pictures, photographs or other static images⁶) that are not “actual or authentic”. *See* Rule 7.2(c)(1)(I)(i) and (ii).

Example #1: A television advertisement includes a scene in which the lawyer is shown consulting with a paid actor who is depicted as a client of the lawyer. The scene is prohibited unless it includes a disclaimer such as “Non-Client Paid Actor.”

Example #2: A television advertisement includes a scene depicting a fictional car accident. The scene is prohibited unless it includes a disclaimer such as “Dramatization.”

(5) Fields of Practice, Specialization, and Certification. Provided the information is true, a lawyer may communicate the particular fields of law in which the lawyer either does or does not practice. *See* Rule 7.2(c)(5). Beyond that, the Advertising Rules distinguish between statements regarding “specialization” and “certification.”

Regarding specialization, a lawyer generally may state that he or she is a “specialist,” practices a “specialty,” or “specializes” in a particular field. Such statements, however, are subject to a “false and misleading” standard.⁷ *See* Rule 7.2(c)(5). It follows, for instance, that a lawyer cannot state that he or she is a “criminal defense specialist” when, in reality,

⁶ Use of “still pictures, photographs or other static images” is addressed above under the heading titled “Prohibited Visual and Verbal Portrayals and Illustrations”.

⁷ The same standard applies to statements that a lawyer is an “expert” in a field of law.

the lawyer has little or no experience in that field. In that case, it is not the appearance of the term “specialist” that renders the statement prohibited, but rather the lawyer’s lack of actual practice in defending criminal matters to validate the statement.

Regarding certification, statements or implications that a lawyer is “certified” or “board certified” in a field of law are subject to more-specific conditions. They are allowed only under the following three scenarios:

- Under Rule 7.2(c)(5)(A), a lawyer who complies with the Plan of Legal Specialization promulgated by the Louisiana Board of Legal Specialization⁸ may communicate the area(s) of practice in which the lawyer is certified. The communication must identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified” or “board certified in (area of certification).”
- Under Rule 7.2(c)(5)(B)(i) and (ii), a lawyer certified by an organization other than the Louisiana Board of Legal Specialization or the bar of another state may communicate the area(s) of practice in which the lawyer is certified by stating that he or she is “certified” or “board certified in (area of certification)” if:
 - The lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization (a lawyer certified by an organization accredited by the American Bar Association is not subject to Section 6.2); and
 - The full name of the organization is included in all communications pertaining to the certification.
- Under Rule 7.2(c)(5)(C)(i) and (ii), a lawyer certified by the bar of another state may communicate the area(s) of practice in which the lawyer is certified by stating that he or she is “certified” or “board certified in (area of certification)” if:
 - The program of the bar of the other state grants certification based on standards reasonably comparable to those of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and
 - The name of the state bar is included in all communications pertaining to the certification.

(6) Liability for Expenses other than Fees. Lawyers are not required to include fee information in advertisements or UWC’s. However, if such information is contained in an

⁸ Analysis of the requirements of the Plan of Legal Specialization is beyond the scope of this Handbook.

advertisement or UWC, including one stating no fee will be charged in the absence of recovery, it must be disclosed whether the client will be liable for any costs/expenses in addition to the fee. *See* Rule 7.2(c)(6).

7. Other General Rules for Content for Advertisements and UWC's—Rule 7.2(c)

Finally, Rule 7.2 covers other general requirements concerning, and restrictions on, content for advertisements and UWC's. While they all must be followed, perhaps the most of important of these pertains to disclaimers and other required statements.

(a) Appearance of Required Statements, Disclosures, and Disclaimers. When appearing in writing, any required words, statements, disclosures, or disclaimers must be clearly legible and, if displayed on television or by electronic means, shall appear for a time sufficient for the viewer to easily see and read them. When spoken aloud, they must be plainly audible and clearly intelligible. In all cases, required disclosures and disclaimers must be clear, conspicuous, and clearly associated with the item to which they relate. *See* Rule 7.2(c)(10).

Example: If a televised advertisement begins with the depiction of a client by a non-client, it would not be sufficient to include the disclosure at the end of the advertisement as, for instance, part of a “disclaimer wall.”⁹ Instead, a disclaimer such as “Non-Client Portrayal” or “Non-Client Actor” would need to appear, clearly and conspicuously, when the depiction of the client by the non-client appears in the advertisement.

(b) Language of Required Statements. Words and statements required by the Advertising Rules must appear in the same language in which the advertisement or UWC appears. If an advertisement or UWC appears in more than one language, required words and statements must appear in each language used in the advertisement or UWC. *See* Rule 7.2(c)(9). The content must be “plainly audible and clearly intelligible” by a native speaker of the foreign language.

(c) Period for Honoring Advertised Fees. When a lawyer advertises a specific fee or fee range for a particular service, the lawyer must honor it for at least 90 days from the date it is last advertised, unless the advertisement specifies a shorter period. The honoring period extends to at least one year from publication for advertisements appearing in the yellow pages or other media that is not published more frequently than annually. *See* Rule 7.2(c)(7).

(d) Payment by Non-Advertising Lawyer. Lawyers and law firms must pay for the cost of their own advertising. It is prohibited for a lawyer, either directly or indirectly, to pay

⁹ A “disclaimer wall” is a block of text sometimes appearing at the end of an advertisement that displays various disclosures associated with the advertisement.

all or part of the cost of an advertisement by a lawyer not in the same firm. *See* Rule 7.2(c)(11).

Note: Assuming all other requirements imposed by the Advertising Rules are satisfied, this restriction does not prohibit lawyers in different law firms from engaging in joint advertising, with each lawyer (or firm) sharing in the cost of the joint advertisement accordingly.

(e) Referrals to Another Lawyer. If a matter or case will be, or is likely to be, referred to another lawyer or law firm, a statement so advising the prospective client must be included. *See* Rule 7.2(c)(12).

8. Additional Rules for UWC's, Particular Media, and Other Communications

In addition to the provisions of Rule 7.2 summarized above, the Advertising Rules impose further restrictions and allowances with respect to specific forms of communication. They are: (1) UWC's, (2) advertisements in electronic media other than computer-accessed communications, (3) computer accessed communications, and (4) information provided upon request.

(a) Unsolicited Written Communications—Rule 7.4(b)

As previously mentioned, while the first part of Rule 7.4 deals with prohibited solicitation, the second part of that Rule governs UWC's—unsolicited written communications. An UWC is a written communication sent by a lawyer on an unsolicited basis to one or more *prospective* clients for the purpose of obtaining professional employment. *See, e.g.*, Rule 7.4(b)(1). A classic example of an UWC is a mass mailer directed to prospective clients who have been affected by an environmental disaster.

(1) Prohibited UWC's. There are circumstances in which use of a UWC is prohibited. A lawyer, either on the lawyer's own behalf, the behalf of the lawyer's firm, or the behalf of any other lawyer affiliated with the lawyer's firm, shall not send or knowingly permit the sending of a UWC, directly or indirectly, if:

- The lawyer knows that the recipient does not wish to receive such communications from the lawyer (Rule 7.4(b)(1)(B));
- The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence (Rule 7.4(b)(1)(C));

- The UWC contains “false, misleading, or deceptive” statements or claims or is improper under certain provisions of Rule 7.2(c)¹⁰ (*see* Rule 7.4(b)(1)(D)); or
- The lawyer knows or reasonably should know that the physical, mental, or emotional state of the recipient renders it unlikely that he or she would exercise reasonable judgment in employing a lawyer (*see* Rule 7.4(b)(1)(E)).

(2) The “30 Day Rule”. Commonly known as the “30 Day Rule,” an UWC pertaining to a personal injury or wrongful death matter or otherwise relating to an accident or disaster involving the person to whom the communication is directed (or one of the person’s relatives), cannot be mailed unless and until more than 30 days have passed since the accident or disaster. *See* Rule 7.4(b)(1)(A).

(3) Requirements for UWC’s. Assuming that an UWC is not prohibited (or premature) per these restrictions, they are further subject to the following:

- The UWC must comply with the provisions of Rule 7.2, *i.e.*, those regarding required content, permissive content, prohibited content, and the other general rules governing advertising content (*see* above). *See* Rule 7.4(b)(2)(A).
- The UWC cannot resemble a “legal pleading, notice, contract, or other legal document” or be sent by registered or certified mail or through other forms of restricted delivery. *See* Rule 7.4(b)(2)(C).

¹⁰ Those provisions, which are contained in Rule 7.2(c)(1) and outlined above in Section 6 of this Part, proscribe communications that: (1) materially misrepresent law or fact, (2) are false, misleading, or deceptive, (3) omit material information necessary to prevent information supplied from being false, misleading, or deceptive, (4) contain a reference or testimonial to past results without an appropriate disclaimer, (5) promise results, (6) state or imply the lawyer can achieve results by means that violate the Louisiana Rules of Professional Conduct or other law, (7) make lawyer service comparisons that cannot be factually substantiated, (8) contain a paid testimonial or endorsement without disclosing the fact of payment, (9) violate the provisions governing client portrayals by non-clients without disclaimer, depictions of events or scenes that are not actual or authentic without disclaimer, and use of photographs or other static images that are false, misleading, or deceptive by virtue of alteration or context, (10) include portrayals of lawyers by non-lawyers or law firms as fictionalized entities, use of fictitious names to refer to lawyers that are not associated in a firm, or implications that lawyers are associated in a firm when that is not the case, (11) resemble a legal pleading, notice, contract, or other legal document, (12) employ a nickname, moniker, motto, or trade name that states or implies an ability to obtain results in a matter, or (13) offer or indicate a willingness to make monetary advances or loan guarantees to prospective clients.

- The UWC must include a statement advising the recipient if a lawyer other than the one whose name or signature appearing thereon will actually handle the case or matter that is the subject of the UWC. *See* Rule 7.4(b)(2)(D).
- When prompted by a specific occurrence affecting the recipient or one of the recipient’s relatives, the UWC must disclose how the lawyer acquired the information that prompted it. *See* Rule 7.4(b)(2)(E).

Examples: A criminal defense lawyer may read a news report of an arrest, or a bankruptcy lawyer may peruse court records to locate filings by persons who have begun seeking bankruptcy protection. The means of discovery of this type of information are easily stated. As to disasters or accidents impacting a geographic area, for which a lawyer wishes to send UWC’s on a mass basis, the UWC could include a statement such as “News reporting suggests that you reside in a location that may have been affected by the chemical spill that recently occurred at ABC Company.”

- The UWC cannot, on the face of an envelope or the outside of a self-mailing brochure or pamphlet, reveal the nature of the recipient’s legal problem. *See* Rule 7.4(b)(2)(F).
- In the absence of a family or prior lawyer-client relationship, there are three more requirements applicable to UWC’s, as set forth in Rule 7.4(b)(2)(B):

- Lawyer Name: The UWC must include the full name of at least one member of the LSBA who is responsible for its content. *See* Rule 7.4(b)(2)(B)(i).
- “ADVERTISEMENT” Mark: The top of each page of the UWC and the lower left corner of the face of the enclosing envelope must be marked “ADVERTISEMENT.” For self-mailing brochures and pamphlets, the “ADVERTISEMENT” mark must be placed above the address panel and on the inside of the brochure or pamphlet. The “ADVERTISEMENT” mark must appear in a print size at least as large as the largest print used in the UWC. *See* Rule 7.4(b)(2)(B)(ii).

Note: UWC’s solicited by clients or prospective clients or sent only to other lawyers are not required to include an “ADVERTISEMENT” mark.

- Filing Number: Unless solicited by a client or prospective client or sent only to other lawyers, the UWC must “state clearly” the Lawyer Advertising Filing Number assigned to the UWC by the LSBA. *See* Rule 7.4(b)(2)(B)(iii).

(b) Advertisements in Electronic Media other than Computer-Accessed Communications—Rule 7.5

The Advertising Rules distinguish between advertisements appearing in electronic media such as television or radio from those that are accessed via computer. This subsection (b) discusses the former; subsection (c) immediately below discusses computer-accessed communications.

(1) General Rule. Advertisements in electronic media are subject to the requirements of Rule 7.2, *i.e.*, those regarding required content, permissive content, prohibited content, and the other general rules governing advertising content (see above). *See* Rule 7.5(a). Apart from those requirements, Rule 7.5 sets forth prohibitions and allowances for content that may be considered unique to electronic-media advertisements.

(2) Prohibited Content. In terms of prohibited content, a television or radio advertisement cannot contain any feature (including background sounds) that is false, misleading, or deceptive. It is also prohibited for any lawyer who is not a member of the advertising firm to speak on behalf of the advertising lawyer or firm. *See* Rule 7.5(b)(1)(A) and (B).

(3) Permissible Content: Televisions and radio advertisements may contain images that comply with the Advertising Rules. A lawyer who is a member of the advertising firm may appear and speak to the legal services that are available to be performed, fees charged for the services, and the background or experience of the lawyer or firm. *See* Rule 7.5(b)(2)(A) and (B).

(c) Computer-Accessed Communications—Rule 7.6

Computer-accessed communications are information about a lawyer's or law firm's services that is read, viewed, or heard directly by using a computer. Chiefly, they include (1) internet presences, *i.e.*, home pages and websites, and (2) unsolicited emails. *See* Rule 7.6(a).

(1) Internet Presence. All websites and home pages accessed via the internet that are “controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services” must disclose all jurisdictions in which the lawyer or members of the firm are licensed to practice, as well as at least one “bona fide” office location (or the city or town of the address on the lawyer's primary registration statement in the absence of a “bona fide” office). *See* Rule 7.6(b)(1)-(3).

Otherwise, a lawyer's or law firm's websites and home pages are considered to be “information provided on request,” as governed by Rule 7.9. The requirements for such information are discussed in subsection (d) immediately below.

(2) Unsolicited Email Communications. Similar to traditional UWC’s, the emails covered by Rule 7.6 are those sent on an unsolicited basis, directly or indirectly, to one or more *prospective* clients for the purpose of obtaining professional employment. *See, e.g.,* Rule 7.6(c). A lawyer, either on his own behalf, the behalf of the lawyer’s firm, or the behalf of any other lawyer affiliated with the lawyer’s firm, cannot send such an email without meeting the following requirements:

- If the email concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the email is directed (or one of the person’s relatives), the email cannot be transmitted unless and until more than 30 days have passed since the accident or disaster. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(1) by reference.
- The email cannot be sent if it has been made known to the lawyer that the recipient does not want to receive such communications from the lawyer, or if the email involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(1) by reference.
- The email cannot contain statements or claims that are “false, misleading, or deceptive” or improper under certain provisions of Rule 7.2(c). *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(1) by reference.¹¹
- The email cannot be sent if the lawyer knows or should know that the physical, mental, or emotional state of the recipient renders it unlikely that he or she would

¹¹ As shown, Rule 7.6(c) relies heavily on cross references to subdivisions of Rule 7.4(b). In turn, Rule 7.4(b)(1)(D) incorporates by reference the provisions of Rule 7.2(c)(1). The provisions of Rule 7.2(c)(1), which are outlined above in Section 6 of this Part, proscribe communications that: (1) materially misrepresent law or fact, (2) are false, misleading, or deceptive, (3) omit material information necessary to prevent information supplied from being false, misleading, or deceptive, (4) contain a reference or testimonial to past results without an appropriate disclaimer, (5) promise results, (6) state or imply the lawyer can achieve results by means that violate the Louisiana Rules of Professional Conduct or other law, (7) make lawyer service comparisons that cannot be factually substantiated, (8) contain a paid testimonial or endorsement without disclosing the fact of payment, (9) violate the provisions governing client portrayals by non-clients without disclaimer, depictions of events or scenes that are not actual or authentic without disclaimer, and use of photographs or other static images that are false, misleading, or deceptive by virtue of alteration or context, (10) include portrayals of lawyers by non-lawyers or law firms as fictionalized entities, use of fictitious names to refer to lawyers that are not associated in a firm, or implications that lawyers are associated in a firm when that is not the case, (11) resemble a legal pleading, notice, contract, or other legal document, (12) employ a nickname, moniker, motto, or trade name that states or implies an ability to obtain results in a matter, or (13) offer or indicate a willingness to make monetary advances or loan guarantees to prospective clients.

exercise reasonable judgment in employing a lawyer. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(1) by reference.

- The email must comply with the provisions of Rule 7.2, *i.e.*, those regarding required content, permissive content, prohibited content, and other general rules governing advertising content (see above). *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(A) by reference.
- Where there is no family or prior lawyer-client relationship, the email must include the full name of at least one member of the LSBA who is responsible for its content. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(B)(i) by reference.
- Where there is no family or prior lawyer-client relationship, the email must “state clearly” the Lawyer Advertising Filing Number assigned to it by the LSBA. This requirement does not apply to emails solicited by clients or prospective clients or sent only to other lawyers. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(B)(iii) by reference.
- The email cannot resemble a “legal pleading, notice, contract, or other legal document” or be sent by a form of restricted delivery. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(C) by reference.
- The email must include a statement advising the recipient if a lawyer other than the one whose name or “signature” appearing thereon will actually handle the case or matter that is the subject of the email. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(D) by reference.
- When prompted by a specific occurrence affecting the recipient or one of the recipient’s relatives, the email must disclose how the lawyer acquired the information that prompted it. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(E) by reference. Examples of means of compliance with this requirement are stated in Section 8(a)(3) of this Part pertaining to UWC’s.
- The email cannot reveal the nature of the client’s legal problem, such as in the subject line, except in the body of the email appearing upon opening the email. *See* Rule 7.6(c)(1), which incorporates Rule 7.4(b)(2)(F) by reference.
- The email must disclose at least one “bona fide” office location of the lawyer or lawyers who will actually perform the advertised services. Once again, in the absence of a “bona fide” office, the city or town of the address appearing on the lawyer’s primary registration statement instead may be used. *See* Rule 7.6(c)(2).

- Unless it is being sent only to other lawyers, the subject line of the email must state “LEGAL ADVERTISEMENT.” *See* Rule 7.6(c)(3).

(d) Information about a Lawyer’s Services Provided Upon Request—Rule 7.9

At times, rather than driving by a billboard, passively viewing a television commercial, receiving a UWC, or the like, a potential client may affirmatively seek and request information about a lawyer’s or law firm’s services. A potential client may do so through various means, including by visiting a law firm’s website or contacting a lawyer and making the request. When this occurs, Rule 7.9 applies.

(1) General Rule. Information about the services of a lawyer or law firm that is provided on request must satisfy the requirements of Rule 7.2, *i.e.*, those regarding required content, permissive content, prohibited content, and the other general rules governing advertising content (see above), except as otherwise provided in Rule 7.9. *See* Rule 7.9(a).

(2) Permissible Information. Rule 7.9 outlines information and materials that may be provided on request and identifies a specific type of information that may be considered misleading. To that end, whenever information about a lawyer’s or law firm’s services is requested by a potential client, the lawyer or law firm may:

- Furnish factual information about the lawyer or law firm that is deemed valuable to assist the potential client. *See* Rule 7.9(b)(1).
- Provide an engagement letter to the potential client. However, if a contingency fee contract is also included with the information provided, it must be marked “SAMPLE” at the top of each page in print size at least as large as the largest print used in the contract, and the statement “DO NOT SIGN” must appear on the client signature line. *See* Rule 7.9(b)(2).
- Make factually verifiable statements regarding past results obtained by the lawyer or law firm, as long as the statements are not false, deceptive, or misleading, either alone or in the context in which they appear. *See* Rule 7.9(b)(3). These statements are not required to be accompanied by disclaimers such as “Results May Vary” or “Past Results are not a Guarantee of Future Success,” though best practices may warrant inclusion of such a disclaimer as a cautionary measure.

(3) Referrals and Associations of Another Lawyer or Law Firm. Any statement or information provided to a prospective client indicating that a lawyer or law firm will represent a client in a particular type of matter is presumed to be misleading if the lawyer or law firm reasonably believes that an outside lawyer or law firm will be associated on the representation or act as primary counsel. To avoid the presumption that the statement or information is misleading, appropriate qualifying language must be included. In

determining whether a statement is misleading in this regard, the lawyer's historical, prior conduct may be considered. *See* Rule 7.9(c).

Example: Lawyer A handles routine, “no fault” divorces and refers all more-complicated domestic cases to Lawyer B. Without qualifying language such as “Cases May be Referred to Another Lawyer or Law Firm,” Lawyer A, upon request, provides information to a potential client stating that Lawyer A represents clients in domestic matters. In assessing whether that statement is misleading, Lawyer A's referral history with Lawyer B may be taken into account.

III. Filing and Evaluation

To this point in this Handbook, the discussion has been focused on the substantive requirements for advertisements and UWC's. Part III will address the procedure for fulfilling the advertising filing requirement for a compliance evaluation. **As stated in Rule 7.7(c), the default requirement, which cannot be overemphasized, is that all advertisements in the public media and UWC's (including unsolicited emails) must be filed for evaluation, unless a filing exemption applies.**

1. Exemptions from the Filing and Review Requirement—Rule 7.8

The following are exempt from the filing and review requirement:

(a) Required Content and Permissible (“Safe Harbor”) Content. Advertisements and UWC's that are solely limited to required content (*i.e.*, the name of a responsible lawyer and the lawyer's location of practice) and permissible (“Safe Harbor”) content are not required to be filed. *See* Rule 7.8(a). Special care should be exercised in relying on this exemption, as any addition to the advertisement or UWC beyond just the permissible (“Safe Harbor”) content listed in Rule 7.2(a) may render the advertisement or UWC non-exempt. Moreover, even if the advertisement or UWC *is* appropriately limited to permissible (“Safe Harbor”) content, filing is required if any required content is omitted.

Example: Lawyer erects a billboard and limits it to permissible (“Safe Harbor”) content, but the Lawyer overlooks the inclusion of “Lafayette” as the Lawyer's “bona fide” office location and does not file the billboard for evaluation. The billboard is not exempt from filing because required content is missing. In fact, the omission creates two potential problems for the Lawyer. The first problem is that, substantively, the billboard is non-compliant with the content rules. The second problem is that, procedurally, the Lawyer has failed to file a non-exempt advertisement.¹²

(b) Sponsorships and Contributions. Brief public-media announcements identifying a lawyer or law firm as a contributor to a specified charitable, community, or public interest program, activity, or event are not required to be filed, provided that the announcement contains no information about the lawyer or law firm other than permissible (“Safe Harbor”) content and the fact of sponsorship or contribution. *See* Rule 7.8(b). In

¹² The example illustrates that the content and filing requirements are separate and may be violated independently. That is, an advertisement may be fully compliant with content requirements, but nonetheless may violate the Advertising Rules if it is non-exempt and not filed. Conversely, a lawyer may timely file an advertisement that is not compliant as to content. In that case, the filing requirement has been met, but use of the advertisement would violate the Advertising Rules because it contains impermissible content.

determining whether an announcement qualifies as a “public service announcement,” the following may be considered:

- Whether the announcement’s content appears to serve the interests of the lawyer or law firm as much or more than the public’s interest (*see* Rule 7.8(b)(1));
- Whether the announcement contains information about the lawyer or law firm’s area(s) of practice, legal background, or experience (*see* Rule 7.8(b)(2));
- Whether the announcement lists the lawyer’s or law firm’s telephone number or address (*see* Rule 7.8(b)(3));¹³
- Whether the announcement concerns a legal subject or contains legal advice (*see* Rule 7.8(b)(4) and (5)); and
- Whether the lawyer or law firm paid to have the announcement published (*see* Rule 7.8(b)(6)).

(c) Law Lists and Bar Publications. A listing or entry in a law list or bar publication is not required to be filed. *See* Rule 7.8(c).

(d) Existing Clients, Former Clients, or Other Lawyers. Communications mailed only to existing clients, former clients, or other lawyers are not required to be filed. *See* Rule 7.8(d).

(e) Requested Communications. Written communications requested by a prospective client are not required to be filed. *See* Rule 7.8(e). This means that information about a lawyer’s services provided on request, as contemplated by Rule 7.9, are exempt from the filing requirement.

(f) Announcement Cards. Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm that are mailed only to other lawyers, relatives, close personal friends, or existing or former clients are exempt from the filing requirement. *See* Rule 7.8(f).

(g) Websites and Home Pages. Websites and internet home pages “that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning

¹³ As explained earlier in this Handbook, lawyers and law firms may be identified as sponsors of public service announcements or charitable, civic, or community programs without, for instance, including a “bona fide” office location, provided the information supplied is limited to permissible (“Safe Harbor”) content.

the lawyer's or law firm's services" are not required to be filed. See Rule 7.8(g), which incorporates Rule 7.6(b) by reference.

Note: To dispel a relatively common misconception, a law firm's website does not need to be filed. However, the website must still otherwise comply with Rule 7.6. It should be noted that, the exemption notwithstanding, the website may still be filed with the LSBA voluntarily if a lawyer or firm desires to have the LSBA review the site's content for Rule compliance.

(h) Gifts and Promotional Items. Coffee mugs, pens, pencils, apparel, and similar items that identify a lawyer or law firm are not required to be filed. See Rule 7.8(h).

Note: This exemption assumes that the item is not being used or disseminated by a lawyer or law firm in violation of the Advertising Rules, including as part of a prohibited solicitation or in exchange for recommending the services of the lawyer or law firm.

(i) Bona Fide Office Signage. A lawyer is not required to file "[a] sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer's services that is permanently affixed, hanging, or erected or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits." See Rule 7.8(i).

Important final note: Finally, and so that there is no confusion on the point, the fact that an advertisement or UWC may be exempt from filing does not automatically mean that it is compliant with the Advertising Rules in other respects. For instance, a mailing sent only to other lawyers is not required to be filed, but nevertheless would be non-compliant if it contains a false, deceptive or misleading statement, e.g., misrepresenting the sending lawyer's experience or background.

2. Requests for Advance Written Advisory Opinions Versus Regular Filings—Rule 7.7

Assuming an advertisement or UWC is not exempt from the filing requirement, there are two options for filing. *First*, before dissemination, the lawyer may request an advance written advisory opinion ("AWAO") regarding compliance. See Rule 7.7(b). *Second*, the lawyer may submit the advertisement or UWC for evaluation as a "regular" filing "prior to or concurrently with the lawyer's first dissemination" of it. See Rule 7.7(c).

There are advantages and disadvantages to each option. Discussed further below, if an advertisement or UWC is evaluated to be non-compliant, the filing lawyer is requested to execute a certificate attesting that the lawyer has not disseminated, and will not disseminate, the advertisement or UWC in its current form. Requesting an AWAO before dissemination protects the lawyer in that regard because the advertisement or UWC is not in use while the evaluation process proceeds, but the process can take up to 30 days to complete (thus delaying

dissemination).¹⁴ For regular filings, the advertisement or UWC may be disseminated immediately upon filing without delay, but proceeding in that fashion leaves the lawyer without a “safety net” in the event of a finding of non-compliance. Particularly, and for instance, if a lawyer uses an advertisement concurrently with submitting it as a regular filing and it is later evaluated to be non-compliant, the lawyer will not be able to certify that the advertisement was not disseminated.

3. How to File an Advertisement or UWC

Regardless of whether a lawyer chooses to seek an AWAO or opts for a regular filing, the filing procedure is largely the same.

(a) The Internal Operating Procedures (“IOP’s”). The Committee is authorized to adopt procedural rules that may be required to perform its functions. *See* Rule 7.7(a)(3). Among other rules and instructions reflected on the LSBA’s website and the filing forms discussed below, in exercise of that authority, the Committee has adopted “Internal Operating Procedures for Lawyer Advertising Evaluation Under Rule 7.7” (the “IOP’s”), which can be viewed and downloaded at <https://www.lsba.org/documents/LawyerAdvertising/LawyerAdvertisingInternalOperatingProc.pdf>. The IOP’s are being introduced at this point because they feature prominently in the discussion of the filing and evaluation process.

(b) Filing Numbers and the Database. An initial step in the filing process is obtaining a LSBA Lawyer Advertising Filing Number. *See, e.g.,* Rule 7.2(a)(3). The filing number is keyed to a searchable online lawyer advertising database maintained by the LSBA and available to the public. *See* Rule 7.7(k). The database can be accessed at <https://www.lsba.org/LawyerAdvertising/LawyerAdSearchV4.aspx> and contains basic identifying information about the filing, including, but not limited to, the filing number, the name of the filing lawyer, the type of communication (*i.e.*, radio, billboard, UWC, etc.), and (if available) the communication itself. The communications are uploaded to the database in accordance with procedures prescribed by the IOP’s.¹⁵

¹⁴ More specifically, a request for an AWAO must be submitted “at least” 30 days prior to its first dissemination. *See* Rule 7.7(b). Further, it is the Committee’s policy that, for an advertisement that will appear in a telephone directory or similar publication, a request for an AWAO must be submitted at least 30 days prior to the printing deadline.

¹⁵ This Handbook does not detail those procedures, but for reference purposes, they are set forth in Section 7.7.10(1)(a)-(c) and (2)(a)-(d) of the IOP’s. Notably, the appearance or non-appearance (exempt advertisements and UWC’s that are not filed are not placed in the database) of an advertisement or UWC within the database does not mean that the advertisement or UWC is or is not compliant. *See* IOP’s at Section 7.7.10(4). It means only that the advertisement or UWC has been filed and fits the applicable criteria for uploading to the database.

Filing numbers may be obtained online year-round, 24 hours per day and seven days per week, by visiting <https://www.lsba.org/LawyerAdvertising/LawyerAdvertisingFiling.aspx> and clicking the “Pre-File Online Now” button. Once the filing number is generated, the lawyer is able to insert the number into the advertisement or UWC before submitting it for a compliance evaluation. Filing numbers generally are valid for 60 days from issuance. In the event no filing materials or “media” (*i.e.*, the advertisement or UWC) are received during that period, the filing number is deemed abandoned and ineligible for use. *See* IOP’s at Section 7.7.10(3).¹⁶ Hence, the lawyer must obtain a new filing number – and is not permitted to use the old filing number – if the lawyer later wishes to go forward with the filing.

(c) Contents of Filing Per Rule 7.7. Pursuant to Rule 7.7(d), the following must be included with any filing:

- A copy of the advertisement or UWC in the form(s) in which it is to be disseminated and is readily-capable of duplication by the Committee (*e.g.*, videotapes, audiotapes, print media, photographs of outdoor advertising, etc.) (*see* Rule 7.7(d)(1));

Note #1: A lawyer need not incur the time and expense of producing a radio or television advertisement in connection with requesting an AWAO. Instead, typewritten production scripts and story boards may be submitted. If that approach is taken, however, the actual, produced advertisement must be submitted before or concurrently with its first dissemination in order to complete the filing and evaluation process.

Note #2: For identical UWC’s that are being sent to multiple prospective clients, the lawyer need not file a list of the names and addresses of all recipients. It is sufficient to file a copy of one of the identical UWC’s, which can be generic as to the recipient’s name and address by including language such as “Dear [insert name of prospective client].”

- A typewritten transcript of the advertisement or UWC, if any portion is on videotape, audiotape, electronic/digital media, or otherwise not embodied in written or printed form (*see* Rule 7.7(d)(2));
- A printed copy of all text used in the advertisement or UWC (*see* Rule 7.7(d)(3));

¹⁶ Lawyers who miss the 60-day window have a brief opportunity for a second chance. Upon expiration of the 60 days, written inquiry is sent to the filing lawyer as a reminder that no materials have been received. Abandonment of the filing number occurs if the filing lawyer neither submits the filing materials nor a “reasonable explanation” for the non-submission as soon as possible, but in no event later than 10 days of the date of the written inquiry. *See* IOP’s at Section 7.7.10(3).

- An accurate English translation if the advertisement or UWC appears or is audible in a language other than English (*see* Rule 7.7(d)(4));
- For communications that are mailed, a sample envelope in which the communication is to be enclosed (*see* Rule 7.7(d)(5));
- A statement listing all media in which the communication will appear, the anticipated frequency of use in each medium in which it will appear, and the anticipated time period of use (*see* Rule 7.7(d)(6)); and
- Fees paid to the LSBA (*see* Rule 7.7(d)(7)).

Note: A late fee is imposed for any advertisement or UWC that is not filed prior to or concurrently with first use or dissemination. While late filings thus are accepted, payment of the additional fee does not absolve the lawyer of the consequences that may result for failing to file timely.

(d) The Form. Embodying these requirements, a “Filing Application Form” is necessary for all filings. Further, a “Filing Application Addendum” additionally is necessary for UWC’s. *See* IOP’s at Section 7.7.7. The form and (if applicable) the addendum must be completed and included as part of the lawyer’s filing packet. The form and addendum may be downloaded at <https://www.lsba.org/LawyerAdvertising/LawyerAdvertisingFiling.aspx>.

(e) Summary of Contents of Filing Application Packet. In sum, a complete filing application packet consists of:

- A check or money order for the applicable filing fee payable to the “Louisiana State Bar Association”;
- A completed and signed “Filing Application Form” and, if evaluation of a UWC is being sought, a completed and signed “Filing Application Addendum”; and
- A specimen of the advertisement or UWC to be evaluated in the form called for by the type of communication for which the evaluation is being sought.

(f) Where to File and Manner of Transmission. Completed filing application packets are to be mailed (including by commercial carrier such as Federal Express or UPS) or hand delivered¹⁷ to:

¹⁷ In the event no one is available to physically accept the filing application, the LSBA maintains an exterior “drop box” where the application may be deposited.

Rules of Professional Conduct Committee
c/o Ethics Counsel (Lawyer Advertising)
Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, Louisiana 70130-3404

Filings are not accepted by fax or email. An application is not deemed “filed” until it has been actually received and “clocked in” by Ethics Counsel.

Example: Lawyer produces a television commercial and submits it as a regular filing. The application packet is mailed on a Monday (the same day the commercial first runs) and is received by the LSBA and clocked in by Ethics Counsel three days later. The filing is late and will not be considered to have been submitted “concurrently” with first use because the date of mailing does not control.

Additional questions and inquiries regarding lawyer advertising may be submitted by telephone, fax, or email, as follows:

Telephone: (800) 421-LSBA, ext. 144 or 122
Direct Line: (504) 619-0144 or (504) 619-0122
Fax: (504) 598-6753
Email: RLemmler@LSBA.org or EBarefield@LSBA.org

4. How the Evaluation Process Works

(a) Acknowledgment Letter. As an administrative matter, shortly after the application is filed, the filing lawyer can expect to receive correspondence acknowledging receipt of the application. This is for confirmation purposes only; it does not constitute the evaluation of the advertisement or UWC. It also serves to confirm and provide in writing the LSBA Lawyer Advertising Filing Number that has been assigned to that filing.

(b) Evaluation Period. Evaluations are to be completed by the Committee within 30 days after receipt of filing. If it is determined that “reasonable doubt” exists as to compliance and that further examination is warranted that cannot be performed within 30 days, the evaluation shall be completed “as promptly as the circumstances reasonably allow.” In that event, the filing lawyer must be informed of such in writing within the 30-day period. If no written communication is sent to the filing lawyer within 30 days following receipt of the filing, the advertisement or UWC is deemed “approved”. See Rule 7.7(e).

(c) Additional Information. In some instances, additional information may be requested from the lawyer in order to complete the evaluation process, to which the filing lawyer

must promptly reply. If the lawyer fails to satisfy any such request, the failure may result in a finding of non-compliance for insufficient information. See Rule 7.7(f).

(d) Evaluation Hierarchy. In the first instance, evaluations are performed on behalf of the Committee by the LSBA’s Ethics Counsel (“Ethics Counsel”).¹⁸ The process progresses as follows:

- For filings that are “simple”, “routine”, or “repetitive” in nature, Ethics Counsel has the discretion to perform the evaluation. See IOP’s at Section 7.7.8.
- For filings presenting a “substantial issue” for review, Ethics Counsel may refer the filing and a draft proposed response to the Review Subcommittee established by the Committee. See IOP’s at Section 7.7.9.
- If the Review Subcommittee does not approve the draft proposed response unanimously, the matter is referred to the full Committee. See IOP’s at Section 7.7.9.

5. After the Evaluation

(a) Non-Binding Effect of Evaluation Findings. The Committee’s finding that an advertisement or UWC does or does not comply with the Advertising Rules is not binding in Louisiana’s system for lawyer discipline. This means that the finding is not a final determination as to compliance, but it may be introduced as evidence in a disciplinary proceeding. See Rule 7.7(h).

(b) Results of Evaluation. The Committee’s compliance findings are communicated to the filing lawyer in writing. If the advertisement or UWC is found to be compliant and the application was timely submitted, the process is finished (except that the lawyer should retain a copy of the findings for the lawyer’s files and remain mindful of the period for maintaining copies of advertisements and UWC’s and the duty to advise of material changes in circumstances, as set forth below).

Otherwise, any feature(s) or omission(s) deemed to render the advertisement or UWC non-compliant with the Advertising Rules are noted for the filing lawyer, along with (if feasible) suggestions for revisions that would bring it into compliance. An area of non-compliance

¹⁸ As alluded to above, Ethics Counsel also is available to respond to advertising questions submitted in writing, by email, or by telephone. Lawyers should be cognizant, however, that any advice given in response to such questions is non-binding and is not a substitute for engaging in the formal filing and evaluation process. For more information on seeking general advice or information from Ethics Counsel, please refer to Sections 7.7.3 through 7.7.6 of the IOP’s.

is referred to as an “exception.” Revisions that remedy an area of non-compliance are referred to as “clearing” the exception.

When a lawyer revises an advertisement or UWC to clear an exception that has been noted, the revised advertisement must be resubmitted for further compliance evaluation. The reason for this is to keep the Committee apprised of the current status of an advertisement or UWC, including for maintenance of the searchable public database and so that the lawyer can, hopefully, ultimately obtain a written evaluation showing compliance with the Rules. As of the date of the writing of this Handbook, there is no additional fee for resubmitting a revised advertisement or UWC for this purpose.

Example: Lawyer files a billboard that includes the statement “We will recover money for you.” Upon being notified that the statement impermissibly promises results, the Lawyer revises the billboard to read “We will work hard for you” and has the billboard installed. Unless the Lawyer resubmits the billboard, the Committee remains unaware of the clearance of the exception and has available to it no compliant version of the billboard to upload to the database.

(c) Certificate of Non-Use. Use of a non-compliant advertisement or UWC may lead to professional discipline. In circumstances where there is a determination of non-compliance, the writing communicating the Committee’s findings to the filing lawyer is accompanied by a certificate attesting that the advertisement or UWC has not been, and will not be, used in its current (*i.e.*, non-compliant) form. If the filing lawyer does not or cannot execute and return the certificate within 10 days from the notice, the matter is reportable to the Office of Disciplinary Counsel by the Committee. See Rule 7.7(g).

(d) Request for Review and Reports to the Office of Disciplinary Counsel. Where a written evaluation of non-compliance has been sent to the filing lawyer, and the filing lawyer has not or cannot execute and return a certificate of non-use, the following applies:

- Either the filing lawyer or Ethics Counsel may request review of the determination by a three-member panel of the Committee’s Review Subcommittee before any report is made to the Office of Disciplinary Counsel. Any such request must be made within 10 days of the date the evaluation of non-compliance is sent to the filing lawyer. If no request for review is submitted within that timeframe, the report of the evaluation shall be sent to the Office of Disciplinary Counsel. See IOP’s at Section 7.7.12.
- If a request for review is submitted timely and a majority of the Review Subcommittee approves the evaluation of non-compliance, the evaluation will be sent to the Office of Disciplinary Counsel. Alternatively, if the Review Subcommittee concludes it requires further review, the matter may be referred to the full Committee. The evaluation of non-compliance will be sent to the Office of

Disciplinary Counsel if the Committee, acting in Executive Session, approves the evaluation of non-compliance by majority vote. *See* IOP's at Section 7.7.12

Example: Lawyer files a radio advertisement as a regular filing concurrently with its first use and subsequently receives a notice of non-compliance. Because the advertisement has already been disseminated, the Lawyer cannot execute and return a certificate of non-use. The matter is reportable to the ODC if no request for review is made within 10 days of the date of the notice of non-compliance.

(e) Re-filing Due to Change of Circumstances. A lawyer's obligations do not end upon being notified that an advertisement or UWC has been evaluated as complaint. On occasion, after the compliance evaluation, a change in circumstances may happen that "raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive". *See* Rule 7.7(i). If that occurs, Rule 7.7(i) instructs that the lawyer must "promptly" refile the advertisement (or a modified version thereof) with an explanation of the change in circumstances and an additional filing fee.

(f) Maintaining Copies of Advertisements. Further as to a lawyer's continuing obligations, a copy or recording of an advertisement or UWC must be maintained by the lawyer for five years after its last dissemination with a record of when and where it was used. For identical UWC's sent to multiple prospective clients, this requirement may be satisfied by the retention for five years of a single copy of the UWC with a list of the names and addresses of all persons to whom the UWC was sent. *See* Rule 7.7(j).

IV. Appendix—Useful Links and Examples of Compliant Advertisements

This Appendix lists links to lawyer advertising resources and examples of advertisements and unsolicited written communications that have been evaluated to be compliant with the substantive content rules.

1. Useful Links:

Louisiana Rules of Professional Conduct:

<https://www.ladb.org/docs/Publication/ROPC/ROPC.pdf>

Internal Operating Procedures for Lawyer Advertising Evaluations Under Rule 7.7:

<https://www.lsba.org/documents/LawyerAdvertising/LawyerAdvertisingInternalOperatingProcedure.pdf>

LSBA Home Page on Lawyer Advertising:

<https://www.lsba.org/LawyerAdvertising/>

LSBA Lawyer Advertising Filing Numbers:

<https://www.lsba.org/LawyerAdvertising/LawyerAdvertisingFiling.aspx>¹

Filing Application Form:

<https://www.lsba.org/documents/LawyerAdvertising/AdApplicationForm.pdf>

Filing Application Addendum for Unsolicited Written Communications:

<https://www.lsba.org/documents/LawyerAdvertising/AdApplicationAddendumForm.pdf>

Public Lawyer Advertising Database:

<https://www.lsba.org/LawyerAdvertising/LawyerAdSearchV4.aspx>

2. Examples of Advertisements and Unsolicited Written Communications Evaluated to be Compliant²

Billboards:

https://media.lsba.org/image/upload/v1657295424/LawyerAdvertising/2022/LA-22-13603_Yasha_L_Clark_tfysef.pdf (Filing Number LA-22-13603)

https://media.lsba.org/image/upload/v1653682332/LawyerAdvertising/2022/LA-22-13478_Blaine_J_Barrilleaux_blgnc.pdf (Filing Number LA-22-13478)

¹ Select the “Prefile Online Now” button to generate an application and obtain a filing number.

² The LSBA is not recommending or endorsing any provider of legal services by including example advertisements and UWC’s in this Handbook.

https://media.lsba.org/image/upload/v1650897900/LawyerAdvertising/2022/LA-22-13282_Gordon_J_McKernan_zqiloh.pdf (Filing Number LA-22-13282)

https://media.lsba.org/image/upload/v1651523582/LawyerAdvertising/2022/LA-22-13370_Benjamin_A_Comeaux_nm2yuo.pdf (Filing Number LA-22-13370)

Magazine/Newspaper:

https://media.lsba.org/image/upload/v1657916627/LawyerAdvertising/2022/LA-22-13551_Julie_D_Rosenzweig_qe4akl.pdf (Filing Number LA-22-13551)

https://media.lsba.org/image/upload/v1653419246/LawyerAdvertising/2022/LA-22-13451_Peyton_P_Murphy_fojc0j.pdf (Filing Number LA-22-13451)

Television:

https://media.lsba.org/video/upload/v1657291879/LawyerAdvertising/2022/LA-22-13608_Philip_C_Hoffman_fib2im.mp4 (Filing Number LA-22-13608)

https://media.lsba.org/video/upload/v1657916685/LawyerAdvertising/2022/LA-22-13544_Donald_G_DAunoy_Jr-30_sec_ctvkg5.mp4 (Filing Number LA-22-13544)

Radio:

https://media.lsba.org/video/upload/v1654200588/LawyerAdvertising/2022/LA-22-13287_Clifford_E_Cardone_mb3bjt.mp3 (Filing Number LA-22-13287)

Unsolicited Written Communication (Letter):

https://media.lsba.org/image/upload/v1657293938/LawyerAdvertising/2022/LA-22-13673_Jacob_D_Rennick_b9untv.pdf (Filing Number LA-22-13673)

Unsolicited Written Communication (Email):

https://media.lsba.org/image/upload/v1657294477/LawyerAdvertising/2022/LA-22-13649_David_L_Colvin_z46nul.pdf (Filing Number LA-22-13649)

Telephone Directory Advertisement:

https://media.lsba.org/image/upload/v1651869023/LawyerAdvertising/2022/LA-22-13382_J_Van_Robichaux_Jr_pbi4ik.pdf (Filing Number LA-22-13382)

Gift/Promotional Item:

https://media.lsba.org/image/upload/v1655496082/LawyerAdvertising/2022/LA-22-13391_Chad_A_Dudley_yi01nn.pdf (Filing Number LA-22-13391)