

# Appendix B

Full Text of Proposed  
Amendments

1 RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

2  
3 (a) Definition. For purposes of this subchapter, "computer-accessed  
4 communications" are defined as information regarding a lawyer's or law firm's  
5 services that is read, viewed, or heard directly through the use of a computer.  
6 Computer-accessed communications include, but are not limited to, Internet  
7 presences such as ~~home pages or World Wide Web~~ websites, unsolicited electronic  
8 mail communications, and information concerning a lawyer's or law firm's  
9 services that appears on ~~World Wide Web~~ Internet search engine screens and  
10 elsewhere.

11  
12 (b) Internet Presence.

13 (1) Homepages. ~~All World Wide Web sites and home pages~~ homepages  
14 accessed via the Internet that are controlled or sponsored by a lawyer or law firm  
15 and that contain information concerning the lawyer's or law firm's services:

16  
17 ~~(1) shall disclose all jurisdictions in which the lawyer or members of the law~~  
18 ~~firm are licensed to practice law;~~

19  
20 ~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm,~~  
21 ~~in accordance with subdivision (a)(2) of rule 4-7.2; and~~

22  
23 ~~(3) are considered to be information provided upon request and, therefore, are~~  
24 ~~otherwise governed by~~ subject to the requirements of rule 4-7.92.

25  
26 (2) Websites Other Than Homepages. Other than the homepage, all  
27 websites accessed via the Internet that are controlled or sponsored by a lawyer or

28 law firm and that contain information concerning the lawyer's or law firm's  
29 services are subject to the requirements of rule 4-7.2 except:

30  
31 (A) notwithstanding the provisions of subdivision (c)(1)(F) of rule 4-7.2,  
32 websites may contain factually verifiable statements concerning past results  
33 obtained by the lawyer or law firm, if, either alone or in the context in which they  
34 appear, such statements are not otherwise misleading and the statements are  
35 accompanied by a disclaimer stating whether all results are provided, that the  
36 results are not necessarily representative of results obtained by the lawyer, and that  
37 a prospective client's individual facts and circumstances may differ from the  
38 matter(s) in which the results are provided;

39  
40 (B) notwithstanding the provisions of subdivision (c)(1)(J) of rule 4-7.2,  
41 websites may contain testimonials if, either alone or in the context in which they  
42 appear, such statements are not otherwise misleading and the statements are  
43 accompanied by a disclaimer that not all clients have provided testimonials, the  
44 results are not necessarily representative of results obtained by the lawyer, and a  
45 prospective client's individual facts and circumstances may differ from the matter  
46 in which the testimonials are provided; and

47  
48 (C) notwithstanding the provisions of subdivision (c)(2) of rule 4-7.2,  
49 websites may contain factually verifiable statements describing or characterizing  
50 the quality of the lawyer's services if, either alone or in the context in which they  
51 appear, such statements are not otherwise misleading.

52  
53 (c) Electronic Mail Communications. A lawyer shall not send, or knowingly  
54 permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or

55 partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's  
56 firm, an unsolicited electronic mail communication directly or indirectly to a  
57 prospective client for the purpose of obtaining professional employment unless:

58

59 (1) the requirements of rule 4-7.2 and subdivisions (b)(1), (b)(2)(A), (b)(2)(D),  
60 (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(H), and (b)(2)(I), ~~and (b)(2)(J)~~ of rule 4-7.4  
61 are met;

62

63 (2) the communication discloses 1 or more bona fide office locations of the  
64 lawyer or lawyers who will actually perform the services advertised, in accordance  
65 with subdivision (a)(2) of rule 4-7.2; and

66

67 (3) the subject line of the communication ~~states "legal advertisement begins~~  
68 with "LEGAL ADVERTISEMENT."

69

70 (d) Advertisements. All unsolicited computer-accessed communications  
71 concerning a lawyer's or law firm's services, ~~other than those subject to~~  
72 ~~subdivisions (b) and (c) of this rule,~~ not addressed by other provisions of this rule  
73 are subject to the requirements of rule 4-7.2.

74

75 Comment

76

77 Advances in telecommunications and computer technology allow lawyers to  
78 communicate with other lawyers, clients, prospective clients, and others in  
79 increasingly quicker and more efficient ways. Regardless of the particular  
80 technology used, however, a lawyer's communications with prospective clients for  
81 the purpose of obtaining professional employment must meet standards designed to

82 protect the public from false, deceptive, misleading, or confusing messages about  
83 lawyers or the legal system and to encourage the free flow of useful legal-related  
84 information to the public.

85  
86 The specific regulations that govern computer-accessed communications differ  
87 according to the particular variety of communication employed. For example, a  
88 lawyer's Internet ~~web site~~website is accessed by the viewer upon the viewer's  
89 ~~initiative and, accordingly, the standards governing such communications~~  
90 ~~correspond to the rules applicable to information provided to a prospective client at~~  
91 ~~the prospective client's request~~subject to most of the requirements of rule 4-7.2. A  
92 website cannot be easily categorized as either information at the request of the  
93 prospective client, which is subject to no regulation under this subchapter but is  
94 subject to the general prohibition against dishonesty, or as advertising in a medium  
95 that is totally unsolicited and broadly disseminated to the public, such as television,  
96 radio, or print media. Although some steps must be initiated by the viewer to  
97 access a website, the viewer might not necessarily be attempting to access that law  
98 firm's website, or a law firm website at all. It is therefore inappropriate to treat a  
99 website as information upon request, because it is not the same as direct contact  
100 with a known law firm requesting information. On the other hand, the viewer is  
101 unlikely to access a lawyer or law firm website completely by accident. Therefore,  
102 a website is treated at an intermediate level and is subject to most of the general  
103 regulations set forth in rule 4-7.2. Websites generally contain much more  
104 information than can be included in the context of a television, radio, or print  
105 advertisement.

106  
107 A lawyer who provides information about past results, testimonials, or  
108 statements characterizing the quality of the lawyer's services on a website must

109 make only true, factually verifiable statements that are not misleading either alone  
110 or in the context in which those statements are made. To avoid misleading  
111 prospective clients, such statements must be accompanied by appropriate  
112 disclaimers as set forth in the rule so that prospective clients will not be misled to  
113 believe that the lawyer can achieve similar results when the facts and  
114 circumstances in their cases may vary greatly from the ones in which the past  
115 results and testimonials are provided.

116  
117 For websites containing verifiable statements of past results, the following  
118 disclaimer ordinarily will comply with subdivision (b)(2)(A): "Not all results are  
119 provided, the results are not necessarily representative of results obtained by the  
120 lawyer, and a prospective client's individual facts and circumstances may differ  
121 from the matter in which the results are provided."

122  
123 For websites containing testimonials, the following disclaimer ordinarily will  
124 comply with subdivision (b)(2)(B): "Not all clients have provided testimonials, the  
125 results are not necessarily representative of results obtained by the lawyer, and a  
126 prospective client's individual facts and circumstances may differ from the matter  
127 in which the testimonials are provided."

128  
129 For websites containing both verifiable statements of past results and  
130 testimonials, the following disclaimer ordinarily will comply with subdivisions  
131 (b)(2)(A) and (b)(2)(B): "Not all results are provided and not all clients have  
132 provided testimonials, the results are not necessarily representative of results  
133 obtained by the lawyer, and a prospective client's individual facts and  
134 circumstances may differ from the matter in which the results and the testimonials  
135 are provided."

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A lawyer providing information about past results or testimonials on the lawyer's website must have the informed consent of the affected client. See rule 4-1.6.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

Examples of computer-accessed communications other than websites and electronic mail include pop-up advertisements and banner advertisements. As indicated by the rule, such advertisements must comply with rule 4-7.2.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet ~~web site~~website.