



THE FLORIDA BAR

Results of the 2008 Florida Bar Survey on Attorney Communication

August 2008

BACKGROUND/SAMPLE

At the request of the Board of Governors Review Committee on Professional Ethics, a short mail survey was developed for the purpose of compiling Florida Bar membership opinion regarding the regulation of both attorney-to-attorney communication and attorney-to-client (current and former) communication via the attorney advertising rules found in subchapter 4-7, Rules Regulating The Florida Bar.

The questionnaire for the survey was approved in May, 2008 by both the Board Review Committee on Professional Ethics and the Program Evaluation Committee. A summary of The Florida Bar's Attorney Advertising Rules was provided as an insert within the questionnaire and several references were placed in the survey as to where respondents could review these advertising rules in more detail on the Bar's Web site.

In early July, The Florida Bar mailed 2,627 questionnaires to a random sample of its in-state membership. By the cut-off date in late July, the Bar had received 504 completed surveys, for a response rate of 19%. Using a statistical analysis program entitled SPSS, the Florida Bar's department of Research, Planning & Evaluation coded and entered all completions. Questionnaires were verified and all data was carefully reviewed for accuracy and completeness.

For this sample, the error of estimation rate is approximately plus or minus 4 percent at the 95 percent level of confidence. This signifies that we can be 95 percent sure that, if all members of The Florida Bar were interviewed, that the results would be within plus or minus 4 percent of what this sample found. If, for example, a question achieved a percentage breakdown of 80 percent in favor, it can be interpreted that between 76 and 84 percent of Florida Bar members are in favor.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 34.5% equals 35%). For this reason, totals may not all equal 100 percent. Also, note that the majority of questions in this survey are "Multiple Response Questions." This means that respondents were encouraged to check all responses which apply to a given situation. Therefore, results to Multiple Response Questions will not total 100%.

Results of The Florida Bar Survey on Attorney Communication

Communication Between Attorneys

1. In the past five years, please select each form of communication that you have initiated with another attorney in order to solicit business either for yourself or for your firm/legal office (includes referrals): (MULTIPLE RESPONSE QUESTION) (ALL ATTORNEYS)

<u>Category</u>	<u>Percent</u>
Face-to-face communication (in-person discussion)	40
Telephone communication (landline phone, fax)	31
Electronic mail communication (e-mail)	25
Written communication (letter, pamphlets, print media)	20
Cellular phone communication (includes text or video messages)	18
Other communication	2
None of the above	52

- * Just over half of all respondents (52%) have not initiated any communication with another attorney in the past five years to solicit business for themselves or for their firm/legal office. For those who do report initiating such communication, face-to-face and telephone communication are the most frequently listed methods.

- 1A. In the past five years, please select each form of communication that you have initiated with another attorney in order to solicit business either for yourself or for your firm/legal office (includes referrals): (MULTIPLE RESPONSE QUESTION) (PRIVATE PRACTICE ATTORNEYS ONLY)

<u>Category</u>	<u>Percent</u>
Face-to-face communication (in-person discussion)	47
Telephone communication (landline phone, fax)	36
Electronic mail communication (e-mail)	29
Written communication (letter, pamphlets, print media)	23
Cellular phone communication (includes text or video messages)	20
Other communication	2
None of the above	44

- * Just over two-fifths (44%) of all respondents in private practice law firms or legal offices have not initiated any communication with another attorney in the past five years to solicit business for themselves or for their firm or legal office. For those in private practice who do report initiating such communication, face-to-face and telephone communication are the most frequently listed methods.

2. **In the past five years, please select each form of communication that you have received from another attorney related to the solicitation of business (includes referrals): (MULTIPLE RESPONSE QUESTION) (ALL ATTORNEYS)**

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	72
Face-to-face communication (in-person discussion)	50
Electronic mail communication (e-mail)	49
Telephone communication (landline phone, fax)	43
Cellular phone communication (includes text or video messages)	17
Other communication	4
None of the above	18

* Nearly three-quarters (72%) of all respondents report that they have received written communication in the past five years from another attorney related to the solicitation of business. About half of all respondents report either receiving face-to-face communication (50%) or electronic mail communication (49%), while 43% report receiving telephone communication related to the solicitation of business. **A complete listing of responses found under the "Other communication" category can be found on Page 11.**

2A. **In the past five years, please select each form of communication that you have received from another attorney related to the solicitation of business (includes referrals): (MULTIPLE RESPONSE QUESTION) (PRIVATE PRACTICE ATTORNEYS ONLY)**

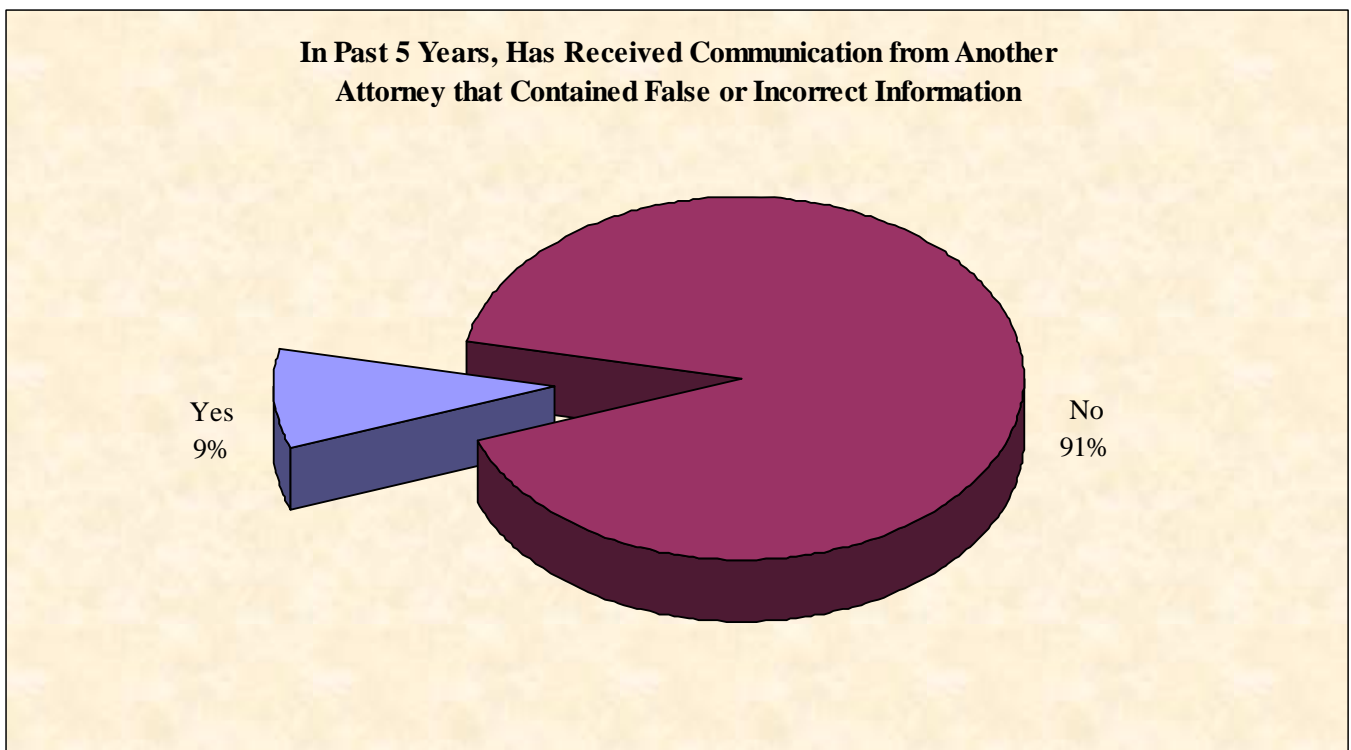
<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	78
Face-to-face communication (in-person discussion)	55
Electronic mail communication (e-mail)	53
Telephone communication (landline phone, fax)	47
Cellular phone communication (includes text or video messages)	19
Other communication	4
None of the above	12

* Over three-quarters (78%) of all respondents in private practice law firms or legal offices report that they have received written communication in the past five years from another attorney related to the solicitation of business. Over half of all respondents report receiving face-to-face communication (55%) or electronic mail communication (53%), while 47% report receiving telephone communication related to the solicitation of business.

3. **Within that five year time period, have you ever received any communication from another attorney that you perceived to contain false or incorrect information?**

<u>Category</u>	<u>Percent</u>
Yes	9
No	91

* A large majority (91%) of all respondents report that, in the past five years, they have not received any communication from another attorney that they perceived to contain false or incorrect information.



3A. **Within that five year time period, have you ever received any communication from another attorney that you perceived to contain false or incorrect information?
(PRIVATE PRACTICE ATTORNEYS ONLY)**

<u>Category</u>	<u>Percent</u>
Yes	10
No	90

3B. If YES, please briefly describe that type of false or incorrect communication and any steps you may have taken to address it.

* A total of 26 respondents provided an example of false or incorrect information that they received and the steps taken to address it. **A complete listing of all comments can be found on Pages 12-13 located in Appendix A.**

**4. Please check which of the following kinds of communication between attorneys should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (MULTIPLE RESPONSE QUESTION)
(ALL ATTORNEYS)**

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	28
Electronic mail communication (e-mail)	23
Cellular phone communication (includes text or video messages)	12
Telephone communication (landline phone, fax)	11
Face-to-face communication (in-person discussion)	7
Other communication	5
None; The Florida Bar should <u>not</u> regulate attorney to attorney communication	69

* Over two-thirds of all respondents (69%) believe that The Florida Bar should not regulate attorney to attorney communication. Just over one-quarter of all respondents (28%) believe that written communication between attorneys should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public. **A complete listing of responses found under the "Other communication" category can be found on Page 14.**

**4A. Please check which of the following kinds of communication between attorneys should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (MULTIPLE RESPONSE QUESTION)
(PRIVATE PRACTICE ATTORNEYS ONLY)**

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	28
Electronic mail communication (e-mail)	23
Cellular phone communication (includes text or video messages)	11
Telephone communication (landline phone, fax)	10
Face-to-face communication (in-person discussion)	6
Other communication	5
None; The Florida Bar should <u>not</u> regulate attorney to attorney communication	69

5. Which of the following types of communication between attorneys should be reviewed by The Florida Bar prior to being conducted/disseminated? (MULTIPLE RESPONSE QUESTION) (ALL ATTORNEYS)

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	17
Electronic mail communication (e-mail)	10
Cellular phone communication (includes text or video messages)	4
Telephone communication (landline phone, fax)	2
Face-to-face communication (in-person discussion)	1
Other communication	2
None; The Florida Bar should <u>not</u> review any type of atty. to atty. communication	80

* A large majority (80%) of all respondents believe that The Florida Bar should not review any type of attorney to attorney communication, while 17% of all respondents believe that written communication between attorneys should be reviewed by The Florida Bar prior to being conducted or disseminated. **A complete listing of responses found under the "Other communication" category can be found on Page 15.**

5A. Which of the following types of communication between attorneys should be reviewed by The Florida Bar prior to being conducted/disseminated? (MULTIPLE RESPONSE QUESTION) (PRIVATE PRACTICE ATTORNEYS ONLY)

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	17
Electronic mail communication (e-mail)	10
Cellular phone communication (includes text or video messages)	4
Telephone communication (landline phone, fax)	2
Face-to-face communication (in-person discussion)	<1
Other communication	3
None; The Florida Bar should <u>not</u> review any type of atty. to atty. communication	80

COMMUNICATION BETWEEN ATTORNEYS AND THEIR PAST/PRESENT CLIENTS

6. Please check which of the following types of communication between attorneys and current or former clients should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (MULTIPLE RESPONSE QUESTION) (ALL ATTORNEYS)

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	29
Electronic mail communication (e-mail)	25
Cellular phone communication (includes text or video messages)	16
Telephone communication (landline phone, fax)	15
Face-to-face communication (in-person discussion)	12
Other communication	8
None; The Florida Bar should <u>not</u> regulate attorney to client communication	69

* Over two-thirds of all respondents (69%) believe that The Florida Bar should not regulate communications between attorneys and current or former clients. Around one-quarter of all respondents believe that written communication (29%) and electronic mail communication (25%) should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public. **A complete listing of responses found under the "Other communication" category can be found on Page 16.**

6A. Please check which of the following types of communication between attorneys and current or former clients should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (MULTIPLE RESPONSE QUESTION) (PRIVATE PRACTICE ATTORNEYS ONLY)

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	26
Electronic mail communication (e-mail)	20
Cellular phone communication (includes text or video messages)	13
Telephone communication (landline phone, fax)	12
Face-to-face communication (in-person discussion)	9
Other communication	7
None; The Florida Bar should <u>not</u> regulate attorney to client communication	72

7. **Which of the following kinds of communication between attorneys and current or former clients should be reviewed by The Florida Bar prior to being conducted/disseminated? (MULTIPLE RESPONSE QUESTION) (ALL ATTORNEYS)**

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	18
Electronic mail communication (e-mail)	14
Cellular phone communication (includes text or video messages)	8
Telephone communication (landline phone, fax)	7
Face-to-face communication (in-person discussion)	6
Other communication	4
None; The Florida Bar should <u>not</u> review any type of atty. to client communication	80

* A large majority (80%) of all respondents believe that The Florida Bar should not review any type of attorney-to-client communication, while 18% of all respondents believe that written communication between attorneys and current/former clients should be reviewed by The Florida Bar prior to being conducted or disseminated. **A complete listing of responses found under the "Other communication" category can be found on Page 17.**

7A. **Which of the following kinds of communication between attorneys and current or former clients should be reviewed by The Florida Bar prior to being conducted/disseminated? (MULTIPLE RESPONSE QUESTION) (PRIVATE PRACTICE ATTORNEYS ONLY)**

<u>Category</u>	<u>Percent</u>
Written communication (letter, pamphlets, print media)	17
Electronic mail communication (e-mail)	13
Cellular phone communication (includes text or video messages)	8
Telephone communication (landline phone, fax)	7
Face-to-face communication (in-person discussion)	6
Other communication	4
None; The Florida Bar should <u>not</u> review any type of atty. to client communication	82

8. **Please briefly list any comments or suggestions you have regarding attorney communication.**

* A total of 63 respondents provided a comment or suggestion regarding attorney communication. The majority of these comments focus on The Florida Bar not becoming more involved in either attorney to attorney communication or attorney to current/former client communication. **A complete listing of all comments or suggestions can be found on Pages 18-23 located in Appendix A.**

DEMOGRAPHICS

**9. What is your legal occupation or classification?
(PLEASE CHECK ONLY ONE RESPONSE)**

<u>Private Practice</u>	<u>Percent</u>
Sole practitioner	27
Partner/shareholder/member	19
Associate	18
Managing partner	11
Practitioner with 1 or more associates	5
Of counsel	2
 <u>Government Practice</u>	
State government attorney	8
Local government attorney	2
Federal government attorney	1
Judge	<1
 <u>Other Legal Position</u>	
Corporate counsel	4
Legal aid/legal service	1
Other	1

* Over four-fifths (82%) of all respondents report that they are employed in private practice positions, while 13% report being in government practice positions.

10. What is the total number of attorneys employed in your firm or legal work place?

<u>Category</u>	<u>Percent</u>
One attorney	30
2 to 5 attorneys	28
6 to 10 attorneys	11
11 to 20 attorneys	11
Over 20 attorneys	20

* Over half (58%) of all respondents are employed in law firms or legal offices that contain five or fewer attorneys. Over two-thirds (69%) of all respondents are employed in law firms or legal offices that contain ten or fewer attorneys.

APPENDIX A:

OPEN-ENDED RESPONSES

OPEN-ENDED RESPONSES

2. **In the past five years, please select each form of communication that you have received from another attorney related to the solicitation of business (includes referrals): (Responses Listed Under the "Other Communication" Category)**

* Television ads.

* DVD.

* I have received firm newsletters that tell results of cases but do not directly solicit business. I have received them in the mail.

* Phone directory, billboards, TV, radio.

OPEN-ENDED RESPONSES

3B. Within that five year time period, have you ever received any communication from another attorney that you perceived to contain false or incorrect information? If YES, please briefly describe that type of false or incorrect communication and any steps you may have taken to address it.

- * False and/or misleading information, while not a daily occurrence, is so frequent that specific examples can't be recalled. Steps taken by me have always been a communication to the attorney correcting the error.
- * Television ads purport to "help the people" yet clients are screened for large dollar cases. Small cases are rejected, e.g. non-catastrophic damages.
- * The cases have all been related to real estate transactions. In these cases involving incorrect statements, I was able to correct or have the attorney responsible for the misstatements, correct the inaccuracies.
- * It was a misrepresentation of substance of a telephone conversation but probably not intentional.
- * Spam type e-mails related to product recalls from attorneys in other states. I've also seen numerous television advertisements that do not comply with the requirements of The Florida Bar. How can attorneys from Arizona or New York advertise in Florida and not comply with our local rules? They should be barred from doing so.
- * I have received communications and court papers containing incorrect statements of fact and have written back to advise the author of same.
- * Misinterpretation of facts with legal issues involved.
- * Face to face. I resolved not to work with the attorney who lied.
- * I am licensed in Florida and Ohio. The communication was by a Florida attorney regarding services being rendered for out-of-state residents owning property in Florida. I called the attorney and received no response.
- * Those written materials that make false promises regarding IRS representation. They promise unreasonable results.
- * I would merely respond to correct an erroneous statement(s) and seek further discussion, etc.
- * Thousands of e-mails from a specific litigious attorney that contain so many false statements, I don't know where to begin. I just ignore them because engaging him just makes things worse.

- * My employer is a governmental agency so we do not solicit business and/or respond to requestors from governmental entities and private firms representing them. I frequently learn that the information provided to this agency is not complete or is basically an “advocacy” document rather than an accurate or impartial statement.
- * A letter marked advertising in red & on the envelope, too. Contents contained language that was to insure assets are “client proof, divorce proof, Medicaid qualified and probate proof”. I called an elder lawyer friend asking if this was even possible. She said she had not heard of this before. So we don’t really know if information was true or false.
- * Called attorney or wrote attorney to correct.
- * Insignificant boasting – such as trial success etc.
- * Attorney lied about his relationship with judge and about ex parte communications. I did nothing.
- * Attorney seeking referrals on contingency fee cases failed to inform that he charged a non refundable retainer and required clients to advance costs.
- * An immigration attorney incorrectly advised mutual client of a) state of law; b) the status of the citizenship application; c) the procedure and; d) lied about work performed. I made complete disclosure to client, corrected the other attorney malfeasance, confronted attorney about same and had the client discharge him.
- * The *Bar Journal* advertisement depicted a BMW X5 as being unsafe.
- * There is currently an onslaught of “Best Lawyers in Florida” articles. I don’t know who selects these “best lawyers”, but the articles are probably misleading. Also, the referral services, such as “Ask Gary”, are in fact for profit and I beware lawyers are paying to join. Patients always go (referred) to clinic owned by “Ask Gary”.
- * In a criminal juvenile matter, the prosecuting attorney attempted to present a witness which he had been made aware of by the previous prosecutor and the matter could not identify to defendant. He was not aware that I was aware of this fact as well, and attempted to call the witness to positively identify the defendant.
- * Too numerous to detail.
- * A couple of times I have been told there are no liens on properties to be paid off prior to receipt of title. Also, an attorney will claim they are out of the office when I know for a fact they are in.
- * Some attorneys have placed false statements in discovery or correspondence. Usually I address this by letter or do not address it at all.
- * Facsimiles that offer materials or services that appear to be too good to be true, unusable for Florida attorneys or prices that are ridiculous compared to the going market rates. I called the "do not fax" line to stop the solicitation.

OPEN-ENDED RESPONSES

4. Please check which of the following kinds of communication between attorneys should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (Responses Listed Under the "Other Communication" Category)

- * All; solicitation of business.
- * Only regulate blind or cold calls/communication.
- * Bulk mail marketing newsletters/brochures.
- * Television, radio.
- * All forms.
- * Phone directory, billboards, TV, radio.

OPEN-ENDED RESPONSES

5. Which of the following types of communication between attorneys should be reviewed by The Florida Bar prior to being conducted/disseminated? (Responses Listed Under the "Other Communication" Category)

- * Written communication for solicitation of business.
- * Only regulate blind or cold calls/communication.
- * Radio, television.
- * Phone directory, billboards, TV, radio.

OPEN-ENDED RESPONSES

6. Please check which of the following types of communication between attorneys and current or former clients should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (Responses Listed Under the "Other Communication" Category)

* Mass media.

* Radio and television.

OPEN-ENDED RESPONSES

7. **Which of the following kinds of communication between attorneys and current or former clients should be reviewed by The Florida Bar prior to being conducted/disseminated? (Responses Listed Under the "Other Communication" Category)**
- * Not sure. Is this reviewed generally or on a case by case basis? Every time? Is it for every solicitation?
 - * Regulating communication between attorneys is dumb. We don't need protection because we should know better!
 - * Radio and television.

OPEN-ENDED RESPONSES

8. Please briefly list any comments or suggestions you have regarding attorney communication.

- * Keep out of it! Who are you anyway?! The Florida Bar already has too much power and gets too much involved with ads. The \$ spent on this could be put to a better use!
- * "If it ain't broke, don't fix it!" Receiving attorneys should be able to discern communications received from another attorney. If an attorney has established a formal relationship with a client, current or former, the Bar should not intervene in future communications. It should be readily apparent that a trust relationship already exists.
- * If the Bar took just took half of the energy and resources they expend on attorney advertising and communication and shifted it towards doing something about the epidemic of the unlicensed practice of law, the public and the profession would be far better served.
- * The Bar controls information to prevent information. The Bar is primarily controlled by attorneys who work for insurance companies. Insurance companies are afraid of people they have wronged contacting an attorney. All the stuff about "reputation of the Bar" is B.S.
- * Attorney to attorney communications do not need to be reviewed by The Florida Bar unless it leads to deceptive communication, which I haven't seen in 50 years of practice in a firm and now as the sole survivor of that firm.
- * Communication between attorney and his client (past and present) is and should remain intimate, unfettered and not subject to encroachment by any third party. The sanctity and free flow of any and all attorney-client communication would be chilled and potentially suspect if either party was required to contemplate future disclosure (unsolicited by the client) by interlopers.
- * Attorneys don't need protection from each other. More emphasis on protecting the public from improper advertising should be the focus of the Bar.
- * I think that an attorney should be smart enough to handle advertising between attorneys without Bar help. I think the Bar has enough to do.
- * Why over-regulate your membership? Attorneys are smart enough to handle these issues by themselves.
- * Advertising rules are meant to protect the uninformed public, not other attorneys, and NOT current or former clients with whom an attorney has an established relationship. There are other rules of professional conduct already in place that apply to these situations.
- * Don't see how the Bar can effectively regulate verbal communications between attorney and client, nor should it.

- * Such should be limited to that permitted by existing law.
- * The Bar should not "big-brother" communications between professionals or between attorneys and their clients.
- * The Bar should not review communications between attorneys or between attorneys and their clients. The Bar does a good job and should continue to review communications to the public in general.
- * Communication from attorneys in area of practice that compete for any portion of their business revenues with non-attorneys should not be bound to any greater standard that would impair their ability to compete. For example, real estate/title attorneys are at a competitive disadvantage to non-attorney-managed title companies.
- * Scrupulous rules and regulations must remain intact on all activities of attorneys.
- * We already have rules regarding attorney-client behavior. Any attempt to expand the rules in this area is redundant, unnecessary and sounds like empire-building to me.
- * Attorneys should not be allowed to advertise prices on signs visible to the public (i.e. billboards, signs outside their offices, etc.). These sorts of advertisements are classless and they tarnish the profession.
- * Attorney communication should not be false otherwise we should be able to contact attorney or clients or former clients.
- * Don't understand the prohibition on "testimonials". If my clients love me, why shouldn't I be able to let them say so, as long as it is not false, misleading, etc.?
- * It would have been helpful to know what conduct has raised these concerns.
- * Try to do a better job of pursuing wrongdoers, particularly where the public is harmed.
- * We are overly regulated already. The Bar should leave us alone. There should be one rule -- "An attorney shall not lie or steal from a client, and can do the work he promised to do."
- * Attorneys should be prohibited from engaging in mass text messaging advertisements and soliciting business via cellular phones.
- * Attorney communication should not be false, otherwise should be able to contact attorney or clients or former clients.
- * In my opinion, communication with current or former clients should be regulated only to prevent misleading or inaccurate information. Other aspects of regulation (e.g., statements regarding expertise or specialization) should not be applied.

- * Once an attorney-client relationship exists ("current" or existed, "former"), I do not believe the Bar should regulate communications. In my opinion, it is marketing or communication to prospective unrepresented potential clients that should require more scrutiny by the Bar, e.g., it would be horrible to see "spam" e-mail sent to unrepresented people (but e-mail to existing clients or former clients should not be regulated as long as the recipient can request removal from that e-mail list.).
- * There is a difference between advertising communications and other forms of communication. The degree of regulation must depend on the nature and purpose of the communication.
- * I personally feel that attorney advertising, TV ads, telephone directory ads, billboards, etc. cheapen the profession.
- * I think attorney to attorney and attorney to client/former client communications should not be subject to Florida Bar review. However, I think attorney to general public advertising/communications to solicit business have reduced the legal profession from a respectable means of helping people to an unrespectable means of making money. The focus has shifted from service to others to service for oneself. The only realistic suggestion I can offer is to restrict advertising to an announcement that so and so is available to assist people in the following areas (e.g. civil disputes, real estate transactions...).
- * I think The Florida Bar is doing a great job protecting the profession from the degradation endured in other states due to deteriorating advertising standards. Keep up the good work.
- * Why try to fix something that is not broken? There are much more important matters for the Bar to address.
- * The Bar has no business regulating any "free speech" communication so long as it is truthful – get off our (obscenity) backs – I can say this because I 'm retiring.
- * Attorneys should be free to communicate with each other but should not be allowed to lie, misrepresent, etc.
- * Seeing former client to retain attorney following a new potential claim when the former client did not first solicit the attorney's involvement. With regard to advertisings, Florida Bar rules actually hurt consumers/accident victims, since similar rules do not apply to non-lawyers, chiropractor/medical clinic advertising "appear" to be from lawyers. Their ads are very slick and enticing, leading the consumer to inferior medical providers, not to mention the public thinking they are calling a lawyer.
- * I favor regulations of attorney advertising to the general public. I also argue with the client regulation. As attorney client communications, I would prefer that they be governed by the disciplinary rules.
- * Should be less restrictive on current and former clients then on general public.
- * Attorneys should be allowed free communication with a present or former client.

- * The Florida Bar does not need to become involved in attorney to attorney or client communication.
- * Let's try going two years without The Florida Bar trying to further mandate and regulate attorneys and their practices. Please stop interfering, and simply start enforcing current rules. Stop trying to regulate everything! Get out of our law practices.
- * Mass attorney communications should comply with rules. Advertisements should be reviewed by the Florida Bar. Personal letter directed to specific clients or former clients, or to another attorney should comply with rules if advertising services are mentioned/main topic of communication, but not subject to Bar review, except in litigation.
- * Most of the rules seem archaic. Many rules were developed when advertising was a new concept to the Bar and in an abundance of caution seem to be aimed at protecting a very small minority of folks with little or no education or common sense. Accuracy in advertising is nearly all that should be required.
- * If they (former or current clients) know you professionally, then they are going to know the solicitation is from an attorney, and, based on their experience with an attorney, be able to make an objective decision as to whether or not to employ the attorney in a different capacity. Further, many causes of action or type of representation can spill over into other legal issues that may subject an attorney to possible malpractice if the attorney does not address it.
- * Maybe there should be a time limit on communication with former without review by the Bar. For instance, if you have had no contact with the client in the past 3 years then you would be subject to review by The Bar, i.e. treat it as a cold call to the general public.
- * This is a difference between communicators with known lawyers and totally unknown, due to mass dissemination the old tradition, of seeing to it, the right case gets to the right lawyer for the job that serves the public best. It should be encouraged rather than having cases handled by those with less experience. Advertising has hampered this tradition. Perhaps the Bar might consider incentives for disengaging cases better handled by others, in this case of advertising.
- * Attorneys should be accountable for the contents of their communications regardless of whom the other party is or the form in which the communications are made.
- * Attorneys who use any communication to solicit should be required to check same to the Bar.
- * Continue to regulate communications by attorneys to prospective clients (the public) to promote professionalism. Moreover, communications to current or former clients must be truthful and not misleading.
- * Attorney to attorney communication is between informed individuals who are exercising their best professional judgment – there is no need to regulate or censor that communication. Attorney to client communications are not the Bar's business, unless a grievance has been filed.

- * Attorney to attorney communication is between, as meaning, someone who is known. If the other person is unknown, then the general public rules apply. One-to-one communication should be less regulated (no prior review) than mass communication. All print or print equitable pieces should at least be filed with the Bar. Anything reviewed should be done so quickly and at low cost.
- * I have seen a solicitation letter from a lawyer telling the client that public records show that the client (potential) has been charged with speeding -- and the sobering lawyer will handle the client case. I object to this.
- * Rules re: advertising as it is today: It is too restrictive; allows for absolutely no creativity (which is the goal of advertising, that is, to set yourself apart from the others), and is too slow (does little to allow attorneys to react or adapt; too many attorneys are paying the price for the sins of a few – no other profession is as restricted as the legal profession. By way of example: Advertising can only have “inanimate” objects! Boring and ineffective.).
- * I note that many attorneys are advertising using social networking Web sites, such as facebook.com, myspace.com, friendster.com and other similar sites. Are these ads on The Florida Bar’s radar? This is attorney to public advertising and should be regulated.
- * I think review and regulation of written materials and local bar newsletter ads are appropriate, but review and regulation of in person communication, texts, and phone calls seem impossible to do. As for review and regulation of communication between attorney and former client or current client, with current client, there should be nothing required for review while, with former clients, it seems it would depend upon the type of advertisement (i.e., mass mailing for another type of law vs. a sentence or two in a personalized letter).
- * First amendment concerns take priority!
- * It needs to be done professionally with a standard of helping a client (prospective) understand his or her role for counsel. The solicitation should be general, and the attorney should not claim any special expertise beyond stating that Board Certified attorneys may be better choices, and he/she is a Board Certified attorney.
- * Any solicitation by, or on behalf of, a lawyer to any lawyer or non-lawyer that is not known to the target (solicitee) should be governed by The Florida Bar. Communications among lawyers and clients should not be regulated.
- * I believe that the nature of telephonic communication that is unsolicited and not related to the attorney's representation poses great risk that clients could be bombarded with solicitations far from the business referral.
- * Any regulation with clients/former clients needs to exclude communication in the course of representation.
- * 1) The Florida Bar should promote certified lawyers as specialists to the public and other attorneys more efficiently, including advertising. 2) The new web information is better at the Florida Bar's Web site but more should be allowed – like bios, etc., and it should be promoted to the public – with v. card downloads.

- * The underlying problem is that communications with prior and existing clients must be handled differently than those with non clients. The underlying principle should be privacy and truthfulness. Also, you need to tread lightly in regulating attorney-client communications.
- * Although I agree attorney communication between attorney and former/current clients should be regulated, I do not believe Bar review before dissemination is necessary. Most, if not all, attorneys take advertising and soliciting rules seriously.
- * TV, radio, letters, etc. should not contain any comments above helping others or clients with any type of injury claim, unless the attorney making the statement can prove he/she personally helped thousands of clients.

APPENDIX B:

QUESTIONNAIRE

The Florida Bar Survey on Attorney Communication

Please complete all questions by checking the appropriate response or by filling in the blank. Kindly check only one answer per question except where noted. Be assured that your responses are strictly confidential.

If you are unfamiliar with The Florida Bar's rules on lawyer advertising, a summary of those rules is attached. Please refer to that attachment on Pages 5-6 in answering the questions below. You can also access these advertising rules in more detail by going to The Florida Bar's Web site (www.floridabar.org) and clicking Lawyer Regulation -- Rules Regulating The Florida Bar -- Chapter 4 -- Subchapter 4-7.

Communication Between Attorneys

1. **In the past five years, please select each form of communication that you have initiated with another attorney in order to solicit business either for yourself or for your firm/legal office (includes referrals): (CHECK ALL THAT APPLY)**

- () Face-to-face communication (in-person discussion)
- () Telephone communication (landline phone, fax)
- () Cellular phone communication (includes text or video messages)
- () Electronic mail communication (e-mail)
- () Written communication (letter, pamphlets, print media)
- () Other communication (_____)

- () None of the above

2. **In the past five years, please select each form of communication that you have received from another attorney related to the solicitation of business (includes referrals): (CHECK ALL THAT APPLY)**

- () Face-to-face communication (in-person discussion)
- () Telephone communication (landline phone, fax)
- () Cellular phone communication (includes text or video messages)
- () Electronic mail communication (e-mail)
- () Written communication (letter, pamphlets, print media)
- () Other communication (_____)

- () None of the above

3. **Within that five year time period, have you ever received any communication from another attorney that you perceived to contain false or incorrect information?**

- () Yes () No **(SKIP TO 4)**

3a. **If YES, please briefly describe that type of false or incorrect communication and any steps you may have taken to address it.**

4. **Please check which of the following kinds of communication between attorneys should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (SEE ATTACHMENT FOR SUMMARY OF RULES) (CHECK ALL THAT APPLY)**

- Face-to-face communication (in-person discussion)
- Telephone communication (landline phone, fax)
- Cellular phone communication (includes text or video messages)
- Electronic mail communication (e-mail)
- Written communication (letter, pamphlets, print media)
- Other communication (_____)

- None; The Florida Bar should not regulate attorney to attorney communication

5. **Which of the following types of communication between attorneys should be reviewed by The Florida Bar prior to being conducted/disseminated? (CHECK ALL THAT APPLY)**

- Face-to-face communication (in-person discussion)
- Telephone communication (landline phone, fax)
- Cellular phone communication (includes text or video messages)
- Electronic mail communication (e-mail)
- Written communication (letter, pamphlets, print media)
- Other communication (_____)

- None; The Florida Bar should not review any type of attorney to attorney communication

Communication Between Attorneys And Their Past/Present Clients

6. Please check which of the following types of communication between attorneys and current or former clients should be subject to the same advertising rules that currently apply to attorneys when they advertise to the general public: (SEE ATTACHMENT FOR SUMMARY OF RULES) (CHECK ALL THAT APPLY)

- Face-to-face communication (in-person discussion)
- Telephone communication (landline phone, fax)
- Cellular phone communication (includes text or video messages)
- Electronic mail communication (e-mail)
- Written communication (letter, pamphlets, print media)
- Other communication (_____)

- None; The Florida Bar should not regulate attorney to client communication

7. Which of the following kinds of communication between attorneys and current or former clients should be reviewed by The Florida Bar prior to being conducted/disseminated? (CHECK ALL THAT APPLY)

- Face-to-face communication (in-person discussion)
- Telephone communication (landline phone, fax)
- Cellular phone communication (includes text or video messages)
- Electronic mail communication (e-mail)
- Written communication (letter, pamphlets, print media)
- Other communication (_____)

- None; The Florida Bar should not review any type of attorney to client communication

8. Please briefly list any comments or suggestions you have regarding attorney communication.

Demographics

**9. What is your legal occupation or classification?
(PLEASE CHECK ONLY ONE RESPONSE)**

Private Practice

- | | |
|--|---|
| <input type="checkbox"/> Managing partner | <input type="checkbox"/> Partner/shareholder/member |
| <input type="checkbox"/> Sole practitioner | <input type="checkbox"/> Practitioner with 1 or more associates |
| <input type="checkbox"/> Associate | <input type="checkbox"/> Of counsel |

Government Practice

- | | |
|--|--|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Federal government attorney |
| <input type="checkbox"/> State government attorney | <input type="checkbox"/> Local government attorney |

Other Legal Position

- | | |
|--|--|
| <input type="checkbox"/> Corporate counsel | <input type="checkbox"/> Legal aid/legal service |
| <input type="checkbox"/> Other (_____) | |

10. What is the total number of attorneys employed in your firm or legal work place?

_____ attorney(s)

Thank you for completing this survey. To ensure confidentiality, please fold the questionnaire so that the Bar's address appears on the outside, staple the survey, and mail it back to the Bar. Once again, thank you for your time and cooperation.

**** REMEMBER TO REMOVE YOUR NAME LABEL ****

Summary of The Florida Bar's Attorney Advertising Rules

You can access these advertising rules in more detail by going to The Florida Bar's Web site (www.floridabar.org) and clicking Lawyer Regulation -- Rules Regulating The Florida Bar -- Chapter 4 -- Subchapter 4-7.

- All ads must contain: name of responsible attorney, geographic disclosure by city or town, cost disclosure if any information about fees is included
- In-person solicitation (including by telephone or fax) is prohibited unless the lawyer has a prior professional relationship with the prospective client
- All ads are prohibited from including:
 - false or misleading information
 - information about past results
 - promises of results
 - statements or implications that the lawyer can achieve results by means that violate law or ethics rules
 - information that cannot be factually substantiated
 - comparisons with other lawyers that cannot be factually substantiated
 - testimonials
 - statements that characterize the quality of legal services
 - visual or verbal depictions that are false, misleading, or manipulative
 - areas of practice in which the lawyer does not currently practice
 - a statement or implication that the ad is Florida Bar approved
 - a statement that the lawyer is a “specialist” or “expert” in an area of practice unless the lawyer is board certified in that area or stating that the lawyer is a “specialist” or “expert” in an area of practice for which there is no board certification
 - a trade name that is misleading
 - a trade name that the lawyer does not practice under (including appearing on signs, letterhead, business cards and together with the lawyer’s signature on pleadings)
 - firm names that state or imply lawyers are partners or practice together in another authorized business entity when the lawyers are not/do not
- All ads have additional requirements:
 - a lawyer must honor an advertised fee for at least 90 days (1 year if in the yellow pages) unless the ad itself states otherwise
 - all required information must appear in the language(s) that the ad uses
 - all required information must be clearly legible and/or clearly intelligible
 - a lawyer cannot pay for the ad of a lawyer who is not in the same firm
 - if the lawyer intends to refer the matter to another lawyer, the ad must so state
- Additional Requirements for All Direct Mail:
 - cannot be sent within 30 days of an accident or disaster
 - cannot be sent to persons who the lawyer knows does not want to receive direct mail from the lawyer

- cannot involve coercion, duress, fraud, overreaching, harassment, intimidation or undue influence
- must be marked “advertisement” in red ink on the envelope and first page of the enclosure(s)
- must be sent by regular U.S. mail
- must contain a written statements of the lawyer’s qualifications and experience
- must be marked “sample” and “do not sign” if it contains a contract
- must not resemble legal pleadings or legal documents
- Additional Requirements for Targeted Direct Mail (recipient is known to have a specific legal problem):
 - first sentence must be “If you have already retained a lawyer for this matter, please disregard this letter”
 - ad must indicate how the lawyer obtained the information prompting the direct mail
 - ad must not disclose the nature of the legal problem on the outside
- Additional Requirements for Direct E-mail:
 - Subject line must state “legal advertisement
 - Otherwise the same as direct mail (including the requirements for targeted direct mail, if the e-mail is prompted by a specific occurrence affecting the recipient)