



## BASIC ETHICS FOR LAWYER ADVERTISING

Lawyers have several sets of rules to consider when creating advertisements. The FTC regulates all advertising in every state; each state may have its own regulations governing advertising; and the attorney ethics rules of the state in which you are advertising will regulate lawyer advertising. A review of FTC rules can be seen at <http://www.ftc.gov/bcp/guides/guides.htm>. Most rules are just plain common sense and are meant to protect the public. Some state lawyer ethics rules go further. For instance, some rules are meant to protect the image of lawyers.

In the past, lawyer ethics rules have been more restrictive, however, they have been slowly eroded by both State and U.S. Supreme Court decisions. Because they have been losing ground, state regulating bodies have become complacent. Consequently, lawyer advertising has continued to evolve and today there are many lawyers advertising without even thinking about ethics rules. It is at this point that the enforcement wave may return. Where the violation is minor, it is unlikely that any action will be taken, but when a lawyer advertisement contains a major ethical violation, authorities will have no choice but to attempt to exert their control. If they do nothing, there will be no need for rules. They may as well take their chances in court.

Ethics rules have been slow to keep up with changing times. I believe that some ethics rules, such as requiring that your local office address appear in the advertisement, may become unenforceable and should be eliminated. This rule may have originally intended that clients should have the means to find your office address if your telephone number changed or to determine if your office was geographically convenient for them. This rule no longer makes sense. Use of a toll-free telephone number ensures that your telephone number will never change even if you move your office. According to Nielsen/Net Ratings, in February 2004, 74.9% of households had Internet access. Telephone companies are now offering high-speed Internet access and electric utility companies are now able to offer high-speed Internet access simply by plugging into an electric socket. According to New American Library, computers are now outselling TVs. In a very short time, every home in the US will not only be able to have Internet access, but high-speed Internet access and can easily access a lawyer's web site and determine the office address. Lawyer advertisements can include a web site address where a potential client can find the lawyer's contact information. Requiring the lawyer's office address in a TV commercial, effectively prevents smaller lawyers from joining group advertising where smaller budgets are combined to effectively compete against wealthier lawyers. There simply is not enough room in the TV commercial to list the address of every lawyer.

With regard to the public's need to know if a law office is near them, this is the least important qualitative factor that a client should consider. Instead of looking for a lawyer who is a couple of blocks away, a potential client should look for other factors such as experience with the client's problem, personality, etc. Many times, clients and patients are willing to travel from the suburbs to the city to find a lawyer or doctor because of the perception that professionals in the city are more competent. Additionally, upon making a call, the caller can simply ask for the address of the office.

For your state's ethics rules, see ABA Links to State Ethics Rules Governing Lawyer Advertising, Solicitation and Marketing at <http://www.abanet.org/legalservices/clientdevelopment/adrules.html#>. For a list of resources and articles on ethics and lawyer advertising, see <http://www.hurt911.org/lawyer-advertising/lawyer-advertising-tips-articles.html>

Below is a short list of what I believe are some of the most important ethics rules to consider when creating attorney advertising:

1) Referrals: If you pay money to anyone and a client is referred to you, you are probably obtaining an illegal referral, unless the referral is from a Bar Association. Advertising involves a risk. The risk is that you may pay for advertising and may not sign up any clients. If you are offered a guarantee that you will sign up enough cases to cover the cost of advertising, this guarantee turns your advertising campaign into an illegal referral system. If you are considering working with an advertising agency that offers a guarantee, have an ethics lawyer review the guarantee before you work with that agency. If you work with an advertiser or an agency, make sure you are actually paying for advertising and not for the cases. Beware of advertising schemes where "someone" offers to send you clients which have been obtained without advertising and offers to bill you on their "advertising agency" bill head for advertising services or consulting services. Several lawyers and doctors, I have spoken to, mistakenly believed that if they have a bill for advertising, it's legal. These schemes are clearly illegal in addition to violating ethics and can result in an arrest and conviction. Know who you're doing business with and live by a simple rule: If you're trying to make something look like something else, it's probably illegal.

In some states, such as New York, if telephone calls are answered in a central office, no person can decide which calls go to which lawyers. For instance, if the agency or call center receives telephone calls from callers requesting different services such as bankruptcy, criminal, divorce, and personal injury, a referral may be made when the operator decides which lawyer to send the call to. Even if all calls request personal injury services and an operator is able to decide whether to give the call to lawyer "A" or lawyer "B", a referral would be made.

2) Disparaging Other Lawyers: Advertising which includes a remark disparaging other lawyers is probably one of the quickest ways to get into trouble. Not only is it unethical in most states, but lawyers who view your disparaging advertising will likely report you.

3) Misleading Advertising Claims: Claims should be carefully examined to avoid being misleading. Claims implying that your law firm can get more money or that your law firm is powerful are misleading. Even a claim that you are a big-city lawyer, while it could be true, can be considered misleading as an implication of power or competency due to your location. In states, such as New York, where the lawyer is required to charge the client for expenses, stating that there is no fee unless you win will not only violate ethics but subject you to a lawsuit.

4) Claiming to be an Expert: Most states prohibit lawyers from stating in their advertising that they are an expert or that they specialize in a particular practice area, unless the lawyer is board certified. Where the lawyer is not certified, some states, like Texas, require that the lawyer state that he or she is not certified (this rule should also be eliminated).

5) Vanity Telephone Numbers and Web Site Domain Names: Some vanity telephone numbers and web site domain names can violate legal ethics. Make sure that your vanity telephone number or web site name avoids use of certain words which could potentially create an incorrect expectation in the mind of the consumer or violate one of the other ethics rules. Both vanity telephone numbers and web site domain names should not imply that you are better than another lawyer, that you can accomplish something for the audience that may not actually occur or that you are an expert.

Use of words such as "BEST", "TOP", "FOREMOST", "LEADING", "WIN" and similar words in a vanity telephone number or web site domain name would likely create a misleading expectation in the mind of the consumer and will violate ethics rules in most states. The question is by who's standards are you the best or leading and in what? 1-800-WIN-XXXX may be good for a casino, but when used for personal injury will imply that the person who becomes a client of the firm will win money when, in fact, that may not happen and even if it does, it's an award for just compensation, not a "winning". Laura Hodes in her article for the ABA Journal entitled Vanity Phone Numbers Make Your Firm Less Forgettable, quoted Will Hornsby, an expert on lawyer advertising and staff counsel in the ABA Division for Legal Services, who said that while there is nothing unethical about vanity numbers, "1-800-1-WIN-CASES would be unethical because it is making an unsubstantiated claim, creating unjustified expectations that can be true but still be misleading."

6) Trade Names: Most states do not allow lawyers to use trade names. While a 1-800 vanity phone number can be branded in advertising so people remember how to call you, it should not become your trade name.

7) Verdict Results: If you advertise previous settlements or verdict results, most states will require a disclaimer that prior results are not predictive of future outcomes. Claims must be true and you should be able to prove it.

8) Use of Actors in the Commercial: Some states prohibit lawyers from using an actor in the commercial to portray a lawyer and have strict regulations regarding the use of testimonials, and the portrayal of clients.

9) Dramatic Accident Re-creation: Some states prohibit use of dramatic accident recreations in the commercials.

10) Jingles: Some states prohibit use of jingles in commercials.

11) Office Address: Most states require that your main office address appear in your advertising.

12) Copy of Advertisement: Some states require lawyers to keep a copy of the advertisement for certain period of time. Some states require lawyers to submit a copy of their advertisements for prior approval.

