

# **Review of the comprehensive revised Florida lawyer advertising rules which become effective on May 1, 2013**

## **Part 1**

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As you may know, the Supreme Court of Florida issued an opinion on January 31, 2013 implementing comprehensive revisions to the lawyer advertising rules which will become effective on May 1, 2013 at 12:01 am. The Supreme Court's opinion is at <http://www.floridasupremecourt.org/decisions/2013/sc11-1327.pdf>.

The Supreme Court opinion gave new numbers to the revised rules stating that the court was concerned that, without this modification "use of the same rule numbers could create confusion in case law for many years" since the new rules are "substantially different from the current rules."

The revised advertising rules, as renumbered, are as follows: Rule 4-7.11 (Application of Rules); 4-7.12 (Required Content); 4-7.13 (Deceptive and Inherently Misleading Advertisements); 4-7.14 (Potentially Misleading Advertisements); 4-7.15 (Unduly Manipulative or Intrusive Advertisements); 4-7.16 (Presumptively Valid Content); 4-7.17 (Payment for Advertising and Promotion); 4-7.18 (Direct Contact with Prospective Clients); 4-7.19 (Evaluation of Advertisements); 4-7.20 (Exemptions From the Filing and Review Requirement); 4-7.21 (Firm Names and Letterhead); 4-7.22 (Lawyer Referral Services); and 4-7.23 (Lawyer Directory).

**Rule 4-7.11 (Application of Rules).** This new rule states that the Florida lawyer advertising rules apply to "**all forms of communication in any print or electronic forum**" which includes "**websites, social networking, and video sharing media.**" The previous rules (specifically Rule 4-7.6) stated that Florida lawyer websites were "information upon request" and exempt from the lawyer advertising rules. The Comment to this new rule states that the Florida advertising rules do not apply "to portions of a multistate firm's website that relate to the provision of legal services in jurisdictions other than Florida."

The new rule also states that the lawyer advertising rules apply to all lawyers, whether admitted in Florida or not, "who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents." Finally, the rule states that if the advertisements are in the "national media" (such as cable television), the rules do not apply "if the disclaimer 'cases not accepted in Florida' is plainly noted in the advertisement." As I have stated before, this is a significant change from the previous rules, which do not specifically indicate that they apply to all advertisements, and only address websites as an electronic forum and the current rule actually states that websites are not advertisements.

**Rule 4-7.13 (Deceptive and Inherently Misleading Advertisements).** This new rule addresses deceptive or inherently misleading advertisements and provides a non-exclusive list of deceptive or inherently misleading statements, which include references to past results, comparisons of a lawyer's skills, reputation, and record, and testimonials if

the advertisements are not in compliance with the restrictions in the rule. **This new rule is a significant change from the current rules which prohibit testimonials and references to past results.**

**1. References to past results will be permitted if "objectively verifiable."** The Comment states that the affected client must give informed consent (full disclosure and waiver in writing) to the disclosure of results, even where "some or all of the information a lawyer may wish to advertise is in the public record."

**2. Comparisons or characterizations of the advertiser's "skills, experience, reputation or record" will be permitted if "objectively verifiable."**

**3. Testimonials will be permitted; however, certain testimonials will not be permitted,** including: (a) matters on which the person making the testimonial is unqualified to evaluate; (b) if the experience in the testimonial is not the actual experience of the person making the testimonial; (b) if the testimonial is not representative of what clients of that lawyer or law firm generally experience; (d) a testimonial that has been written or drafted by the lawyer; (e) a testimonial in exchange for which the person making the testimonial has been given something of value; and/or (f) a testimonial that does not include the disclaimer that the prospective client may not obtain the same or similar results. The Comment states that a "testimonial" is "a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation."

When the revised rules become effective on May 1, 2013, they will be some of the most comprehensive advertisement rules in the country, particularly related to social media and electronic communication, and will be a sea change with regard to lawyer advertising regulation in Florida. Stay tuned...

...and be careful out there!

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