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### **The New Iowa Advertising Rules: A Comparative Look**

On April 15, 2011, the Iowa Supreme Court appointed a committee to propose amendments to the Rules of Professional Conduct regarding attorney advertising. That committee made recommendations, and the Court proposed new rules on April 20, 2012. The proposed rules can be found online at:

<http://www.iowacourtsonline.org/wfdata/files/ProfessionalRegulation/LawyerAdvertising/Recommendations.pdf>

The deadline for comments on the proposed rules was July 29. The new rules were adopted August 29, effective January 1, 2013, and are available at the following link:

<http://www.iowacourts.gov/wfdata/frame13896-1671/File155.pdf>

(If a lawyer is under an existing contractual obligation, then he or she may continue under the old rules for the rest of 2013).

The old rules are among the most conservative in the nation, and it would have been unlikely that these rules would have withstood constitutional scrutiny. See, e.g., Potential Constitutional Infirmities of Iowa's Current Lawyer Advertising Rules, available online at:

<http://www.iowacourtsonline.org/wfdata/files/Committees/FirstAmendmentconstitutionalissues.pdf>

This program will take a look at the existing rules, the new rules, the model rules, and the rules as adopted in other states.

#### **A. The Old Rules**

Since they are still on the books (for another two months), and since they provide the historical background for the proposed rules, it's worth taking a look at the existing advertising rules. (Note that Rules 7.5 and 7.5 are also being replaced, but the existing versions are discussed in more detail below.)

##### **Old Rule 7.1**

Iowa's version of Rule 7.1 follows the model rule in prohibiting false and misleading communications. But the Iowa rule goes further and prohibits any communications with the public that are "unverifiable", that "rely on emotional appeal", or make a statement or claim relating to the quality of the lawyer's services. These additions to the model rule are now omitted from the proposed rule. Therefore, the sole remaining restriction is that public communications not be false or misleading (or omit facts necessary to keep the statement from being misleading).

##### **Old Rule 7.2**

The old version of Rule 7.2 was completely different from the model rule, and from the rule adopted in neighboring states. A more complete description of the rule can be found in my 2011 ethics CLE materials, which are available online at:

<http://www.richardclem.com/coursematerials/EthicsRefresher2011PART2.pdf>

That rule begins by stating the exceptions. The following types of communications are, by definition, not advertising, and are therefore outside the scope of Rule 7.2 (other than certain fee disclosures and biographical information):

1. Communications or solicitations for business between lawyers.
2. Communications between a lawyer and an existing or former client, provided the lawyer does not have reason to know that the attorney-client relationship has been terminated.
3. Communications that are in reply to a request for information by a member of the public, if it was not prompted by unauthorized advertising. "Information available through a hyperlink on a lawyer's Web site shall constitute this type of communication." (Interestingly, the effect of this last provision was to make the internet advertising rules considerably more liberal than the rules for other advertising media. And since the proposed rules have specific provisions for website URL's, the internet rules have actually become somewhat more restrictive.)

**Phone Book Advertising.** The only items specifically allowed in a directory are the lawyer's or firm's name, address, telephone number, and designation as an attorney. It does permit "box ads", and notes that the fee disclosures elsewhere in the rule must be included.

**Broadcast Advertising.** For broadcast advertisements, the information must be "articulated by a single nondramatic voice", but the voice must not be that of the attorney. Television ads are permitted, but no visual display is allowed except in print as articulated by the announcer. Interestingly, while the author has seen a few Iowa TV ads for attorneys, he has not seen a single case where this part of the rule was followed.

**Preserving Advertising.** Copies of advertising must be retained for three years. This does include copies of all information placed on the World Wide Web.

#### **Permitted Contents.**

The following type of content may be communicated, "provided it is presented in a dignified style":

1. Name, address, phone, internet address, and designations such as "lawyer", "attorney", "J.D.", "law firm", etc.
2. A description of the practice. This can be "general practice", "general practice including but not limited to" one of the specified fields or practice, or a field of practice limitation of practice, or specialization. However, such designations of fields of practice are governed by Rule 7.4.
3. date and place of birth;
4. date and place of admission to the bar of state and federal courts;
5. schools attended, with dates of graduation, degrees, and other scholastic distinctions;
6. public or quasi-public offices;
7. military service;
8. legal authorships;
9. legal teaching positions;
10. memberships, offices, and committee and section assignments in bar associations;
11. memberships and offices in legal fraternities and legal societies;
12. technical and professional licenses;
13. memberships in scientific, technical, and professional associations and societies; and
14. foreign language ability.

#### **Communicating Fee Information**

Fee information may be communicated "in a dignified style" subject to the following rules: The following fee information may be communicated:

1. The fee for an initial consultation
2. The availability of a fee schedule and/or estimate

3. Contingent fee rates. The statement must disclose whether the percentage is computed before or after fees and expenses. It must also explain that an unsuccessful contingent fee litigant could be liable for certain costs.
4. Fixed fees or range of fees for specific services
5. Hourly rates
6. Whether credit cards are accepted.

If fee information is communicated, then certain specific disclosures, contained in the rule, must be made. The disclosures must be in print at least as large as the largest type used to discuss fees. Unless otherwise specified, a lawyer is bound by any fees stated in a phone directory for the period of time between printings of the directory. In other advertising, the lawyer is bound by the fee for ninety days.

### **Communication about Instituting Litigation**

If the lawyer's communication seeks to advise the institution of litigation, then it must also disclose that filing a claim solely to coerce settlement or harass another could be illegal. It must state that this could render the person liable for malicious prosecution or abuse of process.

### **Referral Organizations, etc.**

A lawyer who is part of an authorized referral organization, etc., may allow the organization to use "means of dignified commercial publicity" that does not identify the lawyer by name to describe the availability of legal services.

### **Other Permitted Communications**

The following types of identification of a lawyer are not prohibited by this rule:

1. Political advertisements, if the lawyer's professional status is germane.
2. In public notices where the lawyer's name and profession are required and are for a purpose other than attracting potential clients.
3. In routine reports of organizations of which the lawyer serves as a director or officer.
4. On legal documents prepared by the lawyer
5. In legal texts and publications, and in dignified advertisements for them.
6. Communications permitted by a legal assistance organization.

The rule also restricts lawyers from compensating press or other media members for professional publicity.

The following Iowa Supreme Court decisions are among those construing these provisions: In Iowa Supreme Court Attorney Disciplinary Bd. v. Bjorklund, 725 N.W.2d 1 (Iowa 2006), the attorney's license was revoked for various offenses, including violation of the advertising rules.

Regarding First Amendment Issues, see: Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Visser, 629 N.W.2d 376 (Iowa 2001); Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Kirlin, 570 N.W.2d 643 (Iowa 1997); Iowa Supreme Court Bd. of Professional Ethics & Conduct v. Wherry, 569 N.W.2d 822 (Iowa 1997).

### **Old Rule 7.3: Direct Contact with Prospective Clients**

Iowa's existing rule is similar to the model rule, in that it does not allow "in person, live telephone, or real-time electronic contact" to solicit professional employment by a prospective client. (Other states allow such contact if the lawyer's pecuniary gain is not a motive, but the Iowa rule makes no inquiry into the lawyer's motive. The model rule contains some exceptions, but the Iowa rule does not.

A lawyer may make written solicitations by direct mail or e-mail to persons or groups known to possibly need specific legal services. A lawyer must retain a copy of the solicitation for three years. In addition, the

lawyer must simultaneously file a copy with the Iowa Supreme Court Disciplinary Board. Similar solicitations may be sent to the general public, even though recipients might not have a specific need for that service. In this case also, a copy must be maintained for three years, and a copy must be filed with the Disciplinary Board. If required, the fee disclosures required by Rule 7.2(h) must be included on these solicitations. In addition, they must include, in 9-point or larger type, "ADVERTISEMENT ONLY."

## **B. The New Rules**

The new Iowa Rules generally follow the ABA model rules, but with some exceptions.

As noted above, new Rule 7.1 removes the prohibition on unverifiable statements, and statements about the quality of the lawyer's services.

### **New Rule 7.2: Advertising**

A lawyer may advertise. Advertising is subject to Rules 7.1 and 7.3. The following rules also apply: A lawyer may not give anything of value to someone to recommend his services, with the following exceptions:

1. Pay the reasonable cost of permitted advertisements or communications.
2. Pay the usual charges for a legal service plan or a lawyer referral service. (The lawyer referral service must be non-profit or approved by the appropriate regulatory authority.)
3. Pay for a law practice under Rule 1.17.
4. Refer clients to another lawyer or other professional under an agreement that the other person will refer clients to the lawyer. However, such an agreement must be otherwise permitted by the rules, and the following conditions must apply:
  - a. The reciprocal referral agreement is not exclusive
  - b. The client is informed of the existence and nature of the agreement.

Any communications made under this rule must include the name of at least one lawyer or law firm who is responsible for its content.

### **New Rule 7.3: Direct contact with prospective clients**

Rule 7.3 now follows the ABA model rule. While the old Iowa rule was similar, there are some changes. Notably, the old rule called for the words "ADVERTISEMENT ONLY" to be included. The new version of the rule (following the model rules) calls for the words "Advertising Material". Also, currently, a copy of such material must be filed with the Iowa Supreme Court Disciplinary Board. This requirement is now removed. (Interestingly, Indiana and Wisconsin still have a similar requirement in their rules, even though they follow the model rules in other respects.)

A lawyer shall not solicit professional employment from prospective client in person or by live telephone contact, if a significant motive is the lawyer's pecuniary gain. There are two exceptions to this rule:

1. The person contacted is a lawyer, or
2. The person contacted is family, has a close personal relationship, or has a prior professional relationship.

In addition, a lawyer shall not solicit professional employment in any manner (written, recorded, electronic, in-person or telephone) if either of the following are true:

1. The prospective client has made known a desire not to be solicited, or

2. The solicitation involves coercion, duress, or harassment.

Any written, recorded, or electronic communication soliciting professional employment from someone known to be in need of services in a particular matter must conspicuously include the words "Advertising Material" on any outside envelope, and within the communication. There are the same two exceptions as in the first rule:

1. The person contacted is a lawyer, or
2. The person contacted is family, has a close personal relationship, or has a prior professional relationship.

This rule does not prohibit a lawyer from participating in a prepaid or group legal service plan (not owned or directed by the lawyer) that uses in-person or telephone contact to solicit membership, if the persons are not known to need particular legal services.

#### **New Rule 7.4: Communications regarding fields of practice.**

The current rule allows attorneys to communicate a particular field of practice, but the attorney is required to specify the field by reference to a list of specialties, and use the exact terminology of the list contained in the rule. This prohibition is now removed, and this part of the rule follows the model rules:

A lawyer may communicate whether or not he or she practices in a particular field of law. A lawyer admitted to engage in patent practice before the U.S. Patent and Trademark Office may use the designation "patent attorney" or similar. A lawyer engaged in admiralty practice may use the designation "admiralty", "proctor in admiralty", or similar.

With regard to communicating that the attorney is a "certified specialist" or similar language, most states, such as Minnesota, require that the certifying organization be identified, and that it be recognized by the state supreme court.

Iowa now allows this communication, but the Iowa Supreme Court does not accredit such organizations. Therefore, the Iowa rule differs from the model rule.

As in other states, the certifying organization must be clearly identified. But since Iowa does not accredit such organizations, the certification must be by an organization or state authority "that the attorney can demonstrate is qualified to grant such certification to attorneys who meet objective and consistently applied standards relevant to practice in a particular area of law." Reference to the certification must be truthful, verifiable, and not misleading. It must also include a statement that the Iowa Supreme Court does not recognize certifications of specialty, and that certification is not a requirement to practice law in Iowa.

#### **New Rule 7.5 Firm names and letterheads**

New Rule 7.5 follows the model rule, but with two interesting twists. First of all, the law firms URL (web site address, e.g., richardclem.com) is specifically on the same footing as the firm name. Secondly, trade names, **including URL's**, must be registered with the Office of Professional Regulation.

Firm names, letterheads, and other professional designations must comply with Rule 7.1 (e.g., no false or misleading information). A trade name or URL may now be used by an Iowa lawyer or law firm, but it is subject to the following requirements:

1. It may not imply a connection with a government agency or public or charitable
2. It may not imply a connection with a public or charitable legal services organization
3. It must not violate Rule 7.1 (e.g., not be false or misleading)

A firm with offices in more than one jurisdiction may use the same name in each jurisdiction. However, the identification of lawyers in an office shall indicate the jurisdictional limitations.

The name of a lawyer holding public office shall not be used during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

The extension of this rule to URL's might be problematic for some firms. In states in which trade names have been allowed, lawyers are often careful to avoid using geographic names. For example, a law firm in Minneapolis would be wise to avoid using the trade name "Minneapolis City Attorneys", or even "Minneapolis Attorneys" since there is a government office with a similar name, and this could violate the rule. However, since the Minnesota rule does not directly address URL's, a similar URL might be used. Indeed, there is a firm using [minneapolisattorneys.com](http://minneapolisattorneys.com). A URL such as [desmoinesattorneys.com](http://desmoinesattorneys.com) (which is apparently not in use other than by a placeholder page) might be problematic in Iowa under the proposed rule.

Under proposed Iowa Court Rule 49.4, the URL must be registered as a separate trade name if it is "more than a minor variation on the official name of the lawyer, firm, or organization." This registration will be annual, and will include a fee. Therefore, presumably [richardclem.com](http://richardclem.com) would not require registration, but [hawkeyelawyers.com](http://hawkeyelawyers.com) would.

Note, the rule applies to "Uniform Resource Locators" (URL's), and does not relate to domain names. So if your e-mail address is [jane.lawyer@hawkeyelaw.com](mailto:jane.lawyer@hawkeyelaw.com), then registration probably isn't required, as long as you don't have a website with that domain name. And since URL generally refers to the complete web address, and not just the domain name, it might be wise to register if you have a website at a third-party provider, and have a URL such as [lawyers.com/desmoines](http://lawyers.com/desmoines).

It's unclear whether some other URL's might need to be registered. For example, I have a "profile" at [findlaw.com](http://findlaw.com). I don't pay for it, but I believe I provided the information at some point. That page has its own URL: [http://pview.findlaw.com/view/2901163\\_1](http://pview.findlaw.com/view/2901163_1). If I were an Iowa attorney, would I be required to register that URL? The literal language of the rule seems to say yes.

Even though Iowa attorneys are not currently using trade names, most probably have a URL for their website, and many of these will need to be registered with the state under the new rule.

Finally, even though trade names and URL's will be allowed for Iowa firms, the name of one or more principally responsible attorneys must also be displayed.