

APPENDIX B

**SELECTED TEXT OF
PROPOSED
AMENDMENTS WITH
REASONS FOR CHANGE**

June 1, 2010
SC08-1181

RULES REGULATING THE FLORIDA BAR

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER 4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

a) Definition. For purposes of this subchapter, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as websites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on Internet search engine screens and elsewhere.

(b) Internet Presence. All websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

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

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

(3) are subject to the requirements of rule 4-7.2 except that a portion of such a website will be considered a communication made at the request of a prospective client and therefore exempt from subchapter 4-7 under subdivision (f) of rule 4-7.1 if

(A) the information provided in that portion of the website is truthful and not misleading, either by itself or in the context in which it is given and

Amendments to subdivision (b) and comment would provide for a section of a law firm website that would be considered information "at the request of a prospective client" and therefore exempt from

(B) that portion of the website is accessible only after the prospective client views a disclaimer page and makes an affirmative acceptance that the viewer has received the following disclaimers:

(i) the type of information that will be accessible;

(ii) that the information has not been reviewed or approved by The Florida Bar;

(iii) if past results are provided:

1. that a prospective client's facts and circumstances may differ from the matter in which results have been given;

2. whether all results are provided;

3. that the results are not necessarily representative of results obtained by the lawyer; and that every case is different, and each client's case must be evaluated and handled on its own merits; and

(iv) if testimonials are provided:

1. that a prospective client's individual facts and circumstances may differ from the matter(s) in which the testimonials are provided;

2.. whether testimonials of all clients are provided; and

3. that the testimonials are not necessarily representative of all clients' experience with the lawyer.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any

the lawyer advertising requirements.

The Supreme Court of Florida directed that the Florida Bar submit website guidelines developed by the Standing Committee on Advertising in the form of amendments to rule 4-7.6(b) in the case of SC08-1181 by order dated March 31, 2010.

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

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

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

(3) the subject line of the communication begins with "LEGAL ADVERTISEMENT."

(d) Advertisements. All unsolicited computer-accessed communications concerning a lawyer's or law firm's services not addressed by other provisions of this rule are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer's communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

Lawyer and law firm websites containing information about the lawyer or law firm's services must comply with the general advertising regulations set forth in rule 4-7.2. However, a lawyer or law firm can create a portion of the website which contains information that can be provided only at the request of a prospective client, and is therefore not subject to the lawyer advertising rules under rule 4-7.1(f). In order to be considered information that is provided at

the request of a prospective client, the information must be accessible only after viewing a disclaimer page and making an affirmative acceptance that the viewer has received the disclaimers required by this rule. On the disclaimer page, the viewer must acknowledge receipt of the information before being given access to the portion of the website that contains any information that does not comply with the lawyer advertising rules, such as past results, testimonials, or statements characterizing the quality of legal services. The lawyer should not require that viewers provide information about themselves in order to access the information. Lawyers may use a disclaimer page, a pop-up, or any other technological mechanism as long as the above guidelines are followed, and the above information cannot be accessed without viewing the disclaimer page and making an affirmative acknowledgement of receipt of the disclaimer. The website must be set up in such a way that this information cannot be viewed as a result of a general search engine or site search without displaying the disclaimer and acknowledgement page each time.

All information contained in this portion of the website must be truthful and not misleading, either by itself or in the context in which it is given. See rule 4-7.1(g). If testimonials or past results are provided in this portion of the website, sufficient information about the matter also must be provided to allow the consumer to evaluate the testimonials or results. Testimonials and past results may be included in this portion of the website only with the informed consent of each client to which the matters relate. See rule 4-1.6(a).

Alternatively, a lawyer may provide a section of the website in which a viewer, at the viewer's option, may provide contact information and make a specific acknowledgement that the viewer would like to receive specific information about the lawyer or law firm. After receipt of the contact information and acknowledgment, the lawyer or law firm may send the viewer information by either e-mail or regular U.S. Mail, as long as the information is truthful and not misleading, either by itself or in the context in which it is given. The lawyer or law firm must provide the same disclaimers to the recipient imposed by this rule.

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 website.