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### Ending the Pursuit: Releasing Attorney Advertising Regulations at the Intersection of Technology and the First Amendment

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# The Professional Lawyer Volume 24, Number 2

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## Ending the Pursuit: Releasing Attorney Advertising Regulations at the Intersection of Technology and the First Amendment

**By Jan L. Jacobowitz**

*Jan L. Jacobowitz is a Lecturer in Law and Director of the Professional Responsibility & Ethics Program at the University of Miami School of Law.*

In 2012, I characterized the enactment and enforcement of contemporary attorney advertising regulations as an endless pursuit to capture technology at the intersection of attorney advertising and the First Amendment.<sup>1</sup> I invoked the image of Wile E. Coyote and his ongoing pursuit of the evasive Road Runner. Five years later, I have concluded that the pursuit is indeed endless and the “chase” should be abandoned in deference to both the First Amendment and the public’s ability to identify the proverbial wheat from the chaff in the world of Internet driven advertising.<sup>2</sup> While professionalism remains a concern, the courts have found that professionalism concerns alone are not sufficient to chill commercial speech.<sup>3</sup>

In lieu of a detailed set of professional conduct advertising rules, state bars should apply a general standard that prohibits advertising that is misleading or fraudulent. Most states and the American Bar Association Model Rules of Professional Conduct provide such a standard in Rule 8.4(c), which states that *[i]t is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation.*<sup>4</sup> The 8.4(c) standard should enable the state bars to protect the public while simultaneously permitting attorneys the flexibility required to advertise in the digital age.

This article explores the premise that state regulation that governs attorney advertising by employing a standard that prohibits false and misleading advertising is the fair, efficient, and logical approach to advertising in the digital age. The article first provides a brief history of attorney advertising from the nineteenth century to the seminal *Bates*<sup>5</sup> decision through today. Next, the article reviews a few of the recent court decisions and state bar ethics opinions that attempt to apply detailed advertising rules and guidelines to constantly changing technology. The article then reviews the tenor of the current national debate about attorney advertising and the Association of Professional Responsibility Lawyers (APRL) recent proposals to reform the advertising rules. Finally, the article concludes that streamlining the regulation of attorney advertising to require honest advertising that does not mislead the public is an approach that both adheres to the commercial speech doctrine and provides the public with access to information about legal services.

### **The Historical Roots of Advertising**

When discussing the history of attorney advertising, Abraham Lincoln is often cited as both a man of integrity and an attorney who strategically advertised his services.<sup>6</sup> Lincoln not only advertised in the newspaper noting “that his firm handled business with ‘promptness and fidelity,’”<sup>7</sup> but also was known to have solicited business through both letters and personal conversation.<sup>8</sup> He practiced in the nineteenth century and therefore was not prohibited from advertising his services. In fact, attorney advertising was not prohibited by the organized bar until the American Bar Association (“ABA”) enacted the Canons of Professional Ethics in 1908.<sup>9</sup>

The policy concerns that compelled the Canons’ absolute prohibition on attorney advertising may have stemmed from the nineteenth century’s liberal standards for admission to the bar and the resulting significant increase in the number of lawyers in the United States. The growing population of lawyers is thought to have created an increased competition for clients, aggressive attorney advertising, a waning of ethical standards, and a diminished perception of lawyers—all variables that have been cited as reasons for the 1908 ban on attorney advertising.<sup>10</sup>

The ban on attorney advertising remained in place for six decades through several revisions and iterations of the ABA's rules of professional conduct until 1977 when the U.S. Supreme Court decided *Bates v. Arizona*, finding that attorneys have a First Amendment right to advertise in accordance with the commercial speech doctrine.<sup>11</sup> Thus, *Bates* opened the door and attorney advertising burst through, ultimately creating controversy in its midst.<sup>12</sup>

### **Bates and Its Early Progeny**

*Bates* acknowledged that a state may regulate false, deceptive, and misleading attorney advertising,<sup>13</sup> as well as the time, place and manner of the advertising; however, the opinion did not provide the states with specific guidance as to how to regulate commercial speech in a constitutional manner. In 1980, the U.S. Supreme Court decided the *Central Hudson* case and provided standards with which to analyze whether a government regulation passes constitutional muster.<sup>14</sup> *Central Hudson* provides:

[The regulation]...must concern lawful activity and not be misleading. Next,... ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, ... determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.<sup>15</sup>

*Central Hudson* became a litmus test for government regulation of commercial speech. During the 1980's the U.S. Supreme Court employed the *Central Hudson test* in several attorney advertising cases in which the advertisements were deemed to be protected commercial speech and therefore the state's regulation of that speech was found to be unconstitutional.

The early post *Bates* cases predated the Internet. The cases often involved an attorney advertising regulation that completely banned a particular category of commercial speech.<sup>16</sup> The Court reviewed issues such as the failure to adhere to a state proscribed "laundry list" of permitted content in direct mail advertisements,<sup>17</sup> the use of a picture, where all illustrations were prohibited, of a Dalkon Shield uterine device in a newspaper advertisement,<sup>18</sup> and an attorney's letterhead that included his board certification in violation of a prohibition against referencing expertise.<sup>19</sup> The Court reiterated in each case that a total prohibition on commercial speech that is truthful and not misleading will not withstand constitutional scrutiny unless the government can demonstrate both that it has a substantial interest and that the regulation not only advances the government's interest, but also that there is not a less restrictive means of accomplishing the government's goal.<sup>20</sup>

### **Bates and its Digital Age Progeny**

The advent of the Internet and social media revolutionized attorney advertising. Attorneys now have a multitude of low cost digital methods through which to reach a wide audience. Law firm websites, Facebook, LinkedIn, and blogs have proliferated over the past decade. In fact, the speed of technological innovation and the inability of state regulators to maintain pace with the constant changes inspired the metaphorical reference in my prior article to the plight of Wile E. Coyote and his never ending pursuit of the Road Runner.<sup>21</sup>

The article was prompted by the fact that The Florida Bar was attempting a significant revision of its advertising rules that was designed to address commercial speech concerns and the impact of the Internet on attorney advertising. The Florida Supreme Court eventually approved a new version of the rules; however, to carry the metaphor one step further, the result has been somewhat reminiscent of Wile E. Coyote's attempts to employ various Acme Corporation equipment to capture the Road Runner—only to fail again.

Thus, although The Florida Bar's 2013 attorney advertising rules acknowledge the commercial speech doctrine and include a consideration of the digital age, the regulations have been subjected to First Amendment challenge and the impact of technological innovation. For example, in the *Rubenstein* case,<sup>22</sup> the Eleventh Circuit District Court found The Florida Bar's guidelines that interpreted the parameters in which past results could be used in advertising to be unconstitutional because the guidelines prohibited all references to past results on indoor and outdoor display, television and radio media based upon the premise that these "specific media . . . present too high a risk of being misleading."<sup>23</sup>

In another case, *Searcy v. Florida Bar*,<sup>24</sup> the Searcy law firm challenged the "objectively verifiable" requirement as applied to statements about the law firm, past results and a client's testimonial. Searcy initially sought guidance from The Florida Bar and submitted thirteen sample pages from its website, LinkedIn account, and blog for The Florida Bar's review. The Florida Bar concluded that Searcy had violations on each page, such as the use of wording "resulting in justice" and "successfully represent," which were deemed to be subjective despite being truthful; therefore, the language did not comply with the objectively verifiable standard mandated by the regulations.

The Searcy law firm has a significant Internet presence. The Florida Bar's guidance lacked sufficient clarity, and Searcy filed suit rather than risk being in noncompliance. Searcy challenged both the objectively verifiable standard and the regulation that prohibited a lawyer from referring to his expertise unless he is board certified despite the fact that board certification is unavailable in many areas of law.<sup>25</sup>

The Eleventh Circuit District Court's summary judgment order in the Searcy case enjoined The Florida Bar from enforcing the rule on expertise, but found the objectively verifiable challenge not ripe for consideration based upon a failure to exhaust administrative remedies. However, the Court appeared to have a sympathetic ear as it noted that Searcy "can hardly be criticized for fearing the worst" based upon The Florida Bar's enforcement history of restrictive advertising regulations.<sup>26</sup> Indeed, as I concluded in 2012, "...the history of attorney advertising in Florida indicates that [another] such challenge is likely, if not inevitable."<sup>27</sup>

Although my original article was focused upon Florida's proposed advertising amendments, Florida is by no means alone in defending constitutional challenges to its advertising cases. Both New York and Louisiana have federal court decisions that are worthy of note.

In 2006, New York's Appellate Division adopted new attorney advertising regulations designed to prohibit potentially misleading advertising, which included barring techniques such as portrayal of a judge, use of testimonials, special effects and language that contains irrelevant information.

Prior to the adoption of the regulations, a New York personal injury law firm's marketing strategy included the use of special effects, comical scenarios, slogans, testimonials and the portrayal of a judge. The law firm terminated its marketing as a result of the new rules and filed suit to challenge several provisions including the prohibition of "the irrelevant attention-getting techniques unrelated to attorney competence, such as style and advertising gimmicks, puffery, wisps of smoke, blue electrical currents, and special effects, and... the use of nicknames, monikers, mottos, or trade names implying an ability to obtain results in a matter."<sup>28</sup>

The Second Circuit found that New York's regulation was unconstitutional as it categorically banned commercial speech that the court found was not even likely to be misleading.<sup>29</sup> Regardless, the court concluded that a categorical ban on *potentially misleading* commercial speech would not likely survive the *Central Hudson* test.<sup>30</sup> Moreover, the court concluded that even assuming that all of the regulations at issue could survive the first three prongs of the *Central Hudson* test, the regulations would not survive the fourth requirement that requires a regulation be narrowly tailored—an absolute prohibition generally fails the fourth prong of the test.<sup>31</sup>

Louisiana adopted new attorney advertising regulations in 2009, which like New York and Florida, contained absolute prohibitions in various areas including testimonials and other references to past results and the portrayal of a judge. The regulations were challenged and the Fifth Circuit opinion offers a thoughtful application of the *Central Hudson* test.<sup>32</sup>

The Court acknowledged the U.S. Supreme Court precedent finding that a government has a substantial interest in maintaining ethical conduct in licensed professions as well as in assuring the accuracy of information in the commercial marketplace.<sup>33</sup> However, the Court concluded that the government's interest in maintaining the dignity of attorney's communications with the public falls below the substantial interest mark.<sup>34</sup> In fact, the Fifth Circuit quoted the U.S. Supreme Court's language from *Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. at 648, "[T]he mere possibility that some members of the population might find advertising embarrassing or offensive cannot justify suppressing it. The same must hold true for advertising that some members of the bar might find beneath their dignity."

The Fifth Circuit ultimately concluded that most of the regulations did not pass constitutional muster because a total ban on content, such as testimonials or references to past results, fails *Central Hudson's* requirement that regulations that restrain commercial speech must directly advance the government's interest in the least restrictive way possible.<sup>35</sup>

The Florida, New York and Louisiana cases are provided not for the purpose of engaging in a comprehensive First Amendment analysis of each state's regulations, but rather to support the notion that despite the state bars' best efforts to revise the attorney advertising rules, the changing digital environment renders the application of the rules challenging at best and unconstitutional in the worst case scenario.

The resulting confusion caused by various states enacting and revising regulations that are then not universally interpreted throughout the country (and the mere fact that there are not national advertising standards) renders it all the more difficult for lawyers to gain clarity as to permissible advertising. When clarity becomes impossible, then litigation ensues and conjures up visions of Wile E. Coyote chasing the Road Runner with yet a new Acme Corporation tactic that will require a tremendous expenditure of resources and energy, but will not lead to a final resolution of the tumultuous situation.

### **Ethics Opinions and Practical Realities**

Another vehicle through which the state bars have attempted to provide guidance on the application of the advertising rules is through state ethics advisory opinions. California has issued an opinion that parses various Facebook posts to determine which are advertising as opposed to a gleeful sharing of a successful day at work.<sup>36</sup> California also recently issued an opinion that delineates the factors that subject a blog that is written by a lawyer to the advertising rules.<sup>37</sup>

Florida has produced social media guidelines and a best practices guide for effective electronic communication.<sup>38</sup> New York, Pennsylvania, Philadelphia, West Virginia, and the District of Colombia have all issued ethics advisory opinions that respond to social media inquiries and include some guidance as to advertising issues related to social networking.<sup>39</sup>

North Carolina issued an opinion to guide attorneys as to "deal of the day" type of advertising.<sup>40</sup> South Carolina opined on advertising involving a designated expert on an interactive website.<sup>41</sup> Ohio and Florida both permit attorneys to use texting for solicitation if the text follows applicable guidelines.<sup>42</sup> The list continues to grow along with the nuances and availability of new technological opportunities for advertising.

The ethics opinions are advisory, and may vary in both substance and application from state to state. In some situations, there are practical realities that cause compliance problems. For example, an attorney using Twitter in a state where requisite information must be included in an advertisement may have a problem complying with both the state's advertising regulation requirements and Twitter's 140-character limitation.

Moreover, attorneys and law firms that practice in more than one jurisdiction are caught in a dizzying array of regulations. The literature suggests that this endless pursuit to regulate advertising in a technological environment that is constantly evolving not only frustrates bar regulators and practicing lawyers, but also limits the amount of beneficial legal information that is being provided to the public.<sup>43</sup>

Furthermore, although the jurisprudence recognizes the protection of the public as a substantial government interest, survey results indicate that the public does not require the degree of protection that state regulators often assert as a justification for advertising regulations.<sup>44</sup> In fact, the public is bombarded with advertising from many businesses and professions and appears to be fairly savvy at filtering the 24/7 information environment in which we all now reside.

*So what are we to do now?*

### **The Association of Professional Responsibility Lawyers Report**

In 2013, The Association of Professional Responsibility Lawyers (“APRL”) decided to investigate the state of attorney advertising regulation in an attempt to answer the question and find a solution. APRL formed a committee to study attorney advertising regulations throughout the country.<sup>45</sup> The committee gathered data from various sources and sent a survey to state regulators that inquired about the number and type of advertising complaints that are received and how the complaints are resolved.<sup>46</sup>

In June 2015 the committee’s efforts were published in a report that is garnering national attention and facilitating discussion about possible revisions to the ABA Model Rules of Professional Conduct that govern attorney advertising, revisions which would then hopefully be adopted by the states.<sup>47</sup>

APRL’s 2015 report did not analyze the solicitation rules and early feedback indicated that for a national overhaul to take place, solicitation needed to be addressed. Thus, in April 2016 APRL’s advertising committee issued a supplemental report that specifically addressed solicitation.<sup>48</sup>

The APRL reports illuminate the need to simplify the current advertising regulatory scheme to both assist the legal profession and to provide the public with greater access to information. The 2015 report, which addresses the rules pertaining to information about legal services, explains its methodology and conclusions in its executive summary:

Based on the survey results, anecdotal information from regulators, ethics opinions, and case law, the Committee concludes that the practical and constitutional problems with current state regulation of lawyer advertising far exceed any perceived benefits associated with protecting the public or maintaining the integrity of the legal profession, and that a practical solution to these problems is best achieved by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer’s services.

The Committee believes that state regulators should establish procedures for responding to complaints regarding lawyer advertising through non-disciplinary means. Professional discipline should be reserved for violations that constitute misconduct under ABA Model Rule 8.4(c). The Committee recommends that violations of an advertising rule that do not involve dishonesty, fraud, deceit, or misrepresentation under Rule 8.4(c) should be handled in the first instance through non-disciplinary means, including the use of advisories or warnings and the use of civil remedies where there is demonstrable and present harm to consumers.<sup>49</sup>



APRL followed the 2015 report with an analysis of the solicitation rules and the U.S. Supreme Court precedent that provides the standards and underlying policy considerations for limiting commercial speech when it is targeted to solicit an individual who is not an established client, family member or friend.<sup>50</sup>

“The committee concluded that most of the current restrictions on solicitation in the attorney advertising rules as well as the underlying public policy at play are based primarily upon lawyers approaching prospective clients in a face-to-face encounter without regard to today’s digital world of electronic communications.”<sup>51</sup>

Thus, the committee recommended that a prohibition on solicitation be limited to face-to-face and live telephone communication rather than any other type of electronic communications. Additionally, APRL included “sophisticated users of legal services” on the list of individuals to whom lawyers may solicit without violating the rule.<sup>52</sup>

APRL’s reports contain a draft of revised model rules, which collapse the current five ABA model rules on advertising into two rules; language from the current rules has been edited, eliminated, or relocated to the comment sections of the Revised Rule 7.1 Communications Concerning a Lawyers Services or the Revised Rule 7.2 Solicitation.

APRL’s logistical approach is perhaps best viewed in the charts created by APRL’s past president Lynda Shely. The charts were included in her PowerPoint presentation at the Center for Professional Responsibility Annual Conference in 2016.

The charts indicate that many of the comments that were contained in the deleted rules have been merged into the comment section of Rule 7.1. The solicitation rule was moved from Rule to 7.3 to Rule 7.2 and amended as discussed above. Thus, general advertising resides in Rule 7.1 and targeted advertising remains independently considered in Rule 7.2. A “clean” version of the proposed new rules is attached, as Appendix A. APRL’s proposals will be the subject of a Public Forum hosted by American Bar Association Standing Committee on Ethics and Professional Responsibility in Miami, Florida on February 3, 2017.

[insert 3 charts]

### **Revisiting the Purpose and Underlying Policy for Regulating Attorney Advertising**

As discussed above, Abraham Lincoln advertised that he provided his legal services with “promptness and fidelity”—a description that probably fails Florida’s objectively verifiable test. He also approached “sophisticated users of legal services” to offer his services, no doubt an unacceptable solicitation practice under our current rules. Historical literature indicates that the legal profession significantly expanded in the nineteenth century; apparently many of the lawyers at the time would not have earned the title “honest Abe.” The nineteenth century legal profession is described as being somewhat “out of control.”

Often when chaos ensues, the proverbial pendulum swings far to the other side in a corrective attempt. Perhaps that was what occurred when the legal profession moved from virtually unregulated advertising practices in the nineteenth century to a total ban on any type of advertising at the start of the twentieth century.

Maintaining the integrity of the profession and protection of the public are often cited as both the purpose and the policy for regulating attorney advertising. In fact, as discussed above, those standards also support the substantial governmental interest prong of *Central Hudson* in U.S. Supreme Court jurisprudence that addresses attorney advertising. However, it is not sufficient for a state bar to merely articulate its governmental interest without providing evidence that the regulation actually advances its interest in a narrowly tailored manner. Thus, the state bars that lost the cases referred to above were unable to convince the courts that the detailed advertising regulations at issue were actually preserving the integrity of the legal profession or protecting the public, especially when the regulation categorically banned content.

Perhaps it is time for the pendulum to gently swing back to the center. The twenty-first century is characterized by technological innovation, unprecedented access to information, and Internet platforms that facilitate both sharing and obtaining information. One only needs to peruse the Internet and Google attorney advertisements to quickly realize that attorney advertising, like many other types of advertising, is omnipresent.

While some attorney advertising may be deemed unprofessional, that does not necessarily render it dishonest or misleading. And much of the available information proves beneficial to a significant segment of the population who might not otherwise consult a lawyer to learn about their rights. (Remember that the *Bates* case arose because the lawyers involved were trying to provide lower cost legal services and realized that they needed to advertise to reach the people most in need.) The public, as indicated by the surveys mentioned above, and anecdotal observation has become accustomed to analyzing online marketing whether it is for a restaurant, purchasing a car, finding a new doctor, or retaining a lawyer.

Additionally, it is impossible for any state bar to completely monitor attorney advertising. The resources do not exist and one wonders whether even if there were resources, would surveying advertisements be the best use. (APRL's survey demonstrated that at least in the thirty-six states that responded, there are not many complaints. Moreover, competitors rather than consumers often file those complaints.) So that leaves most state regulators in a reactive posture. If the bar receives a complaint, then it is investigated. Of course, many states require attorneys to prophylactically file advertisements for approval. However, it is a fair assumption that the worst offenders do not file. On the other hand, the law firms attempting to comply are often the ones that ultimately file suit when they cannot square their marketing plans with the state bar rules.

Thus, revisiting the purpose and policy of attorney advertising regulations compels the query: Has the time come to release the attorney advertising regulations from the intersection of the First Amendment and technology where the regulations are creating chaos and inefficiencies on the twenty-first century's information highway?

## **Releasing the Advertising Regulations at the Intersection of the First Amendment and Technology**

So how do we lessen the enormous amount of time and energy spent on the endless pursuit of revising and reinterpreting attorney advertising regulations in an attempt to keep pace with the constantly evolving technology? The APRL report and recommendations are a terrific place to begin. In fact, I am proud to be a member of APRL's committee and a co-author of the report. Adopting APRL's proposed revisions would significantly simplify and improve the attorney advertising regulations.

But here's one more idea—Why not return to the days of Abraham Lincoln and abandon the advertising rules altogether? It may sound like a radical suggestion, but consider the fact that unlike the nineteenth century legal profession we have a host of other rules. Specifically, Rule 8.4 (c), which prohibits all lawyers from engaging in any conduct *involving dishonesty, fraud, deceit or misrepresentation*. Doesn't 8.4(c) suffice to prosecute any bad actors that engage in advertising or solicitation that is dishonest or misleading?

Speaking of actors, I have learned that the descendants of our metaphorical buddies, Wile E. Coyote and Road Runner, were (somewhat controversially) reimagined and created as the characters Tech E. Coyote and Rev Runner in a futuristic cartoon that takes place in the year 2772.<sup>53</sup> Apparently, the two characters collaborate on innovations despite the historical cultural animosity between Coyotes and Road Runners.<sup>54</sup>

Perhaps, like the descendants of Wile E. Coyote and the Road Runner, it is time to collaborate to end the pursuit of perfecting a detailed rubric of attorney advertising regulations that ultimately cannot maintain pace with technology and the times in which we live. Let's release the advertising regulations into the past and move forward with an innovative, contemporary standard that simply, but significantly, prohibits false and misleading advertising.

*Have you heard of this new thing called the Internet? It's giving people new expectations. It's allowing them to become their own expert. Knowledge lies anxious at their fingertips. Gloss over the truth in your advertising and you'll quickly be dismissed as a poser.*<sup>55</sup>

—Roy H. Williams

## **APPENDIX A**

### **APRL Proposed Changes to the ABA Model Rules of Professional Conduct—2015 [CLEAN VERSION]**

#### **Rule 7.1 Communications Concerning A Lawyer's Services**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

### *Comments*

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching. [From MR 7.2 Comments]

[6] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[7] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified"

advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. [From MR 7.2 Comments]

### ***Areas of Expertise/Specialization***

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. [From MR 7.4 Comments]

### ***Firm Names***

[9] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal

Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer. [From MR 7.5 Comments]

[10] Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm. [From MR 7.5 Comments]

**Rule 7.2 Advertising**

Comments (Comments 1, 2, and 3 moved to MR 7.1 Comments)

**Rule 7.3 Solicitation of Clients**

No changes (But note that solicitation moved to 7.2 and amended in supplemental report as shown below)

**Rule 7.4 Communication of Fields of Practice and Specialization**

Comments (Comments 1 and 3 were moved to MR 7.1 Comments)

**Rule 7.5 Firm Names And Letterheads**

Comments (Comments moved to MR 7.1 Comments)

**Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges**

No changes

**APRL Proposed Changes to the ABA Model Rules of Professional Conduct—2016 [CLEAN VERSION]****Rule 7.2 Solicitation of Clients***Solicitation*

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.

(b) Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) is a sophisticated user of legal services;
- (3) is pursuant to a court-ordered class action notification; or
- (4) has a family, close personal, or prior professional relationship with the lawyer.

***Written Solicitation***

(c) Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4).

***Limitation on Solicitation***

(d) A lawyer shall not solicit professional employment from any person if:

1. (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
2. (2) the solicitation involves coercion, duress or harassment.

***Prepaid and Group Legal Services Plans***

(e) Notwithstanding the prohibitions in paragraph (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

***Paying Others to Recommend a Lawyer***

(f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or the lawyer’s law firm, except that a lawyer may:

- (1) pay the reasonable costs of advertisements and other communications permitted by Rule 7.1, including online group advertising;
- (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
  - (i) the reciprocal referral agreement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the agreement.

## Comments

### *Solicitation*

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of in-person, face-to-face or live telephone communication can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.



[5] The requirement in paragraph (c) that certain communications be marked “Advertising Material” does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of paragraph (d)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of paragraph (d)(1) is prohibited. Moreover, if after sending a solicitation or other communication as permitted by Rule 7.1 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of paragraph (d).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer’s firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.1 and this Rule. See Rule 8.4(a).

### ***Paying Others to Recommend a Lawyer***

[9] Except as permitted under paragraphs (f)(1)–(f)(4), lawyers are not permitted to pay others for recommending the lawyer’s services or for channeling professional work in a manner that violates Rules 7.1 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Paragraph (f)(1), however, allows a lawyer to pay for advertising and solicitations permitted by Rule 7.1 and this Rule, including the

costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (see Rule 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[11] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return-for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (f) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be

reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

## Endnotes

1. Jan L. Jacobowitz & Gayland O. Hethcoat II, *Endless Pursuit: Capturing Technology at the Intersection of the First Amendment and Attorney Advertising*, 17 J. TECH. L. & POL'Y 63, 64 (2012).
2. Although my conclusion stems from real time events, it is interesting to note that Chuck Jones, the creator of the Road Runner, developed list of rules for the writers of Road Runner episodes, which included "RULE 3. The Coyote could stop anytime—if he were not a fanatic. 'A fanatic is one who redoubles his effort when he has forgotten his aim'—George Santayana." Robert Patrick, *Fun Facts About Wile E. Coyote and the Road Runner*, CHUCK JONES BLOG (Apr. 17, 2009), [http://blog.chuckjones.com/chuck\\_redux/2009/04/fun-facts-about-wile-e-coyote-and-the-road-runner.html](http://blog.chuckjones.com/chuck_redux/2009/04/fun-facts-about-wile-e-coyote-and-the-road-runner.html). While I am not in any way referring to The Florida Bar regulators or any state's regulators as fanatics, perhaps the redoubling of the legal profession's effort to regulate advertising on the Internet with the aim of protecting the public is somewhat analogous.
3. *Pub. Citizen, Inc. v. La. Attorney Disciplinary Bd. (Pub. Citizen)*, 632 F.3d 212, 220 (5th Cir. 2011).
4. MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (2016).
5. *Bates v. State Bar of Arizona (Bates)*, 433 U.S. 350 (1977).
6. Robert F. Boden, *Five Years After Bates: Lawyer Advertising in Legal and Ethical Perspective*, 65 MARQ. L. REV. 547 (1982).
7. Mylene Brooks, *Lawyer Advertising: Is There Really a Problem?*, 15 LOY. L.A. ENT. L. REV. 1, 7 (1994). See also the Complaint in *Searcy et al. v. The Florida Bar et al. (Searcy)*, case number 4:13-cv-00664 (N.D. Fla. 2015), available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/DoEE8F4E3167003D85257C58005BDD01/\\$FILE/131211%20Complaint%20-%20Orig.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/DoEE8F4E3167003D85257C58005BDD01/$FILE/131211%20Complaint%20-%20Orig.pdf?OpenElement) (Complaint at 2).
8. Boden, *supra* note 6, at 548. Boden describes Lincoln's successful efforts to be retained in the seminal Illinois case that ultimately prevented counties from taxing railroad properties. Lincoln spoke with and wrote to county officials about retaining him. When he was not retained, Lincoln wrote to the general solicitor of the railroad who ultimately retained Lincoln. Boden comments on page 548 that, "At the worst, Lincoln's preretainer activities in this case could be barratry, solicitation or "ambulance chasing." Viewed in the best light, they could be called examples of "direct mail" advertising. "Boden offers this anecdote because Lincoln is a nineteenth century lawyer who is considered to be of "unquestionable integrity and morality."
9. MODEL RULES OF PROF'L CONDUCT Preface (2001).
10. Boden, *supra* note 6, at 549; Brooks, *supra* note 7, at 6-9. See also ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS 2015 REPORT OF THE REGULATION OF LAWYER ADVERTISING COMMITTEE (2015) [hereinafter APRL 2015 REPORT], available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aprl\\_june\\_22\\_2015%20report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aprl_june_22_2015%20report.authcheckdam.pdf).
11. *Bates*, *supra* note 5.
12. Jacobowitz, *supra* note 1, at 2.
13. *Bates*, *supra* note 5, at 384.
14. *Central Hudson Gas & Elec. Corp. v. Pub. Service Comm'n of N.Y.*, 447 U.S. 557 (1980).

15. *Id.* at 566.

16. An in depth constitutional analysis of the various cases is beyond the scope of this article, but examples are provided to demonstrate the evolution and challenges of regulating attorney advertising post *Bates*.

17. *In re R.M.J.*, 455 U.S. 191, 197 (1982).

18. *Zauderer v. Office of Disciplinary Counsel (Zauderer)*, 471 U.S. 626, 647 (1985).

19. *Peel v. Attorney Registration & Disciplinary Comm'n (Peel)*, 496 U.S. 91, 93-94 (1990).

20. *Id.* See also *In re R.M.J.*, 455 U.S. at 197; *Zauderer*, 471 U.S. at 647.

21. *Jacobowitz*, *supra* note 1, at 1.

22. *Rubenstein v. Florida Bar No. 14-CIV-20786*, 2014 WL 6979574, at \*2 (S.D. Fla. 2014).

23. *Id.* at \*20.

24. *Searcy et al. v. The Florida Bar et al.*, case no. 4:13-cv-00664 (N.D. Fla. 2015), *available at* [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E8E7FDDE9DB-B8DE385257ED5004ABB95/\\$FILE/Searcy%20Order%20on%20Merits.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E8E7FDDE9DB-B8DE385257ED5004ABB95/$FILE/Searcy%20Order%20on%20Merits.pdf?OpenElement).

25. See Complaint, *Searcy et al. v. The Florida Bar et al.* (Dec. 11, 2013), *available at* [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/DoEE8F4E3167003D85257C58005BDD01/\\$FILE/131211%20Complaint%20-%20Orig.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/DoEE8F4E3167003D85257C58005BDD01/$FILE/131211%20Complaint%20-%20Orig.pdf?OpenElement).

26. *Searcy*, *supra* note 24, at 9.

27. *Jacobowitz*, *supra* note 1, at 80.

28. *Alexander v. Cahill*, 598 F.3d 79, 84-86 (2d Cir. 2010). The court commented, “Moreover, the sorts of gimmicks that this rule appears designed to reach—such as Alexander & Catalano’s wisps of smoke, blue electrical currents, and special effects—do not actually seem likely to mislead. It is true that Alexander and his partner are not giants towering above local buildings; they cannot run to a client’s house so quickly that they appear as blurs; and they do not actually provide legal assistance to space aliens. But given the prevalence of these and other kinds of special effects in advertising and entertainment, we cannot seriously believe—purely as a matter of “common sense”—that ordinary individuals are likely to be misled into thinking that these advertisements depict true characteristics. Indeed, some of these gimmicks, while seemingly irrelevant, may actually serve “important communicative functions: [they] attract the attention of the audience to the advertiser’s message, and [they] may also serve to impart information directly.” *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, at 647.

29. See *Cahill*, 598 F.3d at 96.

30. *Id.*

31. *Id.* Note that the court did uphold the moratorium provisions that prevent lawyers from contacting accident victims for a certain period of time.

32. *Pub. Citizen*, *supra* note 3.

33. *Id.* at 220.

34. *Id.*

35. *Id.* at 229. Note that the court did uphold the regulations that prohibited promising results, that prohibited use of monikers or trade names that implied a promise of success, and that required disclaimers on advertisements that portrayed scenes that were not actual or portrayed clients who were not actual clients. The court distinguished its holding from New York’s *Cahill* opinion by indicating that the Bar had produced evidence in the form of survey results that supported that the requirement that the regulation materially advanced the government’s interest in protecting the public.

36. Cal. State Bar Formal Op. 2012-186 (2012).
37. Cal. State Bar Formal Op. 2016-196 (2016). This opinion replaced Cal. State Bar Formal Interim Op. 12-0006 (2014), which went through two comment periods before becoming a final opinion.
38. THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR NETWORKING SITES (Revised May 9, 2016), *available at* [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/18BC39758BB54A5985257B590063EDA8/\\$FILE/Guidelines%20-%20Social%20Networking%20Sites.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/18BC39758BB54A5985257B590063EDA8/$FILE/Guidelines%20-%20Social%20Networking%20Sites.pdf?OpenElement); THE FLORIDA BAR BEST PRACTICES FOR EFFECTIVE ELECTRONIC COMMUNICATION (Aug. 7, 2015), *available at* [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/867146754B88854A85257E600075565F/\\$FILE/E-communication.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/867146754B88854A85257E600075565F/$FILE/E-communication.pdf?OpenElement).
39. *See* N.Y. State Bar Ass'n Formal Op. 2013-972 (2013); N.Y. Cnty. Bar Ass'n Formal Op. 748 (2015); N.Y. City Bar Ass'n Formal Op. 2015-7 (2015) (application of attorney advertising rules to LinkedIn); Pa. Bar Ass'n Advisory Op. 2014-300 (2014); Pa. Bar Ass'n Advisory Op. 2014-5 (2014); W. Va. L.E.O. 2015-02 (2015); D.C. Bar Op. 370 (2016).
40. N.C. State Bar Formal Op. 2013-10 (2013).
41. S.C. Bar Advisory Op. 12-03 (2012).
42. Ohio Sup. Ct. Bd. Comm'rs on Grievances & Discipline Advisory Op. 2013-2 (2013); *see also* *Bar board finds texting is not prohibited solicitation*, THE FLORIDA BAR NEWS (Aug. 15, 2015), <http://www.floridabar.org/DIVCOM/JN/jnnnews01.nsf/8c9f13012b96736985256aa900624829/e060eb44c677d6e085257e9d00424f90!OpenDocument>.
43. APRL 2015 REPORT, *supra* note 10. Note: I am a member of APRL's advertising committee and a co-author of the advertising report.
44. *Id.* at 24 & 28-29.
45. *Id.* at 3.
46. *Id.*
47. *See, e.g.,* Joan C. Rogers, *APRL: Pare Down Rules on Lawyer Ads To Single 'False or Misleading' Standard*, ABA/BNA LAWYERS' MANUAL ON PROF'L CONDUCT (June 26, 2015); Joan C. Rogers, *APRL Says Get Rid of Total Ban on 'Real-Time Electronic Contact'*, ABA/BNA LAWYERS' MANUAL ON PROF'L CONDUCT (May 16, 2016).
48. ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS REGULATION OF LAWYER ADVERTISING COMMITTEE SUPPLEMENTAL REPORT (Apr. 26, 2016) [hereinafter APRL SUPPLEMENTAL REPORT], [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aprl\\_april\\_26\\_2016%20report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aprl_april_26_2016%20report.authcheckdam.pdf).
49. APRL 2015 REPORT, *supra* note 10, at 1-2.
50. APRL SUPPLEMENTAL REPORT, *supra* note 48, at 1-2.
51. *Id.*
52. *Id.* at 5.
53. *See* George G. Gustines, *It's 2772. Who Loves Ya, Tech E. Coyote?*, N.Y. TIMES, June 6, 2005, *available at* [http://www.nytimes.com/2005/06/06/arts/television/its-2772-who-loves-ya-tech-e-coyote.html?\\_r=0](http://www.nytimes.com/2005/06/06/arts/television/its-2772-who-loves-ya-tech-e-coyote.html?_r=0).
54. *Id.*
55. *See* Roy H. Williams Quotes, BRAINY QUOTE, [http://www.brainyquote.com/quotes/authors/r/roy\\_h\\_williams.html](http://www.brainyquote.com/quotes/authors/r/roy_h_williams.html) (last visited Jan. 27, 2017).