

LOUISIANA STATE BAR ASSOCIATION
RULES OF PROFESSIONAL CONDUCT COMMITTEE
INTERNAL OPERATING PROCEDURES
for
LAWYER ADVERTISING EVALUATIONS UNDER RULE 7.7
(August 2008, Revised 10/24/2008, Revised October 2022)

Section 7.7.1 - Scope

All requests for general advice or information regarding lawyer advertising that do not seek an evaluation of or opinion about a specific advertisement or written communication shall be handled in accordance with Part I of these Internal Operating Procedures (“IOPs”).

All regular filings of and requests for advance advisory opinions regarding lawyer advertising with the Louisiana State Bar Association pursuant to Rule 7.7 of the Louisiana Rules of Professional Conduct shall be handled in accordance with Part II of these IOPs.

Section 7.7.2 - Definitions

For purposes of these IOPS: (a) “Committee” refers to the LSBA Rules of Professional Conduct Committee; (b) “Review Subcommittee” refers to the Subcommittee of the Rules of Professional Conduct Committee established to review compliance determinations as provided in these IOPs; (c) “Ethics Counsel” shall refer to the lawyer designated by the LSBA to perform review functions under the Rules of Professional Conduct and these IOPs.

I. REQUESTS FOR GENERAL ADVICE/INFORMATION

Section 7.7.3 Telephone Requests for General Advice/Information

Ethics Counsel shall exercise discretion with respect to telephone requests regarding lawyer advertising, and may answer telephone requests that are of a simple/routine or repetitive nature and that do not seek an evaluation of or an opinion about a specific advertisement or written communication.

If Ethics Counsel determines that further consultation would be appropriate in connection with any telephone request received, Ethics Counsel shall consult with one or more members of a duty panel of the Review Subcommittee in order to formulate a response to the request.

If Ethics Counsel responds over the telephone to any such telephone request, Ethics Counsel shall keep records of the substance of each such request and the response that is given. Ethics Counsel also shall advise each lawyer requesting telephone service about the limitations of the advice (i.e., that the advice is non-binding on anyone and not intended to be a Rule 7.7(e) evaluation of compliance or non-compliance by Ethics Counsel, the LSBA, or the Committee with respect to any actual or contemplated advertisement or written communication).

Section 7.7.4 Written Requests for General Advice/Information

Ethics Counsel shall exercise discretion with respect to written requests regarding lawyer advertising, and may respond to requests that are of a simple/routine or repetitive nature and that do not seek an evaluation of or an opinion about a specific advertisement or written communication. If Ethics Counsel determines that consultation would be appropriate to respond to a written request, Ethics Counsel shall consult with one or more members of a duty panel of the Review Subcommittee in order to formulate a response to the request.

If Ethics Counsel responds to any such request, Ethics Counsel shall keep records of each such request and the response that is given. Ethics Counsel also shall advise each lawyer requesting general written advice/information regarding lawyer advertising about the limitations of the advice (i.e., that the advice is non-binding on anyone and is not intended to be a Rule 7.7(e) evaluation of compliance or non-compliance by Ethics Counsel, the LSBA, or the Committee with respect to any actual or contemplated advertisement or written communication).

Section 7.7.5 Duty Panel Consultation and Review

If after the consultation described in 7.7.4 there remains any material disagreement regarding the response, Ethics Counsel shall submit the request to a full Review Subcommittee, comprised of

three (3) members of the Rules of Professional Conduct Committee to be selected by the Chair of that Committee from time to time. A simple majority of the three-member Review Subcommittee can determine the final response to be forwarded to the requesting lawyer. In the event that the Review Subcommittee cannot reach a decision, the matter shall be submitted to the full Rules of Professional Conduct Committee.

Section 7.7.6 Duty Panels of Review Subcommittee

The duty panels referred to above shall consist of three (3) members of the Review Subcommittee. As provided above, individual members of the duty panels shall review, pursuant to Section 7.7.4 and Section 7.7.5, written responses drafted by Ethics Counsel to requests that are of a simple/routine or repetitive nature and that do not seek an evaluation of or an opinion about a specific advertisement or written communication. The Duty Panels shall be selected from the Review Subcommittee and shall serve for a one year term, subject to confirmation by the Committee.

II. EVALUATION OF FILINGS OF LAWYER ADVERTISING UNDER RULE 7.7

Section 7.7.7 - Forms

LSBA Ethics Counsel shall provide a standardized “Filing Application Form”, as approved by the Committee, to all filing lawyers for use when submitting filings of lawyer advertising under Rule 7.7 (see attached “Filing Application Form”). In addition to the “Filing Application Form”, whenever a filing lawyer submits an unsolicited written communication (such as a letter, brochure, newsletter, flier, e-mail, etc.), Ethics Counsel shall also provide a standardized “Filing Application Addendum”, as approved by the Committee, to the filing lawyer for use when submitting such filings of lawyer advertising under Rule 7.7 (see attached “Filing Application Addendum”).

Section 7.7.8 Filings of a Simple/Routine or Repetitive Nature

Ethics Counsel shall exercise discretion with respect to all filings of lawyer advertising when providing a written response to the filing lawyer. Filings that are of a simple/routine or repetitive

nature may be processed and evaluated with a written response. Ethics Counsel shall have authority on such filings to issue any necessary or related notices or correspondence, including, but not limited to, requests for additional information and/or findings of non-compliance for insufficient information, as per Rule 7.7(f).

Section 7.7.9 Duty Panel Consultation and Review

In the event that Ethics Counsel determines that a filing presents a substantial issue requiring evaluation for compliance by the Review Subcommittee, Ethics Counsel may refer the filing to a three-member panel of the Review Subcommittee with a request for evaluation and review with regard to compliance, and shall circulate copies of the filing and a draft proposed response to the Review Subcommittee. If the panel members unanimously agree with the proposed response, Ethics Counsel shall forward it to the lawyer who submitted the filing. If there is not unanimity among the Review Subcommittee, the matter will be referred to the full Rules of Professional Conduct Committee.

Section 7.7.10 RPCC Policy on Rule 7.7 On-Line Searchable Public Database

1. Non-exempt advertisements and unsolicited written communications that are filed with the LSBA as “regular filings” as per Rule 7.7(c) shall be uploaded to the online, searchable public database promptly following receipt by the LSBA of the advertisement or unsolicited written communication pursuant to the following protocols:
 - a. For regular filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted, (ii) the filing lawyer has resubmitted the advertisement or unsolicited written communication and revised it to clear the exception, and (iii) the advertisement or unsolicited written communication is evaluated to be compliant, the revised advertisement or unsolicited written communication shall be uploaded when the filing lawyer is notified that the revised advertisement or unsolicited written communication has been evaluated to be compliant;

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- b. For regular filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted and (ii) the filing lawyer either notifies the LSBA that the advertisement or unsolicited written communication is withdrawn, or certifies that the advertisement or unsolicited written communication will not be used or further revised, the online database will note that the advertisement or unsolicited written communication was withdrawn; and,
 - c. For regular filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted and (ii) the filing lawyer either notifies the LSBA that no changes will be made to the advertisement or unsolicited written communication, or does not respond to the LSBA within the time provided, the LSBA shall report the filing of the advertisement or unsolicited written communication and the uncleared exceptions to the ODC as provided in Rule 7.7(g) of the Louisiana Rules of Professional Conduct within 7 days of the receipt of the notification by the filing lawyer of no change or within 7 days of the expiration of the time period for a response.
2. Non-exempt advertisements and unsolicited written communications that are filed with the LSBA seeking “advance advisory opinions” as per Rule 7.7(b) shall be uploaded to the online, searchable public database pursuant to the following protocols:
- a. For advance advisory opinion filings of advertisements and unsolicited written communications that are evaluated to be compliant without exception, the advertisement or unsolicited written communication shall be uploaded when the filing lawyer is notified that the advertisement or unsolicited written communication has been evaluated to be compliant;

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- b. For advance advisory opinion filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted, (ii) the filing lawyer has resubmitted the advertisement or unsolicited written communication and revised it to clear the exception, and (iii) the advertisement or unsolicited written communication is evaluated to be compliant, the revised advertisement or unsolicited written communication shall be uploaded when the filing lawyer is notified that the revised advertisement or unsolicited written communication has been evaluated to be compliant;

- c. For advance advisory opinion filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted and (ii) the filing lawyer either notifies the LSBA that the advertisement or unsolicited written communication is withdrawn, or certifies that the advertisement or unsolicited written communication will not be used or further revised, the content of the originally-filed advertisement or unsolicited written communication shall not be uploaded, and the online database will note instead that the advertisement or unsolicited written communication was withdrawn; and,

- d. For advance advisory opinion filings of advertisements and unsolicited written communications that are evaluated and where (i) an exception has been noted and (ii) the filing lawyer either notifies the LSBA that no changes will be made to the advertisement or unsolicited written communication, or does not respond to the LSBA within the time provided, the LSBA shall report the filing of the advertisement or unsolicited written communication and the uncleared exceptions to the ODC as provided in Rule 7.7(g) of the Louisiana Rules of Professional Conduct within 7 days of the receipt of the notification by the filing lawyer of no change or within 7 days of the expiration of the time period for a response. At the time such report is made to the ODC, the content of the

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originally-filed advertisement or unsolicited written communication shall be uploaded to the online, searchable public database.

3. For regular filings or advance advisory opinion filings of advertisements and unsolicited written communications where the filing attorney has obtained a Lawyer Advertising Filing Number through the online “prefiling” option but has not yet submitted any media with the filing, the LSBA shall upload a message to the on-line, searchable database that states “No Available Media”. If media is received by the LSBA within sixty days of the date on which the Lawyer Advertising Filing Number was obtained through the online “prefiling” option, the media shall be uploaded when received in accordance with the rules and procedures stated elsewhere in this Policy. If no filing materials or media have been received by the LSBA within 60 days of the date on which the Lawyer Advertising Filing Number was obtained through the online “prefiling” option, then Ethics Counsel shall send a written inquiry to the filing attorney, reminding the filing attorney that no filing materials have been submitted to and received by the LSBA to date since the Lawyer Advertising Filing Number was first obtained through the online “prefiling” option, and requesting that the filing attorney submit those filing materials—or a written explanation as to their non-submission—to the LSBA as soon as possible, but no later than ten (10) days following the date of that written inquiry. If the filing attorney does not send filing materials—or a reasonable explanation regarding their non-submission to date—within the time specified, the Lawyer Advertising Filing Number in question shall then be deemed abandoned and ineligible for use in connection with any advertisement and/or unsolicited written communication, and the abandonment of the number will be noted with respect to that Lawyer Advertising Filing Number on the on-line, searchable database.
4. The online, searchable public database shall include a disclaimer that the appearance or non-appearance of any advertisement or unsolicited written communication within the database is not indicative and shall not be construed as a determination that the

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advertisement or unsolicited written communication either is or is not in compliance with the Louisiana Rules of Professional Conduct. The content of this online database is informational only and does not constitute an endorsement or representation as to the content or accuracy of any information appearing within this database or on this website.

5. The LSBA shall maintain records of the dates of receipt of filings of advertisements or unsolicited written communications and the dates those advertisements and unsolicited written communications are uploaded to the online, searchable public database by category according to the categories set forth above in paragraphs 1(a) through 1(c) and 2(a) through 2(d), and make quarterly reports of that information to the RPCC within 30 days of the expiration of each quarter to assist the RPCC with its Rule 7.7 reporting obligations to the Louisiana Supreme Court.

Section 7.7.11 Records and Reports

When a filing is completed, Ethics Counsel shall keep a copy of the filing and written response at the Bar offices for a period of time to be determined by the Committee. Ethics Counsel shall keep reasonably detailed records regarding all filing fees and late fees received and/or refunded by the LSBA in connection with the lawyer advertising filing process under Rule 7.7.

Ethics Counsel shall keep reasonably detailed records regarding all filings and submissions of lawyer advertising under Rule 7.7 and shall prepare any/all reports for the Committee regarding the lawyer advertising process, including the annual report to the Court, as detailed in Rule 7.7(a)(4).

Section 7.7.12 Rule 7.7(g) Report(s) to the Office of Disciplinary Counsel

With respect to all filings of lawyer advertising, where:

- A) A written **evaluation of non-compliance** has been provided to the filing lawyer, and;

- B) Where the filing lawyer cannot and/or has **not properly certified non-use/non-dissemination** as per Rule 7.7(g),

before any Rule 7.7(g) report of such evaluation(s) of non-compliance might be made to the Office of Disciplinary Counsel, Ethics Counsel or the attorney filing the lawyer advertising may request review of the non-compliance determination by a three-member panel of the Review Subcommittee. If neither Ethics Counsel nor the filing lawyer requests review within 10 days of the date the evaluation of non-compliance has been sent to the filing lawyer, the report of the evaluation shall be sent to the ODC. If review by a three-member panel of the Review Subcommittee is requested, the evaluation of non-compliance will be sent to the ODC if a majority of the Review Subcommittee approves the evaluation. In the event the Review Subcommittee believes the matter requires review of the full Rules of Professional Conduct Committee, the Review Subcommittee can vote to refer the evaluation of non-compliance to the full Committee for review. If the full Committee, acting in Executive Session, approves the evaluation of non-compliance by majority vote, the evaluation of non-compliance shall be sent to the ODC.

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