

The Return of the New, Improved Advertising Rule

By Karolin Solorzano Walker

If you read last quarter's article, you know some of the philosophy, policy and even case law behind the history of the advertising rule. I am certain you used the information in the article to dazzle your fellow practitioners, become a wanted party guest, or used the article to line your cat box. I am also sure that you have tuned into this installment to find out what the rest of the advertising rule requires.

Rule 4-7.2 is entitled "Advertising," and it contains both old language and new. Paragraph (d) of Rule 4-7.2 is new and says that a lawyer cannot pay all or part of the cost of advertising in public media unless he or she discloses the name and address of the financing lawyer, and whether or not the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

A lawyer has to conspicuously disclose to the public the fact that a broadcaster has been paid or receives consideration from the lawyer appearing on a program. I like to refer to this section of the advertising rule as the "infomercial rule." The comments to the rule say that advertising can fulfill the public's need to know about legal services, especially for those members of the public who are of moderate means or who have not made extensive

use of legal services.

The next paragraph is Rule 4-7.2(f), which says that advertisements or communications other than written solicitations governed by Rule 4-7.3(b) have to contain a conspicuous disclosure. That disclosure must say, "The choice of a lawyer is an important decision and should not be based solely upon advertisements." You have probably noticed this disclaimer appearing on television or radio advertisements this year.

However, according to Rule 4-7.2(g), a disclosure or disclaimer is not required if the communication in the advertising is limited to the name of the law firm and the name of the lawyers in the firm, one or more fields in which the lawyers practice, the date and place of admission to the bar of the state and federal courts, and the address, including e-mail and web site address, telephone number and office hours. This portion of the rule protects traditional forms of advertising, including the name of the law firm in the white pages of the telephone directory.

In case you are not already overwhelmed, Rule 4-7.3, entitled "Direct Contact with Prospective Clients," contains some of the same language as the previous version, but tightens and clarifies the prohibition on in-person solicitation. In paragraph (a) an attorney may not initiate in-person

solicitation by telephone or real time electronic solicitation.

Paragraph (8) requires that, when referring a matter to another lawyer or law firm other than the lawyer whose name or signature appears on the advertisement, one must include a statement to the potential client. Paragraph (9) codifies the accepted practice that one cannot solicit someone who is already represented.

Finally, paragraph (c) of Rule 4-7.3 says that you cannot send someone advertising if they do not want it and they have said they do not want it. This provision is the "do not call list" of lawyer advertising. The final provisions of section (c) prohibit coercion, duress, fraud, overreaching, harassment, intimidation or undue influence and keep the prohibition on comparing the quality of legal services. One also cannot offer assurances of client satisfaction or assert opinions about the liability of the defendant.

One of the last provisions contained in Rule 4-7.1(c)(4) has been hotly debated in seminars. This is the provision that bars attorneys from sending a written solicitation concerning an action for personal injury or wrongful death, or otherwise relates to an accident or disaster involving the person solicited or a relative of that person, if the accident or disaster

(Continued on page 45)

Advertising

(from page 40)

occurred less than 30 days prior to the solicitation or if the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person solicited makes it unlikely that the person would exercise reasonable judgment in employing a lawyer. Attorneys have argued that this

provision of the rule gives attorneys who defend companies or corporations an unfair advantage in accident situations, since they can visit the hospital of the accident victim, but an attorney who would represent against the corporation in a wrongful death or personal injury suit cannot.

The greatest number of changes to the advertising rules has to do with solicitation, both in person and by mail or media. If an attorney is considering

using an advertisement and is not sure about its content, I would recommend they contact the Legal Ethics Counsel and make certain the contents of the advertisement comply with the rules.



Karolin Solorzano Walker is a practitioner in St. Louis and chair of The Missouri Bar's Professionalism Committee.