

The Florida Bar has submitted to the Florida Supreme Court a report proposing amendments to Rule Regulating the Florida Bar 4-7.1. The proposed amendments would modify Rule 4-7.1, which regulates lawyer advertising, to state that the lawyer advertising rules do not apply to: (1) lawyer-to-lawyer communications; and (2) communications between a lawyer and a client or former client.

The Court invites all interested persons to comment on the Bar's proposed amendments, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. An original and nine paper copies of all comments must be filed with the Court on or before May 1, 2009, with a certificate of service verifying that a copy has been served on John F. Harkness, Jr., Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Florida Bar has until May 21, 2009, to file a response to any comments filed with the Court. Electronic copies of all comments also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

**IN THE SUPREME COURT OF FLORIDA IN RE: AMENDMENTS TO  
RULE REGULATING THE FLORIDA BAR 4-7.1 – LAWYER-TO-  
LAWYER AND LAWYER-TO-CLIENT COMMUNICATIONS, SC09-394.**

**RULE 4-7.1 GENERAL**

**(a) - (d) [No Change]**

**(e) Communications Between Lawyers.** Subchapter 4-7 shall not apply to communications between lawyers.

**(ef) Communications With Family Members.** Subchapter 4-7 shall not apply to communications between a lawyer and that lawyer's own family members.

**(g) Communications With Current and Former Clients.** Subchapter 4-7 shall not apply to communications between a lawyer and that lawyer's own current and former clients.

**(fh) Communications at a Prospective Client's Request.** Subchapter 4-7 shall not apply to communications between a lawyer and a prospective client if made at the request of that prospective client.

**(gi) Application of General Misconduct Rule.** The general rule prohibiting a lawyer from engaging in conduct involving dishonesty, deceit, or misrepresentation applies to all communications by a lawyer, whether or not subchapter 4-7 applies to that communication.

### **Comment**

To assist the public in 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. The public's need to know about legal services can be fulfilled in part through advertising that provides the public with useful, factual information about legal rights and needs and the availability and terms of legal services from a particular lawyer or law firm. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Nevertheless, certain types of advertising by lawyers create the risk of practices that are misleading or overreaching and can create unwarranted expectations by persons untrained in the law. Such advertising can also adversely affect the public's confidence and trust in our judicial system.

In order to balance the public's need for useful information, the state's need to ensure a system by which justice will be administered fairly and properly, as well as the state's need to regulate and monitor the advertising practices of lawyers, and a lawyer's right to advertise the availability of the lawyer's services to the public, these rules permit public dissemination of information concerning a lawyer's name or firm name, address, 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 factual information that might invite the attention of those seeking legal assistance.

Regardless of medium, a lawyer's advertisement should provide only useful, factual information presented in a nonsensational manner. Advertisements utilizing slogans or jingles, oversized electrical and neon signs, or sound trucks fail to meet these standards and diminish public confidence in the legal system.

These rules do not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

These rules apply to advertisements and written communications directed at prospective clients and concerning a lawyer's or law firm's availability to provide legal services. These rules do not apply to communications between lawyers, communications between lawyers and their own family members, communications between lawyers and their own current and former clients, or communications with a prospective client at that prospective client's request.